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A COOLING-OFF PERIOD IN LABOR DISPUTES
IN RELATION TO NATIONAL DEFENSE

BY NICHOLAS UNKOVIĆ*

Today, when democracies throughout the world are at the crossroads, the
greatest problem facing the United States of America is national defense. Labor
disputes and the strikes that follow therefrom are considered by many to be the
weakest link in the defense program. When time is so important and is of the
essence and when speed is urgent, strikes can and do create havoc with the Gov-
ernment program of preparedness.

Recently there has come to the public attention the necessity of a "cooling-off"
period before a strike is called in a defense industry during which the Conciliation
Service of the United States Department of Labor and the United States Board of
Mediation, or other Federal or State bodies may have time to offer their services
and arrive at their findings. Some have said that this cooling-off period should
be voluntary, others insist it must be compulsory. The Railway Labor Act¹ pro-
vides that "carriers and the representatives of the employees shall give at least
thirty days written notice of an intended change in arrangements affecting rates of
pay, rules or working conditions." During this thirty day period collective bar-
gaining conferences are to be held, or the services of the National Mediation
Board, created by the amendments to the Railway Labor Act adopted in 1934,
utilized. Meanwhile the status quo must govern and be maintained. If differ-
ences are not adjusted within this cooling-off period, the President of the United
States may proclaim an emergency and appoint a fact finding board which has
thirty days to investigate and make recommendations. The employer is not to
lock the workers out, nor is the union to strike during such thirty day period.
Oddly enough, no legal penalty is provided if the union does strike within the
prohibited period.


¹44 Stat. 582 (1926) as amended; 48 Stat. 119 (1934), 45 U. S. C. A. Sec. 156. This entire
section provides as follows: "Carriers and representatives of the employees shall give at least thirty
days written notice of an intended change in arrangements affecting rates of pay, rules or working
conditions, and the time and place for the beginning of conferences between the representatives of
the parties interested in such intended changes shall be agreed upon within ten days after the re-
cipt of said notice, and said time shall be within the thirty days provided in the notice. In every
case where such notice of intended change has been given, or conferences are being held with refer-
ence thereto, or the services of the Mediation Board have been requested by either party, or said
Board has proffered its services, rates of pay, rules or working conditions shall not be altered by
the carrier until the controversy has been finally acted upon as required by Section 155 of this
chapter, by the Mediation Board, unless a period of ten days has elapsed after termination of con-
ferences without request for or proffer of the services of the Mediation Board."
Thus, the cooling-off period provided in the Railway Labor Act is neither voluntary nor compulsory. It in fact occupies a middle ground and in effect is an "official declaration of the orderly procedure that public opinion expects."\(^2\) The cooling-off period requirement of the Railway Labor Act has been held constitutional.\(^3\) In fact, the courts have gone so far as to hold that with regard to adverse action by an employing railway company the employees have a property right in the thirty day cooling-off period during which time the employer cannot change rates of pay, rules and working conditions and that this right can be enforced by a mandatory injunction if necessary.\(^4\)

Much has been written in favor of the arbitration provision of the Railway Labor Act. Its effect has been salutary. No harm has come to any group by reason thereof. It has induced peaceful labor relations between railroads and employees, and has been and is conducive to the public good.

Congress and State Legislatures have been extremely slow in implementing labor statutes with cooling-off periods.

On June 8, 1939, Michigan passed an act entitled "Mediation of Disputes."\(^5\) This is a voluntary mediation statute. In Section 9 thereof it provides for notice to the Board before a strike or lockout shall take place. It further provides that the parties must undertake mediation or be guilty of a misdemeanor. This Section 9 and the following Section 9a in their entirety provide as follows:

"Section 9. In the event a dispute arises, and the parties thereto are unable to settle the same, no strike or lockout shall take place, or be put into effect unless in case of an impending strike the employees, or their representatives, or in case of an impending lockout the employer or his agent, shall serve a notice upon the Board of such dispute together with a statement of an issue involved. Said notice may be served on any member of the Board, or sent by registered mail to the Board."

"Section 9a. For a period of not less than five days after the above notice is served, or until the Board undertakes the adjustment or settlement within five days, it shall be the duty of the both, employees and employers, to use their best efforts to avoid a cessation

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\(^3\)Burke v. Morphy, 109 F. 2d 572 (C. C. A. Vt. 1940), certiorari denied, 60 S. Ct. 1078 (1940). This case held that the Railway Labor Act requiring railway labor disputes to pass through a brief period of attempted mediation is not unconstitutional when applied to a carrier in financial distress.


\(^5\)Michigan Act of 176, 1939, p. 336; imd. eff. June 8, (Secs. 17.454 (1)—17.454 (22)).
of employment or a change in the normal operation of the business, and during said period the parties to said disputes shall undertake a mediation thereof. Violation of this section shall be a misdemeanor and punishable as such."

