REPORT TO
GOVERNOR ROBERT B. MEYNER

By

THE GOVERNOR'S COMMITTEE
ON LEGISLATION RELATING TO
PUBLIC UTILITY LABOR DISPUTES

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CHARLES D. CICCHINO
HORACE S. DOVE
MARY H. HANSCOM
Representing Labor

LUKE A. KIERNAN, JR.
ARTHUR T. CARPENTER
ROBERT C. SIMPSON
Representing Industry

CARL H. FULDA
RICHARD A. LESTER
DAVID L. COLE, *Chairman*
Representing The Public

ALLAN WEISENFELD, *Secretary*

September 9, 1954

HON. ROBERT B. MEYNER
The State House
Trenton, New Jersey

DEAR GOVERNOR MEYNER:

Transmitted herewith is the report of your Committee on Public Utility Labor Disputes Legislation. The scope of the report is described in the Introduction, as you will see. Parts II, III and IV include the results of the studies and surveys made of the New Jersey statute, legislation in other states, and the legal problems. The principal editorial observations of the Committee are in Part I, *The Problem: Summary of Government Experiences, Analysis and Conclusions,* and in Part V, *Findings and Recommendations.*

In addition to the report proper, we have prepared some material on the general authority of the Governor in times of stress. We do not consider this to be properly part of our report, but it may be of value to you or the Attorney General in other connections or perhaps under other circumstances, and we are therefore enclosing copies.

We are particularly pleased to be able to inform you that the views expressed in our report are supported by eight of the nine members.

Respectfully submitted,

THE GOVERNOR'S COMMITTEE ON PUBLIC UTILITY LABOR DISPUTES LEGISLATION

Representing Labor
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INTRODUCTION

1. The Creation of this Committee and the Procedures Followed

On January 28, 1954, Governor Robert B. Meyner created this Committee composed of an equal number of representatives of labor, industry and the public to serve as a commission to engage in an intensive study of the problem of legislation relating to public utility labor disputes and to recommend a mutually satisfactory solution. In his letter of appointment, the Governor stated:

> "I am confident that a cooperative study of the problem by representatives of these three groups can produce recommendations that will greatly assist me in formulating the legislation to provide a workable and constitutionally valid method for resolving public utility labor disputes which will be fair and equitable to employees, the industry and the public."

The Committee members named by the Governor are:

Representing Labor

Mrs. Mary H. Hanscom of the Communications Workers of America, C.I.O.
Horace S. Dove of the International Brotherhood of Electrical Workers, A. F. of L.
Charles D. Cicchino of the Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, A. F. of L.

Representing Industry

Arthur T. Carpenter of the New Jersey Bell Telephone Company
Luke A. Kiernan of the Public Service Electric and Gas Company
Robert C. Simpson, Industrial Relations Consultant

Representing the Public

Richard A. Lester of Princeton University
Carl H. Fulda of Rutgers University School of Law
David L. Cole, Attorney, Chairman

Allan Weisenfeld, Secretary of the New Jersey State Board of Mediation, served as Secretary of the Committee.

In its search for a method of resolving labor disputes in the public utility industries which is both legally valid and fair to all the parties who are affected, the Committee has studied carefully the existing statute in New Jersey, its legislative and judicial history, and the experience under this law. Because of the nature of their work and backgrounds, the industry and labor members were able to contribute a great deal of enlightening opinion and history. A number of other industry and labor representatives also cooperated by replying to questionnaires sent to them by this Committee, and the same is true of arbitrators and educators from whom opinions were invited. The Commissioner of Labor and Industry, Carl Holderman, appeared before the Committee, joined freely in a thorough discussion of the problem.

The Committee also investigated similar types of laws in other states and sent questionnaires to many informed people of various backgrounds in all these states concerning the history, administration, and value of such laws, and the experience thereunder. A copy of the questionnaire is attached as Appendix B.

The Committee did not have the time or facilities to engage in original research in all the states and other jurisdictions which have experimented with legislation designed to deal with emergency labor disputes. Its members have, however, drawn heavily on their own experiences in various areas and have freely consulted the literature which has been published on the subject. For convenience, a bibliography is attached to this report as Appendix C.

The Governor's instructions were for the Committee to find a "mutually satisfactory solution." Originally, this seemed like an impossible assignment, considering the adversary nature of major labor disputes and the intensity of feeling with which they are approached. The industry and labor representatives on the Committee have, however, taken their obligation as advisers to the Governor most seriously and have earnestly cooperated, in the public interest, in objectively evaluating past efforts and the several possible courses which are open. It is a source of unusual gratification that this report and the recommendations made are supported by eight of the nine members of the Committee, irrespective of their normal partisan interest.

2. The Nature and Scope of this Report

The body of this report is made up of five parts. Part I is *The Problem: Summary of Government Experiences, Analysis and Conclusions.* Part II is entitled *The New Jersey Law, Its History and Administration.* Part III contains *The Experience of Other States.* Part IV is

an analysis of *The Legal Problems.* Part V is a statement of *The Committee's Findings and Recommendations.*

There are three appendices. Appendix A includes a list of the individuals who have replied to the Committee's questionnaire or have otherwise contributed helpful information or opinions. Appendix B is a copy of the questionnaire sent out by the Committee. Appendix C is a selected bibliography on the subjects considered in this report.

