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## RIGHT TO WORK: PROHIBITION OF EXPRESSION OR COERCION

Conflicting interests between employers and employees have produced an aspect of continuing agitation in the social, economic and political history of American enterprise. It is therefore no small wonder that "Labor-management" jurisprudence has developed with similar fluctuations. Doctrines of first labor control and then management control have been created and discarded as need and acceptance have demanded. Contract interference,<sup>1</sup> due process restrictions<sup>2</sup> and United States Constitutional guarantees<sup>3</sup> have all been the pivotal points of litigation in this area. Legislation,<sup>4</sup> of course, has been vital in the development of these doctrines, past and present. One present attitude, manifested by the so-called "Right-to-Work" laws, is society's latest method of adjusting the principles of individual freedom to the demands of a highly industrialized society. By act of the 37th legislature of the State of Wyoming, it became the twentieth (20th) state to enact such legislation.<sup>5</sup> Previously

1. *Coppage v. Kansas*, 263 U.S. 1 (1915); *Doremus v. Hennessy*, 176 Ill. 608, 52 N.E. 924 (1918).
2. *Adair v. United States*, 208 U.S. 161 (1908); *Trux v. Corrigan*, 257 U.S. 312 (1921).
3. *Thornhill v. Alabama*, 310 U.S. 88 (1940); *Carlson v. People of the State of California*, 310 U.S. 106 (1940); *American Federation of Labor v. Swing*, 312 U.S. 321 (1940); *International Brotherhood of Teamsters v. Vogt, Inc.*, 354 U.S. 284 (1957).
4. *Sherman Anti-Trust Act*, ch. 281, 69 Stat. 282, 15 U.S.C. 1-7 (1955); *Clayton Act*, 38 Stat. 730 (1914), 15 U.S.C. 17 (1952), 29 U.S.C. 52 (1952); *Railway Labor Act*, 44 Stat. 577 (Pt. 2, 1926), as amended 1934, 1936, 1940 and 1951, 45 U.S.C. 151-163 (1952); *Norris-LaGuardia Act*, 47 Stat. 70 (1932), 20 U.S.C. 101-115 (1952); *Wagner Act*, 49 Stat. 449 (1935), as amended 61 Stat. 156 (1947); *Labor Management Relations Act (Taft-Hartley)*, as amended in 1951 and 1956, 29 U.S.C. 141-187, 61 Stat. 136 (Supp. 1958, National Labor Relations Act).
5. S.F. No. 24, 37th Legislature (1963), the so-called "right-to-work bill provides:  
Section 1. (a) The term "labor organization" means any organization, or any agency or employee representation committee, plan or arrangement, in which employees participate and which exists for the purpose, in whole, or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.  
(b) The term "person" shall include a corporation, association, company, firm or labor organization, as well as a natural person.  
Section 2. No person is required to become or remain a member of any labor organization as a condition of employment or continuation of employment.  
Section 3. No person is required to abstain or refrain from membership in any labor organization as a condition of employment or continuation of employment.  
Section 4. No person is required to pay or refrain from paying any dues, fees, or other charges of any kind to any labor organization as a condition of employment or continuation of employment.  
Section 6. Any person who directly or indirectly places upon any other person any requirement or compulsion prohibited by this Act, or who makes any agreement written or oral, express or implied, to do so, or who engages in any lock-out, strike, work stoppage, slow down, picketing, boycott or other action or conduct, a purpose or effect of which is to impose upon any person, directly or indirectly, any requirement or compulsion prohibited by this Act, is guilty of a misdemeanor and shall also be liable in damages to any person injured thereby.  
Section 7. Any person injured or threatened with injury by any action or conduct prohibited by this Act shall, notwithstanding any other law to the contrary, be entitled to injunctive relief therefrom.  
Section 8. Any person convicted of a misdemeanor, as defined in this Act, shall be punished by a fine not to exceed one thousand dollars (\$1000), or imprisonment in the county jail for a term not to exceed six months, or both.  
Note the lack of a savings clause.

nineteen states had adopted "Right-to-Work" legislation either by statute or constitutional amendment.<sup>6</sup>

The earliest enactments were the Arkansas and Florida constitutional amendments adopted in 1944; the most recent is the 1958 constitutional amendment in Kansas. The most active year with respect to right-to-work legislation was 1947. Seven of the laws currently in effect were enacted for the first time in that year and four other acts were passed in states already having constitutional amendments. The other laws have been adopted gradually since 1951. Since 1947, eight states have defeated right-to-work measures by referendum, and four state legislatures have repealed right-to-work laws or other laws restricting union-security agreements.<sup>7</sup> What, in