The Attorney General of Michigan has ruled that the right of strike or lockout begins after the expiration of five full days after the notice provided for in Section 9a of the Michigan statute.6 This five day notice has been interpreted to apply to non-defense industries.

The Michigan Legislature, however, felt that where an employer was operating a public utility, or hospital, or any other industry affected with a public interest that a five day notice was not sufficient and that a union must give notice of its intention to strike thirty days in advance. This thirty day cooling-off period was provided for in Section 13 of the Michigan Act, which reads as follows:

"Section 13. In the event a dispute should arise between employees and employer, where the employer is operating a public utility, or hospital, or any other industry affected with a public interest and before any strike shall be engaged in or put into effect or before any lockout or change in normal operations shall be made, the notice provided in section 9 hereof must be given and there must be no interference with production for a period of 30 days from the giving of such notice, during which time the governor shall appoint 3 qualified and disinterested residents of the state as a special commission which shall undertake to mediate the dispute. Said special commission may prescribe rules and regulations governing procedure, and may incur such expenses as shall be necessary to be paid as a part of the expenses of the board provided for by this act. The findings of said commission shall be reported to the governor. Failure to give the notice as provided for in this section shall be a misdemeanor and punishable as such."

When defense labor problems became an issue, this clause was invoked for the first time and the Michigan Labor Mediation Board decided that any plant engaged in defense work was "affected with a public interest." This interpretation was upheld by the State Attorney General.

This thirty day clause has been invoked about 25 times and is now arresting half a dozen potential strikes.7 The outstanding examples of the application of the thirty day clause are the Consumers' Power dispute, the Motor Wheel Corporation strike, the Ford Motor Company strike and General Motors dispute.

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6Opinion, Attorney General of Michigan, October 27, 1939.
On April 21, 1941, the Chairman of the Michigan State Labor Mediation Board ruled that the General Motors locals of the United Automobile Workers (C.I.O.) must wait an additional 25 days before a strike could be called by them. The unions involved had previously given a five day notice as required in non-defense industries.8

Massachusetts has a statutory board of conciliation and arbitration with power by publication or otherwise to inform employers and employees of their duty to give notice to the Board before resorting to a strike or lockout.9 The Board has general powers relative to mediation and an investigation of labor controversies which threaten to or do affect seriously the public welfare.

Colorado was a pioneer in adopting a statute for compulsory investigation and compulsory truce rather than compulsory arbitration in labor disputes.10 The Colorado Act was modeled after the Canadian Industrial Disputes Investigation Act of 1907.11 Like the Canadian original, the State statute prohibits strikes and lockouts in industries which are affected with a public interest, pending an investigation of the disputes by the Colorado Industrial Commission, and a filing of a report by the Commission. The report is to be filed within thirty days after the employer or the employees notifies the Commission. No strike or other change in conditions may take place, however, if the investigation is not completed within thirty days. Any change in the status of the parties must follow the actual filing of the report. Findings and recommendations for settlement are contained in the report, but are not binding upon the parties unless they had previously agreed to abide by the award. Any change in the status of the parties, such as a strike, is punished by fine or imprisonment when the change is made without notice to the Industrial Commission. Injunctive relief may be obtained to restrain violations of the Act. The constitutionality of the Colorado Act was upheld in 1920.

Wisconsin, likewise, has a statute requiring a ten day cooling-off period.12

During the last war, extensive steps were taken by the Federal Government to curtail labor wastage through strikes and lockouts. These steps covered a broad field.13

8 The New York Times, Tuesday, April 22, 1941, page 16.
9 Massachusetts 1938, 364, Sec. 1, appvd. May 26, 1938; 1939, 111, appvd. April 4, 1939.
10 The Colorado Annotated Statutes 1935, Vol. 3, Chapter 97, Sections 31-35.
11 6 & 7 Edw. VII (Dom.) c. 20.
12 Employment Peace Act, Chapter 111 of the Wisconsin Statutes, as enacted by chapter 57, laws of 1939, approved May 2, 1939, and effective May 4, 1939, Section 111.11.
Some of those attacking a compulsory cooling-off period argue that it in effect creates compulsory labor service. They forget that democratic countries have, in wartime or in preparation for a war, in principle accepted not only compulsory labor service, but also conscription of wealth and labor. The importance of an unimpeded flow of industrial man-power in an emergency such as the present must be realized even prior to the outbreak of actual war. A cooling-off period is by no means a device designed to coerce recalcitrant employees. Its essential purpose is to guarantee the proper and efficient use of willing employees, who in the absence of governmental direction, would go out on strike and gravely hinder and delay national defense.

