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The State Labor Law of Wyoming

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I. *Introduction*

According to the preliminary count of the 1950 federal census, the population of Wyoming on April 1, 1950, was 288,800, with Cheyenne, the largest city in the state, accounting for 31,807 of the total.[1] The latest available report of the Wyoming Department of Labor and Statistics estimates that during the biennium 1947-48 there were 89,000 male and 14,000 female workers in the state covered by the State Employment Security program.[2] This total of 103,000 persons did not include railroad, agricultural or domestic employees. In view of these figures, it is hardly surprising that there are relatively few constitutional provisions, statutes and court decisions in this state pertaining to labor relations.

It is the purpose of this paper to summarize the exisiting Wyoming law of labor relations, which, if not abundant, is certainly not without interest. The scope of the article does not extend to the topics of unemployment compensation, employment agencies, workmen's compensation, safety laws, laws relating to the labor of women and children, or laws (such as exist the country over) relating to the payment, assignment, etc., of wages. Somewhat arbitrarily, we have included statutes limiting the hours of employment of men but not of women and children. We have not included court decisions of cases involving individual contract questions between employer and employee, such as actions by salesmen to recover commissions, unless they appear to have some significance for the law of labor relations as a whole, above and beyond the facts of the individual case. Within these limits the topics of constitutional provisions, statutes, and court decisions will be discussed in order, after which we shall attempt to reach some conclusions concerning the law as a whole.

II. *Constitutional Provisions*

There are but few provisions of the Wyoming constitution specifically relating to labor or which carry special implications in the field of labor relations. The provisions of greatest interest have to do with arbitation, and evidently reflect the popularity which that subject was enjoying at the time of the adoption of the constitution in 1889.

Article 1, Section 22 comprises this pronoucement, with which none would disagree:

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1. Newspaper article in Laramie, Wyoming *Daily Bulletin* of September 6, 1950.
2. Sixteenth Biennial Report, 1947-1948, Wyoming Dept. of Labor and Statistics, p. 10.

> "The rights of labor shall have just protection through laws calculated to secure to the laborer proper rewards for his service, and to promote the industrial welfare of the state."

Article 19, Section 2 provides that eight hours "actual work" shall constitute a lawful day's work in mines, and on state and municipal works. This section has been implemented by statute, with an unusual provision, hereinafter explained, affecting the portal-to-portal problem in coal mines.

The next following section 3 of Article 19 forbids the employment on state, county or municipal works of persons who are neither citizens of the United States nor have declared their intention to become such. An unusual application of this section was made by the Supreme Court of Wyoming in the case of *State ex rel. R. R. Crow and Co. v. Copenhaver, State Auditor,* 64 Wyo. 1, 184 P.2d 594 (1947). During World War II, a camp for German and Italian prisoners of war had been established in Wyoming. Under appropriate federal and state legislation, these prisoners were employed in lumbering operations conducted by R. R. Crow and Company. Teachers, employed to train the prisoners, were paid initially by the lumber company, with the agreement that it would later be reimbursed by the State of Wyoming. The "shooting war" ended, and with it the federal war production training program, but the teachers continued their work for some time thereafter. The lumber company presented to the State Auditor vouchers for reimbursement of the lumber company for salary payments made by it to the teachers, covering a period subsequent to the termination of the war production training program. The State Auditor disallowed the vouchers, and the lumber company instigated a mandamus action to compel him to approve them. In sustaining a demurrer to the petition, the Supreme Court rested its decision partially upon Article 19, Section 3 of the constitution. After quoting that section, the court queried, at page 607 of 184 P.2d:

> "Would it not appear somewhat strange that state moneys could not be paid to aliens for labor on public works, but it should be urged as quite proper to pay instructors for enemy aliens captured by the forces of the United States Government through the fortunes of war, held in this State by force, compelled to work on private enterprise after the War Production Training Program had been brought to an end, and required under the terms of international law to be repatriated upon cessation of hostilities?"