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6. Alabama: Title 26, Code § 375 (et seq.) (1958); Arizona: 1946 Amendment to Arizona Constitution (implemented by Arizona Session Laws, 1947, ch. 81, p. 173); Arkansas: Ark. Const., Amendment 34, Acts of Ark. 1947, Act No. 101; Florida: Fla. Const. Decl. of Rights, § 12, as amended 1944; Georgia: Laws, 1947, No. 140 (Code Ann. 54-804, 66-9906); Indiana: Acts 1957, ch. 19 (Burns' Ann. Stats. (1957 Supp.), §§ 40-2701 et seq.); Iowa: Laws, 1947, ch. 296 (Code Ann. § 736A.1 et seq.); Kansas: Kan. Const., art. 15, § 12 (adopted 1958); Louisiana: the general "right-to-work" law (LAS-R.S. 23:881-23:888) was repealed by Laws 1956, Act 16, Laws 1956, Act 397, is a right-to-work law for agricultural workers; Mississippi: Code Ann. § 6984.5 (Laws 1954, ch. 249, § 12); Nebraska: Neb. Const., Art. XV, §§ 13, 14, 15, adopted in 1946; Nevada: Stats. 1953, ch. 1; North Carolina: N. C. Session Laws, 1947, ch. 328; North Dakota: NDRC, 1949 Supp. § 34-0901, NDRC, 1953 Supp. § 34-0114; South Carolina: Code 40-46 through 40-46.11 (enacted 1954); South Dakota: Const. art. VI, § 2, as amended 1946, Laws 1947, ch. 92, §§ 1-3; Tennessee: Public Acts, 1947, ch. 36 (T.C.A., § 50-209); Texas: Laws 1947, ch. 74 (Vernon's Ann. Civ. St., are 5207a); Utah: Code Ann. §§ 34-16-1 through 34-16-18 (laws 1955, ch. 54); Virginia: Acts of Assembly, 1947, ch. 2. Seven of the statutes (supra) are virtually identical: Alabama, Louisiana (limited to agricultural workers), Mississippi, North Carolina, South Carolina, Utah, Virginia; in addition to outlawing agreements requiring membership or retention of membership in a union as a condition of employment, these acts: (1) outlaw the payment, as a condition of employment, or "any dues, fees or other charges of any kind to a labor union," (2) make "any agreement or combination between any employee and any labor union" whereby membership is a condition of employment "an illegal combination or conspiracy"; (3) provide for the recovery of damages by persons deprived of employment by reason of non-membership in a union or non-payment of dues fees or other charges. Otherwise, these seven statutes vary only slightly. Similarly, Arizona and Nevada have enacted identical statutes. The main difference between these acts and the above mentioned seven are: (1) there is no express provision prohibiting the payment of dues, fees and other charges and (2) conspiracies to violate the Arizona and Nevada Acts irrespective of whether such conspiracies are between an employer and a union, are declared illegal. The Acts of Arkansas, Georgia, Iowa and Tennessee vary but they all treat the question of payment of dues or other monetary consideration as well as mere membership or non-membership in a union. The Nebraska, North Dakota, South Dakota and Texas enactments are of a somewhat limited nature and do not contain the extensive procedural provisions and limitations found in most of the other statutes. Five states, including some of the states which have enacted statutes, also incorporated right to work clauses in their constitutions. (Arizona, Arkansas, Florida, Nebraska, South Dakota). The most recent right to work statute was enacted in Indiana in March of 1957. Wyoming's right to work statute is in accord with the statutes of the seven states first mentioned above, except in points (2) and (3).
7. *State "Right-work" Laws*, Bulletin 204, May 1959, U. S. Dept. of Labor. States in which right to work measures have been defeated by referendum: California, proposed constitutional amendment defeated at general election, November 1944, and November 1958; Colorado, proposed constitutional amendment defeated November 1958; Idaho, Initiative measure defeated November 1958; Maine, Initiative measure defeated September 1948; Massachusetts, Initiative petition defeated November 1958; New Mexico, proposed constitutional amendment was defeated November 1958; Ohio, proposed constitutional amendment was defeated November 1958; Washington, Initiative measure defeated November 1958. States in which

substance, have these states adopted or rejected? The core of the typical right-to-work statute consists of two simple provisions; first, that the right-to-work shall not be denied by reason either of membership or non-membership in a labor union; and second, that any agreement or understanding which conditions employment in any occupation upon membership or non-membership in a labor union is illegal and void. Other provisions to this basis have been added as individual states desire and demand.<sup>8</sup>

These Right-to-Work laws have been attacked from all angles: moral,<sup>9</sup> social, economical, political, and legal. But undoubtedly the most documented arguments are found in the court reports. Within the legal sphere itself many ways have been found to test the validity of these state regulations. The following are some of the more frequent stands taken for this purpose: (1) that states are without jurisdictional power over labor-management disputes.<sup>10</sup> This area of state or federal jurisdiction of labor-management relations was quite prominent in the fifties and has received vast recognition in legal literature.<sup>11</sup> It is sufficient to say that the federal government through its statutes and laws<sup>12</sup> has preempted this area and the field allowed to the state is very narrow. Section 14 (b) of the Taft-Hartley Act of 1947 provides that:<sup>13</sup>

Nothing in that Act shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial Law.