The Gallup Poll has clearly shown that an overwhelming majority of American voters want employers and unions to lay their differences before a Federal Mediation Board, or similar boards, before strikes begin, not after they have been called. This poll showed that 85 per cent of the American voters favor such mediation. In fact the poll showed that 72 per cent of the voters have said that the Federal Government should forbid strikes in the defense industries altogether.14 This attitude of the public generally has been evident recently by a flood of anti-strike bills not only in the various State Legislatures, but particularly in Congress. The most widely publicized congressional bill is that introduced by United States Representative Carl Vinson of Georgia.15 The Vinson Bill provides, inter alia, that naval-defense contractors or their employees must give notice in writing to the National Defense Mediation Board of any desired change in existing agreements, wages, hours, or working conditions, and that there must be no strike or lockout for at least twenty days while the Board is attempting to bring about a settlement. This bill sets up an elaborate compulsory machinery. Many insist that its provisions are too harsh.

Representative Howard Smith of Virginia, on January 24, 1941, introduced a bill aimed against sabotage, lockouts, or strikes in connection with the national defense work.16 This bill makes it unlawful for an employer on a national defense contract to conduct a lockout with intention to interfere with or coerce his employees in the exercise of their rights if guaranteed by the National Labor Relations Act, and further makes it unlawful for employees on a national defense contract to strike until after the expiration of 30 days from the date they have notified their employer and the Secretary of Labor of their intention.

15 H. R. 4159.
16 H. R. 2695.
Senator Joseph H. Ball of Minnesota has introduced in the Senate a bill which provides for a ten day written notice for employers or employees of the intention to seek or make a change in wages, hours, or other working conditions. During the succeeding ten days, all parties would be required to negotiate. If negotiations fail, notice must be served on the Conciliator of the Department of Labor after which a ten day cooling-off period is provided for, during which the Conciliator must call the parties involved into a conference, which they are required to attend. Provision is made for a three-man board of arbitration with the power to subpoena witnesses and make a binding decision. Any lockout or strike during the waiting period would be unlawful and the Federal District Court would be directed to enjoin such action during the waiting period. The Ball bill is copied after section 6 of the Minnesota Labor Relations Act.\textsuperscript{17}

Representative C. E. Hoffman of Michigan introduced a bill which would make it compulsory for all workers employed on defense orders to waive the right to strike.\textsuperscript{18} William H. Davis has recommended a compulsory thirty day waiting period for administrative promulgation.\textsuperscript{19}

Secretary of War Stimson has expressed his disapproval of the Ball bill to establish a ten day waiting period before striking in defense industries. Mr. Stimson has written that the War Department

"considered continuous operation of all available industrial facilities capable of producing defense materials 'so imperative' that 'interruptions caused by strikes and lockouts cannot at the present time be regarded as consistent with the public interest. It, nevertheless, is loath to recommend restrictive legislation concerning labor relations as long as there is hope that other methods of preventing interruptions to production will prove effective'".\textsuperscript{20}

The National Labor Relations Board has protested that the Ball measure "overemphasizes restrictions of action on part of employees without corresponding restrictions on the actions of employers and management."\textsuperscript{21}

\textsuperscript{17}S. 683. This bill is copied from the Minnesota Labor Relations Act, chapter 439, laws of 1939, approved April 22, 1939, effective immediately. This provides for a written notice to the employer of employees' demands and vice versa, and if no agreement is reached at the expiration of ten days after service of such notice, any party may give notice to the State Labor Conciliator of intention to strike or lockout at least ten days before the strike or lockout is to become effective. It is the duty of all parties to a labor dispute to respond to the summons of a labor conciliator for conferences during the ten-day period. The governor may appoint a commission of three to conduct a hearing on the dispute.

\textsuperscript{18}H. R. 1407.

\textsuperscript{19}AMERICAN FEDERATIONIST, February, 1941, page 10.

\textsuperscript{20}The New York Times, Monday, April 21, 1941, page 3.

\textsuperscript{21}The New York Times, Monday, April 21, 1941, page 3.
It must be admitted that organized labor is unalterably opposed to a compulsory cooling-off period or compulsory arbitration legislation, or any anti-strike or cooling-off legislation. The Executive Council of the American Federation of Labor at a recent Miami meeting set forth its position as follows:

"The most common means by which these bills seek to deny organized labor its fundamental rights is to provide for so-called 'cooling-off' periods. During these periods no strike or stoppage of work may take place. However, it is apparent that the real purpose is not a 'cooling-off' period, but rather to impose upon organized labor 'compulsory arbitration.'