PART I

THE PROBLEM: SUMMARY OF GOVERNMENT EXPERIENCES, ANALYSIS AND CONCLUSIONS

What do we seek to accomplish by the use of emergency labor legislation? Have the types of statutes which have been tried in various jurisdictions accomplished the desired purposes or have they, on analysis, been found to be detrimental?

The purpose, stated in various forms, is simply to prevent or terminate strikes in industries in which it is feared a shutdown or the failure promptly to resume operations would seriously jeopardize the health, safety, or welfare of the community or of the nation.

Most of the current laws on this subject originated immediately after World War II. Some, including that in New Jersey, were enacted because of a particular labor dispute. Some were adopted because elsewhere there had been a serious public utility strike, principally the Duquesne Power & Light strike in Pittsburgh in 1946. In general, the public had been shielded from the impact of serious strikes during the war by the disputes procedures of the National War Labor Board. The termination of this wartime agency, it was feared, would leave our communities exposed to serious harm if some means were not provided to restrain labor from its free exercise of the right to strike.

The basic question, however is whether these anti-strike laws have in fact afforded the protection which has been sought. We believe this question requires a comparison of the conditions before and after the enactment of the laws in jurisdictions which have them, consideration of the conditions where there are no such laws, the influence of such laws on the normal processes of labor dispute settlement, and, further, an inquiry into the nature of the danger which it is sought to avoid. These matters are discussed in this part of our report under five headings: (1) The Importance of the Process of Collective Bargaining, (2) Comments on the Nature of Government Efforts to Restrict Strikes, (3) The Impact of Public Utility Strikes on the Public, (4) Assurance to the Public, and (5) The Committee's Conclusions.

1. The Importance of the Process of Collective Bargaining

Efforts have been made to prohibit such strikes and at the same time to preserve the highly desirable process of free collective bargaining. Recognizing, however, that the withdrawal of the right to

strike seriously impairs the desired equality of bargaining power and consequently the efficacy of collective bargaining, each of these laws must try to provide some means of settling the disagreements which have given rise to the threat with which we are concerned.

Unique in that all sides agree thereon is the desirability of the process of collective bargaining. The promotion of equality in bargaining power and the effective use of collective bargaining is our basic policy in industrial relations. It has been declared and reaffirmed by the Congress, and it is most significant that criticisms of labor relations laws never seem to include an attack on this process. The Constitution of New Jersey in Article I, Paragraph 19, also guarantees the right of employees to organize and to bargain collectively, and while we have no State statute implimenting this constitutional guarantee, it is implicit that the aims of the federal law are in concurrence with our basic state law.

Considering the numerous cases in which disputes are not settled until after there has been resort to a strike, it may seem odd that confidence in the value of collective bargaining nevertheless persists. This is so for three reasons. The first is that we know that the strike or the threat of a strike is an essential part of negotiations; without it there could hardly be an approach to equality in bargaining power of the kind which our law seeks. The second is that the denial of the right to strike would be incompatible with tradition and would strip the element of voluntarism from the labor agreement which is, after all, the objective of the process of collective bargaining as we understand it. An agreement, by its very meaning, is something voluntarily made by the contracting parties. Under our political and legal philosophy, an agreement may not be imposed by law or government directive. If it is, it is not the agreement of the parties, and it cannot then command their sense of obligation, and consequently has less chance of accomplishing the purpose for which it is designed. The third is that we have not been able to devise a method of establishing the wage rates and other conditions of employment which is more efficient and at the same time consistent with our basic political thinking. The totalitarian kind of imposition and prohibition is abhorrent to us, and no authoritative voices have been raised to advocate such a course.

We must recognize, however, that collective bargaining is not easy. Conflicting self-interests must be reconciled, and accommodations must be made which are based on reasonableness. It is believed that the process will improve with time and experience and with the realization that more can be gained from intelligent moderation than from constant industrial strife which concerns itself only with immediate advantage. This type of understanding will come gradually, and anything which relieves the parties of their responsibility to

work out their own differences simply defers the time when the most effective use will be made of the process of collective bargaining. Devices which the law substitutes may give one or the other of the parties a temporary advantage, but basically anything which obviates the need for the parties to come to agreement is unsound. It has been found many times that when complete agreement is unattainable, parties who bargain in good faith will try to reach agreement at least on some acceptable procedure to resolve their differences, like arbitration or fact-finding. This is a valuable part of the voluntary process, and is essentially quite different from legal compulsion.

2. Comments on the Nature of Government Efforts to Restrict Strikes

In some jurisdictions, the prohibition against the use of the strike, in critical situations, is restricted only in time, after which resort may be had to the strike. The hope in such cases is that the no-strike interval will be a cooling off period during which intensive negotiations, aided and encouraged by active mediation, will lead the parties to a voluntary settlement.

