SUPREME COURT

DECISIONS ON

LABOR, 1948-49
EDITORIAL NOTE

The Institute of Labor and Industrial Relations was established in 1946 to "inquire faithfully, honestly, and impartially into labor-management problems of all types, and secure the facts which will lay the foundation for future progress in the whole field of labor relations."

The Institute seeks to serve all the people of Illinois by promoting general understanding of our social and economic problems, as well as by providing specific services to groups directly concerned with labor and industrial relations.

The Bulletin series is designed to implement these aims by periodically presenting information and ideas on subjects of interest to persons active in the field of labor and industrial relations. While no effort is made to treat the topics exhaustively, an attempt is made to answer the main questions raised about the subjects under discussion. The presentation is non-technical for general and popular use.

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SUPREME COURT DECISIONS ON LABOR, 1948-49

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Several state laws restricting labor unions were considered by the United States Supreme Court during its 1948-49 term. Unions contended these laws deprived them of their rights guaranteed under the Constitution or federal law. In all cases, however, the Court decided the laws did not conflict with the Constitution or federal laws, and the states could enact and enforce them.

Other Supreme Court decisions of interest to labor during this term dealt with the meaning of federal laws—The Federal Employer's Liability Act, the Fair Labor Standards Act (Wage and Hour Law), the National Labor Relations Act (Wagner Act), and the Labor-Management Relations Act, 1947 (Taft-Hartley Act).

This bulletin discusses all the cases in the 1948-49 term of direct interest in labor-management relations.1

CONSTITUTIONALITY OF STATE LAWS

Among the most talked-about decisions of the Court this term were those involving state laws prohibiting the closed shop. Unions challenged the laws as unconstitutional but the Court upheld the right of the states to pass this kind of law.

Three such cases were considered by the Supreme Court. A Nebraska constitutional amendment and a North Carolina law2 were considered together. Both forbade employers to discriminate against non-union workers in hiring or keeping them on the job. They also prohibited both union-shop and closed-shop contracts.

The unions claimed these laws were unconstitutional. They contended that the laws violated the constitutional rights of free speech, free assembly, and the right of petition; that they interfered with the carrying out of existing contracts, that they treated union workers differently from non-union workers thus denying union workers equal protection of the laws, as guaranteed by the 14th amendment to the Constitution, and that these laws deprived workers of their liberty without due process of law. The unions also argued that if a union is to preserve its right to organize, union workers must have the right to refuse to work with non-union employees. The closed shop, they said, is the means of gaining equal bargaining power between union and employer.

In a unanimous opinion, the Court disagreed with these arguments.

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There is nothing in the language of the laws, the Supreme Court said, which indicates that the states intended to prohibit freedom of speech, assembly, or petition.

The Constitution guarantees the right of workers to assemble and to discuss and make plans for bettering their self-interest in jobs, the Court said. It does not guarantee to unions that no one shall get or hold a job unless he joins a union and agrees to abide by its plans.

The Court went further, saying that these laws do not interfere with the carrying out of existing contracts, and they do not deny to union members any protection which is granted to non-union workers. "In identical language these laws forbid employers to discriminate against union and non-union members. Nebraska and North Carolina thus command equal employment opportunities for both groups of workers."3

Since the Court held that the state has power to forbid discrimination against non-union workers, it may also prohibit closed shop contracts, since such contracts would be evidence of discrimination. In the past the Court had decided that states may enact laws protecting unions without violating the 14th amendment of the Constitution. Now the Court has decided a state legislature may also enact laws protecting non-union workers.

An Arizona constitutional amendment was very similar to the Nebraska and North Carolina laws, just discussed. It also prohibited closed or union shop contracts. It was different in that it did not specifically prohibit discrimination against union workers.

The unions argued before the Court4 that because the amendment failed to provide the same protection for union as non-union workers, the union men were at a disadvantage and were denied the equal protection of Arizona's laws. The Court, in an eight-to-one decision, said the union workers were not unprotected. Laws passed before the amendment was approved forbade "yellow-dog" contracts. (In a yellow-dog contract the employer forced the worker to agree that he would not join a union.) The Court said it did not believe, therefore, that the union workers were really denied equal protection of the laws.

