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LABOR LAW IN VIRGINIA

CHARLES V. LAUGHLIN*

I. INTRODUCTION

It may be said that there is an *old labor law* (largely obsolete today) and a *new labor law*. Labor law courses in a standard law school in 1928 dealt with a different body of material, and (to a lesser extent) a different set of problems, than such courses deal with in 1968. The transition was gradual and may be regarded as being started in 1914 with the enactment of section 6 and 20 of the Clayton Act¹ and being accomplished in 1953 when the United States Supreme Court recognized² that the Labor-Management Relations Act of 1947 (Taft-Hartley Act)³ had largely excluded the states from the labor law field. The crucially significant dates for the change, however, may be considered to be 1935, when the original Labor Relations Act (Wagner Act)⁴ was enacted, and 1947, when the Labor-Management Relations Act (Taft-Hartley Act)⁵ became effective. Between those two dates the new labor law applied in cases of unions against employers, but the old labor law was still basically followed in cases of employers against unions.

Since the enactment of the Labor-Management Relations Act⁶ in 1947, the standard law school course in labor law (except such introductory parts as are primarily historical) has been based almost entirely upon the new labor law: federal statutes, United States Supreme Court and courts of appeals decisions, and decisions and regulations by the National Labor Relations Board. This is as it should be

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¹38 Stat. 730 (1914).

²Garner v. Teamsters Local 776, 346 U.S. 485 (1953).

³29 U.S.C. §§ 141-87 (1964).

⁴49 Stat. 449 (1935).

⁵61 Stat. 136 (1947).

⁶This statute is commonly known as the Taft-Hartley Act which reenacted as Title I, with amendments and additions, the National Labor Relations Act of 1935, 49 Stat. 449 (1935). Titles II, III, and IV of the Labor-Management Relations Act were new. Frequently Title I of that Act is still referred to as the National Labor Relations Act. Further amendment was made by Title VII, the Labor-Management Reporting and Disclosure Act of 1959 (Landrum-Griffin Act). 73 Stat. 419 (1959).

because the great bulk of what may be called labor law is now federal in nature. The states, however, are not entirely excluded from the field. No study of the labor law field is complete without some knowledge of how labor problems are currently handled on the state level. In order to keep within manageable limits for an article such as is contemplated here, the labor law of Virginia is used as a point of focus.

The subject matter of this article is limited to that aspect of law which governs the relationship between employers and their employees acting collectively through unions. Not considered are other types of employee protection such as Workmen's Compensation, laws limiting the assignment of wages, legislation prescribing safety regulations, and Virginia's statute against black-listing of former employees.⁷

Prior to the enactment of the Labor Relations Act in 1935 our labor law was employer-oriented and promulgated primarily on the state level. It is true that there were several forerunners of the National Labor Relations Act such as sections 6 and 20 of the Clayton Act, the Railway Labor Act of 1926, the Norris-La Guardia Act and the National Industrial Recovery Act. Basically, however, our attempt to protect the collective bargaining interests of employees dates from 1935. There were many federal labor decisions prior to 1935, but most of them were in the federal courts by virtue of diversity of citizenship or because there was an alleged violation of the antitrust laws. The bulk of the old labor law was developed doctrinally by state courts.

⁷Virginia's statute forbidding black-listing provides:

No person doing business in this State, or any agent or attorney of such person after having discharged any employee from the service of such person or after any employee shall have voluntarily left the service of such person shall wilfully and maliciously prevent or attempt to prevent by word or writing, directly or indirectly, such discharged employee or such employee who has voluntarily left from obtaining employment with any other person. For violation of this section the offender shall be guilty of a misdemeanor and shall, on conviction thereof, be fined not less than one hundred nor more than five hundred dollars. But this section shall not be construed as prohibiting any person from giving on application for any other person a truthful statement of the reason for such discharge, or a truthful statement concerning the character, industry and ability of such person who has voluntarily left.

VA. CODE ANN. § 40-22 (Repl. Vol. 1953). This section is on the borderline of the subject here being considered. No case under § 40-22 appears in the annotations to the Virginia Code. However, I believe that an employer's temptation to deprive a former employee of working for another employer would usually arise in situations in which the former employment was terminated as the result of a labor dispute. In format, however, § 40-22 protects individual employees and not employees collectively or unions.

The old labor law was employer-oriented in the sense that, for the most part, rights were vested only upon employers. In Hofeldian terminology, the law relating to unions was expressed in terms of duties and privileges.⁸ An employer was privileged to bargain collectively with its⁹ employees, but the law did not require it, i.e. there was no duty, to do so. Whatever benefits a union might be able to obtain for the employees would have to be accomplished by the traditional self-help weapons of strikes, pickets, and boycotts. Labor law consisted mainly of rules and principles defining the limits of permissible union self-help. This is still true on the state level in many states, including Virginia.¹⁰ In 1935 the National Labor Relations Act imposed upon employers the duty to recognize and bargain collectively with such unions as represented the majority of employees in each bargaining unit. The employees might vote not to be represented, but the decision was theirs to make. The Act also defined various practices which were designed to frustrate union membership and the organization of employees as *unfair labor practices*.

II. PREEMPTION

The National Labor Relations Act of 1935 imposed only duties and privileges upon employers. It bestowed rights and powers only upon employees and their unions. Such rights as employers might enjoy and such duties as might be imposed upon unions would continue to be determined after 1935 as they had been before.¹¹ However, no state could deprive employees or their unions of any rights protected by the Federal Act.

In 1947 the Labor-Management Relations Act was enacted. Little was deleted from the original National Labor Relations Act but much was added. The additions largely imposed more restrictions upon unions thereby creating employer rights. For the first time, a comprehensive federal labor law existed, prescribing rights and duties to both employers and unions. In 1953 the leading case of *Garner v. Teamsters Local 776*¹² had the effect of holding that the

⁸*Compare* A. COX & D. BOK, CASES ON LABOR LAW 1078 (6th ed. 1965).

⁹The problem is mostly significant with corporate employers.

¹⁰Care must be exercised not to carry this generalization too far. Some states do have statutes comparable to the National Labor Relations Act. Also, the entire field of labor law was slow to develop in Virginia. It may be an oversimplification to say that labor law is employer-oriented in this State. See articles cited in notes 36 and 37 *infra*.

¹¹The antitrust laws were largely eliminated as a source of labor law in 1940 by *United States v. Hutcheson*, 312 U.S. 219 (1940).

¹²346 U.S. 485 (1953).

Labor-Management Relations Act of 1947 superceded and eliminated much of the labor law that had previously been developed and enforced on the state level. Thus was established what has been known as the *preemption doctrine*. That doctrine has undergone variations and fluctuations. It was restated and clarified in *San Diego Building Trades Council v. Garmon*.¹³ That case may be considered currently as establishing the fundamentals of preemption.

It is not the purpose of this article to investigate in depth the subject of preemption.¹⁴ A bibliography of articles on that topic is suggested in Cox and Bok, *Cases on Labor Law*.¹⁵ The only leading article there cited,¹⁶ subsequent to *Garmon*, is relied upon considerably in this article.

Section 7 of the Labor-Management Relations Act provides:

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, *and to engage in other concerted activities* for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).¹⁷

Section 8(b) of the Act contains a detailed enumeration of acts which, if performed by a union, are declared to be unfair labor practices. It contains prohibitions generally similar to those which had been worked out by the state courts prior to 1947. It is thus evident that certain conduct is protected by section 7 whereas other conduct is forbidden by section 8(b). Section 7 expressly protects the rights of employees to organize into unions and to bargain collectively. It does not spell out the "other concerted activities" which are also protected. What these activities are has been determined by the Supreme Court of the United States, the United States Courts of Appeals, and by the National Labor Relations Board.

The basic principles of preemption may be stated as follows:

1. No state may deprive any person of a right which is federally

¹³359 U.S. 236 (1959).

¹⁴Originally, the author intended to do no more than mention the existence of the problem and refer to the leading articles on the subject. It became evident, however, that somewhat more than that of a treatment of preemption would be necessary to put the Virginia cases in their proper perspectives.

¹⁵A. Cox & D. Bok, *supra* note 8, at 1077.

¹⁶Michelman, *State Power to Govern Concerted Employee Activities*, 74 Harv. L. Rev. 641 (1961).

¹⁷29 U.S.C. § 157 (1964) (emphasis added).

protected by section 7 of the Labor-Management Relations Act.

2. No state may invoke state sanctions against most of the acts which are expressly made unfair labor practices by section 8(b) of the Labor-Management Relations Act.

3. "[W]hen an activity is arguably subject to § 7 or § 8 of the Act, the States as well as the federal courts must defer to the exclusive competence of the National Labor Relations Board if the danger of state interference with national policy is to be averted."¹⁸

4. "The States need not yield jurisdiction to the Federal Government where the activity regulated is but a peripheral concern of the Act or touches local interests so deeply rooted that it cannot be assumed that Congress, absent contrary direction, had deprived States of power to act."¹⁹

The first of the above enumerated propositions does not invoke preemption in the truest sense of that term but is based directly upon the Supremacy Clause of the United States Constitution.²⁰ The preemption doctrine is also based upon the Supremacy Clause, but the clause is broader than the doctrine. In no event may a state promulgate a valid law in direct conflict with federal law.²¹ *A priori*, however, there is nothing in the Federal Constitution to prevent a state from promulgating a law which supplements federal policy. It is only in situations in which the federal government manifests an intention that its policy shall be uniformly enforced that the states are preempted from supplementation. Thus, unlike proposition number one, numbers two and three would not have been true had the Supreme Court not so declared in cases such as *Garner* and *Garmon*. Proposition number three is based upon the further idea that Congress might have intended that conduct which could arguably have been within the prohibitions of section 8(b), but was excluded therefrom, should be protected under section 7. It is evident from proposition number four that states are not completely preempted from enforcing laws which do not conflict with federal policy.²² Under no circumstances, however, may a state enact a law which does conflict with federal law.

¹⁸*San Diego Building Trades Council v. Garmon*, 359 U.S. 236, 245 (1959).

¹⁹*Linn v. Plant Guard Works Local 114*, 383 U.S. 53 (1966). The quotation is headnote (a) which summarizes 383 U.S. at 59-60.

²⁰U.S. Const. art. VI, para. 2.

²¹For example, no state could require the doing of an act forbidden by federal law, or forbid the doing of an act required by federal law. To forbid the exercise of a federally protected right would be of a similar nature.

²²This situation is more completely discussed under Part IV of this article, *infra*.

The scope of permissible state action is somewhat broader than the power of a state to regulate types of conduct which fall outside the preemption doctrine. In addition, certain categories of employees and employers are not covered by the Labor-Management Relations Act. As to such employees and employers the states have the same power to act as they had prior to 1947. Section 2 of the Labor-Management Relations Act²³ limits the categories of employers and employees subject to or protected by the Act.²⁴ Also, by section 14(c)(1)²⁵ Congress authorized the National Labor Relations Board to decline to assert jurisdiction over any labor dispute involving any class of employers if the effect of such labor dispute upon interstate commerce is minimal.²⁶ Prior to the 1959 Act the Board excluded disputes involving employers whose operations were primarily local in significance. In fact, the standards under which the Board is currently operating were announced on October 2, 1958.²⁷ These standards

²³29 U.S.C. § 152 (1964).

²⁴Section 2(2) provides:

The term "employer" . . . shall not include the United States or any wholly owned Government corporation, or any Federal Reserve Bank, or any State or political subdivision thereof, or any corporation or association operating a hospital, if no part of the net earnings inures to the benefit of any private shareholder or individual, or any person subject to the Railway Labor Act

29 U.S.C. § 152 (1964).

Section 2(3) provides:

The term "employee" . . . shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse, or any individual having the status of an independent contractor, or any individual employed as a supervisor . . . or any individual employed . . . by any other person who is not an employer as herein defined.

29 U.S.C. § 152 (1964).

²⁵29 U.S.C. § 164(c)(1) (1964). This subsection was introduced by Title VII of the Labor-Management Reporting and Disclosure Act of 1959 (the Landrum-Griffin Act), 73 Stat. 519.

²⁶The exact language of section 14(c)(1) is as follows:

The Board, in its discretion, may, by rule or decision or by published rules adopted pursuant to the Administrative Procedure Act decline to assert jurisdiction over any labor dispute involving any class or category of employers, where, in the opinion of the Board, the effect of such labor dispute on commerce is not sufficiently substantiated to warrant the exercise of its jurisdiction: Provided, that the Board shall not decline to assert jurisdiction over any labor dispute over which it would assert jurisdiction under the standards prevailing upon August 1, 1959.