The framers of the constitution were aware of the practice, in vogue at the time of its adoption, of the importation by management of strong-arm men to "protect the property" of the employer in times of labor unrest. Thus it is provided by Article 19, Section 6, that

> "No armed police force, or detective agency, or armed body, or unarmed body of men, shall ever be brought into this state

> for the suppression of domestic violence, except upon the application of the legislature, or executive when the legislature cannot be convened."

Article 19, Section 7 prohibits employers from requiring employees to waive or release the employer from liability on account of personal injuries received in the course of employment through the negligence of the employer or of fellow employees.

The arbitration provisions of the constitution are four in number. Article 19, Section 8 authorizes the legislature to provide by law for the voluntary submission of differences to arbitrators, the judgment of the latter being obligatory only when the parties have agreed to abide the judgment of such arbitrators. Article 19, Section 5, however, goes much further:

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

And "courts of arbitration" are included in the list of courts wherein the judicial power of the state shall be vested, according to Article 5, Section 1. Finally, Article 5, Section 28 provides that

> "Appeals from decisions of compulsory boards of arbitration shall be allowed to the supreme court of the state, and the manner of taking such appeals shall be prescribed by law."

It is interesting to note that in *Edwards v. City of Cheyenne,* 19 Wyo. 110, 114 P. 677 (1911) it was contended in eminent domain proceedings that the three disinterested appraisers, appointed to determine the compensation to be paid the property owner, in accordance with legislative enactment, constituted a court of arbitration within the meaning of Article 5, Sections 1 and 28. It was held, beginning at page 683 of 114 Pacific, that the persons so appointed do not constitute such a court or board, the Supreme Court observing that "the debates and proceedings of the constitutional convention disclose" that such courts and boards were to be limited in their jurisdiction to controversies between employers and employees, in accordance with Article 19, Section 5.

III. *Statutes*

All references in the following discussion are to Chapters and Sections of Wyoming Compiled Statutes 1945, unless otherwise noted.

Turning first to the legislative responses to constitutional provisions,

we find Article 19, Section 2 implemented by 54-801 to 54-807, and by 22-514. These statutes limit a lawful day's work on all public works of the state, or any political subdivision thereof, to eight hours. The same limitation is made applicable to emploment in underground mines or workings, smelters, and all other institutions for the reduction or refining of ores or metals. Violations are punishable by fines ranging up to $500, or jail sentences up to six months, or both. 54-806 contains this unusual language:

> "The eight hours herein provided for (as to coal mines) shall be construed to mean eight hours of actual labor, and shall not include the time consumed in going to and returning from work."

This statute was referred to in one of the portal-to-portal cases involving the work-week or ore-mining employees within the meaning of Section 7 of the Fair Labor Standards Act.[3] The Circuit Court of Appeals for the Fifth Circuit pointed out that some state statutes, unlike Section 7 of the Fair Labor Standards Act, contain provisions expressly relating to the portal-to-portal problem, and singled out the Wyoming statute as unique in excluding "time consumed in going to and retuning from work." The U.S. Supreme Court added to this observation that the California statute has been interpreted so as to reach a like result.[4]

On the subject of employment of aliens, touched upon in Article 19, Section 3 of the Constitution, we have three statutes which date from territorial days and which now appear as 54-613 to 54-615. The apparent object of these statutes was to put an end to the practice of contracting for alien labor. They void contracts for such labor, and provide that individual aliens performing labor in Wyoming shall be entitled to recover upon *quantim meruit* for their services, against the persons for whom the labor was performed, regardless of the fact that the employer may already have paid some other person for the same. Third parties are prohibited from receiving pay for the labor of aliens. In the early days in Wyoming there was a practice of importing Chinese to work in the coal mines. The legislature evidently had in mind, among other things, the large profits made by labor contractors who brought in these aliens. Modernly, these statutes affect the importation of Mexican Nationals to work in the sugar beet fields of Wyoming.

