Kansas Labor Law and District Court Injunctions

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INTRODUCTION

Most Kansas lawyers have never tried a labor law case. Consequently, they are not familiar with the current doctrine enunciated by the courts and legislatures. As former Chief Justice Smith observed, "The field is new." Since World War II, this state has experienced extensive industrial expansion. Over 1,000 new industries have been established in Kansas since 1940. The 1956 Kansas Directory of Manufacturers lists 3,200 manufacturing companies. With the merger of the Congress of Industrial Organization and the American Federation of Labor in 1955, the unions of this country have solidified their position and can now expand. The increased industrialization of Kansas will make it a fertile field for organizational efforts. Kansas lawyers will be forced to re-examine the current doctrine in order to advise their clients, employers or employees, of their respective rights and liabilities.

In the early part of this century, Kansas was a leader in the development of labor legislation, and several decisions of the United States Supreme Court construing Kansas law became landmarks. But after Giltner v. Becker in 1931, which discussed the use of injunctions against union organizational efforts, the Kansas Supreme Court spoke infrequently in labor matters. Other than the four very recent cases on the pre-emption doctrine and the one case deciding the right of a union...
to induce a breach of contract when exercising union discipline,\(^7\) the court has only answered peripheral questions.\(^8\) It has spoken on the right to sue on a union contract,\(^9\) the liability of a union to suit by its members,\(^10\) the right of a union to discipline its members,\(^11\) and an early pre-emption problem.\(^12\) Consequently the Kansas court has interpreted only minor sections of the Kansas Labor-Management Relations Act of 1943\(^13\) and the 1955 amendments to that Act.\(^14\)

[After the printer received this article, the Kansas Supreme Court handed down three opinions on October 5, 1957,\(^14a\) and one on October 9, 1957,\(^14b\) discussing Kansas labor law and its relation to federal law. Although this writer has read these opinions in their typewritten form, they will not be analyzed in detail nor will the tone of the article be changed to conform to the fact that the Kansas Supreme Court has increased the slim corpus of state labor law.

Three of these cases involve the doctrine of pre-emption as applied to state court injunctions, while the other determined the legality of "organizational picketing" under the Kansas Labor-Management Relations Act, as amended.\(^14c\) A discussion of these holdings is added to the existing discussion of these topics as they appear in this paper.]

Since 1931, the United States has experienced a substantial change in labor-management relations, both factually and legally. Congress has passed the Norris-La Guardia Act\(^15\) and the Wagner Act\(^16\) with its 1947 Taft-Hartley Amendments.\(^17\) Both federal and state courts have decided hundreds of cases delineating the limits of permissible conduct in labor-management conflict. Kansas started strong, but has rested on the back stretch. Perhaps the state will reassert leadership on the far turn.

One of the problems in determining what is proper for a union or employer is the lack of appellate decisions. The law's delay works a

\(^8\) This is no longer true. See text circa note 14 infra.
\(^13\) Kan. G.S. 1949, 44-802 to 815.
\(^14a\) asphalt Paving Inc. v. Teamsters Union, Local 795, No. 40,282; Bender v. Constr. and Gen. Laborers, Local 685, No. 40,520; Friesen v. Gen. Team and Truck Drivers, Local 54, No. 40,247. Opinions are on file with the Clerk of the Supreme Court, Topeka, Kansas.
\(^14b\) Stieben v. Constr. and Gen. Laborers, Local 685, No. 40,514; opinion on file with the Clerk of the Supreme Court, Topeka, Kansas.
\(^14c\) Asphal Paving Inc. v. Teamsters Union, Local 795, No. 40,282; Bender v. Constr. and Gen. Laborers, Local 685, No. 40,520; Friesen v. Gen. Team and Truck Drivers, Local 54, No. 40,247. Opinions are on file with the Clerk of the Supreme Court, Topeka, Kansas.
special hardship in labor cases. If a strike or picket line is enjoined, the unions lose. If it is denied, management will probably settle. In either case, there is little pressure to obtain a "correct" ruling from the state supreme court. Only when a union desires to get an authoritative holding for future activity will it appeal.

The Kansas lawyer is then faced with a considerable problem. Since the Kansas Supreme Court has not had the opportunity to tell him what it considers unlawful behavior on the part of management, or more especially on the part of labor, the only authoritative interpretation available is that rendered by Kansas district courts in deciding labor injunction cases. It is the district court judges who must and who are interpreting the Act. Furthermore, it is in this area of the law, more than most others, that the actual practices of the district courts are of importance. Abstract rules make little difference when the delay of appellate review renders it ineffective.¹⁸

Since district court opinions are not reported, the only feasible method of obtaining labor injunction decisions is by an examination of the court files.¹⁹ All of the district judges were therefore contacted, and many expressed an interest in the project and offered to help. Eight judges sent in data on fourteen cases, while others indicated that they had heard no labor cases. Several law students examined the court files and found nine cases. In the four pre-emption cases which reached the Kansas Supreme Court,²⁰ the district courts' opinions were available and examined. One district court opinion had been published in the Kansas Law Review.²¹

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¹⁸ The United States Congress realized this problem and attempted to discover how the Norris-LaGuardia Act was actually working. They hired four law schools, Wisconsin, U.C.L.A., Duke and Cornell, to make a study of the practices of district courts. For the results and an account of the difficulties in finding the material, see Senate Sub-Committee on Labor Management Relations, *State Court Injunctions*, S. Doc. No. 7, 82d Cong., 1st Sess. (1951).

¹⁹ To obtain these decisions, the students taking the labor law course at Kansas University in the spring of 1956 checked at the clerk of the district court's office in their home counties during the spring vacation. Nine cases were found and reported with varying degrees of completeness. During the summer of 1956, personal letters were sent to each district court judge soliciting his aid. Again, in February of this year, a second letter was sent. Altogether, nineteen judges answered one or both of these solicitations.

Letters were received from the following judges: Joseph J. Dawes, First Judicial District; Paul H. Heinz, Third Judicial District; Harry W. Fisher, Sixth Judicial District; B. M. Dunham, Seventh Judicial District; John L. Kirkpatrick, Clayton Brenner, Raymond H. Carr, Tenth Judicial District; George S. Reynolds, Thirteenth Judicial District; Hal Hyler, Sixteenth Judicial District; Robert W. Hemphill, Seventeenth Judicial District; William C. Kandt, Eighteenth Judicial District; Lewis L. McLaughlin, Twenty-first Judicial District; William H. McHale, Harry G. Miller, Willard M. Benton, Twenty-ninth Judicial District; A. R. Buzick, Thirtieth Judicial District; Roland H. Tate, Thirty-second Judicial District; Spencer A. Gard, Thirty-seventh Judicial District; and John Fontron, Fortieth Judicial District. Judges A. K. Stavely of Lyndon, C. E. Birney of Hill City and Donald T. Magaw of Osborne all said that they had heard no labor cases, but would send in reports of any cases decided by them in the future.

²⁰ The four district court opinions, appeals from which were decided by the Kansas Supreme Court on October 5 and 9, 1957, were already included in this survey.

²¹ *See note 6 supra.*
A survey of the briefs filed with the Kansas Supreme Court provided some data on three other cases.

Altogether then, a greater or lesser amount of information exists in twenty-six labor injunction cases. While the number of judges responding was only 43.3 per cent of the total contacted,22 most of these are from eastern Kansas. And when their decisions are added to those obtained through the Supreme Court briefs and district court files, it would appear that a substantial number of the last two or three years' cases were obtained and are herein reported.

**BACKGROUND AND HISTORY OF KANSAS LABOR LAW**

Before discussing the district court cases, some background material should be covered. Kansas labor litigation starts with *Brick Co. v. Perry,*23 decided in 1904, where the court invalidated an 1897 statute making it a crime to discharge an employee because he belonged to a labor union.24 The court felt that the statute violated the Fourteenth Amendment of the United States Constitution. Subsequently, the legislature changed the statute to say that it would be unlawful to coerce or induce an employee into signing a "yellow dog" contract,25 but said nothing about discharge. In *Kansas v. Coppage* in 1912,26 the Kansas court attempted to distinguish the *Brick Co.* case and *Adair v. United States,*27 which involved a similar federal statute prohibiting discharge. But this was reversed by the United States Supreme Court in *Coppage v. Kansas,*28 on the ground that the fourteenth amendment gave a constitutional right to employers and employees to make a "yellow dog" contract. Prior to the *Coppage* litigation, the Kansas Court, in *Railway v. Brown,*29 held void another 1897 statute requiring an employer to furnish a true discharge letter,30 on the ground that it violated the fourteenth amendment's freedom to contract.

After World War I, the organized coal miners in southeast Kansas requested a greater share of the profits. Unrest and violence followed their demands. Fearful of complete chaos, the Kansas Legislature, called

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22 Twenty-two out of a total of fifty-one judges.
23 69 Kan. 297, 76 Pac. 848 (1904).
24 Kan. Sess. Laws 1897, c. 120, §§ 1, 2.
25 Kan. Sess. Laws 1903, c. 222, §§ 1, 2. A yellow dog contract is the name given to an agreement signed by an employee that he will not join a union.
26 87 Kan. 752, 125 Pac. 8 (1912), followed per curiam in Kansas v. Ackenhausen, 87 Kan. 792, 125 Pac. 14 (1912).
27 208 U.S. 161 (1908).
28 236 U.S. 1 (1914).
29 80 Kan. 312, 102 Pac. 459 (1909).
to special session in 1920, passed the Court of Industrial Relations Act. This act, a forerunner of Mussolini's corporate state concept, attempted to vest control of all important industry and agriculture, and their labor relations, in an administrative court. This court had the power to settle all problems of wages and prices in a "fair" manner. In effect, it provided for compulsory arbitration and prevented all strikes or lockouts. The multitude of litigation that followed centered on three factual situations.

The first was the *Dorchy* and *Howat* cases arising out of a series of strikes in the southeastern Kansas coal fields. The second was the *Wolff Packing Co.* cases, resulting from an attempt by the Court of Industrial Relations to set wages and hours at a Kansas City packing company. And the third was the *Personett* case, triggered by a strike on the Santa Fe Railroad. In these cases the Kansas Supreme Court upheld the validity of the Act, but the United States Supreme Court ruled otherwise. The Court said that a state could not regulate an industry not affected with the public interest and that forcing an arbitration award and destroying freedom of contract were prohibited by the fourteenth amendment. However, an injunction based on an "unlawful" strike to force back payment of wages was independently upheld. The litigation was long and involved.