The United States Congress by adopting this Act reaffirmed the right of the states to outlaw compulsory unionism or more literally opened the door for the states to enact the so-called "right-to-work" laws.

(2) That these laws are unconstitutional as being in violation of (a)

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right to work laws or other laws restricting union-security agreements have been repealed: Delaware, Ch. 196 approved Apr. 5, 1947, was repealed by Laws 1949, Ch. 301, approved June 29, 1949; Hawaii, Act 250, approved May 21, 1945, is the State Labor Relations Act, removed by Act 210, approved May 30, 1959; Louisiana, Act 1952, approved July 2, 1954, was repealed by Act 16, approved June 21, 1956; Maine, Ch. 395, approved May 13, 1947, Ch. 395 was repealed by the legislature (Ch. 349, § 50); New Hampshire, Ch. 195, approved June 14, 1947, was repealed by Laws 1949, Ch. 57, approved March 11, 1949.

8. *Right to Work, A Brief Study*, Bulletin of the Chamber of Commerce of the United States; *The Challenge to Compulsory Union Membership*, Bulletin of the Chamber of Commerce of the United States (1959).
9. 8 Lab. L.J. 193 (March, 1957).
10. *American Federation of Labor et al. v. Watson*, 60 F. Supp. 1010 (1945); *State v. Whitaker*, 228 N.C. 352, 45 S.E.2d 860, 335 U.S. 525 (1949); *Lincoln Fed. Labor Union v. Northwestern I. & M. Co.*, 149 Neb. 507, 31 N.W.2d 447, 335 U.S. 525 (1949).
11. The most prominent of which are: *Federalism and Labor Relations*, 64 Harv. L. Rev. 211 (1950); *Federalism in the Law of Labor Relations*, 67 Harv. L. Rev. 1297 (1954); *Labor Relations Law: State v. Federal Jurisdiction*, 42 A.B.A.J. 415 (1956); 31 So. Calif. L. Rev. 111 (1958).
12. See note 4 supra.
13. The Labor Management Relations Act, Ch. 120, Public Law 101, 29 U.S.C. 141 et. seq. Under this section the states may prohibit those union-security agreements which would otherwise be permitted under the Labor Management Relations Act in establishments covered by the Act.

the impairment of contract of Article 1, Section 10 of the United States Constitution; (b) the due process and equal protection clauses of the Fourteenth Amendment of the United States Constitution and (c) the civil right of assembly and speech guarantees of the First Amendment.<sup>14</sup> The Supreme Court of the United States upheld the laws as not being in contravention of these constitutional principles.<sup>15</sup>

(3) That these laws are an invalid exercise of a state's police power.<sup>16</sup>

Perhaps the best way to illustrate these fluctuating doctrines is to briefly sketch the history of one of these contested areas and to state the present conclusions that the United States Supreme Court has drawn.

The term "right-to-work" goes back to 1915 when in the case of *Traux v. Haich*,<sup>17</sup> the U. S. Supreme Court said, "The right-to-work for a living in the common occupations of the community is the very essence of personal freedom." In this case the right-to-work was declared to be a plain and self-evident principle of American constitutional law by Justice Hughes. The term has since been used in most of the influential forums and has received world-wide attention. Both the United Nations and many European countries have adopted its use.<sup>18</sup> But the term received little legal use in the United States until the current state enacted restraints on union security agreements. Because of this time lapse also because of the many divergent theories employed to litigate these labor-management disputes it is necessary to rely upon the U. S. Supreme Court's decisions showing the position of labor-management relations in regard to state control or regulation.

One aspect of this relationship has been manifested by the concerted activities of labor in its attempt to communicate its position and the dispute to the general public; and in particular through labor's efforts to persuade employees to join a union or to persuade employers to enter into "union or closed shop"<sup>19</sup> agreements. This aspect is extremely im-

14. See note 10 supra.

15. *State v. Whitaker*, 228 N.C. 352, 45 S.E.2d 860, 335 U.S. 525 (1949); *Lincoln Fed. Labor Union v. Northwest I. & M. Co.*, 149 Neb. 507, 31 N.W.2d 477, 335 U.S. 525 (1949); *United Ass'n of Journeymen Plumbers and Steamfitters of United States and Canada of A.F. of L. v. Graham*, 345 U.S. 192 (1953).

16. *American Federation of Labor v. American Sash and Door Co.*, 67 Ariz. 20, 189 P.2d 912, 335 U.S. 538 (1949); *American Federation of Labor v. Watson, D. C.*, 60 F. Supp. 1010 (1945); which stated that relations between employer and employee have been recognized by the United States Supreme Court to be proper subjects for legislative regulation under the state's police power to legislate for the general welfare. *Thornhill v. Alabama*, 310 U.S. 88 (1940); *Carpenters and Joiners Union v. Ritter's Cafe*, 315 U.S. 722 (1941); *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1936); 11 Am. Jur. Const. Law, § 345.