As a follow-up to Article 19, Section 6 of the Constitution, forbidding the importation of armed police forces to suppress domestic violence, the legislature in 1891 enacted what has become 10-2505 to 10-2507. These Sections make it a misdemeanor for any person, company or corporation

3. Tennessee Coal, Iron and R. Co. v. Muscoda Local No. 123, etc., 137 F.2d 176, 183 (CCA 5th Cir. 1943), aff. in 321 U.S. 490, 64 S.Ct. 698, 88 L.Ed. 949 (1944).
4. See 64 S.Ct. 698, 704.

to import into Wyoming any person or company of persons for the purpose of discharging the duties of any peace officer,

> "in the protection or preservation of any public or private property, in the preservation of the public peace, or in the punishment, arrest, or detention of any person or persons violating or charged with violating any of the laws of this state."

It is likewise made unlawful for the imported persons to exercise or attempt to exercise any of the duties of a peace officer.

54-901 is a restatement of Article 19, Section 7 on the subject of waivers by employees of employers' liability for personal injuries resulting from the negligence of the employer or fellow employees.

The last of the constitutional provisions relating to labor relations are those concerning arbitration. A reading of Article 19, Section 5, and Article 5, Sections 1 and 28 makes it clear that the framers of the Constitution intended that the legislature should establish a system of compulsory arbitration of labor disputes. But in this the Founding Fathers were doomed to disappointment, for no such system was ever established, either before or after the adoption of the Constitution. Throughout the State's history there have been general provisions (such as contemplated by Article 19, Section 8) permitting the parties to any controversy—except one involving the possession of or title to real estate—to voluntarily submit the controversy to any one or more arbitrators, the award having the force and effect of a judgment. These culminated in the Uniform Arbitration Act, passed in 1927 and appearing as 3-5601 to 3-5624. The Uniform Arbitration Act might be adapted to the arbitration of some types of labor disputes, but cannot be considered as labor legislation per se.

In passing, we may mention that there are similar provisions for arbitration in the Justice Court (14-1701 to 14-1704) and a special statute (64-112) regarding controversies in which public utilities are involved. The latter reads as follows:

> "Whenever any Wyoming public utility has a controversy with any other person and all the parties to such controversy agree in writing to submit such controversy to the (Public Service) Commission as arbitrators, the Commission may act as such arbitrators, and after due notice to all parties interested may proceed to hear such controversy, and their award shall be final."

Turning now to legislation outside the purview of the constitutional provisions pertaining to labor relations, it may be well to notice first the administrative organization to which the state has entrusted responsibility for supervision and execution of the state labor laws.

In 1917, the office of Commissioner of Labor and Statistics was created (54-301), to be appointed by the Governor for a term of 4 years (54-302). It is his duty

> "to enforce all laws enacted by the legislature of Wyoming, relating to labor, hours of labor, and to the health, welfare, life and limb of the workers of this state; to see that workers are protected in the collection of their wages lawfully due; to make such inspections as may be by him deemed necessary of the industrial establishments and buildings hereinafter provided for; to make an inspection of all living accommodations provided for employees wherever employed, where such are furnished as part of the wages, and to report biennially his findings to the governor, together with such recommendations thereon as he may consider as being helpful." (54-304)

He is to compile certain statistics "touching the industrial life of the state" such as average daily wages, number and character of accidents, information relating to safety and sanitation, etc., "and such other information relating to industrial, economic, social, education, moral and sanitary conditions of the working class as the commissioner may deem needful to protect the work of his office." (54-305).

Although not specifically directed by statute to do so, the Commissionar and Deputy Commissioner now act as mediators in labor disputes when requested by one or more of the parties.[5] This is done in an informal manner, and out of a desire to be helpful above and beyond the strict letter of the statute.

