The Pennsylvania Labor Relations Act

Nicholas Unkovic
THE PENNSYLVANIA LABOR RELATIONS ACT

NICHOLAS UNKOVIC*

I. HISTORICAL BACKGROUND

The Pennsylvania Labor Relations Act of June 1, 1937, P. L. 1168,1 was patterned to a large degree after the National Labor Relations Act of July 1, 1935,2 sometimes known as the "Wagner Labor Act," and to a lesser extent after the Federal Railway Labor Act.3 One of the factors in the passage of the Pennsylvania Act, which in turn has been termed the "Little Wagner Act," was the fact that the National Act was upheld as constitutional4 at the time the Pennsylvania Legislature had it under discussion.5

Due to the crystallization of certain changes in our economic and social life involving fundamental rights inherent in capital and labor, it became necessary to enact such labor legislation. Problems between management and employes became so detailed and intricate that some sort of governmental supervision seemed appropriate.6

---

*A.B. Harvard University, 1928; LL.B. Dickinson School of Law, 1932; Member of Pennsylvania Bar.

1Act of June 1, 1937, P. L. 1168, 43 PURD. STATS. (Pa.) § 211.1. Pennsylvania Labor Relations Act has been held to be constitutional as a valid exercise of the police power of the Commonwealth. In Spungin's Appeal, it has been held not to unlawfully interfere with liberty of contract nor to deprive employers of liberty or property without due process, nor to be special legislation. Spungin's Appeal, 32 Pa. D. & C. 611 (1938), opinion by Judge Fox of Dauphin County, 45 Dauph. C. R. 145.


When the Pennsylvania Legislature of 1937 enacted the Pennsylvania Labor Relations Act it set forth its labor philosophy and policy in Section 2 of the Act. The principal purposes of the Pennsylvania Act are: to encourage collective bargaining between management and labor; to protect the employees' right to organize; to permit employees freedom of choice in the selection of their bargaining representatives; and to prevent certain enumerated unfair labor practices.

Two general types of cases are provided for by the Pennsylvania Act. First, unfair labor practices; and, secondly, selection of bargaining representatives.

II. UNFAIR LABOR PRACTICES

In 1939, the Pennsylvania Legislature by amendment changed the original Act in many vital and important aspects. The amendatory Act of June 9, 1939, No. 162, made these changes, which are briefly summarized in the title thereof, and which will be set forth with particularity later in this article.

7 Act of June 1, 1937, P. L. 1168, Section 2, 43 PURD. STATS. (Pa.) § 211.2, provides as follows: "Section 2. Findings and Policy.—(a) Under prevailing economic conditions, individual employees do not possess full freedom of association or actual liberty of contract. Employers in many instances, organized in corporate or other forms of ownership association with the aid of government authority, have superior economic power in bargaining with employees. This growing inequality of bargaining power substantially and adversely affects the general welfare of the State by creating variations and instability in competitive wage rates and working conditions within and between industries, and by depressing the purchasing power of wage earners, thus—(1) creating sweat-shops with their attendant dangers to the health, peace, and morals of the people; (2) increasing the disparity between production and consumption; and (3) tending to produce and aggravate recurrent business depressions. The denial by some employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining tend to lead to strikes, lockouts, and other forms of industrial strife and unrest, which are inimical to the public safety and welfare, and frequently endanger the public health.

(b) Experience has proved that protection by law of the right of employees to organize and bargain collectively removes certain recognized sources of industrial strife and unrest, encourages practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours or other working conditions, and tends to restore equality of bargaining power between employers and employees.

(c) In the interpretation and application of this act and otherwise, it is hereby declared to be the public policy of the State to encourage the practice and procedure of collective bargaining and to protect the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection, free from the interference, restraint or coercion of their employers.

(d) All the provisions of this act shall be liberally construed for the accomplishment of this purpose.

(e) This act shall be deemed an exercise of the police power of the Commonwealth of Pennsylvania for the protection of the public welfare, prosperity, health, and peace of the people of the Commonwealth."