This is the theory now followed by the federal government. It is seen in Title II, the Emergency Dispute Section, of the Taft-Hartley Law. It is also the underlying approach of the Railway Labor Act. The status quo is maintained by legislative mandate in the railroad and air transportation industries during a period of mediation. This period usually includes a study by an emergency board which makes recommendations to the parties, after which there are further negotiations and mediation for 30 days. Finally, however, there comes a time when there may legally be a strike. This has also been the manner in which labor disputes in atomic energy installations have been handled. When direct negotiations and the usual mediation efforts have failed, the Atomic Energy Labor-Management Panel steps in as a high level mediating agency. This Panel may constitute itself a fact-finding and recommending body, and during its efforts and for 30 days after its findings and recommendations the parties have been under a no-strike restriction. This restriction was self-imposed, the parties having pledged themselves not to resort to the strike or the lockout. Unfortunately, when the personnel of the Panel was changed, the labor organizations considered themselves released from their pledge, and this has recently led to difficulties. The significant feature in both railroads and atomic energy is that the shutdown of operations has been postponed but not forbidden.

In other cases, under certain circumstances, critical strikes have been flatly prohibited, but compulsory arbitration procedures have been provided for the settlement of the differences. This technique

has been used in Great Britain, Australia and New Zealand. Another approach, which is different only in degree, has been to have the state seize the property or facilities of the industry and thereafter to deny the employees the right to strike on the theory that they are then state employees with the possibility also of penalties on both parties. How the differences are ultimately worked out varies. In some cases, compulsory arbitration follows; in other fact-finding, with continued negotiations and mediation. The strike itself is prevented or discouraged by one of three methods. Criminal penalties may be imposed, an injunction may be obtained, or the employees who strike may lose their status as employees or at least some of the more important benefits of their standing as employees.

In some critical situations our federal government has employed this seizure method. During World War I, it took possession of the railroads and theoretically remained in possession for over 35 years, although rarely after the early period of seizure did it invoke the rights which it could claim as the technical possessor and operator of the railroads. The more recent moves along this line are still fresh in memory, particularly in the coal mining and steel industries.

We have seen, however, that at the federal level seizure and other devices leading to an absolute prohibition of critical strikes have recently been rejected, both legislatively and judicially.

We have also seen that in Great Britain the compulsory arbitration method was discarded almost as soon as the sanctions of the law had to be seriously invoked. This was done by revoking in August, 1951, the Conditions of Employment and National Arbitration Order No. 1305, which had been in effect for about 11 years. This was deemed wise because of the indignation over the prosecution of several strike leaders in the dock and gas strikes of 1950. In Australia, regardless of whether the government was labor or conservative, there was great reluctance to prosecute those responsible for illegal strikes. Even when it was done, the sentences were not carried out, on the theory that it was imprudent to do so. During the strike, it was believed that prosecutions would hamper settlements, and after the strike it was deemed wise to let the heat of the strike die out. In none of these English-speaking countries did the anti-strike laws result in the elimination of strikes; at various times we were relatively more free of strikes in the United States than were the people of the countries which legally prohibited strikes.

It is worthy of special note that on April 9, 1947, the New Jersey Public Utility Labor Disputes Act was amended to provide severe penalties for willful violations of the law, but the outcry raised when three people were prosecuted in connection with the telephone strike that was then in progress resulted in the prompt amendment of the

law on April 22, 1947, by cutting out the penalty of imprisonment and by substantially reducing the amount of the fines.

We note also that several of the states, including New Jersey, have been reluctant to apply their laws since the United States Supreme Court in 1951 held the Wisconsin Public Utility Arbitration Act unconstitutional under the supremacy clause of the federal constitution.

3. The Impact of Public Utility Strikes on the Public

The fact is that there have been very few cases in American industrial history in which a genuine emergency has arisen because of a strike. Many times there was great concern over the consequences of a threatened strike, but it is more significant that in retrospect it was found that somehow the feared crisis had not arisen.

In most cases during critical times, particularly in wartime, the strike has been averted or minimized by strong personal efforts of the President, or of the chief executive of the state or the city, coupled with the extreme reluctance of the labor organization and the industry in question to be responsible for creating a situation which would endanger either the country or the community. It is for this reason that non-statutory fact-finding or mediation boards or commissions appointed by the chief executive have been able to be effective. In 11 cases out of a total of 16 in which such boards were appointed at the federal level, between 1945 and 1951, the boards' recommendations substantially were used as the basis of settlement. While they did not in all instances succeed in avoiding a strike, it is believed they were helpful in curtailing the length of the strike. It is also known that similar types of boards were influential in averting or shortening disputes elsewhere, one example being the City of New York. This technique, moreover, did not originate in 1945. It was used by the federal government as far back as 1902 in the anthracite coal case by President Theodore Roosevelt, and between then and 1948 on 25 separate occasions, all without any specific legislative authority.

The important feature, and the one which cannot be over-emphasized, is the responsiveness of the disputing parties to the public need. It would be most inaccurate to say that management and labor have been indifferent to public opinion and public welfare when this opinion and welfare have been clear.

This sense of responsibility has been demonstrated in various ways. The voluntary assumption of the no-strike, no-lockout pledges during World War II, and, since then, in connection with atomic energy operations is an example. The joint advocacy of the railroad industry and its labor organizations of the Railway Labor Act with, in effect, the voluntary restraints on the use of the strike in that vital industry, is another.