29 U.S.C. § 164(c)(1) (1964).

²⁷The following list of standards is copied from A. Cox & D. Bok, *supra* note 8, at 1087-88, with permission of the copyright owner:

"NOTE—The current tests by which the NLRB decides whether to exercise its jurisdiction were outlined in an NLRB press release dated October 2, 1958 (R-576).

are expressed in terms of the nature and size of the employers involved, rather than in the statutory terms of the size of the particular dispute.²⁸ In addition, the Board has declined jurisdiction over certain other employers.²⁹

By express statutory provision,³⁰ the states are allowed to assert

The tests are as follows:

1. Non-retail Firms: All such firms with an annual outflow or inflow, direct or indirect, in excess of \$50,000.
2. Office Buildings: All such buildings with a gross annual revenue of \$100,000, provided that at least \$25,000 is derived from organizations which would fall under NLRB jurisdiction under any of the new standards.
3. Retail Concerns: All such concerns doing \$500,000 or more gross volume of business.
4. Instrumentalities, Links and Channels of Interstate Commerce (trucking companies, etc.): All such entities which derive \$50,000 or more annually from the interstate (or linkage) portion of their operations, or from services performed for employers in commerce.
5. Public Utilities: All utilities which have at least \$250,000 gross annual volume or qualify under the jurisdictional standard applicable to non-retail firms.
6. Transit Systems (other than taxicabs, which are governed by the standard for retail concerns): All such systems with an annual gross volume of \$250,000 or more.
7. Newspapers and Communications Systems: Radio, television, telegraph and telephone systems: \$100,000 gross volume. Newspapers: \$200,000 gross volume.
8. National Defense: All firms having a "substantial impact on national defense."
9. Business in the Territories and District of Columbia: District of Columbia: Plenary. Territories: The normal jurisdictional standards will apply.
10. Associations: Associations will be regarded as a single employer for jurisdictional purposes.

In addition to the standards set forth above, the NLRB has sometimes declined to take jurisdiction over certain limited occupations or activities, such as horse racing, amusement parks and most private hospitals."

²⁸See also NATIONAL LABOR RELATIONS BOARD, JURISDICTIONAL GUIDE. On page 4 of this manual it is stated: "[I]n applying those standards, the Board considers the total operations of the employer, even though the particular labor dispute involves only a portion of those operations..." These standards, of course, were promulgated prior to the statutory authorization of 1959. The statute does not permit the Board to restrict further its jurisdiction. For that reason, the Board may have considered it prudent not to change the format of its jurisdictional standards.

²⁹A. Cox & D. Bok, *supra* note 8, at 1088 states: "In addition to the standards set forth above, the NLRB has sometimes declined to take jurisdiction over certain limited occupations or activities such as horse racing, amusement parks and most private hospitals."

The Board's JURISDICTIONAL GUIDE, *supra* note 28 states: "Acting pursuant to Section 14(c)(1) the Board has determined that it will not assert jurisdiction over proprietary hospitals, race track enterprises, owners, breeders and trainers of race horses, and real estate brokers."

³⁰Section 16(c)(2) provides:

Nothing in this act shall be deemed to prevent or bar any agency or

jurisdiction over labor disputes over which the Board declines jurisdiction. This was not true prior to 1959. In *Guss v. Utah Labor Relations Board*,³¹ the Supreme Court held that the states were preempted even though the case fell outside the category of disputes which the National Labor Relations Board would consider.³² *Guss* created a so-called "no man's land" which was abolished by the Landrum-Griffin Act.³³

There are three bases upon which states are not preempted by the Labor-Management Relations Act from regulating labor disputes. (1) States are not precluded from handling cases involving employers and employees who are excluded by sections 2(2) and 2(3) of the Act. (2) States are free to act (so far as the Labor-Management Relations Act is concerned) in matters involving employers who fall short of the jurisdictional standards promulgated by the Labor Relations Board pursuant to the power granted in section 14(c)(1) of the Act. (3) Some types of labor disputes are not preempted by the Federal Act and, thus, states are free to act regarding all personnel, even those not covered by categories (1) and (2). Such types of conduct are those which are neither protected by section 7 nor arguably forbidden by section 8 or those which are of but peripheral concern to the Act and touch deeply rooted local interests. This third category may be referred to as "Non-Preempted Fields" and is discussed in Part IV, *infra*. Categories (1) and (2) are called "Preempted Fields" and are discussed in Part V, *infra*.

The more important of the excluded categories of persons not covered by the Labor-Management Relations Act are: public employees, independent contractors, supervisors, hospitals and their employees, and farm employees.³⁴ It might appear that activities and

the courts of any State or Territory (including the Commonwealth of Puerto Rico, Guam, and the Virgin Islands), from assuming and asserting jurisdiction over labor disputes over which the Board declines, pursuant to paragraph (1) of this subsection, to assert jurisdiction.

²⁹ U.S.C. § 164(c)(2) (1964).

³¹ 353 U.S. 1 (1957).

³² *Guss* is also interesting in two other respects. Most preemption cases deal with proscribing judicial action on the state level. In *Guss* it was administrative action, similar in nature to the type of action taken by the Board, which was preempted. Also, the preemption doctrine is usually thought of as one which prevents the states from invoking sanctions against unions and favorable to employers. In *Guss* the converse situation was involved. *Guss* therefore demonstrates that there is no double standard as regards preemption. Neither of these two aspects of *Guss* is especially significant in Virginia. In this State labor matters are still handled through the judicial process. Also, Virginia's labor law is primarily restrictive of unions rather than employers.

³³ A. Cox & D. Bok, *supra* note 8, at 1092.

³⁴ For a discussion of those excluded categories see. A. Cox & D. Bok, *supra* note 8, at 143-57. I am not unmindful that also excluded are employees of the Federal

problems normally associated with labor disputes would not be found in the case of independent contractors. However, many small-time operators, such as newsboys, fishermen, trappers, and insurance agents, are on the borderline of what might be called "employees" or what might be called "independent contractors."³⁵ Such groups might even have what they call a "union" with a charter from the AFL-CIO. If they are independent contractors, however, such so-called "unions" are really small-time trade associations. If these independent contractors, acting through their "unions," engage in any activity of a type normally performed by unions representing employees, regulation of such activity is obviously not preempted by the Federal Labor Act. The states are therefore free to regulate such activity subject to other constitutional limitations such as the free speech doctrine in case of peaceful picketing.

III. SANCTIONS

A. In General

Suppose that an employer has a demand or cause of action against its employees or a union; what are its remedies? The same question

Government and its wholly owned corporations, and employees subject to the Railway Labor Act. These are not important, however, so far as state power, the subject matter of this article, is concerned. The Federal Government would not invoke state sanctions in case of disputes with its employees. I believe that the elaborate provisions for arbitration in the Railway Labor Act, *see* H. NORTHRUP, *COMPULSORY ARBITRATION AND GOVERNMENT INTERVENTION IN LABOR DISPUTES* 51-82, particularly 63-64 (1966), prevent the states from invoking state sanctions in most cases of disputes involving personnel subject to the Act. The cases of *Railway Employees, Department, AFL v. Hanson*, 351 U.S. 225 (1956), and *Slocum v. Delaware, L. & W. R.R.*, 339 U.S. 239 (1950), may be regarded as applying the preemption doctrine to labor disputes subject to the Railway Labor Act. The same statement may be made regarding *Lee v. Virginian Ry.*, 197 Va. 291, 89 S.E.2d 78 (1955), and *Moore v. Chesapeake & O. Ry.*, 198 Va. 273, 93 S.E.2d 140 (1956).

³⁵*See* *NLRB v. United Ins. Co. of America*, 390 U.S. 254 (1968); *United States v. Silk*, 331 U.S. 704 (1947); *NLRB v. Hearst Publications, Inc.*, 322 U.S. 111 (1944); *Columbia River Packers Ass'n v. Hinton*, 315 U.S. 143 (1942); *NLRB v. Steinberg*, 182 F.2d 850 (5th Cir. 1950); *Walling v. American Needlecrafts, Inc.*, 139 F.2d 60 (6th Cir. 1943); *Kansas City Star Co.*, 76 N.L.R.B. 384 (1948). One must always consider the possibility of regarding any manual worker as an employee. In *Farinholt v. Luckhard*, 90 Va. 936, 21 S.E. 817 (1886), it was held that an independent contractor, a mail deliverer, was a "laboring person" within the scope of the homestead exemption. There is considerable logic to the view that the labor act is designed to protect non-affluent people who do manual labor, whether technically employees or independent contractors. Clearly a "laboring person" under the homestead exemption laws is not the same as an "employee" under § 2(3). However, the possibility that the court might rely upon *Farinholt* in a close case must not be overlooked.

could be raised in the converse situation; what are the remedies of employees and unions against employers? As previously explained, that situation is less likely to arise in Virginia. There may be some challenge to the proposition herein previously postulated: that traditional labor law in Virginia is employer-oriented. Two learned articles have been written upon this subject since 1946. John C. Parker, Jr., Esquire, in *Current Trends in Labor Law in Virginia*,³⁶ pointed out that there has been almost no traditional labor law in this state. Virginia has, until recently, been a rural state, with little industry, so there has been little occasion for developing that branch of law known as labor law. A tremendous change occurred in the ten years following Mr. Parker's article. In 1956, Arnold Schlossberg, Esquire, pointed out³⁷ that in the ten years covered by his article (1946-1956) there had been more labor law promulgated in Virginia than in the entire history of the state prior to 1946. This throws somewhat into question my previous premise that Virginia is rooted in tradition so far as labor law is concerned. Mr. Schlossberg takes the position that Virginia's statutory developments have been as favorable to organized labor as they have been unfavorable.

The subject of sanctions relates both to preempted and non-preempted fields. The difference is that any employer may apply its state remedy against any employee or union in a non-preempted situation. If the conduct involved falls within the application of the preemption doctrine state remedies can only be invoked against, or on behalf of, those employees and employers excluded from coverage by the Federal Act by its subsections 2(2) and 2(3) or pursuant to subsections 14(c)(1) and 14(c)(2).

Remedies available in Virginia fall basically into four categories: (1) self-help, (2) criminal sanctions, (3) civil (usually damage) suits, and (4) injunctions. The last three are judicial remedies. There are five³⁸ pertinent statutes in Virginia regulating labor relations. They relate to picketing,³⁹ strikes by public employees,⁴⁰ Virginia's Right-to-Work Law,⁴¹ the prohibition of a limited type of featherbedding,⁴²

³⁶32 VA. L. REV. 1050 (1946).

³⁷Schlossberg, *Current Trends in Labor Law in Virginia*, 42 VA. L. REV. 691 (1956). Mr. Schlossberg acknowledges the identity of the title of his article with that written by Mr. Parker ten years earlier. Mr. Schlossberg refers to "borrowing" the title and gives full credit to Mr. Parker.

³⁸Or six, if § 40-22, the black-listing statute, be included. See note 7 *supra*.

³⁹VA. CODE ANN. § 40-64 (Repl. Vol. 1953).

⁴⁰VA. CODE ANN. §§ 40-65 to -67 (Repl. Vol. 1953).

⁴¹VA. CODE ANN. §§ 40-68 to -74 (Repl. Vol. 1953).

⁴²VA. CODE ANN. § 40-64.1 (Supp. 1966).

and the requirement that unions register.⁴³ The remedies available in each of the five statutes are shown in the following table:

Table I

	Self-Help	Criminal Sanctions	Damage Suits	Injunctions
Picketing § 40-64	no	yes	no	yes
Strikes by Public Employees §§ 40-65 to -67	yes	no	no	no
Right-to-Work §§ 40-68 to -74	no	yes	yes	yes
Some featherbedding forbidden § 40-64.1	no	yes	no	no
Unions required to register, §§ 40-95.7, -95.8	no	yes	no	no

Appendix I is a table classifying all Virginia labor law cases (or Federal cases involving Virginia law) according to the remedy sought.⁴⁴

B. Self-Help

Many demands by either party against the other are best enforced by self-help. The economic weapons available to employees and unions are the strike, the picket, and the boycott. The employer's power to lock out corresponds to the union's power to strike; but the more forceful employer self-help sanction is its power to discharge or otherwise discipline its employees. That weapon is, of course, only available against employees, not against unions or strangers.

It appears from Table I that the only remedy provided to the state, or any of its municipalities or subdivisions, for an unlawful strike by its public employees is a form of self-help: the power to discharge said employees. They are not eligible for reemployment as a public employee for one year.

As previously explained, self-help is almost the only method in Virginia by which employees or unions can protect their interests regarding wages, hours, conditions of employment, or collective bargaining, against employers.⁴⁵ Labor law in Virginia, as was tradi-

⁴³VA. CODE ANN. §§ 40-95.7 to -95.8 (Supp. 1966).

⁴⁴Citation for each case is given at the point in this article at which that case is principally used. The "Note" reference after the case name indicates the footnote or footnotes of this article which are relevant to said case.

⁴⁵This is true, of course, only in labor relations law in the strict sense in

tionally true everywhere, is principally concerned with defining the permissible limits of strikes, pickets, and boycotts.

The employer's most effective self-help weapon, its power to discharge or otherwise discipline, is obviously effective only against individual employees. If an employer covered by the Labor Act seeks to invoke that weapon against an employee also covered by the Act, there is always the danger of a violation of sections 8(a)(1) or 8(a)(3) of the Federal Labor-Management Relations Act. The lockout would be effective only against employees as a group. Against strangers or unions the employer's principal protection is in statutes or doctrines placing limitations upon the union's right to strike, to picket, or to boycott.