The recommendations contained in the Commissioner's biennial reports are worth noting. For example, he has pointed out that Wyoming is the only state in the nation lacking a minimum age law for child labor, and has urged the enactment of such a law.[6]

Possibly the most important of our labor relations statutes are those comprising what may be called the "Little Norris-LaGuardia Act." These were passed in 1933, the year following the Act of Congress from which it was derived, and appear as 54-501 to 54-507. Like its prototype, the State Act declares the policy of the state that workers have the rights to organize and to bargain collectively, and provides that in the exercise of such rights they shall be free from the interference, restraint or coercion of employers; and it forbids or limits the issuance of restraining orders and injunctions in certain instances which are specified. The Norris-La Guaria Act is so well known as not to require further explanation; and

5. Personal interview on September 12, 1950 with Mr. John B. Georges, Deputy Commissioner of Labor and Statistics.
6. Sixteenth Biennial Report, 1947-48, Wyoming Department of Labor and Statistics, pp. 10 and 11.

since there appear to be no essential differences between the Wyoming statutes and that Act, we shall not dwell further upon that subject.

In 1919, evidently in response to labor unrest attributable to the I.W.W. or "wobblies", the legislature enacted what is now 9-401, making it a felony to "incite, advise, advocate, suggest or encourage crime as a means of coercion, or for the accomplishment of any political or industrial reform, change, or purpose in this state." This offense was called "incitement to crime" and was made punishable by fine of not more than $5000, or penitentiary sentence or not more than 5 years, or both.

The misdemeanors styled as "riots" and "routs" are capable of being applied to the sort of activity which sometimes occurs during labor disputes. The former is defined in 9-405:

> "If three or more persons shall do an act in a violent or tumultuous manner, they shall be deemed guilty of a riot, and shall be fined not exceeding one hundred dollars ($100.00) each, to which may be added imprisonment in the county jail not exceeding three (3) months."

The next succeeding section, 9-406, provides that

> "If three (3) or more persons shall meet together to do an unlawful act upon a common cause, and shall make advances toward the commission thereof, they shall be deemed guilty of a rout."

The punishment for a rout is the same as for a riot, except that the jail sentence is limited to sixty days. In 9-406 there seems to be more than an echo of the discarded doctrines of "illegal purpose" and "criminal conspiracy"!

There is a series of statutes, 39-401 to 421, on the subject of unfair competition, discrimination, and monopolies. No specific reference to labor appears; the slant is entirely toward the sale of *goods,* rather than *services,* although the word "commodity" is frequently used. Applying the analogy of the Federal Anti-trust laws, it seems reasonable to conclude that labor unions would not be included within the sweep of these statutes.

Finally, we may notice 39-201—familiar in every jurisdiction—which gives unions the right to adopt a label.

IV. *Cases*

A volume-by-volume examination of the Wyoming Reports discloses but seven cases of any significance in the labor relations field. Of these,

the case of *Beatty v. C.B. and Q. R. Co.*, 49 Wyo. 22, 52 P. (2d) 404 (1935) is the most interesting. Since a full appreciation of the case depends in part upon a thorough understanding of the facts, we shall give it somewhat extended treatment.

Beatty brought an action against the Railroad Company under the state declaratory judgment statute. He alleged that he was a member of the Order of Railroad Telegraphers, an unincorporated labor union, which on October 1, 1927, had entered into a collective bargaining agreement with the railroad, "for and on behalf of plaintiff and others" who belonged to O.R.T. His petition continued, in substance, as follows: The agreement included certain Rules which were made and agreed upon, one of them being Rule 22, which provided that whenever a vacancy might occur, the regular force should have the right to fill it according to seniority where qualifications were sufficient, and that, if the senior applicant be not assigned to the position, the reason therefor should be given in writing by the superintendent within ten days. A vacancy in a better telegraphic position had occurred on November 17, 1928, for which plaintiff applied in the regular manner, and on November 28 he was accepted and assigned to the position, but the next day the assignment was cancelled and the position given to one Halley, who was junior to plaintiff. There followed a period of continuing protest by plaintiff, with the company first assigning as a reason for its action that the plaintiff's eyesight was below standard —which he explained by saying that he had worn his wife's glasses to the physical examination by mistake—and then shifting to a claim that plaintiff's blood pressure was too high, which plaintiff denied. On January 26, 1929, plaintiff was notified that he had been discharged. He requested a judgment declaring that he was qualified for promotion; had prior seniority for the job; that his assignment was cancelled without cause; that his protests were unlawfully ignored; that he was unlawfully discharged; and that he was entitled to re-employment in the new job.