"The American Federation of Labor is unalterably opposed to compulsory arbitration in any form."\(^2\)

Not only has the American Federation of Labor taken an official stand against the cooling-off period legislation, but likewise the C. I. O., through its president, Mr. Philip Murray, has strongly attacked such legislation. Mr. Murray has stated that the Vinson bill "strikes at the very existence of labor unions."\(^2\)

Unions claim that a cooling-off period restricts their right to strike and that it removes the element of surprise from a strike. They further argue that such statutes allow management sufficient time to employ strike-breakers, move goods from the plants, and prepare the plants for walkouts.

Various Chapters of the Civil Liberties Union have gone on record also as opposed to compulsory cooling-off periods for much the same reasons as those advanced by labor leaders.\(^2\)

\(^{22}\)AMERICAN FEDERATIONIST, March 1941, page 8.  
\(^{23}\)The New York Times, Saturday, April 19, 1941, page 8.  
\(^{24}\)Pittsburgh Post-Gazette, Tuesday, April 22, 1941, page 7, column Labor Today by Guy L. Ralston and Joseph H. Shea, the outstanding column on labor news of America, quotes the Western Pennsylvania Branch of the Civil Liberties Union statement as follows:

"The Civil Liberties Union regards such proposals as unsound and a threat to the civil liberties of workers for the following reasons:

"1—Such proposals proceed on the erroneous assumption that strikes occur without previous notice. Strikes are serious matters to workers and generally strike action is taken only after all other means of adjusting grievances and demands have been exhausted.

"2—The tendency of 'cooling-off' periods as shown by experience under several state laws, is to defer to the last minute allowed by law all attempts to agreement and thus to defeat the very object of promoting early mediation.

"3—Proposals to put a time limitation on the right to strike are dangerous incursions on the rights of labor. If men can be restrained from striking for 30 days they can be restrained for six months or a year or altogether.

"4—A law that restricts the right to strike invites discontent and open disobedience.

"5—Existing mediation machinery ought to be given an opportunity for demonstrating its efficiency in adjusting labor disputes.

"6—Compulsory postponement of strikes prevents union leaders from selecting a time for striking which in their judgment has the greatest likelihood for success. It permits the employer
The theory of the cooling-off period is extremely simple. It is based on the fact that if both sides to a labor dispute attempt to mediate their differences under governmental supervision, or even compulsion, that there will be less wastage of national defense effort in times so critical as the present. True, the effect would be to postpone strikes during the cooling-off period, but does not the urgency of the existing situation require some such Federal Legislation? Would not the nation be much better off if the parties to the coal strike had been subject to a compulsory cooling-off period? Is it too much to ask for compulsory truce in labor disputes today?

The beneficial effect of a cooling-off period is that it would provide an additional month or so after the time in which a strike might ordinarily be called. During this period production is maintained and negotiations are conducted. By reason of this enforced truce many disputes actually would be settled before a strike became a necessity. It enables employees to continue working without loss of wages such as are entailed by strikes. The benefits of negotiation are made available to all parties.

An inspection of the existing state legislation and the proposed federal legislation and the frame of mind of American people indicate the immediate necessity for a federal statute requiring a reasonable compulsory cooling-off period. This has been suggested by many to be thirty days. No one can quarrel with the prevention of unnecessary delay in our defense program. The hard facts of reality, blazoned daily in the headlines of our newspapers, necessitate such legislation.

In a democracy such as ours, it is perhaps going too far to impose fines and prison terms for violation of cooling-off provisions. It is submitted that rather than inflict fines and penal provisions upon offenders, cooling-off statutes should deprive the unions and workers involved of the rights they have under the National Labor Relations Act and similar acts. In this way harsh penal features are obliterated and much of the objection to cooling-off legislation would be eliminated.

Leaders of the great labor unions apparently feel that all businesses, industrial establishments and all employers should be circumscribed and limited in their rights and responsibilities, particularly in the present emergency; however, by some strange reasoning, the same leaders feel that the rights of employees cannot be limited, but must be untouched even though this be contrary to the welfare of the country. It is time that not only the public, but labor leaders themselves must realize that labor unions have indeed come of age, and are today perhaps the most vital time within which to prepare to defeat the strikers and it tends to promote disintegration of the unity and the will of the workmen. This unfairness to workingmen is so serious (particularly in areas where labor is not yet organized or not fully organized) as to amount to a virtual denial of the right to strike at all."

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powerfully organized block in America, a driving force of incalculable strength and of unmeasured potentiality.

In conclusion, therefore, a federal statute should be passed providing for compulsory cooling-off periods in all labor disputes involving national defense. The penalty for violation should be not penal or criminal, but should be civil in character. These offending unions and employees should lose the rights given them under the National Labor Relations Act and similar statutes. In this way the greater good for the greater number will be accomplished and national defense expedited without undue delay.

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