C. Criminal Sanctions

The earliest legal mechanism by which labor disputes were controlled was the criminal action. *Crump v. Commonwealth*⁴⁶ is an early Virginia case in which a successful criminal prosecution was based upon what was then an illegal secondary boycott.⁴⁷ The defendant's conduct was characterized as a "criminal conspiracy." This is not, however, to be confused with the historical *criminal conspiracy doctrine*⁴⁸ which made the very formation of a union a criminal offense. This doctrine is said to have withered away after 1842.⁴⁹

The main body of labor law in the states is not to be found in criminal statutes or decisions. There are instances, however, in which labor disputes are the subject matter of criminal prosecutions. From Table I it is seen that four of Virginia's leading labor law statutes provide for criminal sanctions. From Appendix I it is seen that six criminal cases involving labor disputes have been before the Virginia Supreme Court of Appeals.

D. Civil Suits

After criminal prosecutions ceased to be principally relied upon

which it is being discussed in this article. There are many laws designed to protect employees which are enforced through judicial or other governmental sanctions. Note, in particular, that an act of an employer in *black-listing* a prior employee, in violation of § 40-22, is subject to criminal penalties. See note 7 *supra*.

⁴⁶84 Va. 927, 6 S.E. 620 (1888).

⁴⁷This case is also considered under Secondary Boycotts. Note 131 *infra*. The facts of the case are more fully stated at that point.

⁴⁸See A. Cox & D. Bok, *supra* note 8, at 22.

⁴⁹The celebrated case of *Commonwealth v. Hunt*, 45 Mass. (4 Met.) 111 (1842), was decided in that year. The case could only apply to Massachusetts courts, but the prestige of Chief Justice Shaw together with the political climate of the times may have had their effect.

in labor cases, resort was had to the damage suit. At one time labor law came to be regarded as a phase of tort law. Since unions were normally not incorporated, the actions were against individual union leaders or members who were charged with tortious activity. Many of the celebrated labor cases involved damage suits against individuals.

The inadequacy, from a financial point of view, of the damage suit against an individual is readily apparent. One of the earliest successful attempts to sue a union as an entity was made in the English case of *Taff Vale Railway Company v. Amalgamated Society of Railway Servants*.⁵⁰ Considerable political protest arose over the *Taff Vale* decision and the doctrine of that case was repealed in England by the Trade Disputes Act of 1906.⁵¹ Even though the principle of the *Taff Vale* decision was rejected in England, it was followed by the United States Supreme Court in *United Mine Workers v. Coronado Coal Company*.⁵² Real success in enabling unions to sue and be sued as entities, however, came through legislation. Many states now permit suits by and against unions. Likewise such suits are permitted by sections 301 and 303 of the Labor-Management Relations Act.⁵³ Section 8-66 of the Virginia Code permits unincorporated associations, including unions, to sue and be sued as entities.⁵⁴

⁵⁰[1901] A.C. 426.

⁵¹See J. LANDIS & M. MANOFF, *LABOR LAW* 26, (1942). The first chapter is entitled Historical Introduction and is an excellent historical survey of our labor law.

⁵²259 U.S. 344, 390 (1922).

⁵³29 U.S.C. §§ 185, 187 (1964). These two sections are considered in considerable detail *infra*.

⁵⁴All unincorporated associations or orders may sue and be sued under the name by which they are commonly known and called, or under which they do business, and judgments and executions against any such association or order shall bind its real and personal property in like manner as if it were incorporated. Process against such association or order or notice to it may be served on any officer or trustee, director, staff member or agent of such association or order.

VA. CODE ANN. § 8-66 (Supp. 1966).

In *Railway Employees Department of AFL v. Virginian Railway*, 39 F. Supp. 354 (E.D. Va. 1941), § 8-66 was applied in a suit by a union against a company to compel arbitration of a labor dispute. A problem arose in *International Brotherhood of Boilermakers v. Wood*, 162 Va. 517, 175 S.E. 24 (1934). In that case an employee, member of the defendant union, sued the union for alleged insurance benefits. There was apparently no national officer or agent upon whom service could be obtained. It was held that service could not be obtained against an officer of the local. To aid in the problem there presented, the legislature in 1962 enacted § 8-66.1, to provide that, in case no officers or agents of the corporation be in the State, service might be obtained upon the clerk of the State Corporation Commission, VA. CODE ANN. § 8-66.1 (Supp. 1966). In *Yonce v. Miners Memorial*, 161 F. Supp. 178 (W.D. Va. 1958), it was held that three non-resident trustees of a fund created for the benefit of employees did not constitute an

The leading case in Virginia involving a tort action for damages is *United Construction Workers v. Laburnum*.⁵⁵ In that case the company was severely injured in its business by threats of violence by the union in an organizational recognition campaign. In *Laburnum*, an unfair labor practice under section 8(b) of the Labor-Management Relations Act was clearly shown by the evidence. Notwithstanding the preemption doctrine, the Virginia decision in plaintiff's favor was sustained by the United States Supreme Court, upon two grounds: (1) violence; and (2) that the remedy sought in *Laburnum* was not available in a Labor Board proceeding. After *Laburnum* it was believed that the preemption doctrine applied only to state injunction and not to damage suits until the contrary was held in *Garmon*.⁵⁶ *Laburnum* seems not to have been filed under any of Virginia's labor law statutes. Therefore, an employer may be regarded as having a common law right to damages against a union which injures its business by violence or threats of violence.

The damage suit is an expressly authorized remedy in only one of Virginia's five pertinent statutes.⁵⁷ As *Laburnum* shows, however, such a common law remedy may be available. Of the 15 civil suits referred to in Appendix I, only one involves a suit by an employer against a union based upon traditional labor law principles.⁵⁸

E. Injunctions

From the 1890's until 1932 the injunction was the legal sanction most frequently used in labor dispute cases. This did not meet entirely with public favor for a variety of reasons. The most fundamental objection to the injunction was that chancellors did not have the background to understand properly the dynamics of a labor

association so as to be served under § 8-66.1. For an exposition of problems presented by an earlier attempt to make a union amenable to service when it had no officers or agents within the state (§ 40-74.4) see Schlossberg, *supra* note 37, at 698.

⁵⁵194 Va. 872, 75 S.E.2d 694 (1953), *aff'd*, 347 U.S. 656 (1954).

⁵⁶359 U.S. 236 (1959). This is the leading preemption case. See note 18 *supra*.

⁵⁷See Table I.

⁵⁸Not otherwise mentioned in this article are two successive appeals in a suit by a member against her union for breach of an agreement to indemnify her for loss of employment due to her union membership. *Kiser v. Amalgamated Clothing Workers*, 169 Va. 574, 194 S.E. 727 (1938); *Amalgamated Clothing Workers v. Kiser*, 174 Va. 229, 6 S.E.2d 562 (1940). It was held to be within the power of the union to make the agreement, but not within the scope of the authority of the specific officer of the union. This case is well discussed in Parker, *Current Trends in Labor Law in Virginia*, 32 VA. L. REV. 1050, 1055 (1946). A later case which reaches the same conclusion as the second *Kiser* appeal regarding indemnification agreements by union officers is *United Brotherhood of Carpenters v. Moore*, 206 Va. 6, 141 S.E.2d 729 (1965).

dispute. The check of jury trial, available in both criminal prosecutions and damage suits, did not obtain in equity cases. In 1932, the Norris-LaGuardia Act⁵⁹ so drastically curtailed the use of injunctions in labor dispute cases as almost to eliminate that remedy in the federal courts. Approximately twenty states have enacted similar anti-injunction statutes,⁶⁰ but the state courts have generally been more lenient in their interpretation and application of the anti-injunction statutes than have the federal courts. A majority of the states, including Virginia and several of the leading industrial states, have no such legislation.

The injunction was recognized early in Virginia as a remedy against non-peaceful picketing in *Everett Waddey Company v. Richmond Typographical Union*.⁶¹ Today, injunctive relief is expressly authorized by legislation in connection with the statute regulating picketing⁶² and the Right-to Work Law.⁶³ It is evident from Appendix I that six cases have involved injunctive relief. Only three of these were cases by an employer against a union.

IV. NON-PREEMPTED FIELDS

This section deals with those types of labor disputes in which state agencies (or a federal court in a diversity case) may apply state statutory or decisional law, irrespective of the fact that the National Labor Relations Board might also invoke the sanctions provided by the National Labor Relations Act.⁶⁴ The matters here discussed apply to all personnel, irrespective of whether or not they are of the categories of persons that are covered by the Labor Act.

A. Federal Causes of Action in State Courts

Herein considered are causes of action arising under sections 301 and 303 of the Labor-Management Relations Act.⁶⁵ Both sections

⁵⁹47 Stat. 70 (1932).

⁶⁰Commonly known as "Little Norris-LaGuardia Acts."

⁶¹105 Va. 188, 53 S.E. 273 (1906). Actually, it was found in that case that the evidence did not establish the defendant's connection with whatever violence there might have been, so a temporary injunction was dissolved and a permanent injunction denied. The language in the case is instructive, however. The case is a significant injunction case because a temporary injunction usually served the employer's purpose even though a final injunction might be denied.

⁶²VA. CODE ANN. § 40-64 (Repl. Vol. 1953).

⁶³VA. CODE ANN. § 40-74.3 (Supp. 1966).

⁶⁴It must be remembered, of course, that in no situation may a state deprive a party of a right guaranteed by the Federal Act.

⁶⁵29 U.S.C. §§ 185, 187 (1964).

provide for court actions. Section 301 gives either an employer, union, or employee⁶⁶ a cause of action for violation of any collective agreement made between an employer and a union under the National Labor Relations Act. Section 303 gives a cause of action for damages to any person injured in his business or property by a secondary boycott or other conduct violative of section 8(b)(4) of the Labor Act. Under both sections a union may sue or be sued as an entity. Suits may be filed in either a federal or a state court.⁶⁷ However, only federal, and not state, law is to be applied irrespective of which court entertains the action.⁶⁸ There is no difficulty with the preemption doctrine, because federal law is applied. *Pearman v. Industrial Rayon Corporation*⁶⁹ is a Virginia case squarely on point. The preemption doctrine prevents the application of state law, whether in a state court or a federal court.⁷⁰ It is the law to be applied that determines the question of preemption not the tribunal in which it is applied.

Strictly speaking, the reference here made to sections 301 and 303 is irrelevant to the subject matter of this article. These sections do not involve Virginia labor law but federal labor law susceptible of application in the courts of Virginia. These sections are brought in to round out the picture because they involve the type of problem which interests a Virginia labor lawyer. The only Virginia case involving either sections 301 or 303, of which this writer knows, is

⁶⁶*Smith v. Evening News Ass'n*, 371 U.S. 195 (1962), extends the right to sue to individual employees especially if the union refuses to bring suit. *Accord*, *Pearman v. Industrial Rayon Corp.*, 207 Va. 854, 153 S.E.2d 227 (1967).

⁶⁷*Charles Dowd Box Co. v. Courtney*, 368 U.S. 502 (1962).

⁶⁸*Local 174, Teamsters v. Lucas Flour Co.*, 369 U.S. 95 (1962).

⁶⁹207 Va. 854, 153 S.E.2d 227 (1967). In this case the contention was squarely presented that plaintiff's case could only be maintained in a federal court. That argument was rejected. The court's opinion thoroughly summarizes the pertinent federal cases. The preemption argument was also made and rejected in *Smith v. Evening News Ass'n*, 371 U.S. 195 (1962).

⁷⁰Normally federal courts apply state law in diversity cases. In a case covered by the Labor Act, federal courts are preempted from applying state law the same as are state courts.

⁷¹207 Va. 854, 153 S.E.2d 227 (1967). See notes 66 & 69 *supra*. *United Construction Workers v. Haislip Baking Co.*, 223 F.2d 872 (4th Cir. 1955), is a case from Virginia which was brought in a federal district court under § 301. It was held that neither a national union or its local was liable for a wildcat strike alleged to have been in violation of a collective bargaining agreement. This would seem sound when the nature of such a strike is considered. This case is not considered when the statement is made that only one case is found under § 301. *Haislip* is neither in a Virginia court nor based upon Virginia law. The recent case of *Williams v. Chesapeake Bay Bridge*, 208 Va. 714, 160 S.E.2d 573 (1968), is classified in the official reports under the heading of "Labor Relations." That case involves only an employee's suit for pay. It was not brought under a § 301

Pearman.⁷¹ Section 303 is pertinent on the subject of secondary boycotts and is discussed under Part V (C) of this article.

There are two interesting questions in this area: (1) whether a Virginia court may grant injunctive relief in a case under section 301 of the Labor Act,⁷² and (2) if so, whether an injunction can be prevented by the defendant union by removing the case to a federal court under the provisions of 28 U.S.C. § 1441(b).⁷³ The answer to the first question is probably affirmative. Since April 8, 1968, the answer to the second question has been affirmative.