8 Act of June 9, 1939, No. 162, entitled: "AN ACT

To amend the act, approved the first day of June, one thousand nine hundred and thirty-seven (Pamphlet Laws, one thousand one hundred sixty-eight), entitled 'An act to protect the right of employees to organize and bargain collectively; creating the Pennsylvania Labor Relations Board; conferring powers and imposing duties upon the Pennsylvania Labor Relations Board, officers of the State government, and courts; providing for the right of employees to organize and bargain collectively; declaring certain labor practices by employers to be unfair; further providing that
Section Six of the 1937 Act defined the term "unfair labor practices." Under that Section only an employer could be guilty of committing an unfair labor practice and five separate unfair labor practices were set forth. The 1939 Act added a new unfair labor practice on the part of the employer, to-wit: The checking-off of wages unless authorized by a majority of the employees in the appropriate collective bargaining unit by secret ballot and unless the employer thereafter receives the written authorization from each employee affected.

"Unfair labor practices" on the part of the employer are now defined by the Act of June 1, 1937, P. L. 1168, as amended by the Act of June 9, 1939, No. 162, Section Six, as follows (it should be noted that the 1939 amendments are italicized):

"Section 6. Unfair Labor Practices.—(1) It shall be an unfair labor practice for an employer—

(a) To interfere with, restrain or coerce employees in the exercise of the rights guaranteed in this act.

(b) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other material support to it: Provided, That subject to rules and regulations made and published by the board pursuant to this act, an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

(c) By discrimination in regard to hire or tenure of employment, or any term or condition of employment to encourage or discourage membership in any labor organization: Provided, That nothing in this act, or in any agreement approved or prescribed thereunder or in any other statute of this Commonwealth, shall

representatives of a majority of the employees be the exclusive representatives of all the employees; authorizing the board to conduct hearings and elections, and certify as to representatives of employees for purposes of collective bargaining; empowering the board to prevent any person from engaging in any unfair labor practice, and providing a procedure for such cases, including the issuance of a complaint, the conducting of a hearing, and the making of an order; empowering the board to petition a court of common pleas for the enforcement of its order, and providing a procedure for such cases; providing for the review of an order of the board by a court of common pleas on petition of any aggrieved party; providing for an appeal from the common pleas court to the Supreme Court; providing the board with investigatory powers, including the power to issue subpoenas and the compelling of obedience to them through application to the proper court; providing for service of papers and process of the board; prescribing certain penalties; broadening the definition of 'labor dispute'; further defining the rights of employees; further, defining, declaring and limiting certain unfair labor practices by employers and employees; making further provision for designation and selection of representatives for the purpose of collective bargaining; changing the practice before the Pennsylvania Labor Relations Board and limiting its powers in certain cases, and requiring investigations of labor disputes and issuance of subpoenas on the application of either party to a controversy; prescribing further qualifications for the reducing the salaries of members of the Pennsylvania Labor Relations Board; making rules and regulations of the board subject to the approval of the Secretary of Labor and Industry; and prescribing certain forfeitures of rights."
preclude an employer from making an agreement with a labor organization (not established, maintained or assisted by any action defined in this act as an unfair labor practice) to require, as a condition of employment, membership therein, if such labor organization is the representative of the employees, as provided in section seven (a) of this act, in the appropriate collective bargaining unit covered by such agreement when made and if such labor organization does not deny membership in its organization to a person or persons who are employees of the employer at the time of the making of such agreement, provided such employee was not employed in violation of any previously existing agreement with said labor organization.

(d) To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this act.

(e) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of section seven (a) of this act.

(f) To deduct, collect, or assist in collecting from the wages of employees any dues, fees, assessments, or other contributions payable to any labor organization, unless he is authorized so to do by a majority vote of all the employees in the appropriate collective bargaining unit taken by secret ballot, and unless he thereafter receives the written authorization from each employee whose wages are affected.’’

Section 6 (f) clearly outlaws the check-off in intra-state industries, unless two conditions are complied with. First, a majority of all the employees in the proper bargaining unit by secret ballot must authorize the employer to deduct or collect dues, fees, assessments or other contributions payable to labor organizations, out of their wages; and second, each employee whose wage is affected must authorize his employer so to do in writing. An interesting question arises as to the legality of the coal mine union contracts with the so-called “captive” mines providing for the check-off. The “captive mines” are those owned by a manufacturer and only mine coal for the manufacturer. In many such cases the coal is mined and consumed wholly in Pennsylvania. It would seem that this new provision might vitiate the check-off provisions of such contracts.