At the local level there is a form of self-restraint which deserves special mention. Both the Amalgamated Street Railway Union and the International Brotherhood of Electrical Workers, which represent workers in the dominant local transportation and power and light utility operations in New Jersey, have the definite policy of not going on strike without first offering to have their disputes in public utilities settled by voluntary but binding arbitration. In fact, the failure on the part of the local to make such an offer will result in the denial by the parent union, the International, of any financial or strike assistance. It would not be beyond possibility to expect that other unions in the public utility field will be persuaded to adopt a similar policy, under the pressure of public opinion.

There has over the years been a very real concern shown by the public utility industries and their employees for the comfort and needs of the community. In this, to a large extent, lies the explanation of the scarcity of cases in which one can truthfully say the public has suffered for want of the services of these industries. Management is definitely sensitive to criticism, and has gone to great extremes to avoid situations in which it may be said it ignores the requirements of the community. It is for this reason that it has at times agreed to settle its differences with labor by voluntary arbitration, even though public utility industries have repeatedly expressed displeasure over the results of such arbitration. Whether these industry reactions to arbitration awards were justified or not is beside the point. There is much that could be said, and that has been said, both ways. The importance of the point is that nevertheless the managements have been persuaded time and again to avoid the risk of a shutdown by submitting to voluntary arbitration.

Another comforting development, and one which has a distinct bearing on our problem or reassuring the public, has been the demonstrated ability of certain public utilities to maintain a level of operations during a strike which provides for more than a mere essential amount of service for the public. The residents of New Jersey, in particular know that during the most recent strikes in telephone, gas and electric power and light, service was continued, though on a somewhat attenuated basis, well enough to avoid any emergency or crisis. This is most significant. It is strong support for the proposition that public utility management and labor are truly concerned about the needs of the public. The maintenance of service for a period of time while a strike is in progress is possible partly because of the technological advances that have been made in these industries. But this is not the whole explanation by any means. It requires two other things. The first is the willingness and ability of supervisory people to man the work stations for exceedingly long hours. The second is the moderation of the striking employees in not

trying too ardently to disrupt the service and in not preventing these management substitutes from rendering such service. Obviously, operations during a strike are neither economical nor desirable. The burden on the company and on its supervisors is heavy and costly. But the willingness of the company to endure this condition rather than to suspend service, and the reluctance of the striking workers by and large to interfere with truly essential services, are facts not to be overlooked in considering steps which should be taken to protect the public against the possibility of a critical disruption of services during a public utility strike. Apparently, the parties have devised a way of exerting economic pressure on each other, and at the same time respecting the more pressing needs of the public.

4. Assurance to the Public

The problem under discussion is to a large extent psychological in nature. Certainly, the rights of any group of citizens must be subordinate to the welfare of society as a whole. The difficulty lies in ascertaining how and when the general welfare is put in jeopardy. It is not sufficient to conjure up a situation in which a major utility service may be paralyzed by a strike and move from this premise to the obvious right of the public to be protected. This has been equally true in former years, and yet we have had no laws to provide such protection and we have had no such paralysis. If the desire for such protection tends to lead to the creation of the very types of crises from which protection is desired, then it is submitted that we are moving in an unsound and superficial manner.

We have learned with experience that public utility strikes generally do not create the paralyzing kind of emergency which has been feared. We have had several such strikes in New Jersey, and there have been others more prolonged and extensive in other states. There have been shutdowns of local transportation systems in several large cities, some of them of long duration. There have been electrictric power and light strikes in several places. We have had gas industry strikes, and we have had a number of telephone strikes. Such strikes are most undesirable, and public opinion frowns on them severely. They cause uneasiness and fear, and unquestionably a considerable amount of inconvenience. But, for reasons already discussed, they do not necessarily endanger the health or safety of the community, and we have no basis now for assuming that they will more so in the future. Furthermore, undesirable as such strikes are, the implications of control and compulsion by the State are much less desirable in terms of the effects on our political institutions.

Our statute has not been applied consistently. It has not been used, except in a token manner, since 1951, yet in the preceding four

or five years it was applied to all kinds of public utility disputes, the theory then being apparently that practically every such dispute endangers the health, safety or welfare of the community. The Governor undoubtedly observed that such strikes in other states did not seem to lead to such consequences, and became much more discriminating. Moreover, as observed, after the United States Supreme Court decision in 1951 holding the Wisconsin law invalid, serious doubts were raised as to all other such laws, including that in New Jersey. The Governor was also aware of the unacceptability of the New Jersey law not only to labor but to major parts of the public utility industry. It is not certain that the settlements of differences in local transportation, and in electric generating and distributing, which have been reached by the parties since 1951 were accomplished solely because the full possibilities of the law were not employed, because potentially they might have been, but certainly the non-use of the law did no harm.