These problems, regarding the availability of injunctive relief in a section 301 case, originate in the United States Supreme Court decision in *Sinclair Refining Company v. Atkinson*.⁷⁴ In that case a divided court held that suits under section 301 are subject to the limitations of the Norris-LaGuardia Act and that, thus, injunctive relief in a federal court is not available.⁷⁵ In *McCarroll v. Los Angeles County District Council of Carpenters*⁷⁶ the Supreme Court of California was presented with the question whether a state court, in a state which has no anti-injunction statute, might grant an injunction in a section 301 case. At that time it had not yet been determined by the Supreme Court whether injunctive relief would be available in a federal court. However, the California court proceeded upon the assumption that it would not be. A divided California court held that it was bound by federal substantive law but might apply its own remedies. It was therefore held that injunctive relief might be given. Since Virginia has no anti-injunction law, by following *McCarroll*,

collective agreement but under a contract between an employer and its financial underwriter.

⁷²Clearly no injunction is available under § 303 because that section expressly provides that an injured party may recover "the damages by him sustained."

⁷³"Any civil action of which the district courts have original jurisdiction founded on a claim or right arising under the constitution, treaties or laws of the United States shall be removable without regard to the citizenship and residence of the parties." 28 U.S.C. § 1441(b) (1964).

⁷⁴370 U.S. 195 (1962).

⁷⁵The Supreme Court may have weakened a bit in the recent case of *International Longshoremen, Local 1291 v. Philadelphia Marine Trade Ass'n*, 389 U.S. 64 (1967). In that case a trial court order, which might have been regarded as an injunction, was struck down on the ground that it violated federal rule 65(d), which requires that all injunctions be definite. The majority of the court made no reference to *Atkinson* or the Norris-LaGuardia Act. Justices Brennan and Douglas made it clear, in their concurring opinion, that they were not reaffirming *Atkinson*. 389 U.S. at 76, 77. Also, three members of the Supreme Court in their concurring opinion in *Avco Corp. v. Aero Lodge 735, IAM*, 390 U.S. 557 (1968), see note 79 *infra*, made it clear that they regarded the "continuing validity" of *Atkinson* as open for further consideration.

⁷⁶49 Cal. 2d 45, 315 P.2d 322 (1957).

such relief might be made available in this state in a section 301 case.

The question then arises whether, if a section 301 case is filed in a state with no anti-injunction law, injunctive relief might be prevented by the defendant union removing the case to a federal court, pursuant to 28 U.S.C. § 1441(b), thus bringing it under the limitations of the Norris-LaGuardia Act. Prior to April 8, 1968, the answer to this question was in doubt. In *American Dredging Company v. Local 25, AFL-CIO*⁷⁷ the court of appeals refused to permit the removal. The court of appeals reasoned that the federal courts have no jurisdiction because of the limitation in the Norris-LaGuardia Act that "no court of the United States . . . shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in strict conformity with the provisions of this Act" Since, in the court's opinion, a federal court has no jurisdiction of the case, removal could not be accomplished.⁷⁸

Since April 8, 1968, the power of a Virginia court to grant an injunction in a section 301 case has become illusory. On that date, the United States Supreme Court held in *Avco Corporation v. Aero Lodge 735, IAM*⁷⁹ that a section 301 case, commenced in a state court, might be removed to a United States district court under 28 U.S.C. § 1441(b). Being then in a federal court injunctive relief would be prevented. In *Avco* a suit was filed in a Tennessee state court under section 301 to enjoin a strike upon the allegation that it was in violation of a no-strike clause in a collective bargaining agreement. The state court granted an injunction *ex parte*. The defendant removed the case to the United States district court which dissolved the temporary injunction. That action was upheld, but the court refused to pass upon whether the Norris-LaGuardia anti-injunction act required the federal court to dissolve a temporary injunction previously granted by a state court.

⁷⁷338 F.2d 837 (3d Cir. 1964), *cert. denied*, 380 U.S. 935 (1965).

⁷⁸The case is commented upon adversely in 22 WASH. & LEE L. REV. 255 (1965). With all due respect, the author believes that the *American Dredging Co.* decision is clearly wrong. The court's confusion resulted from the unfortunate use of the term "jurisdiction." The concept of jurisdiction is usually thought of as involving a court's power to consider a particular type of case. Here, it is used to refer to the court's inability to give a particular type of relief. Clearly, federal courts have jurisdiction over § 301 cases. An injunction case removed from a state court should be no different in a federal court than one filed there initially. The court should have recognized the removal and either dismissed the case without prejudice or have awarded damages in lieu of an injunction.

⁷⁹390 U.S. 557 (1968).

B. Peripheral Torts

It was recognized in *Garmon*⁸⁰ and more recently in *Linn v. United Plant Guard Workers, Local 114*⁸¹ that certain activity of a peripheral nature may be regulated by the states even though the same acts would constitute a violation of section 8 of the Labor Act.⁸² The idea is that well-established categories of crime or tort may become involved incidentally in a labor dispute.

Labor law, in its purest form, deals with a clash between two distinctively economic interests: the interest of society in optimum production of economic goods and services and the sometimes competing social interest in the preservation of human resources by assuring a beneficial distribution of what has been produced.⁸³ This thought has been expressed by the late Mr. Justice Holmes:

One of the eternal conflicts out of which life is made up is that between the effort of every man to get the most he can for his services, and that of society, disguised under the name of capital, to get his services for the least possible return.⁸⁴

It is the resolution of this conflict that provides the underlying background for our labor law.

Society has other interests in addition to those which compete in the labor law arena. Especially important is the social interest in general security.⁸⁵ It is this interest that forms a large portion of our traditional criminal and tort law. One of these other important social interests might become incidentally involved in a labor dispute. For example, a homicide would be none the less so if committed as part of a labor controversy. The idea is that the other interest might be so important that procedure could be either through traditional channels or through the statutes applicable to labor disputes. Theoretically, it is only in the case of conduct involving a clash between distinctively labor law interests that the preemption doctrine is applicable. However, until recently this peripheral tort theory was

⁸⁰359 U.S. 236 (1959).

⁸¹383 U.S. 53 (1966).

⁸²For a concise statement of this principle see the quotation from a headnote in *Linn* at note 19 *supra*.

⁸³For a table of the more important social interests see E. PATTERSON, *MEN AND IDEAS OF THE LAW* 523 (1953). The contest in labor dispute cases is between category V(a), "social interest in economic progress," and IV(b), "social interest in preservation of human resources."

⁸⁴*Vegeahn v. Guntner*, 167 Mass. 92, 44 N.E. 1077, 1081 (1896) (dissenting opinion).

⁸⁵See E. PATTERSON, *supra* note 83, at 523.

applied only in cases involving non-peaceful acts. Recently a limited application of this theory has been made in a libel case.⁸⁶

C. Non-Peaceful Conduct

The term "non-peaceful" is used instead of the term "violent" in order to avoid a purely semantic argument in certain borderline situations such as mass picketing, obstruction, or name-calling. No definite rule can be made to govern all such cases, but the decision in each case should not turn upon whether or not the conduct involved falls within the category of "violence."

The premise may be accepted that state agencies may invoke state sanctions against some types of non-peaceful conduct, even though the acts involved also constitute a violation of the Labor Act.⁸⁷ One of the leading cases exempting non-peaceful conduct (violence and threats of violence) from the preemption doctrine is the Virginia case of *Laburnum*.⁸⁸ Only damages were sought and obtained in that case. It is pointed out⁸⁹ that between 1953 and 1959 it was believed that the case also had the effect of eliminating all damage suits from the scope of the preemption doctrine.

So far as non-peaceful conduct is associated with picketing, the first two paragraphs of the Virginia Code, section 40-64,⁹⁰ are relevant.

No person shall singly or in concert with others interfere or attempt to interfere with, another in the exercise of his right to work⁹¹ or to enter upon the performance of any lawful vocation by the act of force, threats of violence or intimidation, or by the use of insulting or threatening language directed toward such person, to induce or attempt to induce him to quit his employment or refrain from seeking employment.

No person shall engage in picketing by force or violence, or picket alone or in concert with others in such manner as to obstruct or interfere with free ingress or egress to and from

⁸⁶*Linn v. United Plant Guard Workers, Local 114*, 383 U.S. 53 (1966). The Court was divided. The majority made it clear that not all instances of libel in connection with a labor dispute would remove that dispute from the preemption doctrine. "[W]e therefore limit the availability of state remedies for libel to those instances in which the complainant can show that the defamatory statements were circulated with malice and caused him damage." 383 U.S. at 64-65.

⁸⁷See Michleman, *State Power to Govern Concerted Employee Activities*, 74 HARV. L. REV. 641, 664-66 (1961).

⁸⁸194 Va. 872, 75 S.E.2d 694 (1953), *aff'd*, 347 U.S. 656 (1954).

⁸⁹Note 55 *supra*.

⁹⁰Section 40-64 is primarily a picketing statute and is considered in its entirety under picketing in part V(B) *infra*, see note 123 *infra*, and Appendix II.

⁹¹Although the expression "right to work" is here used, Schlossberg points out that this section should not be confused with the true right-to-work law. Schlossberg, *Current Trends in Labor Law in Virginia*, 42 VA. L. REV. 691, 693 (1956).

any premises, or obstruct or interfere with free use of public streets, sidewalks or other public way.⁹²

So far as is pertinent here, the remainder of the section provides for criminal sanctions and for injunctive relief.

Virginia's leading case under these paragraphs is *McWhorter v. Commonwealth*.⁹³ In that case a strike was in process at a garment manufacturing company in Roanoke, Virginia. Defendant, Grace McWhorter, was an employee, although she had been employed for only a short time and, unknown to the company, was a "plant." Not all of the employees joined the strike. Picketing was instituted and led by the defendant. No actual physical injury occurred, and ingress and egress to the plant was not denied to non-striking employees. However, loud screeching noises were made and abusive and obscene epithets were used. For example, a song was sung with the refrain: "When the roll is called up yonder, will you whores be there?" The abuse was such that one non-striking employee fainted. A conviction for violating section 40-64 was upheld. The case presents a borderline situation. The conduct invoked could be called "non-peaceful" although not actually violent. The court indicated that rough language is permissible so long as it is directed toward persuasion. When it becomes coercive, it no longer falls within the free speech protection.

Paragraph two, § 40-64, was involved in *Hubbard v. Commonwealth*.⁹⁴ Defendant, with her two companions, lay down in front of one of the main entrances to a large industrial plant in such a manner as to block completely the use of the gate by both pedestrian and vehicular traffic. Her conviction for violating both § 18.1-173, prohibiting trespass, and paragraph two § 40-64, was upheld. This case arose in connection with a race and not a labor dispute and is thus, strictly speaking, not within the scope of this article. It is here included, however, because it does involve the interpretation and application of a statute primarily applicable to labor disputes and the case also involves a type of conduct usually associated with labor disputes.

In cases of non-peaceful conduct there is frequently the problem of union responsibility. In *United Brotherhood of Carpenters v. Humphreys*,⁹⁵ an employee was allowed to recover for extreme injuries resulting from unquestionable violence. The only issue was as

⁹²VA. CODE ANN. § 40-64 (Repl. Vol. 1953).

⁹³191 Va. 857, 63 S.E.2d 20 (1951).

⁹⁴207 Va. 673, 252 S.E.2d 750 (1967).

⁹⁵203 Va. 781, 127 S.E.2d 98 (1962).

to the union's responsibility. The local was having trouble getting a contract and the National Union sent two field representatives to aid. A strike and picketing followed. Plaintiff participated in the strike and picketing for a considerable time but eventually announced his intention to return to work. One of the union's field representatives suggested at a meeting that all apostate strikers be "entertained" on their way back and forth to work. That was held sufficient to convict both the national and local union for the assault upon plaintiff.⁹⁶ The court found no trouble in distinguishing *United Construction Workers v. Haislip Baking Company*.⁹⁷

D. Right-to-Work

The term "right-to-work" law is somewhat of a misnomer.⁹⁸ It does not guarantee anyone a job, but forbids even the extremely limited union shop agreement permitted by section 8(a)(3) of the Labor-Management Relations Act.⁹⁹ The power of a state to enact such a statute is expressly excluded from the preemption principle by section 14(b) of the Act.¹⁰⁰ Approximately twenty states, mostly in the South, have such statutes.

Virginia's Right-to-Work Law is found in the Virginia Code, sections 40-68 to 40-74.¹⁰¹ An inspection of that statute indicates that it not only outlaws the union shop, but also anti-union (the so-called *yellow dog*) contracts. The making of such a contract is illegal. It is also illegal to use any form of pressure, even though peaceful, to coerce any party to enter into a forbidden contract. All three types of sanctions (criminal, damage suits, and injunctions) are provided for violations of this law.