Due to practical experience and social, political and economic reasons, substantial arguments have been advanced on many fronts for the amendment of the National Labor Relations Act and the corresponding state acts. Just as strongly,
advocates of the Acts have resisted any proposed changes. In line with the demand for changes in the labor relations laws, Pennsylvania passed its 1939 amendatory Act. One of the chief complaints of the old law was that only the employer could be guilty of unfair labor practices. Many thought it unreasonable that an employer be curbed while labor organizations or their representatives were free to do acts prohibited to the employer.

At any rate, the amendatory Act of 1939 added an entirely new subsection to Section 6, defining certain actions by labor organizations to be unfair labor practices. This new subsection reads:

"(2) It shall be an unfair labor practice for a labor organization, or any officer or officers of a labor organization, or any agent or agents of a labor organization, or any one acting in the interest of a labor organization, or for an employe or for employes acting in concert—

(a) To intimidate, restrain, or coerce any employe by threats of force or violence or harm to the person of said employe or the members of his family or his property, for the purpose and with the intent of compelling such employe to join or to refrain from joining any labor organization, or for the purpose or with the intent of influencing or affecting his selection of representatives for the purposes of collective bargaining.

(b) During a labor dispute, to join or become a part of a sit-down strike, or, without the employer’s authorization, to seize or hold or to damage or destroy the plant, equipment, machinery, or other property of the employer, with the intent of compelling the employer to accede to demands, conditions, and terms of employment including the demand for collective bargaining.

(c) To intimidate, restrain, or coerce any employer by threats of force or violence or harm to the person of said employer or the

---

members of his family, with the intent of compelling the employer to accede to demands, conditions, and terms of employment including the demand for collective bargaining."

Other states that have extended their unfair labor practice provisions of their labor relations laws to certain acts of labor organizations or their representatives are the following: Massachusetts, Michigan, Minnesota, and Wisconsin. Contrary to general popular impression, but few states have labor relations laws such as we are familiar with. In addition to Pennsylvania and the four states mentioned in the first sentence of this paragraph, the following have labor relations laws such as the Wagner Act: New York, and Utah, while Virginia has a labor relations commission. The great majority of states have no laws comparable to the Wagner Act, and the majority of those which do have broadened the scope of their laws to make labor organizations subject to unfair labor practice prohibitions, in somewhat the same manner as Pennsylvania has done.

III. SELECTION OF REPRESENTATIVES FOR COLLECTIVE BARGAINING

We have seen that the Pennsylvania Act deals generally with two broad situations. The first, the prohibition of certain unfair labor practices, has been discussed. The second concerns the selection of representatives for collective bargaining on behalf of the employees. Section 7 of the Act, as amended, deals with this matter. Prior to 1939, no employer had the statutory right to petition the State Labor Relations Board for an election. This condition was the same as then confronted the interstate employer under the Wagner Act. By regulation the National Labor Board has empowered the employer to request an election in certain cases. In Pennsylvania, however, the change has been statutory by means of the Act of 1939.

The entire Section 7 of the Pennsylvania Labor Relations Act, as amended in 1939, now reads as follows (it should be noted that the 1939 amendments are italicized):

"Section 7. Representatives and Elections.—(a) Representatives designated or selected for the purposes of collective bargaining

10Massachusetts State Labor Relations Law, Chapter 345, Acts 1938, approved May 19, 1938, as amended by Chapter 318, Act 1939, approved June 26, 1939, Section 4A.
11Michigan Labor Relations Law, Public Act No. 176, Laws 1939, approved and effective June 8, 1939, Section 17.
12Minnesota Labor Relations Act, Chapter 440, Laws of 1939, approved April 22, 1939, effective immediately, Section 11.
13Wisconsin Employment Peace Act, Chapter 111 of Wisconsin Statutes, as enacted by Chapter 57, Laws of 1939, approved May 3, 1939, effective May 4, 1939, Section 117.06 (2).
14New York State Labor Relations Act, Chapter 443, Laws 1937 (Ch. 32, Secs. 700-716, Supp. 1937), approved May 20, 1937.
15Utah Labor Relations Act, Chapter 55, Laws 1937, approved and effective March 23, 1937.
by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: Provided, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer.

(b) The board shall decide in each case whether, in order to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of this act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof: Provided, That if the majority of a craft union within a plant, or employer unit, signify its wish for a craft unit, the board shall designate the craft unit as the unit appropriate for the members of that union.