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31 Kan. Special Sess. Laws 1920 c. 29. For a discussion of this Act and the conditions that led to its passage, see GAGLIARDO, KANSAS INDUSTRIAL COURT (1941).

32 See note 35 infra.

33 Ibid.

34 Ibid.

35 The first case testing the Court of Industrial Relations Act was *State ex rel. v. Howat*, 107 Kan. 423, 191 Pac. 585 (1920), where the court held that contempt would lie for refusal to testify before the Industrial Court. Then, in *State ex rel. v. Howat*, 109 Kan. 376, 198 Pac. 686 (1921), an appeal from a finding of contempt for refusing to obey an injunction issued under the Act, the court held the Act constitutional, but as an alternative holding said that the district court's injunction could not be collaterally attacked. In another 1921 case, *State ex rel. v. Howat*, 109 Kan. 779, 202 Pac. 72 (1921), the court gave no facts, but upheld the injunction on the authority of the first two Howat cases. On appeal to the United Supreme Court, *Howat v. Kansas*, 258 U.S. 181 (1922), the two earlier cases were dismissed. The Court stated that it would not decide the constitutionality of the Act as there were adequate non-federal grounds for dismissing the state decisions. It was also noted that the Kansas court had construed the Act in yet another case, and that an appeal to the Supreme Court was pending.

The other case, *Court of Industrial Relations v. Wolff Packing Co.*, 109 Kan. 629, 201 Pac. 418 (1921), was decided late in 1921. The Kansas court held the Act constitutional when applied to the setting of hours and wages of employees of a packing plant. Then, prior to action by the United States Supreme Court, on a second appeal to the Kansas Supreme Court, Court of Industrial Relations v. Wolff Packing Co., 111 Kan. 501, 207 Pac. 806 (1922), the Kansas court reconstrued the Act, but again found it constitutional. The United States Supreme Court, in *Wolff Packing Co. v. Industrial Court*, 262 U.S. 522 (1923), stated that the second state opinion controlled and reversed the Kansas court on the grounds that the setting of wages, without either a true showing of an emergency or that the industry was vested with a public interest, violated freedom of contract and took property in violation of the fourteenth amendment.

After the 111 Kansas case, and before the United States Supreme Court reversed it, the Kansas court upheld another injunction in *State v. Howat*, 112 Kan. 235, 210 Pac. 352 (1922). Here the strike was called to force the employer to pay a wage claim of one of the employees; and the Kansas court held the injunction proper by merely citing the earlier cases. On appeal, *Dorchey v. Kansas*, 264 U.S. 286 (1924), the Supreme Court reversed the Kansas court and said...
The Kansas Legislature also passed an act in 1920 making it a crime to commit criminal syndicalism or sabotage. Construing this Act, the court held, in *State ex rel. v. Industrial Workers of the World*, that the state could enjoin the I.W.W. from coming into Kansas. It was immaterial, said the court, that the I.W.W.'s purpose was to violate the criminal laws. The injunction was needed to protect the people.

Rounding out this early period are three injunction cases. In 1913, the legislature passed an anti-injunction statute. This statute provided that in disputes concerning conditions of employment between employers and employees, no injunction should issue unless notice was given, except that a seven-day restraining order was proper upon a showing of irreparable injury. A bond was required in all cases. The injunction was to be specific and directed at the named person only. The final section, reading almost the same as Section 20 of the Clayton Act passed in 1914, prohibited any injunction unless there was irreparable property damage and, in the second paragraph, allowed no restraining order or injunction to prevent peaceful strikes, picketing, boycotting or the paying of strike benefits.

In the first case, *Crane v. Snowden*, the petition alleged a strike accompanied by violence. The Kansas Supreme Court sustained the overruling of the defendant's demurrer on the ground that the conduct of...
business was a property right and that the statute expressly allowed an injunction in cases where there was irreparable injury to a property right. Injury to physical property was not necessary. The court ignored the more restrictive second paragraph. Apparently it felt that the allegation of violence was sufficient to remove the restrictions of that paragraph.

Then in 1925, in *Bull v. International Alliance*, the court, while hinting that the whole statute was unconstitutional, found the statute did not apply to the facts of the case. KAN. G.S. 1949, 60-1107 states that no injunction shall be granted in any case “between an employer and employee, or between employers and employees, or between employees, or between persons employed and persons seeking employment . . . .” The court said that the injunction was not issued against the employees, but only against the union who was not an employee nor seeking employment. This statute could not be used to prevent an injunction against stranger picketing.

Finally, in *Giltner v. Becker*, the Kansas court liberalized the interpretation of the word “employee” and, following the United States Supreme Court in *American Foundries v. Tri-County Council*, which interpreted the like provision of the Clayton Act, held that if the union members had been recent employees, the court could not issue an injunction. If the statute was to apply to anyone, employees who had been or who were seeking employment must be included.

Actually these three cases tell us little. Not only were they decided during the period of restrictive court action, but also they only determined that the conduct of a business was a property right, and that the word “employee” does not include the union, but does include individuals who are ex-employees.

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47 The court cited *Truax v. Corrigan*, 257 U.S. 312 (1921), which held unconstitutional an Arizona statute prohibiting injunctions. However, there is no question today about the constitutionality of an anti-injunction statute. The Truax case has never been formally overruled, but in *Senn v. Tile Layers Protective Union*, 301 U.S. 468 (1937), a similar state statute was upheld, and in *Lauf v. Shinner & Co.*, 303 U.S. 323 (1938), the more restrictive Norris-LaGuardia Act was upheld.
48 133 Kan. 170, 298 P.2d 780 (1931).
49 257 U.S. 184 (1921).
50 See note 44 supra.
51 The court then held that the defendant in the injunction suit could obtain his writ of habeas corpus since the contempt conviction fell with the denial of the right of the court to issue the injunction.

While the interpretation of the statute is correct, there is abundant authority to hold that the issuing of the injunction was not void, but merely erroneous. See *Howat v. Kansas*, 258 U.S. 181 (1922); and for recent authority in the federal courts, see the celebrated case of United States v. United Mine Workers of America, 330 U.S. 258 (1947). See also Cox, *The Void Order and the Duty to Obey*, 16 U. Chi. L. Rev. 86 (1948).
These cases closed out the first chapter of labor law in Kansas. For the next nineteen years, the Kansas court remained silent about the lawfulness of union activity. But the rest of the United States continued to develop the use of legal controls to limit industrial conflict.

**Federal Legislation and Supreme Court Decisions**

Starting with the Norris-La Guardia Act of 1932, Congress overruled *Duplex Printing Co. v. Deering,* with its restrictive interpretation of the Clayton Act, and made explicit to the federal courts that they were not to issue injunctions in labor disputes except under very narrow conditions. Further, Congress defined labor dispute so broadly that the courts had no choice but to say that it included controversies between employers and union members who were *not* his employees.

Then in 1935, Congress passed the Wagner Act and created an entirely new approach. Congress felt that collective bargaining was good, and to encourage it, declared certain activity on the part of the employer to be "unfair labor practices." Congress also stated unequivocally in Section 7 of Wagner, that employees have the "right to self-organization, . . . to bargain collectively . . . and to engage in other concerted activities . . . for . . . mutual aid or protection. . . ." The courts were by-passed. Responsibility for enforcement was vested in the National Labor Relations Board.

At the close of the depression, the United States Supreme Court itself aided the development of unions and collective bargaining. In *Thornhill v. Alabama,* the Court threw a fourteenth amendment free speech protection around peaceful picketing. In the same term, for practical purposes, the Court took unions out from under the restraint of trade prohibition of the Sherman Anti-Trust Act. Only when the union conspired

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The four cases decided during the nineteen years dealt only with intra-union rights. See notes 9 to 12 supra.


254 U.S. 443 (1921).


310 U.S. 88 (1940).

The Court further extended this doctrine in American Federation of Labor v. Swing, 312 U.S. 321 (1941); Bakery Drivers v. Whol, 315 U.S. 769 (1942); and Cafeteria Employees v. Angelos, 320 U.S. 293 (1943), to protect stranger organizational picketing.

with the employer, or was not engaged in a "labor dispute," could it be held to restrain trade.

During the Second World War the situation remained static, but with the wave of strikes and unrest in 1946, Congress passed the Taft-Hartley amendments to the Wagner Act. Now unions, as well as employers, could be guilty of unfair labor practices.

The United States Supreme Court also retreated from the broad freedoms previously given labor unions. In 1949, in *Giboney v. Empire Storage & Ice Co.*, the Court held that a state may restrict picketing without violating free speech, when the object of the picketing was to violate a valid state law. In a series of cases thereafter, culminating in *Local 10, United Ass'n of Journeymen Plumbers and Steamfitters v. Graham*, the Court said, in effect, that within reason, a state could declare the purpose or means of the picketing unlawful; and, since picketing was more than mere speech, such a declaration of policy on the part of a state would not violate the fourteenth amendment. By the summer of 1957, the Court was willing to hold that a state could determine that attempted organizational picketing was per se aimed at coercing the employer to interfere with his employees in their right to join, or refuse to join, a union, and was therefor unlawful.