The applicability of the Right-to-Work Law may depend upon

⁹⁶"A field representative of an international labor organization engaged in union organizational activities, negotiations of contracts, and settling grievances between employers and members of local unions, which are mere divisions of the international union, is engaged in the business of both the international and local unions so as to render both responsible for acts done by him within the scope and course of his employment..." *Id.* at 787.

⁹⁷223 F.2d 872 (4th Cir. 1955). For a statement of the case see note 71 *supra*.

⁹⁸See Schlossberg, *Current Trends in Labor Law in Virginia*, 42 VA. L. REV. 691, 694 (1956).

⁹⁹29 U.S.C. § 158(a)(3) (1964).

¹⁰⁰*Id.* § 164(b). The Railway Labor Act, 45 U.S.C. § 153(i) (1964), has expressly permitted the union shop notwithstanding any state law to the contrary. Thus, it was held in *Moore v. C. & O. Ry.*, 198 Va. 273, 93 S.E.2d 140 (1956), that non-union employees subject to the Railway Labor Act could not enjoin the enforcement of a union shop agreement.

¹⁰¹VA. CODE ANN. §§ 40-68 to -74.1 (Repl. Vol. 1953, Supp. 1966), see Appendix II.

the situation in which it is invoked. If an employer, relying upon an illegal union shop agreement, discharges a non-union employee, no great problem is presented. Such a case was *Finney v. Hawkins*.¹⁰² The only contention made by defendant was as to the constitutionality of the statute. The injured employee recovered a judgment for damages against both his employer and the union.

A more difficult problem arises in cases in which picketing is engaged in for the alleged purpose of compelling an employer to employ only union men or to enter into an illegal union shop agreement. The two cases of *Painters and Paperhangers Local Union No. 1018, A. F. of L. v. Rountree Corporation*.¹⁰³ and *Local 10, Journey-men Plumbers v. Graham*¹⁰⁴ may be compared in this regard. Both cases involved suits for an injunction. In both cases sub-contractors employing only union men and open shop sub-contractors were involved on the same construction project. The union put a peaceful picket around the premises which was honored by the employees of the all-union sub-contractors. In both cases the placards carried by the pickets merely announced that non-union men were employed on the premises. The only difference in the cases seems to be that in *Rountree* no demand was made that non-union employees be discharged, whereas such a demand was made in *Graham*. The Virginia Supreme Court of Appeals denied the injunction in *Rountree* whereas the United States Supreme Court upheld it in *Graham*.

The difference in the two cases seems to be in what the court believed to be the union's purpose in its picketing. In *Rountree* the court accepted the union's contention that it was merely conducting an organizational picket. By its very terms the Act makes it clear that peaceful persuasion of employees to join the union is not forbidden.¹⁰⁵ In *Graham*, the union's demand that all non-union employees be replaced was accepted as evidence that the union's purpose in conducting the picket was to compel the employer to violate the Right-to-Work Law.¹⁰⁶

¹⁰²189 Va. 878, 54 S.E.2d 872 (1948). For an excellent explanation of this case see Schlossberg, *supra* note 91, at 696.

¹⁰³194 Va. 148, 72 S.E.2d 402 (1952).

¹⁰⁴345 U.S. 192 (1953). There is no Virginia reported opinion in the case because petition for writ of error was denied by the Supreme Court of Appeals. The constitutionality of the Right-to-Work Law was also upheld in *Graham*.

¹⁰⁵VA. CODE ANN. § 40-74.2 (Supp. 1966), see Appendix II.

¹⁰⁶In his excellent article, note 91 *supra*, at 703-06, Mr. Schlossberg raises the question whether the United States Supreme Court today would find the picket in *Graham* bad because of its purpose. He relies upon *Weber v. Anheuser-Busch, Inc.*, 348 U.S. 468 (1955), and a statement by Professor Cox to the effect that the preemption doctrine forbids any state to proscribe union conduct because of

E. "Unprotected" Conduct

Reference is here made to conduct neither protected by the Labor-Management Relations Act nor arguably prohibited by that enactment.¹⁰⁷ Of course, it seems evident that either party would be free to use self-help or to resort to any available state law remedies in the event the other engages in "unprotected" conduct.

It is difficult to think of many types of activity, involved in labor disputes, that would fall within this category of "unprotected" conduct. The writer agrees with Michelman's conclusion that strikes, or other concerted activity, for the purpose of compelling an employer to perform an illegal act would be unprotected.¹⁰⁸ It also seems clear that a strike which is expressly forbidden by federal law, such as a mutiny at sea,¹⁰⁹ would fall within this category.

F. Harassment

By this term is meant concerted activities engaged in by employees while they are in a pay status.¹¹⁰ An example may be found in conduct

its purpose. The so-called illegal purpose doctrine is discussed primarily in Part V(D) *infra*. It is there pointed out that there are two versions of that doctrine. What *Weber* and Professor Cox rule out is the objectives test in its broader aspect: the condemning of certain purposes as being beyond the scope of proper labor objectives. In *Graham*, the union's purpose, as construed by the Court, was to compel the plaintiff to do an act which he could not legally do. This is the illegal purpose doctrine in its narrow sense.

In another respect Mr. Schlossberg has cleared up a problem that has long troubled me. In both *Rountree* and *Graham* the sub-contractor whose employees instituted the picket employed only union men. How was that possible under the Right-to-Work Law? At page 700 of the Schlossberg article it is brought out that there is much de facto circumvention of the Right-to-Work Law by willing and cooperative unions and employers.

¹⁰⁷This term "unprotected" conduct is borrowed from Michelman, *State Power to Govern Concerted Employee Activities*, 74 HARV. L. REV. 641, 658 (1961). Michelman uses the quotation marks, which are necessary because the designation is not strictly accurate. Conduct which is not protected but is forbidden or arguably forbidden would literally fall within the designation of unprotected *conduct* but is not the sort of thing that is here being considered. The writer has borrowed Michelman's terminology because of his inability to think of a better short designation.

¹⁰⁸Michelman, *supra* note 107, at 670-72. An example may be found in *American News Co.*, 55 N.L.R.B. 1302 (1944). In that case, the union struck to compel the employer to immediately put into effect an agreed-upon pay increase. At that time such an increase in wages could not legally be made until approved by the War Labor Board.

¹⁰⁹*Southern S.S. Co. v. NLRB*, 316 U.S. 31 (1942). The Supreme Court in this case was divided five to four. However, the case is complicated by the fact that the strike was because of an unfair labor practice.

¹¹⁰By section 2(3) of the Labor Act, 29 U.S.C. § 152(3), employees do not

involving a series of short, intermittent strikes. Such conduct was held to be unprotected in *International Union, Local 232 v. Wisconsin Employment Relations Board*,¹¹¹ commonly called the "Briggs and Stratton" case. In that case it was held that state sanctions might be invoked. The same problem would be involved, however, if the employer had sought to exercise its self-help right of discharge. Similar harassing tactics were held not to be a violation of the Labor Act in *NLRB v. Insurance Agents' International Union*.¹¹² Disloyalty to an employer, while still in a pay status, is also an example of a harassing tactic regarded as unprotected.¹¹³ The idea of these decisions seems to be that while drawing the employer's pay its employees owe it a high degree of loyalty and obedience. The concerted activities contemplated by section 7 of the Labor Act are those which involve a temporary cessation of work and pay.

In Virginia there are no official sanctions available to an employer as a protection against harassing tactics by his employees. Its remedy is to exercise its self-help power of discharge or other disciplinary action. It would not be guilty of an unfair labor practice under the Federal Act by doing so.¹¹⁴

V. Preempted Fields

Under this heading is considered conduct which is protected, prohibited, or arguably prohibited by the Federal Act. There may still be some Virginia law relative to such conduct, but it can only be applied in cases involving employers or employees not covered by the Labor Act.¹¹⁵ The most important are public employees, hospitals and their employees, supervisors, unionized workers technically considered independent contractors, farm workers, and (perhaps most important) employees in enterprises which fail to meet the Labor Board's jurisdictional standards. It must not be assumed that the

lose their status as such by striking. However, they are not in a pay status while on strike.

¹¹¹336 U.S. 245 (1949).

¹¹²361 U.S. 477 (1960).

¹¹³NLRB v. Local 1229, IBEW, 346 U.S. 464 (1953). Here the employees disparaged the employer's product but did not actually strike. This case is commonly called the "Jefferson Standard" case.

¹¹⁴Of course an employer's power to make rules and enforce discipline in its establishment goes beyond its remedy for harassing tactics. So far as the Labor Act is concerned, an employee may be disciplined for any reason except belonging to a union, participating in strike activities, or engaging in other protected conduct. A wholly arbitrary discharge of an employee, for a reason other than some conduct protected by the Labor Act (such as the employee's religious affiliation), would not violate the Labor Act but it would likely violate a collective bargaining agreement, most of which limit discipline to "just cause."

¹¹⁵See notes 23 to 35 *supra*.

state can make and enforce any labor law it chooses regarding such persons. There are various other constitutional limitations upon state action, such as the free speech doctrine. The point is that the Labor-Management Relations Act does not bar state action where such employers and employees are concerned.

A. Strikes

The strike is probably the most fundamental tool of labor's power of self-help. For over 100 years it has been recognized as generally legal. This is subject to the limitation that some types of strikes are forbidden,¹¹⁶ and to limitations sometimes asserted regarding the purpose for which a particular strike is called.¹¹⁷ The general legality of the strike has been recognized in Virginia.¹¹⁸ It has been held, however, that a union representative has no authority to bind the union to indemnify members for losses suffered during a strike.¹¹⁹

The only type of strike expressly prohibited by current Virginia law, so far as this writer is aware, are strikes by public employees.¹²⁰ The only sanction available in case of a strike by public employees is discharge and ineligibility for public employment for twelve months. No published decisions appear in the annotations to this statute.

B. Peaceful Picketing

As early as 1906 peaceful picketing was recognized as legal in Virginia in *Everett Waddey*.¹²¹ This is quite remarkable because in the United States generally peaceful picketing was not accepted until much later. In 1940 in the leading case of *Thornhill v. Alabama*,¹²² peaceful picketing was declared to be a form of constitutionally protected freedom of speech and entirely free from legislative or judicial restraint. Soon after *Thornhill* was decided, however, the United States Supreme Court recognized that even peaceful picketing is not merely

¹¹⁶See notes 108 and 109 *supra*.

¹¹⁷See Part V(E) *infra*.

¹¹⁸*Everett Waddey Co. v. Richmond Typographical Union*, 105 Va. 188, 53 S.E. 273 (1906).

¹¹⁹*United Bhd. of Carpenters v. Moore*, 206 Va. 6, 141 S.E.2d 729 (1965).

¹²⁰VA. CODE ANN. §§ 40-66, -67 (Repl. Vol. 1953). (See Appendix II) It is seen in Part VI, *infra*, that strikes by utility employees are curtailed. It must be remembered that no strike forbidden by federal law would be legal in Virginia. The nature of our doctrinal (i.e. common) law is such that a judicial decision could announce a limitation upon strikes as though such limitations had always existed.

¹²¹105 Va. 188, 53 S.E.2d 273 (1906).

¹²²310 U.S. 88 (1940).

a matter of free speech but might be a coercive weapon of the type normally subject to regulation by our labor law. Thus, a long series of decisions restricted much of the original *Thornhill* doctrine. These decisions are summarized in the majority and dissenting opinions in *International Brotherhood of Teamsters, Local 695, v. Vogt, Incorporated*.¹²³ It was held there that Wisconsin might forbid a peaceful picket by non-employees designed to induce an employer to persuade its employees to join the union, contrary to the state law giving them a freedom of choice. This is known as the organizational picket. *Vogt* makes it clear that the free speech doctrine is not completely abandoned and that not all peaceful pickets may be forbidden by state action.

Virginia's only attempt to curtail legislatively peaceful picketing is found in the third paragraph of the Virginia Code, section 40-64. This was first enacted in 1946 but significantly amended in 1952. The section as originally enacted and as amended, is as follows:

[It shall be unlawful for any] *When a strike or lockout is in process* no person who is not, or immediately prior to the time of the commencement of any strike or lockout was not, a bona fide employee of the business or industry being picketed [to] shall participate in any picketing or any picketing activity with respect to such strike or lockout [or such business or industry].¹²⁴

Both criminal sanctions and injunctive relief are provided by section 40-64. Paragraph three was intended to forbid what has been called *stranger picketing*, i.e., picketing by non-employees. The most usual instance of stranger picketing is called *organizational picketing*, which deals with a situation in which a union is attempting to organize the employees of an employer. It is usually found where the employees have been offered an opportunity to join the union, and select it as their bargaining representative, but have declined to do so.

By interesting coincidence, the case destined to test paragraph three, section 40-64, as originally drafted in 1946, was not one involving organizational picketing, but a case completely outside the field of labor law. Defendants in *Edwards v. Commonwealth*¹²⁵ were Negroes who were prosecuted under the criminal provisions of section

¹²³354 U.S. 284 (1957).

¹²⁴Material in brackets was in the 1946 version of this statute but was deleted in 1952. Material italicized was added in 1952. Section 40-64 relates to both non-preempted conduct (violent picketing) and to preempted conduct (peaceful picketing). For the relationship of this statute to non-peaceful picketing see notes 86 to 88 *supra*.