(c) Whenever a question arises concerning the representation of employees the board may, and, upon request of a labor organization, or an employer who has not committed an act herein defined as unfair labor practice, or any group of employees in an appropriate unit representing by petition thirty per centum or more of the employees of that unit, shall investigate such controversy and certify to the parties, in writing, the name or names of the representatives who have been designated or selected. In any such investigation, the Board shall provide for an appropriate hearing upon due notice, either in conjunction with a proceeding under section eight, or otherwise, and may [take a secret ballot of employees or] utilize any [other] suitable method to ascertain such representatives, except that if either party to the controversy so requests, a secret ballot of employees shall be taken within twenty days after such request is filed. Any certification of representatives by the board shall be binding for a period of one year, or for a longer period if the contract so provides, even though the unit may have changed its labor organization membership.

(d) Whenever an order of the board, made pursuant to section eight, subsection (c), is based, in whole or in part, upon facts certified following an investigation pursuant to subsection (c) of this section, and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under subsections (a) or (b) of section nine, and thereupon
the decree of the court enforcing, modifying or setting aside, in whole or in part, the order of the board, shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript, an appeal may be taken from any certification although not a final order, either immediately or within fifteen days of its issuance or after some final order has been entered as provided in section nine of this act, but an appeal from an order which is not final shall neither stay nor supersede any proceeding pending before the board unless so ordered by the court."

Other changes in or additions to Section 7 besides the granting to employers of the right to request an election are the provisions stating that the State Labor Relations Board shall designate a craft unit as the appropriate unit where the majority of a craft union within a plant or employer unit shall signify its wish for a craft unit; giving a group in an appropriate unit representing by petition at least thirty per cent of the employes in that unit the right to request an election; providing for the taking of the secret ballot within twenty days if requested; making the certification of the board binding for one year or longer if the contract so provides; and providing for an appeal within fifteen days from any certification although not a final order. Thus, if a labor organization is certified by the Board as the sole bargaining agent, it could enter into a contract with the employer for a period of one year, five years or any number of years under a strict statutory interpretation of Section 7.

IV. OTHER IMPORTANT PROVISIONS OF THE ACT AS AMENDED

Section 3 (b) of the 1937 Act defined the term person as follows:

"(b) The term 'person' includes an individual, partnership, association, corporation, legal representative, trustee, trustee in bankruptcy or receiver."

This has been amended by the 1939 Act so as to include labor organizations within the meaning of the term "person," said Section 3 (b) now reading as follows (amendment in italics):

"Section 3. Definitions. When used in this act—(b) The term 'person' includes an individual, partnership, association, corporation, legal representative, trustee, trustee in bankruptcy, [or] receiver, or labor organization."

Thus the Pennsylvania Act now includes within its provisions and prohibitions not only the employer but also the employees' labor organizations.

Section 4 of the Act provides for the creation of the "Pennsylvania Labor Relations Board" composed of three members appointed by the Governor with
the advice and consent of two-thirds of all the members of the Senate. The 1939 Act amended this Section by adding the following qualification to the previously existing prohibition against Board members holding other state or federal offices: "nor shall he engage in any business or commercial enterprise of any kind, nor be an officer in any labor organization, or be engaged in any political activities." The regular term of office is six years. Two members of the Board constitute a quorum. The salaries of Board members had been $9000 a year under the 1937 Act but in 1939 this was reduced to $7500 for the Chairman and $7000 for the other two members, with the Board members eligible for reappointment. Under the Act as amended the Board has the authority to make, amend and rescind rules and regulations governing it by and with the approval of the Secretary of Labor and Industry.

Section 6 (c) allows an agreement between employer and a labor organization for a closed shop "if such labor organization does not deny membership in its organization to a person or persons who are employees of the employer at the time of the making of such agreement, provided such employee was not employed in violation of any previously existing agreement with said labor organization."