**Picketing and Free Speech**

Another in the long line of cases concerning picketing and free speech came up before the Court this term. In the *Thornhill*5 case in 1940 the Court's decision seemed to be a sweeping protection of picketing under the right of free speech. Since then the Court has been limiting the gains made by workers in that case. At first the Court said picketing could be restrained if violence occurred. Then in 1942 the Court decided6
that a state might curb even *peaceful* picketing where non-employees picketed a restaurant to force the owner to require a contractor to use union labor on a separate building he was constructing for the restaurant owner.

Now the Supreme Court has placed a further limit on peaceful picketing. The Court decided that picketing is illegal when it is used to force an employer to violate a state law. The case involved the Ice Wagon Drivers Union of Kansas City, who were engaged in an organization drive. Some drivers refused to join the union. To persuade them to join, the union made agreements with wholesale ice distributors not to sell ice to non-union drivers. One dealer, Empire, would not enter into such an agreement. The union set up a picket line to force Empire to agree.

Empire claimed that if it had made the agreement, it would have been violating a Missouri law making such trade agreements a crime and could have been sued by the non-union drivers for triple damages. Empire asked instead for an injunction against the union’s picketing. The trial court issued the injunction.

In its argument before the United States Supreme Court, the union attacked the right of the state to issue the injunction, as a denial of the right of free speech. The purpose of the picketing was to better wages and working conditions. This was a lawful purpose, the union said, and the violation of the state anti-trade restraint law was only incidental.

The Supreme Court had previously ruled that the states have the power to prohibit agreements in restraint of trade. The present Court added unanimously: These laws apply to unions unless they are specifically exempted. Missouri decided to apply its law to *all* persons combining to restrain freedom of trade: unions were not exempt from its provisions. The activities of the union—the combination, the picketing, and the publicizing of its case—were part of a single course of action in violation of Missouri’s law. Freedom of speech and press do not mean speaking and writing which are parts of an action that violates a valid criminal law. The posters carried by the pickets were used to persuade Empire to violate the Missouri law by making an agreement with the union. The union was doing more than exercising freedom of speech and press; it was also exerting economic pressure to make Empire abide by the union’s demands rather than the state law. The Court held the state could apply its anti-trade restraint law to unions, businessmen, or others, or exempt any of them without denying freedom of speech or of the press.

It is not yet clear whether the Court will apply this line of reasoning to declare that picketing in connection with strikes made unlawful by the Taft-Hartley Act is also illegal.
Other State Labor Cases

The constitutionality of the Wisconsin Employment Peace Act, as applied to certain union activities, was also attacked before the Court. This law provides that it is an unfair labor practice for employees individually or collectively: (1) to intimidate other employees or their families, (2) to engage in certain types of picketing unless a majority of union members have voted for a strike, and (3) to engage in sit-down strikes or “any concerted effort to interfere with production except by leaving the premises in an orderly manner for the purpose of going on strike.”

The Wisconsin Board administering the law ordered a union to stop calling “unannounced work stoppages” during the working day in order to hold union meetings. The union had used the work stoppages to put pressure on the employer while contract negotiations were deadlocked. Twenty-seven such meetings were called during a five-month period.

The union challenged the law as being unconstitutional as applied by the Board. The union argued that the law makes people work against their wishes, thus imposing involuntary servitude which is prohibited by the 15th amendment of the Constitution. The union said the law takes away the constitutional right of freedom of speech and assembly. And, the union contended, the law conflicts with the constitutional provision giving Congress the power to regulate commerce between the states. It also conflicts with the Wagner and Taft-Hartley Acts, the union claimed.

In a 5 to 4 decision the United States Supreme Court said the Wisconsin Board's action was not unconstitutional or in conflict with federal law.

Justice Jackson, writing the majority opinion, said the Wisconsin law does not impose involuntary servitude; it does not make it a crime for workers either individually or collectively to quit work and it is also not a violation of free speech and assembly. (This repeats the Court's ruling in the Nebraska and North Carolina anti-closed-shop cases.)