The Supreme Court also opened the way for restrictive state action by holding constitutional, in *Lincoln Federal Labor Union v. Northwestern Iron and Metal Co.*, state "right to work" statutes. The Court admitted that in the early labor cases, such as *Adair v. United States* and

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*Allen-Bradley Co. v. Local No. 3, IBEW, 325 U.S. 797 (1945).*

*See, e.g., Columbia River Packers v. Hinton, 315 U.S. 143 (1943).*

*61 STAT. 136 (1947) (codified in scattered sections of 2, 29 and 50 U.S.C. (1952)).*

*61 STAT. 141 (1947), 29 U.S.C. § 158(b)(1)-(6) (1952).*

*Even at the height of these freedoms, the Court said that the states could restrict violence, *Milk Wagon Drivers Union v. Meadowmoor Dairies, Inc., 312 U.S. 287 (1940);* and limit the area of the dispute, *Carpenters and Joiners Union v. Ritter's Cafe, 315 U.S. 722 (1942).*

*336 U.S. 490 (1949).*


*345 U.S. 192 (1953).*

*Teamsters Union, Local 695, AFL v. Vogt, Inc., 352 U.S. 817 (1957) (three dissents). Prior to the Vogt case, scores of professors and lawyers wrote on the problems of free speech and picketing. Many argued that since the early cases were not overruled, a state could not constitutionally outlaw all picketing. Some argued that the Court would still protect purely organizational picketing. See, e.g., Smoot, *Stranger Picketing: Permanent Injunction or Permanent Litigation?* 42 A.B.A.J. 817 (1956). The Vogt case refutes this later argument.*

*335 U.S. 525 (1949).* This case involved a Nebraska constitutional amendment. In the same opinion, the court upheld the North Carolina "right to work" statute in *Whitaker v. North Carolina*. Simultaneously, in *AFL v. American Sash and Door Co., 335 U.S. 538 (1949)*, the Arizona statute was upheld.

*"Right to work" statutes provide, in varying language, that it shall be unlawful to have any form of union security contracts—closed shop, union shop or maintenance of membership. Many state labor acts outlaw the closed shop, as does the Taft-Hartley Act, but allow some forms of union security. The issue presented is whether to outlaw all forms.*

*208 U.S. 161 (1908).*


Truax v. Corrigan, it had found regulation violating the fourteenth amendment. However, the philosophy of the Court had changed since that time, and since states were free to aid unions, they were free to impose reasonable restrictions.

Pre-emption and the Penumbra

No sooner had the court relaxed constitutional restrictions on state action, when it prohibited state action through the use of pre-emption. In Garner v. Teamsters Union, Local 776, AFL the Court held that if the employer was engaged in interstate commerce, which today includes almost anyone, Congress intended to have his labor relations governed by the Wagner and Taft-Hartley Acts. Prior to the Taft-Hartley amendments, the Wagner Act made only employers guilty of unfair labor practices. Therefore it was logical to assume that Congress intended the states to be free to regulate employees. But then Congress said employees could also be guilty of unfair labor practices. Therefore it must have meant the states to remain silent, or else there would be no uniformity of restraint. Besides, Congress had established an administrative board, the N.L.R.B., to handle such problems and a state court’s injunction would interfere. However, the Court felt that Congress did not mean to pre-empt everything. Between employees’ activity protected by Section 7 of the Act and activity prohibited by Sections 8(b)(1)-(6), there lay a penumbra.

What conduct falls within the gray area is an open question. The Supreme Court has said that violence may be regulated by the states, but the theory here is not that such activity lies in the penumbra, but that the states are free to protect property. Partial strikes are also unpro-
tected activity that the states may regulate, but the decision arose prior to the N.L.R.B.'s finding that a partial strike was an unfair labor practice in that it violated Section 8(b)(3) of Taft-Hartley. In the other types of cases reaching the United States Supreme Court where lack of pre-emption was argued, the Court found that the state was pre-empted.

Assuming that there is at least some activity of a union that falls within the penumbra, there are other problems that face a state court in determining how to handle the pre-emption doctrine.

Must the employer first be refused by the N.L.R.B. and then seek a state court injunction, or may the state court find in the first instance that the Board would not have jurisdiction? There is some dicta that the state must wait for the Board, but the Court has also hinted that you might show to the state court that it was futile to so apply. However, the Court has not told us what “futile” means. Could you show that the union conduct complained of had never been held by the Board to be an unfair labor practice, that it had never been held to be protected activity, or that it did not reasonably fall within either classification? We do not know.

**Jurisdictional Standards and the “No-Man’s Land”**

In 1950, the Board, on its own initiative, established so-called juris-

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88 In Bus Employees v. WERB, 340 U.S. 383, 398 (1951), the court, in holding pre-empted a Wisconsin Law providing for compulsory arbitration in local public utilities, said that "the Wisconsin Act, in forbidding peaceful strikes for higher wages in industries covered by the Federal Act, has forbidden the exercise of rights protected by § 7 of the Federal Act." In United Mine Workers v. Arkansas Oak Flooring Co., 351 U.S. 62 (1956), the court found the state of Louisiana pre-empted when it tried to enjoin peaceful picketing by a majority of the employees demanding recognition. The court felt that such picketing was a protected right under Section seven. Even though the union could not use the Board's processes to force the employer to bargain, since it had not filed its non-communist oath, the employer still had a duty to bargain with the majority union and the union could strike to enforce that right. See also the cases cited in note 96 infra and the discussion below as to other activity found pre-empted. In one other case, the Court permitted state action, holding that a state, in the context of violence, could allow common law damages. United Constr. Workers v. Laburum Constr. Corp., 347 U.S. 656 (1954).
89 In Weber v. Anheuser-Busch, Inc., 348 U.S. 468, 481 (1955), the Court stated that "where the facts reasonably bring the controversy within the section prohibiting these practices, and where the conduct, if not prohibited by the federal Act, may be reasonably deemed to come within the protection afforded by that Act, the state court must decline jurisdiction in deference to the tribunal which Congress has selected for determining such issues in the first instance." In Local 25, Teamsters Union v. New York, New Haven, and H. R.R., 350 U.S. 155, 161 (1956), the Court said: "As we noted earlier, respondent's amended complaint alleged violations of the Act. Whether the Act was violated or whether, as respondent now claims, it was not, is, of course, a question for the Board to determine. Even if petitioner's conduct is not prohibited by § 8 of the Act, it may come within the protection of § 7, in which case the state was not free to enjoin the conduct."
90 In Building Trades Council v. Kinard Constr. Co., 346 U.S. 933 (1954), the Court said: "Since there has been no clear showing that respondent has applied to the National Labor Relations Board for appropriate relief, or that it would be futile to do so, the Court does not pass upon the question suggested by the opinion below of whether the state court could grant its own relief should the Board decline to exercise its jurisdiction."
91 See note 89 supra.
The Board felt that it had neither the time nor resources to handle all the “little” employers. Some state courts felt that since the Board refused to act, the states must, or the employer and employees would have no forum. The states argued that if the business of the employer was not large enough to fall within the jurisdictional standards, it would be futile to apply to the Board, and the state could therefore act. On the other side, it was argued that since many of these “little” employers were engaged in interstate commerce, the pre-emption doctrine applied. If Congress intended the states to stay out, it made no difference that the Board did not care to exercise its power.

In three cases decided in March of 1957, the United States Supreme Court adopted this latter approach. The Court reasoned that Section 10(a) of the Taft-Hartley Act was a declaration by Congress that the states could only act when the Board had ceded jurisdiction to them. It made no difference that the Board refused to act, be it for budgetary or policy reasons. Granting that a “no-man’s land” now exists, the Court suggested that either Congress could change the statute, the N.L.R.B. could reassert its jurisdiction, or, the states could bring their labor statutes into conformity with the federal Act so that the Board could cede jurisdiction under Section 10(a). The word “futile,” then, does not mean the Board’s refusal to act because of its jurisdictional standards.

While not the primary problem raised in these three cases, the Court, in order to reverse the state courts, had to find that the activity complained of was either prohibited or protected. In Guss v. Utah Labor Relations Bd., the union alleged, after a consent election, that the employer violated Sections 8(a)(1), (3) and (5) of Taft-Hartley. The regional director dismissed on jurisdictional grounds. The state board

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94 In these last three cases, the United States Supreme Court reversed the state decisions. See note 96 infra.
95 For the full reach of the commerce power, see cases cited note 77 supra.
97 61 STAT. 146 (1947), 29 U.S.C. § 160(a) (1952). This section grants the Board power to prevent unfair labor practices and further provides that the Board is empowered to make agreements with the states to cede jurisdiction when the state laws are comparable to the federal.
98 To date, the Board has not yet made such an agreement since no state law parallels the federal Act.
99 See text infra note 96 supra.
100 See note 96 supra.
found a violation. In *Amalgamated Meat Cutters and Butcher Workman, Local 427, AFL v. Fairlawn Meats, Inc.*, the employer alleged that the stranger union was picketing for recognition and an all union shop contract, and was engaged in some secondary activity. The United States Supreme Court stated that this activity violated Section 8(b)(2) of Taft-Hartley. In *San Diego Bldg. Trades Council v. Garmon*, the Court found that the stranger union was picketing to obtain recognition and to force the employer to sign an all union shop contract. This also was prohibited by Section 8(b)(2). Therefore, the state courts must assume that if the union asks for an all union shop contract, when the union has not been voted the representative of a majority of the employees, the federal Act prohibits the picketing and the state court is pre-empted.

These three decisions could leave open one further pre-emption question regarding stranger picketing. In both the *Meat Cutters* and *San Diego* cases, the Court said the union asked for an all union shop contract. If the union had just asked for recognition, the United State Supreme Court might not have found pre-emption. Except in cases where another union has been certified, the Act does not prohibit picketing for recognition by a minority union.

Whether the United States Supreme Court will go along with the Board's view that recognition and organizational picketing by a stranger union does not violate the Act and will also declare it not a protected activity under Section 7 is, of course, an open question. If they do, we would have a penumbra. If they find it either prohibited or protected, the state courts are pre-empted.

**Other Pre-emption Arguments**

The court has dismissed one argument used by state courts to find no pre-emption. In *Arkansas Oak Flooring Co. v. United Mine Work-
ers; the Court held that peaceful picketing for recognition, when the union represented a majority of the men, was a protected activity, and the state could not enjoin it despite the fact that the union was not in compliance with the non-communist affidavits requirements of Taft-Hartley.

Even when the employer does not go to the Board, but tries his luck in the state court, the union may try to force the suit to the Board or into federal court. In Capital Service v. N.L.R.B., the Supreme Court held that the Board could obtain an injunction in a federal court to prevent the enforcement of a state court injunction when an unfair labor practice was charged. The unions tried to obtain a federal court injunction directly, but were denied this right in Amalgamated Clothing Workers v. Richman Brothers Co., on the ground that a federal court was prohibited from enjoining a state court by virtue of 28 U.S.C. § 2283 (1952). One possible way for a union to escape the Richman Brothers case is to allege before the Board that the employer has committed an unfair labor practice in going to the state court and seeking an injunction. If the Board takes jurisdiction, it could then obtain an injunction in a federal court prohibiting the state court to act.