Section 8 of the Act deals with the prevention of unfair labor practices. The Labor Board is given "exclusive" power to prevent any person from engaging in unfair labor practices. Upon charges filed by an employee, labor organization or employer that any person, employer or labor organization is engaging in unfair labor practices, the Board causes an investigation to be made. Should the Board feel that a substantial basis exists for the charges filed a complaint is issued against the offending party.18

A full hearing is then held before a Trial Examiner after due notice and opportunity to answer. Section 8 (b) in part states that "in any such proceeding, the rules of evidence prevailing in courts of law or equity shall be followed but shall not be controlling." (Italics show 1939 amendment). The Board may then dismiss the complaint or issue a "cease and desist" order against the offender, in which the Board may also require reasonable affirmative action such as reinstatement of employees wrongfully discharged with or without back pay; however "no order shall award back pay from a period more than six weeks prior to the time of the filing of the complaint."19 Either the Board itself or the Trial Examiner in each case involving unfair labor practices and representation cases, too, makes "findings of fact," "conclusions of law," and a nisi "order." Due process does not call for findings of fact, conclusions of law, and an intermediate report on the part of the Trial Examiner, with the opportunity to file exceptions.

19Pennsylvania Labor Relations Act of June 1, 1937, P. L. 1168, Section 8(c) as amended by Act of June 6, 1939, No. 162.
and have oral argument thereon. This has been ruled squarely. The Board, after any hearing by a Trial Examiner, may itself take the case in its hands for whatever decision it deems proper, provided respondent had a full hearing.

No findings of fact are to be "made on the basis of evidence relating to acts which occurred prior to" June 1, 1937. Since the Labor Act creates a new status between employer and employee, provides for unfair labor practices and selection of employe bargaining agents, and penalizes violations thereof, it could not be retrospective in scope. The National Act has been held to require interpretation thereof prospectively, unless there can be shown a continuation of acts after the effective date of such Act or Acts.

---

21 ibid.
22 Section 8(e) as amended of the Pennsylvania Labor Relations Act.

Circuit Judge Parker at page 139 carefully noted that:
"The action of the board was not predicated upon anything that occurred prior to the passage of the act, but upon an unfair labor practice which occurred ten days after its effective date, i. e., upon refusal to bargain collectively with the representative of the employees, which occurred July 15th." (Italics supplied).

The case of Appalachian Electric Power Company vs. National Labor Relations Board, 93 F. (2d) 985, at page 989 (C.C.A. 4th 1938) was decided January 4, 1938. In setting aside the N. L. R. B. order concerning alleged unfair labor practices, Circuit Judge Parker said in part:
"There is no question but that the reduction in the working force at the Glen Lyn plant was made bona fide for business reasons. The Board found that petitioner was opposed to unionization and that the high percentage of union men thrown out of employment as a consequence of the reduction evidenced discrimination on account of union membership; but the board properly held that, as this occurred prior to the passage of the act, it could not be made the basis of complaint against petitioner." (Italics supplied).

In addition to creating new obligations and liabilities, the Pennsylvania State Labor Relations Act is punitive in nature. As such it comes within the Pennsylvania constitutional provision against ex post facto laws, which is as follows: PA. CONSTITUTION, Article I, Section 17—Purdon's Digest, Pa. Constitution:
"No ex post facto law, nor any law impairing the obligation of contracts, or making irrevocable any grant of special privileges or immunities, shall be passed."

In Sadsbury Township v. Dennis et al., 96 Pa. 400 (1880) at page 402, an Act of Assembly attempted to impose upon a County a liability that had no previous existence was considered by the Court. At page 402, Mr. Justice Green ruled:
"This act creates a liability and gives a remedy. So far as it creates a liability which had no previous existence, we should regard it as inequiter under decisions heretofore made."
The Pennsylvania UNIFORM STATUTORY CONSTRUCTION ACT of May 28, 1937, P. L. 1019, Art. IV, Sec. 56, 46 PURD. STATS. (Pa.) § 556 expressly provides that:
"No law shall be construed to be retroactive unless clearly and manifestly so intended by the legislature."

"The Board has declined to accept numerous charges alleging unfair labor practices where the matters complained of occurred prior to June 1, 1937, the effective date of the act. If there is a continuing of current labor dispute, however, or other conditions exist which indicate that the jurisdiction of the Board can be sustained, the charges are accepted for investigation and appropriate action." (Italics mine).

See also case of Duquesne Light Company and The Independent Association of Employees of Duquesne Light Company and Associated Companies and U. W. O. C., Pa. L. R. B. No. 71 year of 1937, decided August 22, 1939, page 12 et seq.
A Trial Examiner cannot hold any other position with the State or Federal Government.

Until a transcript of the record has been filed with a court, the Board may, upon proper notice, modify or set aside in whole or in part any finding or order made or issued by it.