17. *Traux v. Raich*, 239 U.S. 33 (1915).

18. The United Nations in its Universal Declaration of Human Rights has recognized that, "Everyone has the right to work."—Art. 29, § 1 of the Declaration reads: "Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protect against unemployment." Recently an article was published which showed that in the free nations of Western Europe the idea that a man may be compelled to belong to a union as a condition of employment is uniformly rejected. Lenhoff, *The Problem of Compulsory Unionism in Europe*, Am. Jour. Comp. Law 18 (1956).

19. Defined: "closed shop," required membership in the contracting union before a job applicant can be employed, and for the duration of his employment. Such an

portant because of its close approximation to the main objective which right-to-work laws attempt to prohibit. From the very beginning labor has contended that any restraint imposed upon them in exercise of their right to communicate their grievances to the public is in violation of the constitutional freedoms guaranteed in the First Amendment.<sup>20-21</sup> But at that time the Supreme Court held that "militant purposes were inconsistent with peaceful persuasion." Later in 1937 the Court in reflecting the economic times and conditions allowed picketing and injected the element of freedom speech into the issue of what constitutes peaceful picketing.<sup>22</sup> This decision did little to clear the air because it merely held that the unions' right was a constitutional freedom and did not explain how this freedom could be exercised. This decision seemed to pave the way for later decisions (1940), which at the time indicated that the status was settled and that peaceful picketing was a form of free speech.<sup>23</sup> However, these decisions avoided the question of whether the states, in retaining the right to regulate abuses of picketing, could only regulate the manner in which the picketing was carried out or whether this regulation extended to its objectives. This question waited sometime for an answer. But the court soon deflated the Thornhill Doctrine and in two cases in 1950, recognized that picketing is more than free speech. In the case of *Hughes v. Superior Court*, the court recognized that the compulsive features inherent in picketing were beyond mere communication.<sup>24</sup> In another case considered in the same term, *International Brotherhood of Teamsters v. Hanke*, the court stated, "We must start with the fact that while picketing has an ingredient of communication it cannot dogmatically be equated with the constitutionally protected freedom of speech."<sup>25</sup> The case of *Carpenter and Joiner's Union v. Ritter's Cafe*<sup>26</sup> dealt with the question left open before, the effect on peaceful picketing of an objective found improper by the state court. Justice Frankfurter in his opinion for the majority of

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agreement is generally accompanied by a "union hiring hall" arrangement. The "union shop" does not require membership before employment, but does require membership in a reasonable time after employment, and for the duration of the employment.

20. *American Steel Foundries v. Tri City Central Trade Council*, 257 U.S. 184 (1921).
21. I use the picketing aspect of labor-management relations disputes because it is litigated the widest and is possibly the most expressive in its characteristics. It is used merely as an example of union concerted activity.
22. *Senn v. Tile Layers Protective Union, Local No. 5*, 301 U.S. 468, 478 (1937); Justice Brandies in his majority opinion said, "Members of a union might, without special statutory authorization by a state, make known the facts of a labor dispute, for freedom of speech is guaranteed by the Federal Constitution."
23. *Thornhill v. Alabama*, 310 U.S. 88 (1940); *Carlson v. People of the State of California*, 310 U.S. 106 (1940); *American Federation of Labor v. Swing*, 312 U.S. 321 (1940); *Thomas v. Collins*, 323 U.S. 516 (1941); *Bakery & P. Drivers & Helpers, I.B.T. v. Wohl*, 315 U.S. 769 (1942); *Cafeteria Employees Union v. Angelos*, 320 U.S. 293 (1943). In the *Thornhill* case at p. 102, Justice Murphy pointed out: "In the circumstances of our times the dissemination of information concerning the facts of a labor dispute must be regarded as within the area of free discussion that is guaranteed by the Constitution."
24. *Hughes v. Superior Court*, 339 U.S. 460, 468 (1950); the Court further stated: "But the very purpose of a picket line is to exert influences, and it produces consequences, different from other modes of communication."
25. *Id.* p. 474.
26. *Carpenter Union v. Ritter's Cafe*, 315 U.S. 722 (1942).

the court maintained that the state had a right to declare it contrary to its public policy for a union to picket a person not involved in the labor suit. Later, in *Bigoney v. Empire Storage and Ice Company*,<sup>27</sup> a state injunction was upheld as being within state power, on the grounds that the activity was in violation of state public policy. In 1950, the U. S. Supreme Court passed on a case which in a way is a little ironical: *Building Service Employees International Union v. Gazzam*.<sup>28</sup> In this instance the union picketed an employer because he refused to compel his employees to join that union and the court upheld the injunction against the union. Doesn't this "smack" a little of the prohibitive purpose of the right-to-work laws? In an article by Fraenhel,<sup>29</sup> a member of the New York bar, it was stated in regard to the *Gazzam* case:

There can be no quarrel with the Supreme Court's decision that the enjoining of such picketing did not violate the constitutional guarantee of free speech. . . . Clearly the state legislature must have the right to determine what sanctions to employ to deal with acts held to be contrary to public policy.