In this hasty sketch of the pre-emption doctrine, many of the refinements and possible arguments are left out. It seems clear from the vast amount of litigation that many state courts are attempting to find ways to assert their jurisdiction. But, the United States Supreme Court is attempting to protect federal uniformity. The answer is largely one of policy as to the relative advantages of one uniform law and forum to govern multiple state industries, and of each state being allowed to govern the permissible limits of industrial conflict. Congress has the power to decide the issue and should do so.

112 This section prohibits federal injunctions against state courts except in certain specified cases. But see Retail Clerks Local 1564, AFL v. Your Food Stores, 225 F.2d 659 (10th Cir. 1955), where the court of appeals held that if the case were removed to the federal court and if it stayed the state court on the grounds that the board had jurisdiction, res judicata would prevent the employer from going back to the state court when the Board declined jurisdiction. It made no difference that the federal court could not issue an injunction because of the Norris-LaGuardia Act. Perhaps other unions will attempt this method of circumventing a state court.
114 See the many recent cases cited in Smoot, Stranger Picketing: Permanent Injunction or Permanent Litigation?, 42 A.B.A.J. 817 (1956).
The 1943 Labor-Management Relations Act

While the rest of the United States was evolving new legal approaches to labor problems and despite the partial silence of our own state supreme court, the Kansas Legislature passed new statutes regulating labor management relations. In 1943, it enacted a comprehensive labor code.\(^{116}\) Much of this Act was copied from the federal Wagner Act. KAN. G.S. 1949, 44-803 guaranteed to employees the right to collective bargaining and to engage in concerted activities for mutual aid and protection. Employers were prevented from interfering with these rights in much the same manner as were employers under Wagner.\(^{117}\) However, the Kansas Act went further. Kansas also made certain activities of unions unlawful. Prohibitions ranged all the way from violence, to picketing beyond the area of a labor dispute, and engaging in a strike without a majority vote of the employees.\(^{118}\) A close tab was kept on unions. They had to file their constitutions and by-laws.\(^{119}\) Their business agents had to obtain licenses.\(^{120}\) While the United States Congress vested the control of labor relations in an administrative board,\(^{121}\) with the power to issue cease and desist orders,\(^{122}\) Kansas made the unlawful acts a crime.\(^{123}\)

In 1945, several national labor unions attacked this Act before a three-judge federal district court. The State Attorney General defended. The Kansas Federal District Court, in *Stapleton v. Mitchell*,\(^{124}\) held Subsections 3, 12 and 13 of KAN. G.S. 1949, 44-809 unconstitutional and enjoined the Attorney General and the state of Kansas from enforcing them. The court, relying on the full reach of the free speech doctrine of *Thornhill v. Alabama*,\(^{125}\) stated that Kansas could not demand a strike vote, prevent secondary picketing, or prevent a work stoppage because of a jurisdictional dispute.

In 1950, the Kansas Supreme Court decided the one case that even partly construed the Act.\(^{125a}\) In *Radio Station KFH v. Musicians Ass’n, Local 297, AFM*,\(^{126}\) the plaintiff station sought an injunction. It claimed

\(^{116}\) KAN. G.S. 1949, 44-802 to 815.


\(^{118}\) KAN. G.S. 1949, 44-809(3), (15) and (16). The Wagner Act made no provision for union unfair labor practices.

\(^{119}\) KAN. G.S. 1949, 44-803.

\(^{120}\) KAN. G.S. 1949, 44-804.


\(^{123}\) KAN. G.S. 1949, 44-814.

\(^{124}\) 60 F. Supp. 51 (1945), cert. denied, 326 U.S. 690 (1945).

\(^{125}\) 310 U.S. 88 (1940); see text circa note 60 supra.

\(^{125a}\) This is no longer true. See text circa note 138 infra.

that the union had prevented a musical group from appearing on the station and had thereby induced a breach of contract between the station and the group. The group had played once on the plaintiff's station without transferring in to the defendant's local, as required by the local's by-laws. The union, as punishment, threatened to expel the group if they continued to play. The court held that the local could invoke the union's by-laws and discipline the group even if remote injury to the plaintiff resulted. The court suggested that organization is a legitimate labor objective. It made no difference that this objective had the effect of inducing breaches of contract. While inducing a breach of contract is actionable, justification is a defense. To enforce the rules of the union is not against public policy. "The public interest in improving working conditions is of sufficient social importance to justify such peaceful labor tactics."127

The only section of the 1943 Labor-Management Relations Act128 cited by the court was the one requiring the business agent of the union to be licensed.129 The agent was in non-compliance when the suit commenced, but apparently the court felt that it was sufficient if the union later complied.130

The 1955 Amendments

With much publicity and bitterness, the state legislature in 1955 passed several amendments to the Act, adding or amending Sections 802, 808, 809a, 814, 816 and 817.131 New definitions were formulated.132 Employers were also prohibited from checking off union dues without employee authorization and from employing labor spies.133 KAN. G.S. 1949, 44-809, aimed at unlawful union practices, was extensively amended.134 Subsections (3), (12) and (13), held unconstitutional in the Stapleton case,135 were all revised. Subsection (3) now prohibits strikes without a vote only in those cases where the employer was organized. Subsection (12), prohibiting the refusal to work on or handle non-union goods, and Subsection (13), prohibiting jurisdictional strikes, were abolished. However, a new section, KAN. G.S. 1955 Supp., 44-809a, was copied, with appropriate word changes, from Section 8(b)(4) of the Taft-Hartley

127 Id. at 601, 220 P.2d at 204 (1950).
128 See note 116 supra.
129 See note 120 supra.
130 The dissent, by Harvey, C.J., stated that the union was acting unlawfully in conducting business without compliance, citing KAN. G.S. 1949, 44-809(10).
131 Governor Hall's veto of the "right to work" bill did not extend to these changes in the Act. See Kan. Sess. Laws, c. 252 (1955).
135 See text circa note 123 supra.
The four parts of this section prohibit secondary boycotts and jurisdictional strikes. So the substance of old Subsections (12) and (13) of Kan. G.S. 1949, 44-809 are found in Kan. G.S. 1955 Supp., 44-809a. Two new Subsections were added to Kan. G.S. 1949, 44-809. Subsection (15) made it unlawful for any person to violate the terms of a collective bargaining agreement, while Subsection (16) outlawed the closed shop. Finally, an amendment removed the section making violations of the Act a crime and substituted injunctions to be brought by the county attorney or any "aggrieved party."

[As of October 5, 1957, the Kansas Supreme Court has interpreted certain sections of this act. In Bender v. Constr. and Gen. Laborers, Local 685, the court, holding that the employer's business did not affect interstate commerce, said that the Kansas Labor-Management Relations Act prohibited "organizational picketing." The court cited language from Kan. G.S. 1949, 44-803, Kan. G.S. 1955 Supp., 44-808(1) and 44-809(12), and Kan. G.S. 1949, 44-813 and said that it indicated a legislative policy to protect the unorganized worker from coercion. The court felt that a picket line, of necessity, pressured the employer into coercing his employees to joining a union. However, the court denied the argument made by the plaintiffs, the unorganized workers, that there existed a constitutional "right-to-work" and based their decision on a violation of legislative policy as expressed in the above statutes.]

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137 "The district court injunction issued in the Stapleton case would no longer be valid, as the re-enactment (44-809 into 44-809a) would be held constitutional by the United States Supreme Court under current doctrine. See cases cited note 69 supra, and NLRB v. Denver Bldg. and Constr. Trades Council, 341 U.S. 675 (1951)."
138a "KAN. G.S. 1955 Supp., 44-814, KAN. G.S. 1955 Supp., 44-816 empowered the State Labor Commissioner to establish rules and regulations for the various types of union elections demanded by the Act. KAN. G.S. 1955 Supp., 44-817 provided for the appointment of mediators. The State Labor Commissioner has established these rules and they are published in a pamphlet entitled KANSAS LABOR LAWS (1955), which may be obtained from the State Labor Department, Topeka, Kansas. This pamphlet also collects all of the laws applicable to labor relations. Due to lack of appropriations from the State Legislature, the Commissioner has not been too active in conducting elections. If a statutory scheme is established the Legislature should provide funds for carrying out this scheme.
138b "See note 14a supra.
138c "... and such employee shall also have the right to refrain from any or all such activities."
138d "It shall be unlawful for any employer
(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 44-803 of the General Statutes of 1949. ..."
138e "It shall be unlawful for any persons
(12) To coerce or intimidate any employee in the enjoyment of his legal rights, including those guaranteed in section 44-803 of the General Statutes of 1949. ..."
138f "Except as specifically provided in this act, nothing therein shall be construed so as to interfere with or impede or diminish in any way the right to strike or the right of individuals to work; nor shall anything in this act be so construed as to invade unlawfully the right to freedom of speech." (Emphasis added.)
138g The constitutionality (vis-a-vis free speech) of this legislative policy is discussed below. See text circa note 176a infra.
Effect upon the 1913 Anti-Injunction Act and the 1920 Court of Industrial Relations Act

Although the 1943 Act and its amendments constitute a comprehensive code of labor relations, the legislature did not repeal either the 1913 Anti-Injunction Act\textsuperscript{139} nor the 1920 Court of Industrial Relations Act.\textsuperscript{140} The procedural aspects of the Anti-Injunction Act are apparently still valid. While KAN. G.S. 1955 Supp., 44-418 provides for injunctions for violations of the Act, nothing is said about the procedure in obtaining these injunctions. Only the second part of the Anti-Injunction Act,\textsuperscript{141} prohibiting all injunctions in certain cases, would be overruled, by implication, in those cases where the new Act provides for an injunction.

The Court of Industrial Relations Act presents a different problem. Although the United States Supreme Court held it unconstitutional as violating the fourteenth amendment when regulating a packing plant,\textsuperscript{142} the change in philosophy of that Court suggests that today the Act is valid.\textsuperscript{143} Certainly regulation of industry and labor in the public interest is favored. State laws, if reasonable, are no longer declared contrary to the fourteenth amendment.