Section 9 of the Act deals with judicial review. Under it the Labor Board itself cannot enforce its orders. It must petition the court of common pleas in the county where the matter took place for enforcement of its order and for appropriate temporary relief or restraining order, after filing with such court a complete transcript of the case. No objection not urged before the Board will be considered by the common pleas court unless excused by extraordinary circumstances. "The findings of the Board as to the facts, if supported by evidence, shall be conclusive." The court may send the case back to the Board for further testimony and proceedings thereon. The common pleas court has exclusive jurisdiction except that its final judgment or decree is subject to review by the Supreme Court on appeal by either party, irrespective of the nature of the decree or judgment or the amount involved. Such appeal shall be taken in the same manner and form as other appeals to the Supreme Court.

Any person, labor organization, employer, or employee aggrieved by a final order of the Board may obtain a review of such order in the common pleas court in the county where the matter involved took place, upon filing therewith a petition for review and a transcript of the entire record. The proceedings before the common pleas court and appeal therefrom are the same as in the cases where the Board itself seeks enforcement of its order. In all cases of review to the Supreme Court of Pennsylvania appellant may print testimony in narrative form and abridged.

The 1939 Act specifically states that the Labor Anti-Injunction Act of June 2, 1937, P. L. 1198, shall not apply to orders of the Board or court orders enforcing or restraining same.

No petitions or charges involving alleged company domination of unions relieve the Board from deciding petitions for selection of collective bargaining representatives.

Occasionally some of the older unions prefer charges of unfair labor practices against the employer, alleging that an independent or other union is company fostered or dominated. Prior to the 1939 amendment of Section 9, if such charges were pending, there was no statutory authority for the Board to allow a petition of such independent or other union against which charges were filed for an election to determine the majority choice of the employees. Now, this is remedied, and even though unfair labor practice charges involving a union are pending, if that union requests an election the Board must order such election by secret ballot within twenty days after such request is filed. This amendment,
then, facilitates the exercise of the employees' free choice of representatives for collective bargaining.

Section 9, as amended, further sets forth the following specific limitation: "No petition or charge shall be entertained which relates to acts which occurred or statements which were made more than six weeks prior to the filing of the petition or charge."

Section 10 gives the Board broad investigatory powers, and was amended in 1939 to make the granting of subpoenas upon the request of either party a matter of right at any stage of a pending proceeding. An interesting question arises as to whether or not a union's records, papers, accounts, and books are subject to such subpoena. They probably are, although the older unions have strenuously objected to the validity of such subpoenas.

An entire new section known as Section 10.1 was added to the Pennsylvania Labor Relations Act by the 1939 Act, which reads as follows:

"Section 10.1. Forfeiture of Rights.—Whenever the board shall find, as part of its findings of fact in any proceedings before it, that the party or parties filing charges of unfair labor practices upon which the complaint was based have engaged in an unfair labor practice [as defined in section six] in connection with or as part of the actions forming the basis of the complaint, such findings shall constitute a complete defense to the complaint, and no order shall issue thereon against the person charged."

In effect, this new section tells complainants that they must come before the Labor Board with clean hands, otherwise all rights thereunder are forfeited. This section will undoubtedly be used often by respondents. Its efficacy will be determined ultimately by the courts.

On July 14, 1937, the Pennsylvania Labor Relations Board promulgated extensive "Rules and Regulations" issued in printed form. These are comprehensive and set forth in detail the procedure to be followed in cases before the Board. Intervention by interested parties in Board proceedings is fully provided for.

For able and complete summaries of the work of the Pennsylvania Labor Relations Board, its 1937 and 1938 Annual Reports stand out. Moreover, a thorough examination of these Reports, particularly that of 1938, will reveal the Board's position and policy on many of the complex labor relations questions constantly arising. No study of the Labor Relations Law in Pennsylvania is complete without reference to these two Reports.
An important question arises over the extent of the jurisdiction of the National and Pennsylvania Boards. In an authoritative opinion on this subject, Mr. Justice Finch of the New York Court of Appeals in Matter of Davega City Radio, Inc. v. N. Y. S. L. B. 24 held:


To the foregoing cases may be added the Second Employers' Liability Cases (223 U. S. 1, 55), where the court declared, 'And now that Congress has acted, the laws of the states, insofar as they cover the same field, are superseded, for necessarily that which is not supreme must yield to that which is.' But in all the cases in which such or similar language is to be found it is clear that the problem is one of State regulations whose requirements differ from those of the Acts of Congress.