In its answer, defendant alleged that plaintiff was discharged "on account of incapacity" and that the company had offered him a substitute position. Plaintiff replied that this "substitute position" was that of a common laborer in another state. The trial court gave judgment for defendant on the pleadings.

In affirming the action of the trial court, the Supreme Court first discussed plaintiff's right to sue on the collective bargaining agreement. The Railroad Company had contended that this agreement was not a contract under which plaintiff could sue. The following quotations are taken from the court's opinion, at various places beginning on page 406 of 52 P. (2d). The court first observed, in connection with the issue just mentioned, that "The rule in that regard . . . cannot be said to be altogether settled." (It should be recollected that the case was decided in

1935.) Citing a Missouri case in defendant's favor, the opinion continued:

> "But there has lately been a distinct tendency in the other direction, and the majority of the decisions bearing on the point hold, upon one theory or another, that a contract entered into between an employer and a trade union is primarily one, as far as it goes, for the benfit of each individual member of the union. . . ." *(citing cases and law review notes).*

Accordingly, the court held that plaintiff could sue upon the agreement of October 1, 1927.

But, said the court, the prayer of plaintiff's petition was equivalent to a demand for specific performance of a contract for personal service, available, ordinarily, only where the employee's services are unique and extraordinary—which was not the case here. The opinion took note that actions by employers to enjoin a strike or other union action in violation of a contract have frequently been sustained, but that the decisions in actions by unions against employers are not uniform. Discussing some of the leading cases such as *Harper v. Local Union,* it was observed that some courts have taken the attitude that although, ordinarily, a contract for personal services will not be specifically enforced, equity will interfere when an action for damages is inadequate.

However (the opinion continued) such cases are distinguishable from the case at bar. Here, "mere recognition of seniority will avail nothing if plaintiff stands discharged;" in other words, the question of whether plaintiff's seniority rights could be specifically enforced cannot be reached in this case. The collective bargaining agreement did not contract away the employer's right to discharge its employees—in fact, if it had purported to do so it would have been unenforceable because lacking in mutuality—the agreement did not prevent plaintiff from quitting any time he chose! Thus the court relegated plaintiff to an action for damages for violation of the agreement, by reason of his alleged wrongful discharge.

But this is not the end. Can a declaratory judgment action be construed as, or converted into, an action for damages? "There are, so far as we know, no direct authorities on that question in the United States." At the time this action was begun, declaratory judgment proceedings were not removable to federal court; therefore, to permit the case to continue as an action for damages would deprive the defendant of its right, otherwise available, to remove. Primarily for this reason the Supreme Court concluded that the trial court was correct in giving judgment for defendant on the pleadings.

Laying aside the interesting point on construing a declaratory judgment action such as the one in the *Beatty* case as an action for damages,

as not properly within the scope of this paper, the case is important from two standpoints: first, the enforceability of collective agreements, and second, the requirement (so familiar in administrative law) of exhaustion of administrative remedies.