The powers of the Industrial Court are now vested in the State Labor Commissioner.\textsuperscript{144} At the present time, the Commissioner is only applying the 1920 Act to the mining industry. While KAN. G.S. 1949, 44-603 says that the Court of Industrial Relations Act applies to the manufacture and preparation of food and clothing, mining, public utilities and common carriers, the Commissioner, in the pamphlet published by his office,\textsuperscript{145} omits all reference, in quoting KAN. G.S. 1949, 44-603, to the food and clothing industries, public utilities and common carriers. The Commissioner has orally stated that it is questionable whether the State Labor Commission or the State Corporation Commission has jurisdiction over public utilities.\textsuperscript{146} At this time, the Commissioner does not plan to attempt to invoke the compulsory arbitration or seizure sections of the Act in the utility field.

\textsuperscript{139}KAN. G.S. 1949, 60-1104 to 1107.
\textsuperscript{140}KAN. G.S. 1949, 44-601 to 628.
\textsuperscript{139}KAN. G.S. 1949, 60-1107.
\textsuperscript{141}See cases cited note 35 supra.
\textsuperscript{142}Some fourteen states have such laws, ten of which were enacted after World War II. For an analysis of these laws and arguments in favor of the validity of the Kansas Act, see Williams, Settlement of Contract Negotiation Labor Disputes, 27 Texas L. Rev. 587 (1949).
\textsuperscript{143}KAN. G.S. 1949, 75-3402.
\textsuperscript{144}See note 138 supra.
\textsuperscript{145}Kan. Sess. Laws 1951, c. 306 repealed KAN. G.S. 1949, 44-602, 604 and 605. These sections provided for rate-making power and specifically gave jurisdiction to the State Corporation Commission over public utilities and common carriers. While Section 603 was not repealed, the repeal of the other sections leaves the power of the Labor Commissioner in doubt.
The Commissioner is also limited in applying the Court of Industrial Relations Act in that the United States Supreme Court, in *Bus Employees v. WLRB*, held that the Wisconsin compulsory arbitration act was pre-empted by Section 7 of Taft-Hartley. The Court stated that the right to strike for terms and conditions of employment was a "protected activity." Since all public utilities "affect" interstate commerce, the states are ousted from compulsory arbitration control of public utilities. Furthermore, as most mining in this state is carried out in interstate commerce, the State Labor Commissioner would be pre-empted even there. However, Congress may limit the reach of the federal act in the future, and the Commissioner could then re-assert power.

The sections of the Court of Industrial Relations Act prohibiting picketing and striking and providing penalties are probably repealed by implication by the 1943 Kansas Labor-Management Relations Act. Therefore, even though the former act is still in the statute book, it is not going to have much practical effect on Kansas labor law.

**The 1897 Anti-Monopoly Act**

Mention should also be made of the Kansas Anti-Monopoly Act. This Act makes restraints on trade unlawful, and the definitions are broad enough to include labor unions. Although the United States Supreme Court has taken unions out from under the Sherman Act, there can be no assumption that the Kansas Supreme Court will do likewise. The Norris-LaGuardia Act was used by the federal courts to protect unions from the Sherman Act. Kansas still operates under a Clayton-type restriction on injunctions. It has not adopted a little Norris-LaGuardia Act. In fact, *KAN. G.S. 1949, 50-101 to 157.* states that persons shall not be guilty of a criminal offense "except as otherwise provided by law." This would seem to allow criminal prosecutions under the Anti-Monopoly Act.

**The Kansas Supreme Court and Pre-emption**

Finally, the court's stand on pre-emption is of importance. As mentioned before, at the time of writing, the Kansas Supreme Court had decided four pre-emption cases in the last two years. In all four cases the court found that the trial court was pre-empted. In none of the four
cases did the court discuss the possibility of the union activities falling within the penumbra—being neither protected nor prohibited. To date, the Kansas court is willing to say that in all cases of stranger picketing, no matter what the immediate purpose of the union, the N.L.R.B. should have jurisdiction in the first instance. In City Motors v. Int'l Ass'n of Machinists,\textsuperscript{168} the court refused to speculate on the power of the district court to act when the Board refused jurisdiction on the ground that no unfair labor practice was shown. Here, unless precluded in the future by the United States Supreme Court, the Kansas court may be willing to assume jurisdiction. None of these cases discussed the issue, now answered by the United States Supreme Court,\textsuperscript{164} of the right of the state to act when the Board declined jurisdiction because of the failure to meet jurisdictional standards.

[In the cases decided this October 5 and 9, the Kansas Supreme Court reaffirmed the stand taken in the four earlier pre-emption cases. However, in the new cases the court recognized the problem of the penumbra and specifically followed the United States Supreme Court on the declining jurisdiction problem. The court also discussed what activities of the union are prohibited and therefore pre-empted from state court action.

In Asphalt Paving, Inc. v. Teamsters Union, Local 795,\textsuperscript{154a} the trial court had found the union guilty of engaging in a secondary boycott and that the purpose of the picket line was to force the employer to bargain as a representative of the employer's employees and to refuse to employ non-union workers. The supreme court found that these activities violated Sections 8(b)(4)(A),\textsuperscript{164b} 7,\textsuperscript{154c} and 8(b)(2) and 8(a)(3)\textsuperscript{154d} of the Taft-Hartley Act.

In Friesen v. Gen. Team and Truck Drivers, Local 54,\textsuperscript{154e} the trial court had found that the purpose of the union picket line was to force other employers to refuse to do business with the plaintiff and that this violated KAN. G.S. 1955 Supp., 44-809 and 44-809a. The supreme court found that picketing for such a purpose was prohibited by Section (8)(b)-(1)(A) of the Taft-Hartley Act,\textsuperscript{154f} so that the state court was pre-empted.

Finally, in Stiben v. Constr. and Gen. Laborers, Local 685,\textsuperscript{154g} the court held that organizational picketing, in which the union also

\textsuperscript{168} Ibid.
\textsuperscript{164} See text \textit{circa} note 96 supra.
\textsuperscript{154a} See note 14a supra.
\textsuperscript{154e} See note 14a supra.
\textsuperscript{154g} See note 14a supra.
attempted to force the employer to coerce his employees, violated Kan. G.S. 1955 Supp., 44-808(1) and 44-809(12).\textsuperscript{164b} But as this activity also violated Section 8(b)(1) of the Taft-Hartley Act\textsuperscript{154} and would force the employer to violate 8(a)(1) of Taft-Hartley,\textsuperscript{154} the state court was pre-empted.\textsuperscript{154k}

In all three of these cases, the plaintiff had argued that it would be futile to apply to the National Labor Relations Board as the plaintiff’s business volume did not meet the Board's jurisdictional standards. Following the dictates of the United States Supreme Court in the Guss case,\textsuperscript{154} the Kansas Supreme Court refused to allow the state trial court to exercise jurisdiction.

The court raised two interesting problems in these cases. In the Asphalt Paving case, the plaintiff argued that Section 14(b) of the Taft-Hartley Act,\textsuperscript{154m} which allows states to control the execution and application of union security contracts, should also allow the state to prohibit activity which coerced the employer into executing such a contract. The court rejected this argument, feeling constrained by several decisions of the United States Supreme Court.\textsuperscript{154n} Justice Fatzer, in a concurring opinion, pointed up the problem and suggested that the freedom allowed the state by Section 14(b) should control over the pre-emption of state laws demanded by 8(b)(2).\textsuperscript{154o}

The Kansas Supreme Court also made some interesting observations on who should determine whether the employer's business “affected” interstate commerce. The court, in the Asphalt Paving case, held that the trial court, after reviewing all the evidence, should determine, as a matter of fact, whether this particular business affected interstate commerce. They said that determining whether a business “affects” interstate commerce was not a question of law, and that if there was any evidence in

\textsuperscript{154} See notes 138c and 138d, respectfully, supra.
\textsuperscript{154c} As discussed above, see text circa note 105 and note 105 supra, the National Labor Relations Board has not yet found that organizational or recognition picketing violates the federal Act. Whether the United States Supreme Court will so find, or that such activity is prohibited, or protected, is doubtful.
\textsuperscript{154f} The court cited Amalgamated Meat Cutters and Butcher Workmen, Local 427, AFL v. Fairlawn Meats, Inc., 353 U.S. 20 (1957); Int'l Brotherhood of Electrical Workers, Local 429, AFL v. Farnsworth & Chambers Co., Inc., 353 U.S. 969 (1957); and Garner v. Teamsters Union, Local 776, AFL, 346 U.S. 485 (1953). The Farnsworth case was a per curiam reversal of a state court's attempt to prohibit picketing aimed at forcing illegal union security contracts. However, the United States Supreme Court has always talked in terms of a violation of Section 8(b)(2) of the Taft-Hartley Act, without discussing the apparent conflict between Section 14(b) and Section 8(b)(2).
the record to support the trial court's findings, the supreme court would not reverse.164p

However, in both the Stieben and the Friesen cases, the court reversed the lower courts. In the Stieben case, the court used alternative grounds for finding that the employer "affected" interstate commerce. The supreme court, unlike the trial court, found that the plaintiff's evidence showed interstate activity and that the construction job was on a United States Air Force Base. Thus, the court held that this was sufficient to show "affecting" interstate commerce. In the Friesen case, the plaintiff, a local warehouse, handled material shipped in interstate commerce. The trial court denied the pre-emption argument, not on the basis that the plaintiff did not "affect" interstate commerce, but because it did not fall within the National Labor Relation Board's jurisdictional standards. The supreme court reversed because jurisdictional standards are immaterial to pre-emption.]

CURRENT UNION ACTIVITY AND THE LEGAL CONTROL THEREOF

Before discussing the views of the Kansas District Courts in labor cases, some of the current labor union tactics and how a few of the other state supreme courts have handled them should be mentioned. This further background is presented so that the Kansas lawyer may compare the approaches of the Kansas District Courts with those of other states.

Stranger Picketing

Most injunction cases decided by Kansas District Courts are predicated upon what is known as stranger picketing.165 In the typical situation, you have an unorganized shop or construction job, and union officials, seeking to organize the employees, throw up a picket line composed of non-employees of that particular employer. If union men supply the employer or if the other workers on the construction job are union members, they will not cross the picket line, and the employer is forced to close down. This puts economic pressure on both the employer and his unorganized employees.