The language of the Court is consistent with this observation made by Justice Frankfurter in the *Hughes* case<sup>30</sup>:

The policy of a State may rely for the common good on the free play of conflicting interests and leave conduct unregulated. Contrariwise, a State may deem it wiser policy to regulate. . . . Either method may outlaw an end not in the public interest or merely address itself to the obvious means toward such end. The form the regulation should take and its scope are surely matter of policy and, as such, within a State's choice.

Actually the Court has never been able to formulate a satisfactory principle to indicate the dividing line between picketing which is a constitutionally protected form of free speech and that picketing which is not protected. But from these cases Mr. Fraenhel has drawn several principles which may be helpful in determining this dividing line.<sup>31</sup>

1. Indiscriminate bans on peaceful picketing whether by statute or injunction violate the Constitution.
2. Peaceful picketing may be enjoined when it is part of an activity which the state, whether by its legislature or its highest court, has declared contrary to public policy—subject, of course, to the proviso that such a declaration be itself constitutional.
3. Between these extremes lies an area about which no safe prediction can be made—that is, if the state courts let such an area remain. There the validity of a ban on peaceful picketing will depend on whether the majority of the Supreme Court considers that the State has confined the picketing to an unrealistic area. Now it looks as though state court, by the simple

27. *Giboney v. Empire Storage & Ice Co.*, 336 U.S. 490 (1949).

28. *Gazzam v. Building Employers, Etc. Union*, 29 Wash. 2d 488, 188 P.2d 97, 339 U.S. 532, 11 A.L.R.2d 1330 (1950).

29. 99 Un. Pa. L. Rev. 1.

30. *Hughes v. Superior Court*, see note 24, supra, p. 468.

31. See note 29, supra, at p. 11.

device of declaring union objectives contrary to public policy, can ban peaceful picketing in almost all situations, where there is room for difference of opinion as to these objectives.

The basic underlying principle must be remembered, free speech—the right to convince—must be protected but coercion under the guise of free speech must fall.<sup>32</sup> From one of the latest Supreme Court decisions these three principles seemed to have been affirmed; in *Teamsters Union v. Vogt, Inc.*,<sup>33</sup> the court said:

Prior decisions of this Court have established a broad field in which a State, in enforcing some public policy, whether of its criminal or civil law, and whether announced by its legislature or its courts, may constitutionally enjoin peaceful picketing aimed at preventing effectuation of that policy.

Consistently with the Fourteenth Amendment, a State may enjoin peaceful picketing, the purpose of which is to coerce an employer to put pressure on his employees to join a union in violation of the declared policy of the state.

Of course, the mere fact that there is picketing does not automatically justify its restraint without an investigation into its conduct and purposes. State courts, no more than State legislatures, can enact blanket prohibitions against picketing.

This means that state courts and state legislatures are free to decide whether to permit or suppress any particular picket for any reason other than a blanket policy against all picketing. This decision indeed seems to codify the position that states can regulate against picketing. Again remember picketing is used here merely as an example of concerted activity by labor, when the state has declared its public policy and by its policy picketing is unlawful or contrary to it. "The effort in these latest cases has been to strike a balance between the constitutional protection of the element of communication in picketing and the power of the state to set the limits of permissible contest open to industrial combatants."<sup>34</sup>

With this brief summary the next step is to see if the current "right-to-work" legislation adopted in Wyoming fits into this permissible area of State regulation. First of all, what is Wyoming public policy in regard to unions and their concerted actions? The so-called "Little Norris LaGuardia Act," enacted in 1933, declared the public policy of Wyoming.<sup>35</sup>

32. *Edwards v. Virginia*, 191 Va. 272 (1950); *Baldwin v. Arizona Flame Restaurant*, 82 Ariz. 385, 313 P.2d 759 (1957); *Edwards v. Virginia*, 33 A.L.R. 328, 336, by Justice Brandies: "Picketing is subject to regulation by state, either by legislation or by court action, but such regulation must have a reasonable basis in prevention of disorder, restraint of coercion, protection of life or property, or promotion of general welfare and instrument of state action, whether judicial process or legislative enactment, must be specifically directed to acts or conduct which overstep legal limits, and not those which keep within protected area of free speech."

33. *International Brotherhood of Teamsters v. Vogt*, 354 U.S. 284 (1957).

34. *Hughes v. Superior Court*, see note 16, supra, at p. 470. See also *Edwards v. Commonwealth*, 60 S.E.2d 916, 922 (1950); where the court states that a pattern developed out of the effort to strike a balance, the pattern which emerges seems to be that picketing is subject to regulation, by either court or legislature. But such regulation must have a reasonable basis, and must not regulate those which keep within the protection of free speech.