The Wyoming Supreme Court appears to adopt the "third party beneficiary theory" to justify the enforceability of collective bargaining agreements between unions and employers, without expressly calling it that. Justice Jackson might well have cited the *Beatty* case in his well known opinion in the *J. I. Case Co.* case, decided nine years later.[7] On the second point—exhaustion of administrative remedies—there seems little disagreement. The two cases next discussed hereinafter, one prior to and the other subsequent to the *Beatty* case, apply the same principle to accident benefit and seniority problems. These cases are *Hanson v. C. B. and Q. R. Co.,* 32 Wyo. 337, 232 P. 1101 (1925) and *Samuelson v. Brotherhood of Railroad Trainman,* 60 Wyo. 316, 151 P.2d 347 (1944).

In the *Hanson* case the plaintiff was a railroad engineer who had suffered an impairment of vision which he alleged was caused by, or connected with, an injury to the eye which he had sustained nine years before. He therefore claimed accident benefits from the relief department of the railroad. Claim was denied by the superintendent, who headed the relief department, and plaintiff brought suit against the company.

Membership in the relief fund was voluntary. Those employees who desired to join did so by signing an application, and thereafter paying into the relief fund a certain portion of their wages. In his application, the applicant agreed to be bound by the regulations of the relief department, and

> ". . . to be especially bound by the regulation providing for final and conclusive settlement of all claims for benefits . . . by reference to the superintendent of the relief department, and an appeal from his decision to the advisory committee."

Plaintiff did not take such appeal. There were detailed regulations concerning the organization of, and hearing before, the advisory committee, which the court examined and held to assure a full, fair, and prompt hearing before that committee. In denying plaintiff's claim, the superintendent expressly called Hanson's attention to his right of appeal. The advisory committee was composed of six employee representatives and six nominated by the company, with the general manager of the railroad as an *ex officio* member.

Defendant pleaded the regulations of the relief department, and

7. J. I. Case Co. v. N.L.R.B., 321 U.S. 332, 64 S. Ct. 576, 88 L. Ed. 762 (1944).

plaintiff's failure to exhaust his remedies within the organization before invoking the aid of the court.

The Supreme Court affirmed a judgment in favor of defendant, holding (1) That such relief organizations are classified as "beneficial associations," (2) That the rights of a member of such an association are governed by the terms of his contract of membership, which include such reasonable regulations as may exist, (3) That the regulations in the instant case were reasonable, and (4) That it was mandatory upon plaintiff to take an appeal to the advisory committee as a condition precedent to resorting to the courts.

Although the relief department involved in the *Hanson* case was not a labor union, the situation is analogous to questions, such as seniority, which arise in connection with the internal affairs of unions—the exhaustion of remedies rule applying in both cases—so that for this reason the *Hanson* case has been included in this discussion. It seems to form a trilogy with the *Beatty* and *Samuelson* cases.

In *Samuelson v. Botherhood,* the plaintiff brought a declaratory judgment action to establish his seniority. Defendants were the Brotherhood of Railroad Trainmen, one of its subordinate Lodges, the Burlington Transportation Company, and several named individuals who had been placed ahead of plaintiff on the seniority list. He asked for a determination that his seniority dated from June 27, 1935, when he first entered the employ of the Transportation Company as a bus driver in Omaha, Nebraska. On June 5, 1937, he had transferred to Cheyenne, Wyoming, having first been assured by the Company's superintendent that he would not lose seniority by so doing. Cheyenne was in the Company's Division 4, while Omaha was in Division 2. On June 15, 1937, a collective bargaining agreement was signed by the Company and the Brotherhood, under the terms of which the former agreed to accept seniority as established by the Brotherhood through its grievance procedure. Thereafter, in accordance with this procedure, the General Grievance Committee of the Brotherhood promulgated a seniority list based upon a rule that when employees transferred from one Division to another, they lost their seniority. Plaintiff was therefore assigned June 5, 1937, as his seniority date, but was given the option (which he refused) to return to Division 2 and resume his old seniority date of June 27, 1935. He appealed to the Board of Appeals of the Brotherhood (its court of last resort in such matters) which affirmed the action of the General Grievance Committee. Some subsequent action was taken by Brotherhood officials, which gave rise to the question whether plaintiff should have taken a further appeal to the Board of Appeals—he did not do so—and called forth from the court a reiteration of the rule of exhausting remedies within the organization.