Nor does the law violate the commerce clause, the court said. Congress "left open" an area in which the states may control "coercive tactics" in labor disputes.

Answering the union's claim that the Wisconsin law conflicted with federal labor law, the majority opinion said the Wagner Act did not give the National Labor Relations Board authority either to permit or forbid these unannounced work stoppages, and the Taft-Hartley Act does not forbid them; so there was no conflict between the authority of state and federal boards. The union claimed that Section 7 of the Wagner Act gave workers "the right to engage in concerted activities," and Section 13 of the Wagner Act protects "the right to strike."
The Court replied that not all "concerted activities" are protected by the Wagner Act, as both the Court and the Board had previously ruled, and Section 13 of the Wagner Act protects a lawful strike but outlaws a strike to enforce an unfair labor practice. "It is only the objectives of a strike, not the tactics," the Court ruled, which the National Board may prohibit or supervise. Therefore, the Court decided, there was no federal authority either permitting or forbidding these unannounced work stoppages, and the state therefore has the right to use its own power over such activities.

Justices Douglas and Murphy wrote separate dissenting opinions. They and the two other dissenting justices, Black and Rutledge, said these union activities were protected by the Wagner Act. Justice Douglas was especially concerned that the majority ruling of the Court would have the effect of leaving the regulation of the manner of calling strikes wholly to the states. Thus it might mean the states could outlaw strikes completely in spite of any federal policy to the contrary.

Another case concerned a Michigan law forbidding the licensing of a woman as a bartender unless she was the wife or daughter of the male owner of the bar. It was claimed the law denied "equal protection of the laws" to the wives and daughters of non-owners. Frankfurter wrote the opinion for the Court. He said, "Michigan could, beyond question, forbid all women from working behind a bar." However, "Michigan cannot play favorites among women without rhyme or reason." The Court concluded that evidently Michigan's legislators believed that the ownership of a bar by a barmaid's husband or father offers them protection that other barmaids would not have. This, the Court felt, is a reasonable distinction that the state may make.

LABOR RELATIONS LEGISLATION

Some of the cases before the Supreme Court this term dealt with interpretation of labor relations legislation. Where the case arose before the National Labor Relations Act of 1947 (Taft-Hartley Act) came into effect, these cases were decided under provisions of the older National Labor Relations Act (Wagner Act). Rather than deciding the cases only on the basis of the Wagner Act, however, the Court seems to consider the Taft-Hartley Act as an aid to determining congressional intent under the earlier act.

State and Federal Laws

Two decisions which deserve mention concern the dividing lines between the jurisdiction of a state labor relations board and that of the National Labor Relations Board.
In one case a telephone company and the union, the International Brotherhood of Electrical Workers-AFL, in its plant each brought suit\textsuperscript{11} against the Wisconsin Employment Relations Board after the board held an election among the company employees and certified a rival union, the Telephone Guild of Wisconsin, as the bargaining agent. The company and the IBEW claimed that only the National Labor Relations Board had authority to certify a union in the plant and that the Wisconsin Board was therefore without jurisdiction in the case.

The Supreme Court held that the Wisconsin Board’s action was in conflict with the Wagner Act. The telephone company is engaged in interstate commerce, and it is an industry over which the National Board has “consistently exercised control.” There is always danger that a state board’s policies will conflict with those of the National Board. Even though the National Board had not yet acted, it is the only board with authority to do so. The fact that Section 10 (a) of the Taft-Hartley Act allows the National Board to transfer jurisdiction to a state agency does not change the situation (the Court continued), because no such transfer had taken place. The Wisconsin Board, then, did not have authority to certify the guild as bargaining representative, even though the National Board had not acted in any way.

The other case concerns a Wisconsin law which forbids the enforcement of a maintenance-of-membership clause unless the contract containing it is approved by two-thirds of the employees in an election conducted by the state board.