¹²⁵191 Va. 272, 60 S.E.2d 916 (1950).

40-64 because they picketed a theater which did not employ a Negro manager. The picketing was peaceful and ingress and egress of patrons was not disturbed. It was held that the statute, in this situation, violated the principle of free speech and thus could not be enforced.

In its decision in *Edwards*, the Virginia Supreme Court of Appeals may not have understood the extent to which the *Thornhill* doctrine had eroded. Even so, *Edwards* could well be supported as involving a true free speech situation even after the Supreme Court's decision in *Vogt*.¹²⁶ It seems as though the Virginia legislature misconstrued the scope of the decision in *Edwards* when it amended the section in 1952. True, paragraph three was held completely unconstitutional, but that was because it forbade all stranger picketing irrespective of the circumstances. The decision in *Edwards* does not preclude the reenactment of paragraph three so as to forbid organizational picketing. In fact, that was exactly the type of enactment upheld in *Vogt*, which had not yet been decided when *Edwards* was before the Virginia court.

After the decision in *Edwards*, the legislature did not amend paragraph three, section 40-64, so as to be limited to organizational picketing. Instead, it amended paragraph three so as to apply only in cases in which a strike or lockout is in process. As thus changed, the Supreme Court of Appeals upheld paragraph three in *Dougherty v. Commonwealth*.¹²⁷ The legislative change saved the constitutionality of the section. However, it altered the original purpose for which the paragraph was passed. Organizational picketing is quite controversial. There is authority upon both sides. It is now considerably curtailed by section 8(b)(7) of the Labor-Management Relations Act. Organizational picketing exists when there is no dispute between an employer and his own employees and no strike is in process. On the other hand, there is little historical precedent, and no substantial policy, to forbid non-employees from helping employees in their picketing in cases in which a genuine strike is in process.

The entire issue of paragraph three, section 40-64, and the *Edwards* and *Dougherty* cases, turned out to be of less consequence than originally thought. In *Waxman v. Virginia*,¹²⁸ it was held that paragraph three falls within the preemption doctrine. A conviction thereunder was therefore reversed. *Waxman* would seem to be clearly correct.

¹²⁶Note 123 *supra*.

¹²⁷199 Va. 515, 100 S.E.2d 754 (1957).

¹²⁸371 U.S. 4, *rev'g* *Waxman v. Commonwealth*, 203 Va. 257, 123 S.E.2d 381 (1962).

The entire subject of organization picketing is now covered by section 8(b)(7) of the Labor-Management Relations Act.¹²⁰ Paragraph three of section 40-64 now applies only to those personnel not covered by the Labor Act. In this regard it is unlike the first two paragraphs which deal with non-peaceful conduct and thus apply to all personnel.

Difficulty, as regards preemption, is presented by the type of conduct involved in *Hubbard*.¹³⁰ Defendant lay in the entrance to an industrial plant and thus prevented ingress and egress. As in *Edwards*, a race, and not a labor, dispute was involved in *Hubbard*. So, there is no actual problem of preemption in regard to that case. Suppose that the same conduct were involved in connection with a labor dispute. Would this conduct be responsible for coercing employees not to exercise their right to enter and work, and thus be a violation of § 8(b)(1) of the Labor-Management Relations Act? Likely. But would the fact that defendants were also found guilty of the peripheral offense of trespass, in violation of a non-labor law statute of Virginia, retain concurrent jurisdiction in Virginia's courts over defendants' conduct? It is at least so arguable. The freedom of speech problem is not so obvious in *Hubbard* as in *Edwards* because in *Edwards* there was no obstruction.

C. Secondary Boycotts

The only Virginia case, known to this writer, involving the secondary boycott is the early case of *Crump*.¹³¹ The defendants in that case were members of a typographical union who sought to influence Baughman Brothers, a printing establishment, to employ only union printers. For that purpose they sent circulars to all of Baughman Brothers' customers asking them to cease patronizing Baughman Brothers and threatening to boycott them if they did not comply with the request. It was held that the defendants had committed a criminal offense.¹³²

Today it is very clear that all types of secondary boycott activity involving employers and employees who are subject to the Labor Relations Act can be handled only under that Act.¹³³ Thus, the

¹²⁰ 29 U.S.C. § 158(b)(7) (1964). This section was not yet in effect at the time section 40-64 was enacted or amended, or when *Edwards* and *Dougherty* were decided. However, that circumstance does not bar the applicability of the preemption doctrine.

¹²⁰ 207 Va. 673, 152 S.E.2d 250 (1967).

¹³¹ 84 Va. 927, 6 S.E. 620 (1888).

¹³² The court used the term "criminal conspiracy." This must not be confused, however, with the earlier criminal conspiracy doctrine in which the mere establishment of a union was regarded as a criminal offense.

¹³³ See note 18 *supra*.

doctrine of *Crump*, even if it is still the law of Virginia, can be applied only in cases of employers and employees who are not subject to the Federal Act. In this connection, however, it must be remembered that a party injured by secondary boycott activity, violative of the Federal Act,¹³⁴ may maintain an action for damages in either a federal or state court.¹³⁵ The case, however, must be decided under federal law (statutes and decisions) and not under state law.

There is still the problem of secondary boycotts under Virginia law regarding those employers and employees not subject to the Labor-Management Relations Act. The law has never been clear or explicit as to exactly what categories of conduct may be regarded as constituting illegal secondary boycotts. There is only the one precedent in Virginia. The purpose of a rule (whether statutory or court-made) against secondary boycotts is to confine a labor dispute to the parties primarily involved and not permit it to spread to persons whose position would logically make them neutral. It is here suggested that, if confronted by an alleged secondary boycott involving employers and employees not subject to the act, a Virginia court might apply the pertinent provisions of the Federal Act by analogy.¹³⁶

D. Interference with Contractual Relations

One of the doctrines of tort law which was part of the old labor law was that inducing a breach of contract is tortious, unless justified.¹³⁷ In 1917 the Virginia Supreme Court of Appeals applied this principle in *Brotherhood of Railroad Trainmen v. Vickers*.¹³⁸ It was held that a declaration which sought damages by an employee against a union upon the theory that the union had caused plaintiff's employer to break its contract with plaintiff stated a cause of action. Unfortunately, the facts of the case do not appear in the opinion,

¹³⁴Specifically, Labor-Management Relations Act, § 8(b)(4), 29 U.S.C. § 158(b)(4) (1964), which forbids jurisdictional strikes as well as certain types of secondary boycotts.

¹³⁵See Part IV(A) *supra*. The action is for damages under § 303 of the Labor-Management Relations Act, 29 U.S.C. § 187 (1964).

¹³⁶See note 134 *supra*.

¹³⁷See C. GREGORY, *LABOR AND THE LAW* 93-95 (2d ed. 1958, Supp. 1961); C. GREGORY & H. KATZ, *LABOR LAW: CASES, MATERIALS, AND COMMENTS* 117-125 (1948). The leading tort case is *Lumley v. Gye*, 118 Eng. Rep. 749 (Q.B. 1853). The leading labor law case applying the *Lumley* doctrine is *South Wales Miners' Federation v. Glamorgan Coal Co.*, [1905] A.C. 239. The most extreme application of this doctrine is found in *Hitchman Coal & Coke Co. v. Mitchell*, 245 U.S. 229 (1917), in which the Supreme Court upheld a decree enjoining a labor organizer from inducing employees to break their anti-union (so-called "yellow-dog") contracts.

¹³⁸121 Va. 311, 93 S.E. 577 (1917).

most of which is devoted to procedural questions not here material. If a union causes an employer (not subject to the Railway Labor Act) to discharge an employee because of non-membership in the union, a violation of Virginia's Right-to-Work Law.¹³⁹ has occurred. If a union induces employees to strike in violation of their collective agreement, the remedy of an employer subject to the Federal Labor Act is under section 301 of that Act.¹⁴⁰ If a union induces one company to break its contract with another company, the remedy of an employer subject to the Federal Act is a complaint to the Labor Board or an action under section 303.¹⁴¹ In the last two situations an employer not subject to the Labor-Management Relations Act might predicate a cause of action upon the general principle underlying *Vickers*.¹⁴²

E. Forbidden Union Objectives

One of the established principles of the old labor law was that otherwise legitimate union conduct (such as a strike or peaceful picket) would become illegal if the court regarded the union's objective as being outside the realm of legitimate union concern. This principle has been variously referred to as *the unlawful purpose doctrine*, the *prima facie tort doctrine*, or the *objectives test*. A leading case is *Plant v. Woods*¹⁴³ in which a strike to compel the employer to enter a union shop agreement was held to be illegal. A fairly recent application of the doctrine is found in *Opera on Tour, Incorporated v. Weber*.¹⁴⁴ It was there held that a strike for the purpose of preventing an employer from replacing employees with machines was an improper labor objective, and therefore illegal.¹⁴⁵

This unlawful purpose doctrine was recognized, by way of dicta,

¹³⁹VA. CODE ANN. §§ 40-68 to -74 (Repl. Vol. 1953). See Part IV(C) *supra* and Appendix II.

¹⁴⁰See Part IV(A) *supra*.

¹⁴¹*Id.* The complaint with the Labor Board would be based upon § 8(b)(4). See note 134 *supra*.

¹⁴²121 Va. 311, 93 S.E. 577 (1917). It is obvious that the case is not strictly in point. In *Vickers* the suit was by an employee against a union. That case, therefore, would be only analogous to a case involving a suit by a company against a union.

¹⁴³176 Mass. 492, 57 N.E. 1011 (1900).

¹⁴⁴285 N.Y. 348, 34 N.E.2d 349 (1941).

¹⁴⁵Injunctive relief was upheld, even though New York has an anti-injunction statute. It was regarded that the improper objective took the case outside the concept of a "labor dispute." The illegal purpose doctrine is more a part of the old labor law than the new labor law. However, between 1935 and 1947 the old labor law still applied to cases of employers against unions. See Part I *supra*. The illegal purpose principle is retained, to some extent, in § 8(b)(4) of the Labor-Management Relations Act.

in the Virginia case of *Everett Waddey*.¹⁴⁶ The object of the strike in that case was to obtain an adjustment of working hours. Such a purpose is clearly legitimate. Since the union's picketing was peaceful, a temporary injunction was dissolved and a permanent injunction refused. However, the court did recognize that the objectives test would be applied in an appropriate case.

There is not one, but two, objectives tests. In its broad sense, the doctrine enables courts to pass upon the legitimacy of union purposes. In that sense, there is little manifestation of the objectives test in the new labor law,¹⁴⁷ except where certain objectives have been legislatively forbidden, as by section 8(b)(4) of the Labor-Management Relations Act. The concept of improper union ends, however, has a narrower application. Sometimes a union engages in concerted activity for the purpose of compelling an employer to take action it cannot legally take. Such a case is *American News Co.*¹⁴⁸ The union in that case struck to compel the immediate activation of an agreed-upon wage increase. At that time such a wage increase could not be put into effect lawfully until approved by the War Labor Board. Such a strike was unprotected. The Board discussed the objectives test in both its broader and narrower aspects.

Mr. Arnold Schlossberg takes the position that the preemption doctrine now forbids states from applying the objectives test to parties covered by the Labor Relations Act.¹⁴⁹ Mr. Schlossberg cites,¹⁵⁰ with approval, a statement made by Professor Archibald Cox¹⁵¹ to the same effect. This is undoubtedly a sound conclusion so far as the broader objectives test is concerned. Since the Labor Act has legislatively forbidden concerted activities for some specified objectives, it is clearly inferable that Congress intended that other objectives be regarded as legitimate.¹⁵² Thus, a Virginia court could forbid concerted union activities because it disapproved of the union objectives only if the dispute was between parties not covered by the Federal Act.

¹⁴⁶105 Va. 188, 198, 53 S.E. 273 (1906).

¹⁴⁷*But see* NLRB v. Reynolds Int'l Pen Co., 162 F.2d 680 (7th Cir. 1947), in which a strike in protest against disciplinary action of a foreman was considered to be for an improper objective and thus not protected.

¹⁴⁸55 N.L.R.B. 1302 (1944).

¹⁴⁹Schlossberg, *Current Trends in Labor Law in Virginia*, 42 VA. L. REV. 691, 703-06 (1956).

¹⁵⁰*Id.* at 704.

¹⁵¹Cox, *Federal Preemption of the Law of Labor Relations*, NEW YORK UNIVERSITY, SEVENTH ANNUAL CONFERENCE ON LABOR, PROCEEDINGS 1, 8 (1954).

¹⁵²*Compare* Weber v. Anheuser-Busch, Inc., 348 U.S. 478, 479 (1955), which is relied upon in the Schlossberg article.