35. Laws 1933, Ch. 27, § 1; C.S. 1945, § 54-501; Wyo. Stat. Ann. 1957, § 27-239.

. . . workers have a right to organize for the purpose of protecting the freedom of labor and of bargaining collectively with employers of labor for acceptable terms and conditions of employment, and that in the exercise of the aforesaid rights, workers should be free from the interference, restraint or coercion of employers of labor, or their agents in any concerted activities for mutual aid or protection.<sup>36</sup>

In 1952 Wyoming applied the "Little Norris LaGuardia Act" to a labor-management dispute and Justice Blume outlined Wyoming's public policy more clearly.<sup>37</sup>

Coercing employer into forcing his employees to join a union would not be lawful labor objective, for the accomplishment of which picketing could be permitted.

He went further to state that:

The guaranty of liberty and pursuit of happiness, set forth in the Declaration of Independence, and reiterated in the Wyoming Constitution, guarantees every person the right to choose to belong to a union or not to belong, and no legislature provision is necessary in that connection to further such guarantee; and the right to join or not to join a union is also implicit in the so-called "Little Norris LaGuardia Act"; and therefore, it would be unlawful for an employer to coerce his employees; to so coerce his employees would be beyond the pale of the constitutional guarantees of free speech and peaceable assembly, relied upon by the union, and would be unlawful. W.S.C. 1944 sec. 54-501: Const. art. 1, sec. 2.

Wyoming is not alone in holding that peaceful picketing to force employees to join a union or to compel an employer to enter into a contract which would in effect compel their employees to do so is unlawful as against the State public policy.<sup>38</sup> In a number of states which have statutes or constitutional amendments similar to section 27-239 of the Wyoming 1957 compiled statutes, it has been held that such an objective of picketing is unlawful.<sup>39</sup> The *Hagen* case, Wyoming's sole case in the area, was decided along the same lines as similar cases in Washington and Indiana which have statutes identical to Wyoming's 27-239. So, even before the advent

36. See 31 Am. Jur., Labor, §§ 13 to 599.

37. See 11 A.L.R.2d 1138, and also A.L.R. Digest, Labor 90 and 106.

38. *Hagen et al. v. Culinary Workers Alliance Local No. 337*, 70 Wyo. 165, 246 P.2d 778, 11 A.L.R.2d 1338 (1952). "With respect to the Little Norris LaGuardia Act, this section does not specifically state that persons are entitled to choose whether to join a union or not. But this is implied therein, since the right to join a labor union implies the right not to join one."

39. Alabama: 249 Ala. 265, 30 So. 2d 696; Colorado: 119 Colo. 92, 200 P.2d 924; Connecticut: 146 Conn. 93, 147 A.2d 902; 139 Conn. 95, 90 A.2d 881; Idaho: 71 Idaho 412, 232 P.2d 968, 78 Idaho 85, 298 P.2d 375; Indiana: 216 Ind. 363, 24 N.E.2d 280; Kansas: 181 Kan. 799, 317 P.2d 371; Kentucky: 254, S.W.2d 335, 346 U.S. 834, 258 S.W.2d 694; Maine: 151 Me. 36, 116 A.2d 497; Massachusetts: 310 Mass. 510, 38 N.E.2d 685; Michigan: 335 Mich. 478, 56 N.W.2d 357; Minnesota: 227 Minn. 263, 35 N.W.2d 337; 244 Minn. 558, 20 N.W.2d 873; Missouri: 365 Mo. 477, 284 S.W.2d 492; New Jersey: 30 N.J. 173, 152 A.2d 331; New York: 303 N.Y. 300, 101 N.E.2d 697; Pennsylvania: 360 Pa. 48, 60 A.2d 21; 382 Pa. 476, 115 A.2d 746; 369 Pa. 408, 145 A.2d 258; Washington: 29 Wash. 2d 488, 188 P.2d 97, 11 A.L.R. 1330, 34 Wash. 2d 38, 339 U.S. 532; 49 Wash. 2d 145, 298 P.2d 1112; Wisconsin: 270 Wis. 315, 71 N.W.2d 359, 354 U.S. 284. Contra see, 353 P.2d 47, and 98 Pac. 1027.

of right-to-work laws Wyoming had enunciated its public policy with respect to this particular facet of labor-management relations. Whether that policy will remain the same and how the conflict with the Little Norris-LaGuardia Act will be resolved, are questions which only our Supreme Court can answer. However, generally, a later legislative act will supercede a prior inconsistent one. The court will have a certain amount of precedent from other states and from a few United States Supreme Court decisions which have dealt with that problem. All the nineteen states which have right-to-work legislation have had cases which have involved these and other similar questions;<sup>40</sup> i.e., a southern case in 1955 citing a United States Supreme Court decision held that peaceful picketing could be enjoined when it interfered with states right-to-work statute.<sup>41</sup> These same issues along with the constitutionality of right-to-work laws have been litigated by the United States Supreme Court. Some ten years ago the right-to-work laws of Nebraska and North Carolina were examined by the Supreme Court,<sup>42</sup> and the Court ruled that this legislation was in harmony with the Federal Constitution. The following is an excerpt from the Court's ruling:

. . . there cannot be wrung from a constitutional right of workers to assemble a further constitutional right to drive from renumeration employment all other persons who will or cannot participate in union assemblies.