Courts reason that picketing is a means of achieving certain ends. While a few courts seemingly find that stranger picketing is per se an unlawful means, most courts look to the purpose of the picketing and

164p The Kansas Supreme Court apparently rejected the argument that the factual relation of the employer to interstate commerce is a question of fact, but that the issue of whether this factual relationship falls within the definition of "affects" is a question of interpretation of federal law to be determined by the United States Supreme Court.
165 Stranger picketing exists when a union sets up a picket line around a non-union employer. None of the members of the union or picket line are employees. It is picketing without a strike.
then decide whether picketing, as a means of achieving this particular purpose, is unlawful.

In handling this problem, state courts have categorized stranger picketing into several classifications, according to the immediate purpose or tactics of the stranger union. These are: (1) advertising to the public that the employer is non-union; (2) attempting to organize the employees by trying to show them that the union is powerful and that it would be intelligent to join; (3) demanding that the employer grant the union the right, by signing a contract with them, to represent his employees in collective bargaining—so-called recognition picketing; (4) demanding that the employer induce or coerce his unorganized employees to join the union; and (5) demanding that the employer not only make the union the bargaining agent, but also sign a contract containing an all union shop provision. Tactics (3), (4) and (5) are frequently found in various combinations, depending on the evidence presented to the court. Though the immediate purpose may vary, the ultimate aim of all of these tactics is to increase the size and power of the union.

Usually, the employer seeks the injunctive aid of the court to assist him in his economic fight with a union. He could seek damages or, if a criminal statute was violated, ask for the aid of the county attorney. But, to protect his business, an injunction is the most effective. To obtain this injunction, the employer must meet the usual equitable requirements. He must show that he has suffered irreparable injury, that the union's activity is "unlawful," and that he has no adequate remedy at law.

Unlawfulness is a vague and confusing requirement. At some time or another, courts have held almost every activity of a labor union unlawful. In the beginning, courts would find unlawful the intentional infliction of economic damages. Later, they talked in terms of the privilege to inflict these injuries, if the activities of the union were justified. Justification existed if the union was engaged in economic competition, attempting to gain an economic benefit for its members.158 With the passage of labor legislation in the 1930's and 1940's, the courts looked to the legislature to define the state's policy of justification, and therefore unlawfulness.

In the area of stranger picketing, the legislatures gave seemingly contradictory instructions. Most state acts, following the Wagner Act, stated that collective bargaining was favored; that employees were to have the right of concerted action, including the right to strike; and

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158 In Radio State KFH v. Musicians Union, Local 297, AFM, 169 Kan. 596, 220 P.2d 199 (1950), the court talked in these terms.
that employers were not to interfere. On the other side, employees were given the right to refrain from collective action and specific union practices were prohibited. But organizing the unorganized was not specifically prohibited and would carry out the policy of the state. It was to be encouraged. Some courts so held, and allowed stranger picketing.

The United States Supreme Court at first limited the right of the states to stop organizational picketing, as the union could claim first amendment protections. However, the Supreme Court later relaxed this prohibition, and said that, within reasonable limits, a state court could prevent stranger picketing found to be contrary to the state's public policy. With this new freedom, many state courts found stranger picketing to be violating public policy.

The Vogt Case

This past June the United States Supreme Court finally completed the circle. In Teamsters Union, Local 695, AFL v. Vogt, Inc., a five-justice majority held that a state could look beyond the immediate purpose of the union in picketing (stipulated here to be organizational), and find that the actual effect, and presumably therefore the actual purpose, was to coerce the employer into forcing the employees to join the union. The Supreme Court had previously held that a state, without violating the union's constitutional rights, could find unlawful the union's coercion of an employer to coerce his employees. But it was a big and important step to hold that a state could find, with only direct evidence of intention to organize, that the purpose of the union was to coerce the employer to coerce his employees.

In effect, the Vogt case now allows a state court, if its makes a proper factual finding, to hold organizational picketing unlawful. No longer...
need the employer testify that the union organizer demanded that he tell his employees to join the union. While *American Federation of Labor v. Swing* 106 which held that stranger organizational picketing was an exercise of free speech, was not overruled, it is indistinguishable on the facts. The Court, speaking through Justice Frankfurter, says of the earlier cases: "It is not too surprising that examination of these adjudications should disclose an evolving, not a static, course of decision." 107

The Court specifically leaves two constitutional limitations on the states. A statute, a la *Thornhill*, which prohibits all picketing, and a blanket injunction prohibiting all picketing, would be invalid. The statute and the injunction must be limited to preventing unlawful purposes. However, as the dissent points out, these limitations are extremely weak if the state court is careful in finding its facts.

There are no state decisions since the *Vogt* case. How far states will carry their new freedom is problematical. As a matter of policy, states may and need not limit picketing up to the constitutional line.

Prior to the *Vogt* case, however, many state courts had expressed policies as to the extent of allowable union picketing. While some of these decisions may be the result of felt constitutional compulsion, many were merely an indication of a state policy in this conflicting area.

Besides Maine and Wisconsin, Washington also found that organizational picketing necessarily results in coercion of the employer. 108 Oregon said that their labor relations statute prohibited a union from coercing or influencing employees to join. 109

Some states have apparently reverted to the old idea that stranger picketing is wrongful per se. The purpose is immaterial. 170 These states outlawed stranger picketing by defining a "labor dispute" as a dispute between an employer and a *majority* of his employees, and by forbidding picketing if there were no "labor dispute." However, a lower Arizona court 171 held, as did the Oregon Supreme Court, 172 that a statute outlawing all picketing by a non-majority union was unconstitutional, matter of organization. To say that picketing is not designed to bring about such action is to forget an obvious purpose of the picketing—to cause economic loss to the business during non-compliance by the employees with the requests of the union." 77 Sup. Ct. at 1171.

106 312 U.S. 321 (1941); see note 61 supra.
107 77 Sup. Ct. at 1168.
109 Gilbertson v. Culinary Workers, 204 Ore. 326, 282 P.2d 632 (1955). However, the court held unconstitutional a section of the Oregon act outlawing all picketing by a non-majority union.
172 See note 169 supra.
as it violated the "stranger organizational picketing—free speech rule" of the Swing case. But the Vogt case may now give these states a freedom to act.

A few states have made a distinction between organizational and advertising picketing on the one hand, and picketing aimed at recognition or coercion of the employer to coerce his employees on the other. Only the latter has been held unlawful. Indiana recently said that organizational picketing was proper, but the stranger union must communicate its demand to the employees. It must ask them to join. Mere silent organizational picketing is unlawful. California has apparently gone all the way and found that stranger picketing aimed at recognition or coercion of the employer is lawful.

As there is no uniformity among the other states as to how far a union may go, Kansas is free to choose whatever policy it desires. The legislature has spoken about elections and recognition, but the Labor-Management Relations Act is silent about advertising or narrow organizational picketing.

[The October 5 case of Bender v. Constr. and Gen. Laborers, Local 68 is almost identical to both the Wisconsin Vogt case and the Maine case of Pappas v. Stacey. In all three cases, the state courts found organizational picketing, and that this violated state labor policy. The United States Supreme Court, in the Vogt case, noted that the Wisconsin and Maine courts both found, as did the Kansas court, that this type of organizational picketing would of necessity place pressure on the employer to coerce his employees. Perhaps it is this latter "purpose" that a state may find unlawful without violation the fourteenth amendment—free speech protection.

In any event, the Kansas Supreme Court has spoken, and the trial courts may now find organizational picketing unlawful. Let us now turn to the Kansas district courts and see how they construed the state labor act prior to the October 5 decisions of the Kansas Supreme Court.]

See note 166 supra.


C. S. Smith Metropolitan Market Co. v. Lyons, 16 Cal.2d 389, 106 P.2d 414 (1940). But see Plant, Recognitional Picketing by Minority Unions in California, 9 STAN. L. REV. 100 (1956), who argues that some forms of recognitional picketing would now be held to be unlawful.

See note 14a supra.


Current Views of the Kansas District Courts

Information was obtained on some twenty-six labor cases.\(^\text{177}\) In many of these, the exact holding of the court and the reasons therefor were not available.\(^\text{178}\) No attempt was made to evaluate the correctness of the decision. Reference should be made to the opinions of other states courts, to those of the United States Supreme Court, and particularly to the latest Kansas opinions handed down this month.

**Stranger Picketing Cases**

Of the twenty-six cases, eighteen involved stranger picketing.\(^\text{179}\) Sixteen of these were suits by the employer against the union. Two suits were brought by the employees of the picketed employer.

In three of the stranger picketing cases, the district court found that the employer was engaged in interstate commerce and the district court thereby pre-empted. In one of these, the court issued an *ex parte* restraining order pending the determination of the pre-emption issue, while in the other two, the court refused even this. In all three cases, the court found pre-emption after the Kansas Supreme Court's first pre-emption decision in *Amalgamated Meat Cutters, Local 576 v. Johnson*.\(^\text{180}\) These district courts felt that it was for the N.L.R.B., in the first instance, to determine whether the union activity was an unfair labor practice. In one case, the court said the fact that the Board would not take jurisdiction because plaintiff did not meet the Board's jurisdiction standards was immaterial. The state court still did not have jurisdiction. In another, the court felt it was for the Board in the first instance, and it made no difference that the regional counsel of the Board had dismissed on the merits. The employer still could have appealed to the chief counsel.

In the other fifteen cases involving stranger picketing, the court either found that it was not pre-empted or ignored the problem, or there was insufficient information on which to base a conclusion as to the court's position on pre-emption. In the cases where the issue was discussed, three courts found that the employer was engaged in intrastate commerce, so the federal Act did not apply. In two of the cases, the court felt that while the employer was in interstate commerce, his volume of business

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\(^\text{177}\) A list of the case appears in the Appendix.

\(^\text{178}\) In the following discussion all statements are, it is hoped, reasonably correct. Unless the courts' views were fairly well indicated, the case was classified as "no information." In a few cases, inferences were drawn where reasonably justified. In some cases the actual holding of the court was given even if the court did not use the same language. In all of the cases where the pleadings and memorandum opinion of the district court were not available, the validity of the report cannot be vouched for.