In 1942 the National Labor Relations Board certified a union as the bargaining agent for the employees of a plywood company. In 1943 the War Labor Board directed the company to include a maintenance-of-membership clause in the union contract. The contract was continued from year to year and was in effect in 1947 when an employee was fired for refusing to pay union dues.

The employee complained to the Wisconsin Board. Acting under the state law mentioned above, the Wisconsin Board declared the company was guilty of an unfair labor practice since there had been no referendum by the state board to establish the maintenance-of-membership clause. The state courts sustained the action of the Wisconsin Board.

In presenting its arguments before the United States Supreme Court,\textsuperscript{12} the company maintained: (1) that the Wagner Act (this case arose before the Taft-Hartley Act went into effect) gave the NLRB “exclusive” power to prevent “any unfair labor practice”; (2) that federal law (at that time) permitted an employer to make a closed shop agreement with a union\textsuperscript{13}; (3) that the state board’s order conflicted with the
National War Labor Board's ruling on a maintenance-of-membership clause.

The Supreme Court opinion, written by Justice Frankfurter, discounted these arguments. Citing the congressional reports on the Wagner Act, the Court concluded it was not the intent of Congress that administration over "unfair labor practices" be exclusively federal. In reply to the argument that because the Wagner Act permitted closed shops, the state could not forbid them, the Court declared that the statement concerning closed shops announces national policy but it does not prevent the states from prohibiting them. That the Taft-Hartley Act permits states to restrict the making of union security agreements is added indication of congressional intent, the Court declared. Certification of the union by the National Board does not keep the state board from carrying out state policy over a matter not governed by federal law. Federal policy is not exclusive in this area. It allows the states to regulate or prohibit union or closed shops. The War Labor Board's practice of including maintenance-of-membership clauses in union contracts was based on war powers, not the Wagner Act; and the War Labor Board had ceased to exist before the State Board issued this order.

**N L R B Cases**

In two cases reviewed by the Supreme Court this term, National Labor Relations Board findings of unfair labor practices under the Wagner Act were upheld. Since these rulings were based on sections of the Wagner Act which were carried over into the Taft-Hartley Act, they will probably apply now also.

The Board held it was an unfair labor practice, under the Wagner Act, for a textile company to give a general increase in wages to its employees without consulting the union after contract negotiations were at a standstill. The increase was substantially higher than the employer had offered at any time during the negotiations. The Court\textsuperscript{14} agreed with the Board finding that the company was not bargaining in good faith.

In another case it was declared an unfair labor practice for an employer to refuse the use of a company-owned hall in a company-town for a union organization meeting. The NLRB found that the only reason the company refused the use of the hall was to prevent organization and collective bargaining by the employees, and ordered the company to allow the employees to use it for union meetings. Challenging the Board's order before the Supreme Court, the company claimed the order was a violation of its property rights under the Fifth Amendment of the Con-
stitution. The company also claimed it was only obeying the provisions of the Wagner Act which prohibit a company's interfering in the formation of a labor organization.

Not "every interference with property rights is within the Fifth Amendment," the Court said. "Inconvenience may be necessary in order to safeguard the right to collective bargaining." Further, the Court accepted the Board's opinion that for the company to grant the use of the hall was not unlawful assistance to the union. The Court ruled, however, that the Board's order to the employer to let the union use the hall must be changed to read that the employer must consider the union's application for the use of the hall on the same basis as other applications.

This seems to indicate how far the majority of the Court is willing to go in granting unions equal treatment with other groups while not granting them special privileges.

In two important areas of labor relations the Supreme Court denied review of lower court decisions. This is not the same as affirming the decisions which the lower courts made but it may indicate that the Supreme Court's general attitude was similar.

One case arose in the Seventh Circuit, which includes Illinois. It is therefore a binding decision in this state. The Circuit Court decided that the area of "collective bargaining" as set forth in the Wagner Act and the Taft-Hartley Act amendments includes retirement and pension plans. This means that employers and unions are required to bargain on these matters if either side demands it.

Another case from the Sixth Circuit upheld the National Labor Relations Board ruling that an employer must bargain collectively with a union over merit wage increases for individual workers.