Appellant argues that it is the intent of Congress, as expressed in the National Labor Relations Act, to preclude consistent State regulation of the same subject-matter and that this intent is purportedly established by the absence of a saving clause in the National act and by the fact that the National Labor Relations Board is given exclusive jurisdiction to enforce the terms of that act. The significance of the lack of a saving clause in favor of State legislation is considerably diminished by the fact that there was no like legislation in existence when Congress adopted the National act. Furthermore, where the result would be to curtail what is otherwise an exercise of the State's police power, such an intent is not to be inferred, but must be clearly manifested. (Kelly v. Washington, 302 U. S. 1; Reid v. Colorado, 187 U. S. 137.)

That the National Labor Relations Board is given exclusive jurisdiction under the National act is of significance only in fixing the appropriate agency to enforce the National act, and is not

relevant to the question whether a consistent State law may co-exist with a National act.

We reach the conclusion, therefore, that the State Labor Relations Board may enforce the State Act at least until such time as it is ousted by the exercise of the National Labor Relations Board of its jurisdiction under the National act. At what point the State Board would be displaced need not be considered. (Cf. Lake Erie, etc., R. R. v. Public Utility Commission, 109 Ohio St. 103.) It is sufficient that in the present case the National Board has not acted. Indeed, the record shows that the appellant was informed by the Regional Director of the National Board, albeit not by formal order, that the Board would not assume jurisdiction.

Appellant seeks to create a twilight zone in which it may disobey its plain duty, required by both statutes, upon the pretext that its conduct is dictated by the other statute. Insofar as is possible within the framework of our Federal form of government, such a result should be avoided. To permit State enforcement of a State law consistent with a Federal law on the same subject until such time as the appropriate Federal Agency asserts its own jurisdiction in no way lessens the supremacy of the National laws as required by Article VI of the Constitution.

The same question was considered in Wisconsin Labor Relations Board v. Rueping Co. (228 Wis. 473), and the same decision was there rendered."

Pennsylvania Attorney General Margiotti on October 13, 1937,25 ruled in an opinion that the jurisdiction of the National and Pennsylvania Boards was not concurrent but that each had exclusive jurisdiction in its respective field. The test he provided was whether or not interstate commerce was affected. If it were, then the National Board had jurisdiction. Since nearly everything done in the field of commerce affects interstate commerce, this view would appear to be too rigid and impractical. The New York and Wisconsin cases in this regard seem to be better law.

STATE LABOR RELATIONS BOARD NOT TO BE CONFUSED WITH LABOR MEDIATION BOARD

An error to be avoided is the confusing of the Pennsylvania Labor Relations Act with the Pennsylvania Labor Mediation Act of May 18, 1937.26 The Labor

26Act of May 18, 1937, P. L. 674, 43 PURD. STATS. (Pa.) § 211.31.
Relations Act does not authorize that Board to appoint individuals for the purpose of conciliation, mediation or arbitration. In the same manner the Mediation Act does not apply to any controversy involving unfair labor practices or the selection of collective bargaining agents.

The Labor Board has quasi-judicial functions in hearing and determining labor controversies within its jurisdiction as well as its investigatorial powers. The Labor Board cannot act as mediator or conciliator in labor disputes. It is important to note that the function of mediation rests with the Department of Labor and Industry. Neither body exercises concurrent jurisdiction, but exercise separate and distinct functions.

**CONCLUSION**

In conclusion it may be stated fairly that the 1939 Legislature attempted to make the statutory requirements for labor relations in Pennsylvania more equitable both as concerns the employer and the employee. Whether or not this result has been achieved depends not only upon the administration of the Act, but also upon the decisions of the courts interpreting the Act as amended.

**Pittsburgh, Pa.**

**Nicholas Unkovic**

---

27 Act of June 1, 1937, P. L. 1168, Section 4 (e), 43 PURD. STATS. (Pa.) § 211.4; Act of May 18, 1937, P. L. 674, Section 9, 43 PURD. STATS. (Pa.) § 211.39.

28 Pennsylvania Labor Relations Board, Annual Report for 1937, p. 6, and 1938 Annual Report (mimeographed), p. 3. These admirable reports are invaluable in the study of the Pennsylvania Labor Relations Law and its workings.