\(^\text{179}\) See text *circa* note 155 supra.

\(^\text{180}\) See note 6 supra.
was not sufficiently large to meet the Board's jurisdictional standards. In one case, the court indicated its belief that a restraining order could issue, pending the Board's determination of the issue. One judge, in two cases before him, felt that organizational picketing, aimed at destroying a constitutional "right to work," was neither prohibited nor protected by Taft-Hartley. Therefore, a state court could act. In two cases, the court found the employer in interstate commerce, but said that the state court could still act. Neither district court gave a reason, but apparently felt that stranger picketing aimed at recognition was neither prohibited nor protected, and therefore, perhaps, came within the penumbra. In one other case, on which there is rather extensive information, the court seemed to ignore the pre-emption problem. Apparently it was not even raised. Finally, there was not enough information in four cases to discover the court's view on pre-emption.

As stated earlier, the Kansas Supreme Court has heard four pre-emption cases, and has sustained the trial court on the pre-emption issue in one case and reversed it in three others. Of the other twelve cases where pre-emption was not found, five were decided prior to the Kansas Supreme Court's decisions on pre-emption. Seven of the cases, however, were decided after the first Kansas pre-emption case. In two of these seven cases, the court said that pre-emption did not apply when constitutional rights were involved. In one, the court found no pre-emption when the employer did not meet the Board's jurisdictional standards. Information is lacking as to the reasoning of the district courts in the other four cases.

[Of the four cases decided on October 5 and 9, the trial court was reversed in two and sustained in one of the above pre-emption cases. In the one case where the trial court was sustained and in one of the cases where the trial court was reversed, the supreme court refused to follow the trial court's reasoning that pre-emption does not exist when constitutional rights are involved. Rather, the supreme court sustained or reversed on the grounds of the factual finding of "affecting" interstate commerce. In the other case, the court reversed the trial court on the ground that the jurisdictional standards of the National Labor Relations Board were immaterial in determining pre-emption.]

In the fifteen cases that the district courts decided on their merits, not finding pre-emption, they found a variety of unlawful purposes.

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1 See text *circa* note 83 *supra*.
2 See text *circa* note 152 and note 6 *supra*.
3 In the fourth case the court sustained the trial court's finding that it was pre-empted.
Frequently the court found more than one unlawful purpose in a single case. From the information available, it is sometimes difficult to discover just what the court felt the purpose to be, but the findings appear as follows.

There were three cases of purely organizational picketing. No demand was made on the employer. In two cases, the employer alleged that the union was asking for recognition without representing a majority of the employees. The court issued the restraining order, but there is no information on what it found unlawful. One court issued a restraining order to preserve the status quo when the union picketed for both organizational and recognition purposes. The court did not find the picketing unlawful, but merely restrained the union pending N.L.R.B. action. In two other cases, the court found that the union engaged in both recognition and organizational picketing, and issued an injunction. But there is no information on why the court felt that the picketing was unlawful.

In four cases, the court found recognition picketing unlawful. In one of these four, the court also found the union unlawfully coercing the employer to coerce his employees to join the union. In the other three, the court found that the union unlawfully demanded that the employer sign an all union shop contract. In two of these three cases, the court also found unlawful picketing aimed at organizing the shop.

In the remaining three cases, the court found unlawful, in two of them, the demand that the employer sign an all union shop contract. In the other case, the court found that the employer quit working at the same jobs as his employees, and that the employer coerce his employees into joining the union, were both unlawful. In one of these cases, the court indicated that if the union had only engaged in organizational picketing, no injunction would have issued.

What reasons did the courts assign for finding these purposes unlawful in these fifteen cases? When the court found that the union was merely attempting to organize, it stated, in two of the cases, that this was unlawful because it violated a constitutional "right to work" and because it was picketing beyond the area of a "labor dispute" in violation of KAN. G.S. 1955 Supp. 44-809(13). In the other organizational picketing case, the court did not cite the Kansas act, but stated that such picketing was against public policy and was a "secondary boycott."
In seven of the fifteen cases, the court talked in terms of a violation of Kan. G.S. 1949, 44-803. This section not only gives employees the right to bargain collectively, but also gives them the right to refrain from collective bargaining. In all four of the recognition cases, the court used this section to find the picketing unlawful. In two of the cases, the court said that demanding recognition also violated Kan. G.S. 1949, 44-808(1) and Kan. G.S. 1949, 44-809(14). In the third recognition case the court cites only Kan. G.S. 1949, 44-803 and 44-809(14). In the other recognition case, the court cites Kan. G.S. 1949, 44-803 and 44-809, without referring to any subsection.

In five of the cases, the court talked about an all union shop clause in the demanded contract. In only one of the cases did the court clearly find that such a clause was demanded. In that case, the court cited Kan. G.S. 1949, 44-803 and 44-809 and said that without an election as provided by statute, such a demand is unlawful. The court also found that the picketing was a public and private nuisance, but the all union shop contract is the only unlawful activity discussed by the court. In two of the five cases, the all union shop clause existed, but specifically stated that it was not to be effective until voted upon by the employees. The court is not clear on whether a non-effective all union shop clause is an independent violation. The language of the memorandum opinion leaves the impression that the court felt the clause to be unlawful, but it cited no reason. In the fourth case, the court merely said, without citing the statute, that an all union contract is bad and against the public policy of Kansas. In the fifth case, the court stated that there was no evidence of the terms of the contract, but warned that the necessary effect of the demand for union recognition is to impose an all union shop, which is unlawful.

None of the courts found that the only unlawful purpose of the picketing was to coerce the employer to coerce the employees, but two courts found this one of several violations. One court cited Kan. G.S. 1949, 44-803 as authority and held that it was wrongful for a union to force the employer to violate employee rights. In the other case, the court cited

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185 This subsection prohibits an employer from coercing his employees in the exercise of rights guaranteed by 44-803.
186 This subsection is now Kan. G.S. 1955 Supp., 44-809(12) and provides that no person shall coerce any employee in the enjoyment of rights under 44-803.
188 The court must be referring to Kan. G.S. 1955 Supp., 44-809(4) which prohibits an all union shop without a majority vote.
189 It is not clear, in this fourth case, whether the court found this demand to be an independent violation, as it also discussed organizational picketing and said that the union violated Kan. G.S. 1949, 44-803.
KAN. G.S. 1949, 44-803 and also KAN. G.S. 1955 Supp., 44-809(4), presumably on the theory that employer coercion was not allowed without an election.

In one case, the court found unlawful picketing against a one-man shop, and said that this was against public policy. In another case, the court issued a restraining order pending N.L.R.B. action on the theory that it could preserve the status quo without making a finding of unlawful activity.

**Cases Not Involving Stranger Picketing**

There are eight injunction cases that apparently do not involve stranger picketing. In two cases, the union was the plaintiff. In one of these, the union had previously asked for and received an injunction prohibiting the employer from coercing his employees in their right to engage in collective bargaining. The union claimed that the employer ignored the injunction and sought a contempt citation. From the information available, the union apparently dismissed its petition and therefore contempt proceedings did not ensue. The pre-emption issue was not raised. In the other case, the court dismissed the injunction suit brought by the union on the ground that the case was then pending before the N.L.R.B. on a charge of an unfair labor practice by the employer. The district court felt it was pre-empted.

An employer obtained an injunction in one case on the ground that the union was picketing beyond the area of a labor dispute. The union, representing the truck drivers of a trucking company, picketed a flour mill as part of a strike against the trucking company. Although the flour mill company had the same board of directors as the trucking company and even though the trucking company carried all of the flour mill’s products, the court found that the two companies were separate. The court felt than KAN. G.S. 1949, 44-809(15) prohibited this type of picketing. No mention is made by the court of the pre-emption problem.

In the fourth case of those not involving stranger picketing, an employer obtained an injunction against a majority union, which was striking to enforce demands in a new contract, on the grounds that some of the union members engaged in violence, used insulting language and conducted mass picketing. The court did not discuss pre-emption in its journal entry, nor did it cite any Kansas statutes. But the court did find the activity unlawful and issued a temporary injunction. However, the

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100 Now KAN. G.S. 1955 Supp., 44-809(13).
court allowed peaceful picketing by a small number of men at the gates of the plant. In the other four cases, information as to the facts and holdings is lacking. These cases might be classified as stranger picketing ones, but even though the union was made the defendant and non-employees were picketing in some instances, it appears that the union actually represented a majority of the employees.

In one case, it appears that the union obtained a majority of the truck drivers of a food processing company. When the employer refused to recognize the union, it struck and picketed the food processing plant. The court issued a restraining order against the picketing, but this was later dismissed on the ground that the employer had recognized the union. The reasons for granting the order are not given, nor is pre-emption discussed.

In another case, the union struck, picketed the employer, and "persuaded" other union men not to handle the goods of the employer. It appears that the court enjoined the union from invoking the "hot cargo" clause of its contract and from any secondary picketing. But no reasons are given and nothing is said about pre-emption.

In the last two cases, the union apparently had a majority of the employees and when the employer refused to recognize it, the men struck and picketed the employer. The union also picketed the stores that sold the employer's product. In one case, the court found the plaintiff operating in interstate commerce and, after issuing a restraining order, denied a temporary injunction on the grounds that the N.L.R.B. had jurisdiction. In this case, decided prior to the Kansas Supreme Court decisions on pre-emption, the court said that part of the Court of Industrial Relations Act, Kan. G.S. 1949, 44-603 to 44-617, was in conflict with Kan. G.S. 1949, 44-803 and the Wagner and Taft-Hartley Acts. Therefore the settlement of this dispute was for the proper administrative agency. However, the court did order the union to remove a false statement from the picket signs and apparently said, as dicta and without any reasons, that product picketing was not unlawful. In the other case, the court felt that such product picketing was unlawful, but there is no information as to why this was so. The pre-emption issue was raised, but the court stated that the employer was in intrastate commerce even though it purchased goods from outside the state. Therefore the district

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191 In only two other cases did the employer allege violence, but the courts found none in these or in any other cases. Apparently, most locals are shying away from such behavior. There is a suggestion in one case, brought by a union, that the employer used violence to prevent the employees from organizing, but it is not clear that the court so found.
court had jurisdiction. The court did refuse to enjoin the distribution of union literature concerning the labor dispute, but enjoined all picketing.