Both of these decisions are important as extensions of the definition of the area of "collective bargaining" under federal law.

**OTHER FEDERAL LAWS DEFINED**

In two cases certain sections of the Fair Labor Standards Act (Wage and Hour Law) were interpreted.

In one, the Court decided by a five to four decision that the Act applies to workers constructing a military base for the United States Government in Bermuda on land leased to the United States by Great Britain.

Congress has power to regulate the actions of our citizens in areas under our control even though they are outside the territorial jurisdiction of the United States. This is set forth in the Constitution (Article IV, paragraph 3, clause 2) which says Congress shall have power
to make “needful rules and regulations respecting the Territory or other property belonging to the United States.” The chief question was whether the wording of the Wage and Hour Law defining the area in which the Act applied could be made to include Bermuda. In the Act’s definition the word “possessions” of the United States was used. Looking at other laws which defined “possessions” the Court found other “far off islands with very different economic conditions” included, such as Guam and Samoa. Since the Wage and Hour Law has such a broad purpose and includes so many phases of labor relations, the Court decided Congress intended the Act to apply to such a leased area as that in Bermuda.

Justice Jackson wrote the dissent, in which three other Justices joined. He said that the word “possessions” should not include such areas as Bermuda. When the lease was signed, American policy was to limit control to the military base. He thought applying the Wage and Hour Law to Bermuda would cause Great Britain, or any other nation from whom we might want to lease bases in the future, to be very resentful. By such action we would appear to be extending our jurisdiction to another nation’s territory.

In the other important wage and hour case an irrigation company in the United States claimed its employees were exempt from provisions of the Wage and Hour Law because they were persons employed in agriculture. The company was a mutual company owned by farmers. It did not sell water, but distributed it to farmers who owned stock in the company.

The Wage and Hour Law covers workers producing goods for interstate commerce, with certain exceptions. Among the exceptions are workers in agriculture. The Law defines agriculture as (1) “farming in all its branches,” and (2) “any practice performed either by a farmer or on a farm incident to or in conjunction with farming.”

The company claimed the only way their employees could be covered by the Act was to say the work of supplying water to the farmers was part of the production of farm goods for interstate commerce. In that case, it said, they must be exempt as workers in agriculture.

Pointing out that the law defines the “production of goods for interstate commerce” as “any process or occupation necessary to the production thereof,” the Court declared the work of the irrigation company is necessary to agricultural production, but that does not mean it is agricultural production and exempt from the Act.

Taking the two parts of the law’s definition of agriculture, the Court said the first part did not apply to the irrigation company since it owns no farms and raises no crops. The Court agreed that a portion of the second part of the definition applied since irrigation is a practice “inci-
dent to or in conjunction with farming," but it is not performed by farmers or on a farm. Even though farmers owned the company, the workers were hired not by them but by the company independent of the owners. Therefore the company’s employees were not exempt from the Act.

[Note: Since this decision, the United States Congress has specifically exempted mutual irrigation companies from the Act. Fair Labor Standards Act, as amended, 1949. Section 13, [a], (6).]

Eight Hour Law

The Eight Hour Law (Walsh-Healey Act) provides among other things that “every contract” of over $10,000 made by or on behalf of the United States must have a clause restricting work to eight hours a day unless workers are paid the overtime rate of pay established by the Secretary of Labor. Special provision is made for employees of private contractors with the condition that overtime rates are paid for work over eight hours.

In the 1948-49 term the Court26 was asked to determine whether this law applies to employees of United States Government contractors in Iraq and Iran. In the opinion of the Court, Congress did not intend to apply the Eight Hour Law to such foreign countries because its chief concern in passing the bill was with labor conditions at home. There is no provision in the Eight Hour Law, such as that in the Wage and Hour Law, which covers United States “possessions”; therefore the decision was different from that in the Bermuda case. It was different also because the United States had been granted no property rights in Iraq and Iran.