The constitutional right of workers to assemble, to discuss and formulate plans for furthering their own self interest in jobs cannot be construed as a constitutional guarantee that none shall get and hold jobs except those who will join in the assembly or will agree to abide by the assembly's plan. . . . Just as we have held that the due process clause erects no obstacles to block legislative protection for union members, we now hold that legislative protection can be afforded non-union members. . . .

Precisely what these state laws do is to forbid employers acting alone or in concert with labor organizations deliberately to restrict employment to none but union members. . . .<sup>43</sup>

Later in the same term the Supreme Court in upholding the constitutionality of Arizona's right-to-work amendment held that it does not deny employers, labor unions or members thereof freedom of speech, assembly or impair the obligation of their contracts, or deprive them of due process of law, contrary to the Constitution of the United States.<sup>44</sup> This decision seems to do away with many of the arguments used against right-to-work regulation. In this Arizona case, the Court went on to say that:

40. *Messner v. Journeymen Barbers, etc.*, 53 C.2d 873, 351 P.2d 347 (1950) at p. 363, note 5.

41. *Peigts v. Amalgamated Meat Cutters, Inc.*, 228 La. 131, 81 So. 2d 835 (1955).

42. *Lincoln Federal Labor Union v. Northwestern I. & M. Co.*, 149 Neb. 507, 31 N.W.2d 477, 335 U.S. 525 (1948); *State v. Whitaker*, 228 N.C. 352, 45 S.E.2d 860, 335 U.S. 525 (1947). The Court stated that right-to-work legislation which have a relationship to the public welfare, are a reasonable and valid exercise of the police power by the states.

43. *Id.* p. 531.

44. *American Federation of Labor et al. v. American Sash & Door Co.*, 67 Ariz. 20, 189 P.2d 912, 335 U.S. 538 (1949).

Nor does its failure to forbid like discrimination against union members deny them equal protection of laws contrary to the Fourteenth Amendment—especially in view of the fact that certain Arizona statutes make it a misdemeanor for any person to coerce a worker to make a contract “not to join or become a member of a labor organization” as a condition of employment in Arizona and make such contracts void and unenforceable.

In my opinion this decision will play a part in the construction and enforcement of Wyoming’s right-to-work law in view of section 6 thereof.<sup>45</sup> This Supreme Court decision is strong and persuasive precedent in favor of upholding the validity of Wyoming’s law and in the enforcement of it. A 1953 Supreme Court case gives further impudence to this opinion.<sup>46</sup> The case, *Plumbers Union v. Graham* involved the Virginia Right-to-Work Statute which in substance provides that neither membership nor non-membership in a labor union shall be made a condition of employment and that a contract limiting employment to union members is against public policy.<sup>47</sup> The Court held in this case that the state could enjoin peaceful picketing which was carried on for purposes in conflict with its right-to-work statute and that an injunction was not in violation of the Fourteenth Amendment of the Federal Constitution. The Supreme Court of Virginia also reached this same decision in another case not inconsistent with the *Plumbers* case.<sup>48</sup> This decision, *Edwards v. Virginia*, was very helpful to the court in rendering later decisions which upheld right-to-work laws as valid exercises of a state’s police power.<sup>49</sup> These cases also interpreted the meaning of their respective right-to-work laws. An interpretation of the Virginia law, by the state’s highest court, in *Finney v. Hawkins* is extremely clear and concise.<sup>50</sup>

It provides in substance that neither membership nor non-membership in a labor union shall be made a condition of employment, that a contract limiting employment to union members is against public policy; and that a person denied employment because he is either a member of a union or not a member of a union shall have right to action for damages.

These above cases seem to indicate clearly that these right-to-work laws are constitutional and fall within the area left by the Supreme Court in which states might regulate in accord with their own individual public policy. Only one state has found fault with their legislation and in that

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45. See note 5.

46. Local Union No. 10, United Association of Journeymen Plumbers and Steamfitters v. Graham, 345 U.S. 192 (1952).

47. Acts of Assembly 1947, Ch. 2, Va. Code, 1950, §§ 40-68 to 40-74, inclusive. The Virginia statute is almost identical in effect as the Wyoming statute. Section 40-74.2 thereof is the same as Section 6 of the Wyoming Statute, also both statutes provide for the same injunctive relief.