**General Observations on District Court Cases**

Some general observations about the twenty-six cases are possible. In only one case did the district court mention the Anti-Injunction statute.\(^{102}\) Citing *Bull v. Int'l Alliance*,\(^ {103}\) the district court held here that no "labor dispute" existed in a stranger picketing situation. Therefore, the statutes did not apply and the court was free to issue the injunction under ordinary equity procedure. In three of the cases, the temporary restraining order was issued for seven days or less, indicating perhaps that Kan. G.S. 1949, 60-1104 was followed.\(^ {104}\) In at least seven cases, the employer was required to give a bond, perhaps indicating compliance with Kan. G.S. 1949, 60-1105.\(^ {105}\) In many of the cases there is no information as to the pleadings; thus it is not known whether or not the court required a bond. However, in several cases about which there is information, the Anti-Injunction statute was ignored, even though the defendant union cited it in their answers.

The free speech problem was raised in only three cases, which were all decided by one judge. In one case, the court concluded that the state had a right to set a limit on the right of free speech, citing *Local Union of Journeyman Plumber and Steamfitters v. Graham*.\(^ {106}\) In the others, the court merely said that the injunction did not violate the right of free speech.

One of the problems faced by the United States Congress before passing the Norris-LaGuardia Act was that of the delay inherent in injunction cases. An *ex parte* restraining order, frequently issued on affidavits without notice, works a hardship on the defendant. To meet this problem, the Kansas labor code limits an *ex parte* restraining order to a duration of seven days.\(^ {107}\) The Norris-LaGuardia Act limits such an order to five days.\(^ {108}\) How have our district courts handled this problem?

In the four cases where information is available, the court issued a temporary injunction upon a hearing some three, nine, eleven and fifteen

\(^{102}\) Kan. G.S. 1949, 60-1104 to 1107.

\(^{103}\) 119 Kan. 713, 241 Pac. 459 (1925); see text *circa* note 46 supra.

\(^{104}\) This statute provides that temporary restraining orders must expire within seven days from date issued, unless extended for good cause.

\(^{105}\) This statute requires one obtaining a restraining order or injunction to post bond.

\(^{106}\) Kan. G.S. 1949, 60-1104.

days after the restraining order. In one case, a hearing was held three
days after the restraining order issued, but 128 days elapsed until the
restraining order was dismissed and a temporary injunction denied, ex-
cept as to some false statements on a placard. One court denied an ex
parte petition for a restraining order, but issued a temporary injunction
the next day. In four other cases, a restraining order was issued for four
days (dissolved upon a subsequent hearing) five days, thirty-nine days,
and two years and ten months. In all these cases, no temporary injunction
was ever issued. In three other cases a restraining order was issued, but
there is no information on their time limits or whether a temporary or
permanent injunction was issued.

In eight cases a permanent injunction was issued. In two of these, no
temporary injunctions were issued, and forty-six days and forty-eight
days elapsed from the dates of the restraining orders to the dates of the
permanent injunctions. In the two having temporary injunctions, forty
and fifty-three days elapsed from the dates of the restraining orders. Four
cases lack information regarding restraining orders, but twenty-eight,
forty-four, 151 and 163 days elapsed from the dates of temporary injunc-
tions to the dates of the permanent ones.

This lack of prosecution, to at least the temporary injunction stage,
works a hardship on the union because in Kansas a restraining order is
not a final order, and therefore is not appealable.\textsuperscript{169} If the district court
does not set a time limit on the restraining order or dismiss it for lack
of prosecution, the employer, particularly in the construction industry,
may complete the job free from picketing and thus never prosecute the
case to a conclusion on its merits. If picketing is ever proper, the merits
of the injunction should be heard as soon as possible.

\textit{Conclusion}

In general, these opinions leave the impression that the District Courts
of Kansas feel that the Kansas Labor-Management Relations Act declares
the policy for the state. That policy is that picketing is not a proper
weapon for unions to use in organizational drives. It is economic coercion,
and coercion is not favored. Some court might allow a union to picket
if the union stated that it was engaged in picketing for organizational
and advertising purposes only, but the union could make no demands on
the employer. But most courts would not even sanction this type of

\textsuperscript{169} The United States Supreme Court has held that a temporary injunction is not a final order.
In effect, this means that if the state supreme court decides the case upon an appeal from a
temporary injunction, there is no appeal to the United States Supreme Court. Montgomery Building
picketing. They feel that personal conversation and the circulation of 
union literature are the only proper ways to increase union membership. 
Even though the Kansas labor laws provide for unionization and collect-
tive bargaining, the district courts do not feel that they should aid this 
policy by allowing economic pressure. The counter policy of freedom 
to choose prevails.

The pre-emption question is still open in Kansas. Most of the district 
court opinions finding no pre-emption were handed down prior to the 
decisions of the Kansas Supreme Court. A few courts still seem to ignore 
these decisions, but with their increased publicity, plus knowledge of 
this month's supreme court decisions, the district courts will undoubtedly 
find that they are pre-empted. Of course, there are still some unanswered 
questions even for those industries in interstate commerce. When the 
industries are in intrastate commerce, the Kansas courts must decide 
the issue.

[The four cases decided by the Kansas Supreme Court on October 
5 and 9, 1957, apparently confirm the above views. Certainly the supreme 
court feels that when the employer is in, or affects, interstate commerce, 
the state courts are pre-empted. And surely the district courts will follow 
this lead.

The one case decided on the merits leaves the impression that the 
Kansas Supreme Court agrees with the majority of trial courts in holding 
that stranger picketing is unlawful. Only the intricacies of "unlawful
purpose" must be defined by later cases.]

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199a Bender v. Constr. and Gen. Laborers, Local 685.
199b Three other cases are now on appeal to the Kansas Supreme Court. One, Hyde Park 
Dairies, Inc. v. Teamsters Union, Local 795, No. 40,543, has been argued, but the supreme court 
has not yet released its opinion. Newell d/b/a El Dorado Dairy v. Teamsters Union, Local 795, 
No. 40,486 and Coleman Co., Inc. v. Int'l Union, UAW, No. 40,631 appear on this October's 
docket. Perhaps some of the remaining questions will be answered this winter.
APPENDIX

1. **Amalgamated Meat Cutters & Butcher Workmen, Local 576 v. Johnson**  
   Shawnee County Dist. Court, Dist. 3; J. Johnson.

2. **Asphalt Paving, Inc. v. Teamsters Union, Local 795**  
   Sedgwick County Dist. Court, Dist. 18, Case No. A-57194; J. Sattgast.

3. **Atkinson v. United Brotherhood of Carpenters & Joiners, Local 1587**  
   Reno County Dist. Court, Dist. 40, Case No. 7840; J. Fontron.

4. **Binder v. Constr. & Gen. Laborers Union, Local 685**  
   Saline County Dist. Court, Dist. 30, Case No. 21072; J. Buzick.

5. **Coleman Company, Inc. v. U.A.W., Local 570**  
   Sedgwick County Dist. Court, Dist. 18 (Div. 1), Case No. A-65666; J. Kandt.

6. **City Motors v. I.A.M., Local 778, AFL**  
   Wyandotte County Dist. Court, Dist. 29 (Div. 4), Case No. 92810-A; J. McHale.

7. **Davidson Brothers Motor Co. v. I.A.M., Local 778**  
   Wyandotte County Dist. Court, Dist. 29 (Div. 3), Case No. 92665-A; J. Miller.

8. **Friesen v. Gen. Team & Truck Drivers, Local 54**  
   Reno County Dist. Court, Dist. 40, Case No. 8864; J. Fontron.

   Saline County Dist. Court, Dist. 30, Case No. 19631; J. Buzick.

10. **Hoehn Chevrolet, Inc. v. I.A.M., Local 778**  
    Johnson County Dist. Court, Dist. 10 (Div. 2); J. Brenner.

11. **Hyde Park Dairies, Inc. v. Teamsters Union, Local 795**  
    Sedgwick County Dist. Court, Dist. 18 (Div. 2), Case No. A-60176; J. Kline.

12. **Johnson v. Sheetmetal Workers, Local 29**  
    Reno County Dist. Court, Dist. 40, Case No. 7143; J. Fontron.

13. **Kaw Paving Co. v. Int'l Union of Operating Engineers**  
    Douglas County Dist. Court, Dist. 41; J. Coffman.

14. **KilLough Constr. Co. v. Cowe**  
    Douglas County Dist. Court, Dist. 41, Case No. 20111; J. Coffman.

15. **Leonard Stieben v. Constr. & Gen. Laborers Union, Local 685**  
    Saline County Dist. Court, Dist. 30, Case No. 21084; J. Buzick.

16. **Name Unknown—Similar to Rose Constr. Case (No. 18 below)**  
    Johnson County Dist. Court, Dist. 10; J. Brenner.

17. **Neathrely Trucking Service v. Chauffers & Teamsters, Local 795**  
    Sedgwick County Dist. Court, Dist. 18, Case No. A-54774.

    Johnson County Dist. Court, Dist. 10 (Div. 2), Case No. 23026; J. Brenner.
19. **Steffans Dairy Foods Co. v. Teamsters Union, Local 795**
   Sedgwick County Dist. Court, Dist. 18 (Div. 4), Case No. A-46424; J. Brown.

    Sedgwick County Dist. Court, Dist. 18, Case No. A-56427.

    Phillips County Dist. Court, Dist. 17, Case No. 9533; J. Hemphill.

22. **Union of Hotel, Restaurant Employees & Bartenders, Local 864 v. Ayala**
    Sedgwick County Dist. Court, Dist. 18, Case No. A-55346.

23. **Weeks Food Market v. Amalgamated Meat Cutters & Butcher Workmen**
    Saline County Dist. Court, Dist. 30, Case No. 19820; J. Buzick.

24. **Western Foods Co. v. Baker**

25. **Western Star Mill Co. v. Teamsters Union, Local 620**
    Saline County Dist. Court, Dist. 30, Case No. 20756; J. Buzick.

26. **Winfield Drive-in Theater v. Int’l Alliance of Theatrical Employees, Local 641**
    Cowley County Dist. Court, Dist. 19; J. White.