No distinction was made in the Act between citizen and alien laborers, so that, if the law applied in foreign countries, citizens of these countries must be paid the same rates as citizens of the United States. The Court concluded it was not the intent of Congress to extend the Act to foreign countries. To do so might upset a foreign country’s economy if U.S. wage rates were paid. The fact that the administrators of the law had not applied it outside our territory was further evidence to the Court that it was intended to apply only in the United States.

Federal Employers’ Liability Act

The Federal Employers’ Liability Act makes interstate railroads liable for damages for injury to their employees if the injury is wholly or in part caused by the negligence of any of the officers, agents, or employees of the railroad. Two cases concern interpretations of the Act by the United States Supreme Court.
One concerned the question whether occupational diseases, such as silicosis, are included in the definition of injuries covered by the Federal Employers’ Liability Act and the Boiler Inspection Act. The Boiler Inspection Act makes it unlawful for interstate railroads to use locomotives which are not in proper condition or which have not been inspected and passed the tests.

A railroad worker had to work where there were large amounts of silica dust due to improper adjustment of equipment. He acquired silicosis after a period of years and had to quit work. He sued the railroad for compensation under the Federal Employers’ Liability Act. The railroad argued that the definition of “injury” under the Act means only injury by accident. According to the Act the injury must be reported within three years after it occurs in order to claim damages.

The Court decided that silicosis is an injury within the meaning of the Federal Employers’ Liability Act when it results from an employer’s negligence. The “injury” in a case of silicosis occurred when the “accumulated effects” of breathing silica dust for a long period of time finally resulted in permanent disability. When, through his employer’s negligence, working conditions exist which injure a worker’s health, his injury may be as great because the negligence continued over a long period of time as when it results suddenly in an accident.

Since, in the Court’s view, the Boiler Inspection Act is an addition to the Federal Employers’ Liability Act, it was not intended to narrow the definition of injury under the Employers’ Liability Act, but rather to provide for health protection as well as accident protection. Four justices dissented from the majority opinion concerning the Boiler Inspection Act. They maintained that occupational diseases cannot be read into the definition of “accidents” under the Boiler Inspection Act.

This case seems to indicate that the Court is extending the definition of injuries under the Federal Employers’ Liability Act to include occupational diseases as well as accidental injuries. This would mean much greater protection to interstate railroad employees.

The other case involved the Federal Safety Appliance Act. This Act provides that interstate railroads are responsible for the payment of damages for the deaths of their employees “resulting in whole or in part from defective appliances.”

A workman’s estate sued the railroad for damages under the Act after the worker was killed when the track car on which he was riding crashed into the back of a freight train. The train was stopped because its air brakes were defective—a violation of the Federal Safety Appliance Act.

The trial court directed the jury to return a verdict in favor of the
railroad because the protection provided by the law against defective brakes allegedly did not cover employees following and crashing into a train stopped suddenly because of defective brakes.

In the opinion of the United States Supreme Court, the Act “protects all that need protection against defective appliances.” This includes workmen riding on the train or crashing into it. In this case the workman’s estate could recover damages if the equipment was entirely or partly the cause of the workman’s death. The trial court, the Supreme Court declared, should not have directed a verdict for the railroad, but should have submitted the evidence to the jury so that it could decide the cause of death.

The Jones Act

Three suits23 for damages under the Jones Act appeared before the Supreme Court for review during the 1948-49 term. The Jones Act applies the standard of liability under the Federal Employers’ Liability Act to shipping companies.

The suits concerned the application of the Jones Act to “general agents” of the United States. Were the “general agents” liable for damages under the Jones Act for injuries to seamen, due to the negligence of the ships’ officers? The “general agents” were shipping companies under contract to the United States War Shipping Administration.

The main question, the Supreme Court said, was whether the “general agent” was the employer of the seaman and therefore liable under the Jones Act for the injuries. If, instead, the United States was the employer, the suits would have to be brought against it under the Suits in Admiralty Act. The solution to the puzzle “Who was the employer?” was determined by the answer to the question “Whose business was the operation of the ship?” According to the terms of the contract the United States kept the possession, management, and navigation of the ship, and had control of the ship’s officers and crew for the entire voyage. The “agent’s” duties were limited to the shoreside business of the ship. The crew were employees of the United States, not of its “general agents”, the Court concluded; and the shipping company as a “general agent” was not liable to the seaman for injuries caused by the negligence of the master or crew of the ship under the Jones Act.