48. Painters & Paperhangers Local Union No. 1018 v. Roundtree Corp., 194 Va. 148, 72 S.E.2d 402 (1952).

49. Edwards v. Virginia, 191 Va. 272, 60 S.E.2d 916 (1950); Finney v. Hawkins, 189 Va. 878, 54 S.E.2d 872 (1950); American Federation of Labor v. American Sash Co., 67 Ariz. 20, 189 P.2d 912 (1949); Lincoln Union v. Northwestern Co., 149 Neb. 507, 31 N.W.2d 477, 335 U.S. 525 (1947).

50. Finney v. Hawkins, 189 Va. 878, 54 S.E.2d 872, 874 (1949).

state the right-to-work laws was declared unconstitutional and repealed, but only in part. The state is Louisiana, and the case is *Hanson v. International Union of Operating Engineers*.<sup>51</sup> This case introduces two new concepts in this area. The first deals with their "Little Norris LaGuardia Act" which in substance is the same as Wyoming's. The Louisiana Supreme Court held that:

If there is any conflict between the Right-to-Work Bill and the Little Norris LaGuardia Act, the Right-to-Work Bill being the latest expression of the Legislature, will supersede conflicting portions of the Norris LaGuardia Act.

The second concept brought to light in this case has not been decided in another court. The Louisiana court held that certain language used in Section 4 of Louisiana Act 252 of 1954 was unconstitutional. To quote from the opinion:

. . . We hold that the provision of LSA-R.S. 23:888, suld, B, that any person engaging in conduct "a purpose or effect of which is to cause any other person to violate any provision of this Part shall be guilty of illegal conduct" is unconstitutional insofar as the words "or effect" is concerned. However, especially in view of the saving clause, the invalidity of one portion of the provision does not invalidate the valid portion, the latter being independent of the invalid portion.

This decision and its rationale is quite interesting when we analyze the Wyoming Right-to-Work law and see in Section 6 thereof the language "a purpose or effect of which is to impose upon any person, directly or indirectly, any requirement or compulsion prohibited by this Act is guilty of a misdemeanor. . . ." A review of the rest of the right-to-work laws adopted by other states shows that this language is not found in any of the other laws and therefore this language has not been interpreted by any other court. None of the statutes or constitutional amendments which have been held as being constitutional by the Supreme Court or which have been given Supreme Court consideration contain this express language. What effect this case will have on the Wyoming judiciary cannot be ventured; all one can do is take a "wait and see" attitude. But an important point to consider has been uttered recently by the Florida Supreme Court in a case in which they held that a closed shop agreement was in violation of the State's right-to-work provision. "There would be little point in permitting the states to enact such "right-to-work" laws if the states could not enforce them."<sup>52</sup>

The United States Supreme Court in the *Vogt* case stated that the

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51. *A. J. Hanson v. International Union of Operating Engineers*, 79 So. 2d 199 (1955). Upon rehearing this court did not decide these issues again because the law was repealed and there would be little reason to decide any issue upon it. See also, *Mirabeau Food Store v. Amalgamated Meat Cutters*, 230 La. 921, 89 So. 2d 392 (1956); where it was held that the court could not rule upon the legality of the picketing under the right-to-work law where the Act repealing such law would become effective before any decree handed down by the court could become final.
52. *Schermerhorn v. Local 1625 of Retail Clerks Int. Ass'n*, 141 So. 2d 269 (1962).

prior decisions of the court had established a broad field in which a state, in enforcing some public policy, could constitutionally regulate the concerted activities of organizations whose acts were aimed at preventing effectuation of that policy.<sup>53</sup> The Right-to-Work law is a statement of the Wyoming's public policy. It and the *Hagen* case give the individual freedom to choose or not to choose to become a union member and to choose his own bargaining agent, whether it be merely himself or an organization. This public policy will be enforced if the Supreme Court in regard to the points enumerated in this survey feel that the law is a valid exercise of the State's police power and does not infringe upon the personal liberties of its inhabitants unreasonably. The Supreme Court of Wyoming must determine the validity of this latest swing in the legislative efforts to balance the forces in this changing world of labor-management relations. They and they alone can validate the limits of permissible contest and the duties which have been created by the new situation.

The wisdom or lack of wisdom of a State Statute or of a provision in a state constitution is not a matter for the courts. The people, through their representatives in the Legislatures and through their vote for an amendment to their constitution, have the right to commit folly if they please, provided it is not prohibited by the Federal Constitution or antagonistic to General Statutes authoritatively enacted concerning the matter involved. "The conditions developed in industry may be such that those engaged in it cannot continue their struggle without danger to the community. But it is not for the judges to determine whether such conditions exist, nor is it their function to set the limits of permissible contest and to declare the duties which the new situations demand."<sup>54</sup>

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53. See note 33 supra.

54. American Federation of Labor, Metal Trades Dept. v. Watson, D. C., 60 F. Supp. 1010, 1016 (1945).