In any evaluation of the impact of public utility strikes we must not underestimate the resiliency of our industries. Our society is not helpless in the face of every threat of disruption. In time of necessity public utility industries have been ingenious in providing some service. We can stand such disruptions for a reasonable period of time without irreparable effects, as we have seen over and over again. It is not, then, the threat of a strike which should alarm us. It would be the undue prolongation of a major strike that could hurt. This in turn depends upon how much service or production may be provided during the strike, and on the nature of the current requirements, which in turn are dependent on the exigencies, the prevailing conditions. In a time of national stress, we would accept very little disruption. During more normal periods we could stand more without serious jeopardy. It is wrong, therefore, to hold categorically in advance that any strike and, even more so, any threat of a strike, would be intolerable and would seriously impair our health, safety, or welfare.

If we approach this problem in a more philosophical way and do not lead the parties in dispute to believe that government is on the verge of taking action merely because there is talk of strike as part of the bargaining process, then the normal deterrents to the strike will be given the opportunity to exert their force. The people who manage and those who work in public utilities have a greater urge, as indicated, than do those in other industries to keep their operations moving. There is a kind of esprit which has a practical meaning. In addition, they have the normal urge to maintain profits and to avoid the loss of wages. It is wise to exploit this urge and this spirit, in the public interest. If they know that their failure to agree will lead to a loss of earnings and to public disapproval for failure to meet

their duty to the public, rather than merely to some substitute procedure set up by a statute, then the likelihood of settlement and of avoidance of the shutdown will undoubtedly be greater.

It is a mistake simply to assume there must be a law, and that without some law New Jersey will be helpless. Other jurisdictions have gotten along satisfactorily without laws under which strikes may be forbidden, and we know that the present type of law has been unsatisfactory, The writing of another law may again give a false sense of security. We now have on our statute books many laws which were enacted for the purpose of preventing interference with public utility services, which are applicable in time of strike as well as at other times. It is, for example, a misdemeanor if one maliciously destroys or damages property in general, and there are statutes which specifically prohibit malicious damage to or tampering with public utility facilities, including telegraph, telephone, electric lines, or other generating or transmitting devices. Violations are punishable by fine and imprisonment. Why would it accomplish more to write a new law on this phase of the subject than to demand respect for, and to enforce the existing laws?

An anti-strike law should at best be addressed only to a case of genuine emergency, one in which we see as a fact that very acute harm is being done to the community; in other words, a situation, unlike any we have ever had, which approaches the proportions of disaster. Short of this, it would be better to let the normal forces of economics, public duty, and public opinion expressed through the executive branch in the form of intensive mediation and persuasion, work out the difficulties. If we do this, we are less likely to run into the type of emergency which we fear.

When, however, this disastrous kind of shutdown does occur, if ever it does, we are certainly not helpless and impotent. Our State Constitution enunciates the proposition, in Article I, paragraph 2, that

> "Government is instituted for the protection, security, and benefit of the people. . . ."

As the State's chief executive, the Governor has broad power and judgment to take the ncessary steps to quell disorder or to meet sudden emergencies, including the right to call out the militia or to proclaim martial law. This type of action by governors in industrial disputes has been sustained by the federal courts in several cases. The Supreme Court of Florida, in an advisory opinion to the Governor of Florida (9 So. 2d 172, 176, 1942), put it this way:

> "Implied power when not forbidden is as potent as power expressly conferred," and, "Emergencies do not

> create power or authority, but emergencies may afford occasions for the exercise of powers clearly existing. This principle of law is peculiarly applicable to executive powers and authority to meet great public emergencies."

A truly critical situation would be quickly recognized as such. The Governor might do any of several things in the crisis. Moreover, in a state as small and compact as New Jersey, he could quickly bring the Legislature together in extraordinary session. The Legislature could work out a course of action designed to meet that particular problem, or it could ratify and approve the course which the Governor has already instituted for the protection of the public. The merit of such a program is its extreme flexibility and also its freedom from the charge that it encourages indifference on the part of the parties or in any sense interferes with their own efforts. It is neither necessary nor advisable to suggest the various things the Governor might do. Suffice it to say, both governors and presidents have acted in such situations and their efforts have been effective.

5. The Committee's Conclusions

In Parts II and III which follow, we discuss the history of anti-strike laws and the experiences under such laws in New Jersey and in other states. We see that the incidence of strikes, or of strike threats in public utilities has not declined because of such laws. In New Jersey, we have had a much more frequent occurrence of these strike situations since our law went into force in 1946, not, as we see it, solely because of the law. On the other hand, we believe that the law has definitely contributed toward the inability or unwillingness of the parties to settle their differences directly and expeditiously. It is common knowledge also that in other major industrial states which do not have anti-strike laws, like New York, Illinois, Ohio and California, strikes in public utilities have not presented greater problems nor have they been as frequent as they have been in states like New Jersey, Pennsylvania, Indiana, Michigan and Wisconsin which do have such laws. Parenthetically, judging by newspaper reports, in New York where there is no general anti-strike law, but where there is a law providing for sanctions against civil service employees who go on strike, the most frequent strike threats which alarm the residents of that state seem to come from the groups of employees who are legally forbidden to strike, particularly those who operate the transit system of New York City, rather than from those who are free to strike.