The Company pleaded neutrality, and the other defendants answered

that Samuelson's case had been properly disposed of under Brotherhood laws, as contained in its constitution, by-laws, and the collective bargaining agreement.

In affirming a judgment for the defendants, the Supreme Court of Wyoming held that as to the internal management of voluntary associations—especially labor unions—if rights exist in consequence of contracts between the employer and the union, and these rights are to operate and be enforced pursuant to the union's constitution, by-laws, and rules, through the established authorities and tribunals thereof, the courts ordinarily will not interfere with the decisions of such authorities and tribunals unless their action has been fraudulent, *mala fide,* arbitary, violative of public policy or general law, or in excess of jurisdiction.

Here, said the court, none of the exceptions just mentioned existed. The collective bargaining agreement provided an exclusive method of settling grievances, including seniority rights, and in this realm the decision of the Board of Appeals was made final and conclusive.

The court observed that seniority is not an inherent, natural, or constitutional right, but exists solely by virtue of the contract between the employer and the union; and that the company's superintendent who purported to assure Samuelson of his earlier seniority date had no authority to do so. Plaintiff was chargeable with knowledge that under the collective bargaining agreement such assurances were not within the authority of the superintendents.

It is interesting to note that plaintiff joined in his petition a demand for damages against defendants in the sum of $1500. Perhaps his primary object was to forestall removel of the case to the federal court.

The *Samuelson* case may be taken as the culmination of the *Hanson* and *Beatty* cases. As a result of these three dicisions, the law of Wyoming with respect to the relation of the courts to questions involving the internal management of labor unions seems clearly established—at least in principle —with the seniority question thoroughly covered.

There are two cases which dealt with the statutes limiting the hours of work in coal mines and on public works. *State v. Thompson,* 15 Wyo. 136, 87 P. 433 (1906) interpreted what is now 54-805 to 54-807, referred to hereinabove. These are the coal mine statutes. The penalty for violation is expressed thus in 54-807:

> "Any owner, lessee or operator, his or its agent, employees or servants, violating any of the provisions of this Act . . ."

shall be fined or imprisoned or both. The *Thompson* opinion held that

coal miners themselves were not included within the class of persons subject to the penalty. The court noted that there is nothing in the Act to prevent a miner from *voluntarily* working in a coal mine more than eight hours a day.

The second of the two cases, *State v. A. H. Read Co.,* 33 Wyo. 387, 240 P. 208, 218 (1925) held that certain portions of Comp. St. 1920, Sec. 4308 (which, as later revised, is now 22-514) were unconstitutional because of the indefiniteness of the penal provisions thereof, but that

> ". . . the Legislature has and had power to limit and restrict the hours of labor upon public works of the state, county, city or town, or other political subdivision thereof, in the manner provided by section 4308. . . ."

The language of that section which the court found objectionable was subsequently rectified by an amendment, and it is believed that the present W.C.S. 1945 sec. 22-514 therefore bears our Supreme Court's stamp of constitutional approval.

In *Janssen v. Employment Security Commission,* 64 Wyo. 339, 192 P.2d 606 (1948) the plaintiffs, doing business as the Pathfinder Potato Company, sued the Employment Security Commission of Wyoming to recover taxes paid under protest by reason of the State Employment Security Law, which had been enacted as complementary to the federal Social Security Act. The services performed by plaintiffs consisted in processing, packing and marketing farm products purchased by plaintiffs from others, or handled on consignment from others—and plaintiffs claimed that these services were exempt from taxation under the so-called "agricultural labor exemption" of the Employment Security Law. The Supreme Court held that the services would be exempt only if performed in the employ of an owner or tenant operating a farm, and as an incident to ordinary farming operations, as distinguished from industrial or commercial operations. The court decided the case in consonance with the regulations originally made by the U. S. Treasury Department under the Social Security Act, conceding that Congress had later broadened the agricultural labor exemptions of the Act in a way which would have exempted the plaintiffs, but pointing out that the Wyoming legislature had not seen fit to modify the state statute to conform.