The Schlossberg article raises the question¹⁵³ as to whether *Graham*¹⁵⁴ would be decided the same way by the United States Supreme Court if it were to arise today. The difficulty lies in the fact that the Supreme Court upheld the injunction against the picketing because the purpose thereof was to compel the employer to violate the Right-to-Work Law. It is submitted here that a recognition of this difficulty overlooks the distinction between the broad and narrow versions of the objectives test. It would seem anomolous if concerted activities directed toward compelling a violation of law would be protected against state action. Michelman¹⁵⁵ takes the position that state agencies are not preempted from prohibiting union activity designed to compel an employer to do an act which is forbidden by any federal law.¹⁵⁶ The same conclusion would seem to apply to union activity designed to force an employer to perform an act forbidden by a valid state enactment.¹⁵⁷ It is the opinion of this writer that Virginia may enjoin, even in regard to parties subject to the Federal Act, concerted activities intended to coerce an employer into violating a valid federal or state law, such as the Right-to-Work Law.

V. Regulation of Unions

Most of the few restrictions imposed by Virginia's legislature upon labor unions have been aimed as assimilating unions to the status of corporations so far as responsibility is concerned. It is seen that the Virginia Code, section 8-66, permits a union to sue and be sued as an entity.¹⁵⁸ In line with the juristic personality thus conferred upon

¹⁵³Schlossberg, *supra* note 149, at 705-06.

¹⁵⁴345 U.S. 192 (1953). See Part IV(C) *supra*, in which *Graham* is compared with *Painters Local 1018 v. Rountree Corp.*, 194 Va. 148, 72 S.E.2d 402 (1952).

¹⁵⁵Michelman, *State Power to Govern Concerted Employee Activities*, 74 HARV. L. REV. 641 (1961).

¹⁵⁶*Id.* at 670-72. This statement applies to conduct designed to compel an employer to violate the Labor-Management Relations Act or any other federal statute. This must not be confused with union conduct which is merely an unfair labor practice under the Labor-Management Relations Act, but which is not resorted to for the purpose of compelling the employer to violate that Act.

¹⁵⁷*Compare Fur Workers Local 72 v. Fur Workers Union*, 105 F.2d 1 (D.C. Cir. 1939), *aff'd. mem.*, 308 U.S. 522 (1939). In that case, a minority union picketed to compel an employer to recognize it. Such recognition would have been an unfair labor practice by the employer because another union unquestionably represented the majority of the employees. The court, however, denied injunctive relief because of the limitations of the Norris-La Guardia Act. The specific conduct involved would now constitute a violation of the Labor Act, § 8(b)(4). However, so far as known to this writer, the Supreme Court does not recognize an exception to the anti-injunction act of cases in which concerted activities are designed to compel a violation of law.

¹⁵⁸Part III(D) *supra*.

unions is section 40-63 which permits unions to own, encumber, and sell real estate.¹⁵⁹ Other Code sections aimed at imposing responsibility upon unions are 40-95.7¹⁶⁰ and 40-95.8¹⁶¹ (passed in 1966) requiring unions to register. This registration requirement might be compared in purpose to the requirement that a corporation qualify to do business within the state. It also is intended as a protection to workers from being solicited for membership and dues by unauthorized individuals. The section further supplements Code 40-74.4 regarding service of process upon a union.¹⁶²

There may appear to be a question regarding the constitutionality of Virginia's union registration law. In *Thomas v. Collins*¹⁶³ the United States Supreme Court declared unconstitutional a Texas statute requiring that all union organizers obtain an organizer's card before soliciting members for his organization. The statute was held to constitute a violation of freedom of speech. The whole context of *Thomas* makes it clear that the Texas legislature was concerned with a control of union solicitation *before* it occurred. Such is not the case under the Virginia Code, sections 40-95.7 and 40-95.8. These sections do not forbid a union from doing business within the State. They merely provide that if the union does do business, it must register. There being no prior restraint, it is difficult to see how freedom of speech could be involved.

A question also arises whether sections 40-95.7 and 40-95.8 can be sustained in regard to personnel covered by the Labor-Management Relations Act, *i.e.* whether those sections are subject to the preemption doctrine.¹⁶⁴ It may be that the purposes of the Virginia sections fall within the category of matters of peripheral concern exempted from federal preemption. However, section 7 of the Federal Labor Act permits employees to join unions. Can it be said, therefore, that the state may place even so mild a restraint upon the power

¹⁵⁹VA. CODE ANN. § 40-63 (Supp. 1966), see Appendix II.

¹⁶⁰VA. CODE ANN. § 40-95.7 (Supp. 1966), see Appendix II.

¹⁶¹VA. CODE ANN. § 40-95.8 (Supp. 1966), see Appendix II.

¹⁶²VA. CODE ANN. § 40-74.4 (Supp. 1966). Section 40-74.4 requires a labor organization, which has no officers or agents within the state, to file with the Department of Labor and Industry and the State Corporation Commission a written power of attorney appointing the clerk of the State Corporation Commission an agent for purposes of service. Mr. Schlossberg has pointed out that § 40-74.4 is of little consequence because national unions usually operate through their locals in this state. Schlossberg, *supra* note 148, at 698. Section 40-95.7 is useful as establishing a record of the registered agent for a local union for purposes of service of process.

¹⁶³323 U.S. 516 (1945).

¹⁶⁴Only freedom of speech was considered in *Thomas v. Collins*, since when that case was decided in 1944 the preemption doctrine was not yet effective.

to unionize as to require registration? Certainly, an employer must bargain with the union selected by the majority of its employees. This writer is of the opinion that it would be no defense to a charge of refusal to bargain that the union had failed to register as required by sections 40-95.7 and 40-95.8.

Code of Virginia, section 40-64.1¹⁶⁵ forbids a type of featherbedding. During the 1950's most automobiles were shipped from the point of production to the point of sale by highway carriers. In the 1960's railroads sought and obtained part of that business. Highway transportation was required for part of the trip, even though the shipment was later transferred to a train. Unions representing the highway drives would sometimes require that an extra fee be paid before making the transfer. This fee was in addition to compensation for services actually performed and was supposed to compensate, at least in part, for loss of the wages members of the union would have earned had the entire shipment been made by highway carrier. It was to avoid such union demands that section 40-64.1 was enacted.

The Labor-Management Relations Act has not preempted from the states power to subject unions to some of the types of regulation to which other enterprises are subject.¹⁶⁶ In *National Maritime Union v. City of Norfolk*¹⁶⁷ it was held that a city might apply its zoning ordinance to a labor union's hiring hall.

Virginia courts are called upon to decide the usual type of property questions even though they indirectly relate to internal union affairs. In *Miller v. International Union of United Brewery Workers*¹⁶⁸ the court, in an injunction suit, had to determine the ownership of property as between two unions. The defendant body had seceded from the parent organization. The court held that a bill to enjoin the seceders from interfering with the property held by the parent union stated grounds for equitable relief. On the other hand, the court held in *Brotherhood of Locomotive Engineers v. Folkes*¹⁶⁹ that, absent fraud, illegality, or abuse of power, the construction of the rules of a labor union (as in the case of any other unincorporated association) is for the appropriate officers of the union and not for the civil courts. In that case a member sought to enjoin the enforcement of a compulsory retirement agreement between a local union and an employer upon the ground that no retirement insurance had been

¹⁶⁵VA. CODE ANN. § 40-64.1 (Supp. 1966), see Appendix II.

¹⁶⁶See Part IV(B) *supra*.

¹⁶⁷202 Va. 672, 119 S.E.2d 307 (1961).

¹⁶⁸187 Va. 889, 48 S.E.2d 252 (1948).

¹⁶⁹201 Va. 49, 109 S.E.2d 392 (1959).

contracted for by the employer as required by a declared policy of the national union. The national organization had been informed of the agreement between the local and the employer and had approved it. This action of approval was a construction of the union's policy by its own officers. The court felt that it should not interfere with this construction.

VI. Mediation of Labor Disputes

Some states have statutes comparable to the Labor-Management Relations Act compelling employers to bargain collectively with their employees (if so desired by the employee) and forbidding unfair labor practices of the type involved in section 8(a) of the Federal Act.¹⁷⁰ Virginia has no such statute.¹⁷¹ However, Virginia does have a limited statute providing for mediation of certain labor disputes.¹⁷²

Virginia's mediation statute is important because, under the Labor-Management Relations Act,¹⁷³ it is made applicable to some disputes between employers and employees who are subject to the Federal Act. That act forbids either party from seeking to terminate or modify a contract unless notice of such intention be given within 60 days of the termination date of the contract. Within 30 days the Federal Mediation and Conciliation Service must be notified and also any state agency designated to mediate labor disputes. Such agency in Virginia is established by statute as the Department of Labor and Industry.

It must not be assumed that sections 40-95.1 to 40-95.6 apply only to cases of notification under the Federal Act. It is clear that the Governor may use the sections in the event of other disputes affecting the designated public utilities. In fact, the 1966 amendment took out certain language which might tend to limit Virginia law to cases not covered by the Federal Act. Since this law provides a governmental service more than it imposes control, this writer believes that the preemption doctrine is not applicable and that the Governor may invoke the State Act even in cases subject to the federal service. It is to be noted, however, that the application of Virginia's mediation section is limited to public utilities.

¹⁷⁰29 U.S.C. § 158(a) (1964).

¹⁷¹It is difficult to see much value in such state statutes since the preemption doctrine prevents their use in most cases. The leading preemption case, *Guss v. Utah Labor Board*, 353 U.S. 1 (1957), involved an attempt to invoke such a state labor statute against the employer.

¹⁷²VA. CODE ANN. §§ 40-95.1 to -95.6 (Repl. Vol. 1953) (Supp. 1966), see Appendix II.

¹⁷³29 U.S.C. § 158(d) (1964).

APPENDIX I

The following table shows the remedy sought in the Virginia cases (and federal cases involving Virginia law) cited in this article.

Criminal Sanctions

Crump v. Commonwealth, Notes 46, 131
McWhorter v. Commonwealth, Note 93
Edwards v. Commonwealth, Note 125
Dougherty v. Commonwealth, Note 127
Waxman v. Commonwealth, Note 128
Hubbard v. Commonwealth, Notes 94, 130

Civil Suits

Lee v. Virginian Railway Co., Note 34
 Employee against employer for alleged contract violation.
Railway Employees v. Virginian Railway, Note 54
 Union against company to compel arbitration.
International Brotherhood of Boilermakers v. Wood, Note 54
 Suit by employee, member, against union for alleged insurance benefits.
Yonce v. Miner's Memorial Hospital Ass'n, Note 54
 Antitrust suit against trustees.
United Construction Workers v. Laburnum, Notes 55, 88, 89
 Company against union for threats of violence.
Kiser v. Amalgamated Clothing Workers,
Amalgamated Clothing Workers v. Kiser,
 Successive appeals in the same case.
 See note 58. Suit by member against union on an indemnity agreement.
United Brotherhood of Carpenters and Joiners v. Moore,
 Note 58 (same as *Kiser*)
Pearman v. Industrial Rayon Corp., Notes 66, 69, 71
 Employees suit against employer under § 301.
United Constr. Workers v. Haislip Baking Co., Notes 69, 97
 Suit by employer under § 301 for wildcat strike.
United Brotherhood v. Humphreys, Note 95
 Damage suit for violent injuries by employee against union.
Finney v. Hawkins, Note 102
 Right-to-Work action against employer and union.
United Brotherhood v. Moore, Note 119
 Suit by employee against union on indemnity contract.
Brotherhood of Railroad Trainmen v. Vickers, Notes 138, 142
 Employee sues union for causing employer to break its contract with employee.
National Maritime Union v. City of Norfolk, Note 167
 Not a damage suit but a declaratory judgment action.

Injunctions

Everett Waddey Co. v. R.T. Union, Notes 61, 118, 121, 146
Local 1018 v. Rountree, Note 103
Local 10 v. Graham, Notes 104, 154
Moore v. Chesapeake & Ohio Ry., Note 100
Miller v. Union of United Brewery, Note 168
 Between two unions.
Brotherhood v. Folkes, Note 169
 Member against union.

APPENDIX II

CODE OF VIRGINIA

TITLE 40, CHAPTER 4

LABOR UNIONS, STRIKES, ETC.

ARTICLE 1.

In General.

§ 40-63. *Authority of labor unions to own, encumber and sell real estate.*—The trustees of any unincorporated association organized for mutual benefit and chartered as a labor union for the purpose of collective bargaining and other lawful functions of labor unions, as defined by the laws of this State, and having a duly authorized charter as a local labor union, from either a State or national labor organization, shall have the right to own, possess, improve, sell or mortgage real estate, not to exceed a total holding of five acres in extent at any one time. Such real estate can be acquired for any lawful purpose whatsoever.

Property acquired by an unincorporated association under the provisions of this section can be sold, mortgaged or the title transferred by such trustees in the same manner and to the same extent as if such trustees were natural persons acting for themselves in their individual capacity, under the laws of this State.

The provisions of this section shall apply to any real estate acquired prior to June twenty-seven, nineteen hundred sixty-six, by any such unincorporated association, provided such real estate is real estate that could be legally acquired by such unincorporated association, if acquired after such date. (1946, p. 565; Michie Suppl. 1946, § 47a; 1966, c. 382.)