The federal government since 1947 has had statutory provisions for use in so-called emergency disputes. These provisions have been invoked by the President on 12 occasions. On other occasions, the

President has been criticized for not employing the statutory procedures. There has been a great deal of debate as to the value and efficacy of these provisions, and there is general agreement that they should be modified in some particulars at least. Senator Taft so recommended, and President Eisenhower made some such recommendations to the present Congress. One view of informed experts is that these emergency provisions have tended to create or prolong the critical situations which they were designed to avoid, and that a number of the disputes to which they were applied would probably have been resolved sooner by the parties themselves if both had known that responsibility to reach such resolution rested solely with them, and that neither could expect any help from government. In any event, it should be noted that even in national emergency disputes as defined in the law the strike may be enjoined only for a limited period of 80 days and that the settlement of the underlying dispute must be found by the parties themselves. Not only is there no compulsory arbitration, but the board of inquiry appointed by the President is forbidden even to make any recommendations as to how the differences may be worked out.

In Part IV, below, we discuss the legal aspects of this problem, and while we do not go so far as the Attorney General of Missouri in holding our type of law definitely unconstitutional, we must agree that there is serious doubt whether it would not be held so in a test in the courts. This legal obstacle would have been overcome if the Congress had followed President Eisenhower's recommendation that authority to deal with emergencies arising out of labor disputes be specifically delegated to the states, but the Congress has decided to take no such action, at least during this session. This effectively prevents any attempts by the states to deal adequately with the problem by state legislation. It is doubtful whether such a law in New Jersey will now command the respect of labor and industry which is essential if it is to be effective.

From what has been said, it is evident that this Committee seriously questions the value of laws like our Public Utility Labor Dispute Law. Not only do we doubt the ability of such laws to do good, but we believe that they have actually done harm. They clearly impair the efforts of the parties to arrive at agreement through collective bargaining because of the belief that the substitute devices of the law will probably be used and that any concessions voluntarily made will simply serve as the floor or the ceiling in the ultimate procedure of compulsory arbitration. They also relieve the parties of the obligation which must be theirs if the difficult process of collective bargaining may be expected to work, for under such laws the parties are not held answerable for the consequences of their disagreement, either to themselves in lost revenues and wages, or to

the public in disruption of important services. Moreover, the parties' demonstrated sense of obligation to the public is weakened by the predetermination of the State in effect that specific legislative protections must be maintained against the failure of the parties to meet their responsibility. This is an unwarranted and unwise show of lack of confidence, and it has in practice tended to enhance the very dangers which are sought to be avoided.

Having seen no evidence that jurisdictions with such laws have fared better than those without, and recognizing the ability of our Governor and our legislature to act very quickly if an actual emergency should arise, we believe it would be better for the State to discard its present law and to place greater reliance on the sense of obligation of the public utility management and labor groups to shield the public from danger. To be effective in line with the intentions of those who advocate such a law, the law would have to contain severe penalties, and experience in both the United States and in other English-speaking nations has generally shown that laws which rely on penalties are not enforceable as a practical matter. Some have been modified or repealed when they were put to the ultimate test. This is precisely what happened in New Jersey in 1947. We believe that the very existence of such a law, particularly of one which cannot be fully effective, is undesirable because it has been found to be clearly detrimental to the process of collective bargaining wherever it has been tried. We can expect better results from good collective bargaining, including even an occasional strike, than we can possibly derive from punitive legislation or from laws of the kind we now have.

We believe that all aspects of the negotiating and contract-making process should be voluntary and free of legal compulsion. This applies to mediation as well, for mediation represents only the State's efforts to assist the parties in overcoming their differences. If mediation is not willingly accepted, its value is seriously impaired. Compulsory mediation is a contradiction in terms. On the other hand, the sense of responsibility in which we believe confidence may be placed should make the parties receptive to such efforts on the part of the State and responsive to the help and suggestions which flow from this source.

Obviously, there is a minimum amount of information which the State's Mediation Board must have in order to be prepared to assist the parties and to keep the Governor fully informed on what is apt to happen in a public utility labor dispute. The Governor will always be concerned in such cases and will need current information to decide on the course to follow. For this reason, we are recommending that Chapter 100, Laws of 1941, be amended to require both the union and the public utility company involved in a dispute in which

a strike is scheduled to start at a definite time to inform the State Board of Mediation thereof at least 72 hours before such time, and if the strike occurs to give a brief report on the status and negotiations every 48 hours, while the strike continues. This would call for more information than is available in the simple 30 day strike notice required by the Taft-Hartley Act. The purpose is solely to keep the State informed for the reasons indicated.

The considerations outlined above lead this Committee to conclude that our statute on Public Utility Labor Disputes should be repealed and that no statute should be enacted at this time to replace it. We prefer the adoption of a joint resolution of our Senate and Assembly setting forth our confidence that the public utility industry and its labor organizations will conduct themselves in a manner compatible with and responsive to the public interest. Our findings and recommendations are more specifically set forth in Part V of this report.

PART II

THE NEW JERSEY LAW, ITS HISTORY AND ADMINISTRATION

1. History of the Statute

As originally enacted in 1946 (P.L. 1946, ch. 38), our statute declared that heat, light, power, sanitation, transportation, communication and water are essential for the life of the people and that the possibility of labor srife in such enterprises leading to or threatening interruption of these vital services was a threat to the public health and welfare. Accordingly, the Governor was authorized to take possession of any public utility plant for use and operation by the State if, in his opinion, this was necessary to insure continuous service.