The situation presented in the *Janssen* case is analogous to problems relating to the exclusion of agricultural employees from the coverage of the National Labor Relations Act. Section 2 (3) of the latter provides in part that "the term 'employes' . . . shall not include any individual employed as an agricultural laborer," and the question has arisen as to whether persons employed in the processing and manufacture of food

products are covered by the Act. The decision in the *Janssen* case is in accord with the views of the National Labor Relations Board on this question.[8]

The seventh and last Wyoming case is *Atwater v. Gaylord,* 63 Wyo. 501, 184 P.2d 437 (1947). Plaintiff was employed by defendant as an oil driller from March, 1944, to June, 1945. He had been paid his agreed wages, but sued for overtime, liquidated damages, and attorney's fees under the provisions of the Fair Labor Standards Act, alleging that his employment was subject thereto. No oil or gas was ever found in the well drilled by plaintiff; the hole was a "duster". It was not drilled in a producing field. The parties agreed that if oil in commercial quantities had been found, it would have been shipped to Utah. It was also agreed that the Fair Labor Standards Act applies to employees who are engaged in interstate commerce, or in the production of goods for such commerce.

The Supreme Court held for the defendant, stating that the real purpose of the Act was to prohibit the shipment of goods in interstate commerce if they are produced under substandard labor conditions. If no goods are produced, the Act does not apply! Illustrating by a quotation from another case, the court put it that

> "Henry Ford, when experimenting in his workshop in an attempt to produce a machine to be operated by gasoline, could hardly be said to be engaged in commerce."

The rule of the *Atwater* case would seem to apply to all labor employed in the search for minerals, where the search is fruitless. Here, as in the *Janssen* case, we have a direct analogy to a problem of coverage under the NLRA.

The writer did not intend to annotate the cases discussed in this section of the paper, but only to describe them in such detail that the questions involved and the rulings of the Wyoming Supreme Court might be fully understood. It may not be amiss, however, before closing the discussion to call attention to the fact that prominent writers in the labor relations field have referred to the *Samuelson* case as a good case study on the general problem of seniority.[9]

V. *Conclusions*

As we stated at the outset, the volume of labor relations law in Wyoming is small because the state is sparsely populated and not highly industrialized.

8. Re San Fernando, etc. Assn., 72 NLRB 372 (1947); Re American Fruit Growers, Inc., 75 NLRB No. 134 (1948).
9. Gregory and Katz, *Labor Law, Cases, Materials and Comments,* p. 1071.

The constitutional provisions relating to labor law are primarily of historical interest—*e.g.*, the four sections dealing with arbitration—although the alien labor provisions, both constitutional and statutory, are worth noting.

The most significant legislation is the Little Norris-La Guardia Act. Administratively, the organization and functions of the office of Commissioner of Labor and Statistics seem adequate, and capable of expansion to meet new and changing conditions. At present the office seems to be chiefly occupied with the enforcement of the health and safety laws, and laws relating to the labor of women and children. The activity of the Commissioner and Deputy Commissioner in the labor conciliation field is commendable and deserves encouragement.

As to case law, the *Beatty* case appears to establish the enforceability of a collective bargaining agreement in an action by employee against employer. The *Hanson, Beatty* and *Samuelson* cases together constitute a siginificant contribution to the law pertaining to the internal management of labor unions, and the relation of the courts thereto. The *Janssen* and *Atwater* cases are informative as to questions of coverage of the National Labor Relations Act.

The unexplored territory of Wyoming labor relations law (touched, it is true, by the Little Norris-La Guardia Act) includes such problems as strikes, boycotts, picketing, closed and union shops, work permits, dues, check-off, mediation and many phases of internal union affairs.