Liability for damages in these cases rested with the United States as the employer and any suits for damages would have to be brought under the Suits in Admiralty Act. The Court would not now rule on the liability question. It would have to be brought up as a new suit. In a similar case the courts ruled that suits for maintenance and cure—as well as damages—must be brought under the Suits in Admiralty Act.
In another case involving seamen, a member of the Merchant Marine was permanently disabled and sued the United States government for maintenance. The Supreme Court said it was the duty of the ship’s owner to furnish maintenance and cure only until the greatest possible cure had taken place. The ship’s owner was not held permanently liable or required to make a lump sum payment in settlement for the permanent disability.

Longshoremen’s Act

A decision interpreting a section of the Longshoremen’s and Harbor Workers Compensation Act is worth noting here. A worker lost the sight of his right eye in an accident not connected with his work. Later he was hired by a steamship company and in an injury received while working for them he lost the sight of his left eye. He was totally disabled according to the meaning of the Act. It was agreed by all concerned that the steamship should pay compensation for the loss of the left eye. A question came up, however, concerning the balance of payment due for total disability compensation. Should the difference be paid by the employer or should the extra compensation be paid from the “second injury” fund provided by the Act?

The section of the Act providing for payments under the “second injury fund” uses the term “previous disability” to describe the first injury. The worker argued that the definition of “previous disability” applied only to injuries received during employment. Therefore he could not be paid out of the “second injury fund”, but the employer was liable.

The Supreme Court ruled the definition of disability was not intended to be that narrow. Congress did not intend to distinguish here, the Court said, between a worker previously injured in industry and one handicapped by a non-industrial injury. In either case the second injury was just as serious, as it disabled him totally. The Court said it could not agree, as contended by the employer, that the use of the second injury fund for workers whose first injury was non-industrial would soon use up the fund.

CONCLUSIONS

The Court’s decisions do not reflect an attitude clearly favorable to labor or to management. In about one-half of the cases of the 1948-49 term in which a pro or con issue could be distinguished, the Court’s decisions had the effect of being favorable to labor.

The Court is reluctant to declare any laws unconstitutional. This is usually more true of national than state laws. During 1948-49 it was
also very true of state laws. The only constitutional questions appearing before the Court concerned state laws. It is probably unfair to say the Court's decisions in these cases reflect an attitude either favorable or unfavorable to labor. They reflected instead the attitudes of state legislatures, whose views were frequently unfavorable to organized labor and who passed laws which happened to be reviewed this term. The Court, loath to declare any law unconstitutional, went on record as upholding some restrictive labor legislation.

In cases involving federal laws, the present Court term was concerned only with statutory interpretation. Broadening the interpretation of injury under the Federal Employer's Liability Act will extend the protection of the law to a large number of cases not previously thought to be covered. Provision for payments under the "second injury fund" of the Longshoremen's and Harbor Workers Compensation Act to workers whose first injury was not industrial will be a boon to handicapped workers.

Looking at the state and national labor board cases one sees that the Court is not so concerned about whether a state adds d, e, and f union activities to the Taft-Hartley list of a, b, and c unfair labor practices, as it is concerned about conflicts of national and state policy as to what union will be certified as the bargaining agent. The Court has declared that in certification the National Board's authority is exclusive.
NOTES

1 Labor cases involving questions of judicial procedure are not discussed in this bulletin. See list of cases following these notes.


3 Ibid. at 532.


7 Giboney v. Empire Storage and Ice Co., 336 U.S. 490 (1949).

8 Wisconsin Statutes, 111, par. 111.06 (1947).


12 Algoma Co. v. Wisconsin Board, 336 U.S. 301 (1949).

13 Section 10(a) and Section 8(3) of the Wagner Act.


16 Inland Steel Co. v. N.L.R.B., 170 F.2d 247 (1948).


Cases not discussed as involving only questions of judicial procedure:


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