In its original form, the statute provided for the appointment of members of a panel by the parties or the State Board of Mediation which was to conduct public hearings and report to the Governor its findings of facts and recommendations. There were no sanctions against strikes or lockouts before or during the period of seizure.

In April, 1947, the Act was amended for the purpose of discouraging a strike called by the Traffic-Telephone Workers Federation of New Jersey against the New Jersey Bell Telephone Company. The amendment (P.L. 1947, Ch. 47) forbade strikes or lockouts after seizure and provided for the appointment, within ten days after seizure of a board of arbitration by the Governor which shall hear the dispute, make written findings of fact and promulgate a decision, subject to review by the Appellate Division of the Superior Court. Violations were to be punished by fine or imprisonment, or both, and a civil penalty of $10,000 for each day of violation, recoverable by the State.

The amendment failed to prevent the outbreak of a telephone strike, which started on April 7, 1947. The offices of the Company were picketed and only emergency telephone calls were accepted. The Governor promptly seized the Company, and three telephone operators who had participated in the strike were arrested. The Union obtained a temporary restraining order in the United States District Court in Newark enjoining the State to hold in status quo all further actions until the constitutionality of the statute could be determined (Traffic Telephone Workers Federation of N. J. v. Driscoll, 71 F. Supp. 681). Because of strong public protest, the legislature

soon reconsidered its drastic action; in a second amendment (P.L. 1947, Ch. 75) the provisions for imprisonment were eliminated and the fines were substantially reduced.

The State then commenced a proceeding in the State courts (see *Traffic Telephone Workers v. Driscoll,* 72 F. Supp. 499) praying for a determination of constitutionality. The strike was settled long before the Supreme Court rendered its final decision holding the provisions for compulsory arbitration unconstitutional "because they delegate legislative power to an administrative agency, without setting up adequate standards to guide the administrative agency in the exercise of the powers delegated to it" (Van Riper v. Traffic Telephone Workers Federation, 2 N. J. 335, 352 (1949)).

The defect found by the Court was immediately corrected by a special session of the Legislature which added a new section providing that, in the case of a dispute concerning the negotiation of a new contract, the board of arbitration shall be required to make its determination on the basis of certain specifically enumerated factors (P.L. 1949, Ch. 308; N.J.S.A. 34:13B-27).

The last amendment of the statute was enacted in 1950; it repealed the provisions for fact-finding panels (P.L. 1950, Ch. 14) on the ground that the Public hearings before these panels had become unnecessary "dress rehearsals for the arbitration proceedings . . ." (N. J. State Board of Mediation, Sixth Annual Report, 1948, p. 20).

2. Judicial Review of Decisions by Arbitration Boards

On two occasions, companies which felt aggrieved by decisions of a statutory arbitration board appealed to the courts. In one case the appeal had been filed after the Supreme Court had held the statute invalid for lack of standards guiding the arbitrators, but before the amendment curing this defect had been enacted. The appeal was, therefore, dismissed on the ground that there was no legal basis to entertain the appeal and the curative amendment had no retroactive effect (*Public Service Electric & Gas Company v. Camden Coke and Gas Workers Independent Federation,* 5 N. J. Super. 123 (App. Div. 1949)).

In the other case, the Supreme Court set aside and remanded to the arbitration board an award rendered by said board in a statutory proceeding following seizure of the New Jersey Bell Telephone Company (*N. J. Bell Telephone Co. v. Communications Workers of America,* 5 N. J. 354 (1950)). The decision was based on criticism of the procedure adopted by the arbitrators: The Court held that the arbitrators had disregarded the statutory standards in their determination of wages by referring to "wage trends" (See *Matter of New Jersey Bell Telephone Co.,* 14. L.A. 574, 581); this was, according to the

Court, an "illusory" factor which could not properly be considered. Indeed, the Court held that "the Board has not made adequate basic or essential findings to support its conclusions" (5. N. J. 354, at 378) in spite of the fact that the Board's opinion contained repeated references to and comments on the evidence presented to it (14 L.A. 574-593). In addition, the Court pointed out that the Board had filed its "Findings of Fact and Decision" five weeks after it had entered its Order; this "contravenes the orderly process contemplated by the statute to insure substantial justice." The Court also found it objectionable that the three public members of the Board had arrived at their decision in the absence of the labor and industry members (5 N. J. 354, at 380; 14 L.A. 574, at 600). It is thus apparent that the Court insisted on Judicial control over procedure before the Board which goes far beyond the narrow scope of judicial review of arbitration awards rendered pursuant to voluntary arbitration agreements (N.J.S.A. 2A:24-6, 7 and 8).