§ 40-64. *Preventing persons from pursuing lawful vocations, etc.; illegal picketing; injunction.*—No person shall singly or in concert with others interfere or attempt to interfere with another in the exercise of his right to work or to enter upon the performance of any lawful vocation by the use of force, threats of violence or intimidation, or by the use of insulting or threatening language directed toward such person, to induce or attempt to induce him to quit his employment or refrain from seeking employment.

No person shall engage in picketing by force or violence, or picket alone or in concert with others in such manner as to obstruct or interfere with free ingress or egress to and from any premises, or obstruct or interfere with free use of public streets, sidewalks or other public ways.

When a strike or lockout is in progress, no person who is not, or immediately prior to the time of the commencement of any strike or lockout was not, a bona fide employee of the business or industry being picketed shall participate in any picketing or any picketing activity with respect to such strike or lockout.

Any person violating any of the provisions of this section shall be guilty of a misdemeanor, and punished accordingly.

Notwithstanding the punishments herein provided any court of general equity jurisdiction may enjoin picketing prohibited by this section, and in addition thereto, may enjoin any picketing or interference with lawful picketing when necessary to prevent disorder, restrain coercion, protect life or property, or promote the general welfare. (1946, p. 392; Michie Suppl. 1946, § 4711a; 1952, c. 674.)

§ 40-64.1 *Payment of certain charges by carriers or shippers to or for benefit of labor organization.*—(1) As used in this section, the term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(2) It shall be unlawful for any carrier or shipper of property, or any association of such carriers or shippers, to agree to pay, or to pay, or to for the benefit of a labor organization, directly or indirectly, any charge by reason of the placing upon, delivery to, or movement by rail, or by a railroad car, of a motor vehicle, trailer, or container which is also capable of being moved or propelled upon the highways, and any such agreement shall be void and unenforceable.

(3) It shall be unlawful for any labor organization to accept or receive from any carrier or shipper of property, or any association of such carriers or shippers, any payment described above.

(4) Any corporation, association, organization, firm or person who agrees to pay, or who does pay, or who agrees to receive, or who does receive, any payment described hereinabove shall be guilty of a misdemeanor and shall be fined not less than one hundred dollars nor more than one thousand dollars for each offense. Each act of violation, and each day during which such an agreement remains in effect, shall constitute a separate offense. (1962, c. 376.)

ARTICLE 2.

Strikes by Government Employees.

§ 40-65. *Employee striking terminates, and becomes temporarily ineligible for, public employment.*—Any employee of the Commonwealth, or of any county, city, town or other political subdivision thereof, or of any agency of any one of them, who, in concert with two or more other such employees, for the purpose of obstructing, impeding or suspending any activity or operation of his employing agency or any other governmental agency, strikes or willfully refuses to perform the duties of his employment shall, by such action, be deemed to have terminated his employment and shall thereafter be ineligible for employment in any position or capacity during the next twelve months by the Commonwealth, or any county, city, town or other political subdivision of the State, or by any department or agency of any of them. (1946, p. 561; Michie Suppl. 1946, § 2695h.)

§ 40-66. *Department head, etc., to notify employee of such termination, etc.*—In any such case the head of any department of the State Government, or the mayor of any city or town, or the chairman of the board of supervisors or other governing body of any county, or the head of any other such employing agency, in which such employee was employed, shall forthwith notify such employee of the fact of the termination of his employment and at the same time serve upon him in person or by registered mail a declaration of his ineligibility for reemployment as before provided. Such declaration shall state the facts upon which the asserted ineligibility is based. (1946, p. 561; Michie Suppl. 1946, § 2695h.)

§ 40-67. *Appeal by employee from declaration of ineligibility.*—In the event that any such employee feels aggrieved by such declaration of ineligibility he may within ninety days after the date thereof appeal to the circuit court of the county or the corporation or hustings court of the city in which he was employed by filing a petition therein for a review of the matters of law and fact involved in or pertinent to the declaration of ineligibility. A copy of the petition shall be served upon or sent by registered mail to the official signing the declaration, who may file an answer thereto within ten days after receiving the same. The court or the judge thereof in vacation shall, as promptly as practicable, hear the appeal de novo and notify the employee and the signer of the declaration of ineligibility of the time and place of hearing. The court shall hear such testimony as may be adduced by the respective parties and render judgment in accordance with the law and the evidence. Such judgment shall be final. (1946, p. 561; Michie Suppl. 1946, § 2695i.)

ARTICLE 3.

Denial or Abridgement of Right to Work.

§ 40-68. *Policy of article.*—It is hereby declared to be the public policy of

Virginia that the right of persons to work shall not be denied or abridged on account of membership or nonmembership in any labor union or labor organization. (1947, p. 12; Michie Suppl. 1948, § 1887(113).)

§ 40-69. *Agreements or combinations declared unlawful.*—Any agreement or combination between any employer and any labor union or labor organization whereby persons not members of such union or organization shall be denied the right to work for the employer, or whereby such membership is made a condition of employment or continuation of employment by such employer, or whereby any such union or organization acquires an employment monopoly in any enterprise, is hereby declared to be against public policy and an illegal combination or conspiracy. (1947, p. 12; Michie Suppl. 1948, § 1887(114).)

§ 40-70. *Employers not to require employees to become or remain members of union.*—No person shall be required by an employer to become or remain a member of any labor union or labor organization as a condition of employment or continuation of employment by such employer. (1947, p. 12; Michie Suppl. 1948, § 1887(115).)

§ 40-71. *Employers not to require abstention from membership in union.*—No person shall be required by an employer to abstain or refrain from membership in any labor union or labor organization as a condition of employment or continuation of employment. (1947, p. 12; Michie Suppl. 1948, § 1887(116).)

§ 40-72. *Employer not to require payment of union dues, etc.*—No employer shall require any person, as a condition of employment or continuation of employment, to pay any dues, fees or other charges of any kind to any labor union or labor organization. (1947, p. 12; Michie Suppl. 1948, § 1887(117).)

§ 40-73. *Recovery by individual unlawfully denied employment.*—Any person who may be denied employment or be deprived of continuation of his employment in violation of §§ 40-70, 40-71 or 40-72 or of one or more of such sections, shall be entitled to recover from such employer and from any other person, firm, corporation or association acting in concert with him by appropriate action in the courts of this Commonwealth such damages as he may have sustained by reason of such denial or deprivation of employment. (1947, p. 12; Michie Suppl. 1948, § 1887(118).)

§ 40-74. *Application of article to contracts.*—The provisions of this article shall not apply to any lawful contract in force on April thirtieth, nineteen hundred and forty-seven, but they shall apply in all respects to contracts entered into thereafter and to any renewal or extension of an existing contract. (1947, p. 12; Michie Suppl. 1948, § 1887(119).)

§ 40-74.1. *Agreement or practice designed to cause employer to violate article declared illegal.*—Any agreement, understanding or practice which is designed to cause or require any employer, whether or not a party thereto, to violate any provision of this article is hereby declared to be an illegal agreement, understanding or practice and contrary to public policy. (1954, c. 431.)

§ 40-74.2. *Conduct causing violation of article illegal; peaceful solicitation to join union.*—Any person, firm, association, corporation, or labor union or organization engaged in lockouts, lay-offs, boycotts, picketing, work stoppages or other conduct, a purpose of which is to cause, force, persuade or induce any other person, firm, association, corporation or labor union or organization to violate any provision of this article shall be guilty of illegal conduct contrary to public policy; provided that nothing herein contained shall be construed to prevent or make illegal the peaceful and orderly solicitation and persuasion by union members of others to join a union, unaccompanied by any intimidation, use of force, threat of use of force, reprisal or threat of reprisal, and provided that no such solicitation or persuasion shall be conducted so as to interfere with, or interrupt the work of any employee during working hours. (1954, c. 431.)

§ 40-74.3. *Injunctive relief against violation; recovery of damages.*—Any employer, person, firm, association, corporation, labor union or organization injured as a result of any violation or threatened violation of any provision of this article

or threatened with any such violation shall be entitled to injunctive relief against any and all violators or persons threatening violation, and also to recover from such violator or violators, or person or persons, any and all damages of any character cognizable at common law resulting from such violations or threatened violations. Such remedies shall be independent of and in addition to the penalties and remedies prescribed in other provisions of this article. (1954, c. 431.)

§ 40-74.4. *Service of process on clerk of State Corporation Commission as attorney for union.*—Any labor union or labor organization doing business in this State, all of whose officers and trustees are nonresidents of this State, shall by written power of attorney, filed with the Department of Labor and Industry and the State Corporation Commission, appoint the clerk of the State Corporation Commission its attorney or agent upon whom all legal process against the union or organization may be served, and who shall be authorized to enter an appearance on its behalf. The manner of service of process on the clerk of the State Corporation Commission, the mailing thereof to the labor union or organization, the fees therefor, the effect of judgments, decrees and orders, and the procedure in cases where no power of attorney is filed as required, shall be the same as provided for in cases of foreign corporations. (1954, c. 431; 1956, c. 430.)

§ 40-74.5. *Violation and penalty.*—Any violation of any of the provisions of this article by any person, firm, association, corporation, or labor union or organization shall be a misdemeanor and punishable by fine not exceeding five hundred dollars. Each day of continued violation after conviction shall constitute a separate offense and shall be punishable as herein provided. (1954, c. 431.)

ARTICLE 5.

Mediation and Conciliation of Labor Disputes.

§ 40-95.1. *Department of Labor and Industry designated agency to mediate disputes.*—The Department of Labor and Industry is hereby designated as the State agency authorized to mediate and conciliate labor disputes. (1952, c. 697.)

§ 40-95.2. *Notice of proposed termination or modification of collective bargaining contract; notice prior to work stoppage.*—Whenever there is in effect a collective bargaining contract covering employees of any utility engaged in the business of furnishing water, light, heat, gas, electric power, transportation or communication, the utility or the collective bargaining agent recognized by the utility and its employees shall not terminate or modify such contract until the party desiring such termination or modification serves written notice upon the Department of the proposed termination or modification at least thirty days prior to the expiration date thereof or, in the event such contract contains no expiration date, at least thirty days prior to the date it is proposed to make such termination or modification, provided, however, that a party having given notice of modification as provided herein shall not be required to give a notice of termination of the same contract.

Where there is no collective bargaining contract in effect, the utility or its employees shall give at least thirty days' notice to the Department prior to any work stoppage which would affect the operations of the utility engaged in the business of furnishing any of the utilities as described in this section. (1952, c. 697; 1966, c. 92.)

§ 40-95.3. *Commissioner to notify Governor of disputes; mediation and conciliation.*—Upon receipt of notice of any labor dispute affecting operation of the utility, the Commissioner shall forthwith notify the Governor and inform him of the nature of the dispute. If the Governor deems it necessary the Commissioner, or his designated agent, shall offer to meet and confer with the parties in interest and undertake to mediate and conciliate their differences. If the Governor deems it advisable, it shall be the duty of the utility and its employees, or designated representatives, to meet and confer with the Commissioner or his agent, at a time and place designated by the Commissioner, for the purpose of mediating and

conciliating their differences. (1952, c. 697; 1966, c. 92.)

§ 40-95.4. *Commissioner of Labor to keep Governor informed of negotiations, etc.*—The Commissioner of Labor shall keep the Governor fully informed as to the progress of the negotiations between the utility and its employees and shall report as soon as practical whether in his judgment a strike or lockout appears to be probable in any such dispute or, if a strike or lockout begins, whether continuation thereof is probable. (1952, c. 697.)

§ 40-95.5. *Right of entry.*—In order to carry out the duties imposed by this article, the Commissioner of Labor or his designated agent shall have the right to enter upon the property of the utility. (1952, c. 697.)

§ 40-95.6. *Article not applicable when National Railway Labor Act applies.*—Nothing in this article shall apply to any utility to which the National Railway Labor Act is applicable. (1952, c. 697.)

ARTICLE 6.

Registration of Labor Unions, Labor Associations and Labor Organizations.

§ 40-95.7. *Triennial registration required; forms; notice of change in officers.*—Every labor union, labor association or labor organization doing business in this State whether it be an affiliate of an international, national or State labor organization or an independent organization, shall register once every three years with the Department of Labor and Industry not later than forty-five days after January first of each year registration is required. Registration shall be on forms furnished by the Department on request and include the following information:

(a) Name of the union, association or organization and business address thereof; and

(b) Name and address of the principal officer in the State of Virginia or the registered agent.

In addition to such triennial registration, each such union, association and organization shall notify the Department in writing within thirty days of any change in the officers designated on such registration form. (1966, c. 75.)

§ 40-95.8. *Failure to register.*—Any such union, association or organization failing to register as required by § 40-95.7 shall be guilty of a misdemeanor and upon conviction shall be fined not less than fifty dollars nor more than five hundred dollars for such violation. Each year the union, association or organization fails to register shall constitute a separate violation. (1966, c. 75.)

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