Procedural questions were, however, not the sole issues determined by the Court in this second Bell Telephone Case. The Court was also asked to determine the constitutionality of the amended statute. Although this part of the Court's opinion would seem to have been superseded by the more recent decision of the U. S. Supreme Court in the *Wisconsin* case, discussed in Part IV of this report, it is, nevertheless necessary to call attention to the Court's holding that the arbitrators had no authority to award a union shop because the New Jersey statute "does not contemplate compulsory arbitration of the union security questions." (5 N.J. 354, at 368). In the meantime, this requirement of a special election to authorize union shop agreements was repealed by Public Law No. 189, 82nd Cong., 1st Sess. (1951); hence, the Court could probably no longer adhere to this particular ruling if that issue were to come again before it.

3. Administration of the New Jersey Statute; Comments by Representatives of Labor and Industry

The judicial decisions discussed above reflect, of course, only a fragment of the administration of the New Jersey law, since most of the awards rendered by statutory arbitration boards were not challenged in the courts. Therefore, in order to appraise the effect of the statute realistically, it became necessary to ascertain the views of persons with practical experience in the operation of the statute. This task was greatly facilitated by the fact that the members of this Committee had all had such experience. In addition, the Committee asked for and received comments from several prominent representatives of labor and industry throughout New Jersey.

The opinions of responsible spokesmen for industry and labor, which emerged from these consultations, show substantial unanimity of opposition to the statute on the ground that it weakens the vitality of the collective bargaining process by making agreements between labor and management more difficult to reach. (The two published studies of the statute resulted in similar conclusions. France and Lester: *Compulsory Arbitration of Utility Disputes in New Jersey and Pennsylvania,* Princeton, 1951, p. 40; MacDonald: *Compulsory Arbitration in New Jersey,* Second Annual New York University Conference on Labor 625, at 684 (1949). There was also unanimity with respect to the conclusions that the statute was unnecessary because in all the disputes in which it was invoked, agreement would have been reached if the Governor had not intervened, and because no real emergency situation actually threatening the "health and welfare of the people" had ever occurred in New Jersey.

It is appropriate to set forth in more detail the specific information which served as a basis for these general observations. For instance, the Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America was not involved in any strike in New Jersey from 1923 until the advent of the anti-strike law, although the industry was completely organized since 1918. In 1947, for the first time, the Union sensed some reluctance to bargain on the part of Public Service Transportation Company; nevertheless the Company agreed to voluntary arbitration, waiving its rights under the statute. The Union acknowledged that this created serious difficulties for the Company before the Board of Public Utility Commissioners; that board would not approve fare increases when the Company voluntarily accepted wage increases. Therefore, in 1948 and subsequent years, the Company insisted on statutory procedings, but it accepted a number of statutory awards without judicial review.

In this connection, it was pointed out that strikes are commonly considered unpopular and undesirable in public utilities. In 1946, when the New Jersey law was first enacted, there had accumulated during the stabilization period of the war years strong demands for higher wages. Hence, due to the pressure of temporary post-war conditions, strikes might have been inevitable under any circumstances. The law did not help, because it created a substitute for agreement by collective bargaining. Moreover, according to the Union, the Board of Public Utility Commissioners showed more willingness to grant fare increases to reflect added labor costs when wage increases were ordered by another government agency. When there was no prospect of State intervention, as during the 1954 negotiations, agreement was reached without a strike. The gas strike of January, 1954, ended after five weeks of strike without the law being invoked and significantly, with no serious impairment of service.

According to the Amalgamated, the law has a discriminating effect because it has been invoked mainly in disputes affecting large companies. There have been several strikes against small bus companies who had sought State help; the Governor's refusal to intervene in such cases was based on his finding that there was no emergency. In fact, the representative of independent bus operators urged us to recommend exemption of bus companies from the law. They contend that bus transportation is now a convenience, and not a necessity, because "the automobile is furnishing stiff competition and riding is declining."

The representative of the electrical workers expressed substantially the same arguments. He said that a one day strike at Public Service Electric and Gas Company in 1945 had caused the demand for this legislation. From 1947 to 1949, agreements were concluded each year, but in 1950 the Company refused the Union's offer of voluntary arbitration of the Union's wage demands. Instead, the Company insisted on its statutory rights, including judicial review of any statutory award. A short strike ensued, and after six days the parties submitted to compulsory arbitration. The Governor then seized the plant because of low fuel supply in generators. In 1952, an agreement was reached voluntarily. In 1954, the parties voluntarily agreed to submit their contract differences to a fact-finding board.

The Union's comment on the 1950 events may be summarized as follows:

a. In the absence of the statutory procedure, agreement would have been reached quickly. This is so because the Company, in the light of the Supreme Court's decision in the *Bell Telephone* case discussed above, was reluctant to waive its right of court review, and the Union felt that strategically it would be unwise to reduce its wage demands in order to preserve its position before the arbitration board. Thus, this strike, like others in the public utility field, can be attributed to the Act.
b. The statutory proceedings involve enormous delay and expense: both of these negative factors can be avoided by voluntary arbitration. Moreover, the decision in the *Bell Telephone* case has enormously increased the likelihood of awards being upset by the courts. Again, this danger does not exist where awards are the result of voluntary agreements. In addition, there is no real freedom of selecting arbitrators under the statute.
c. Under its established policy, the electrical workers' union obligates its locals to offer to submit to voluntary arbitration whenever agreement cannot be reached. This is because employees of utilities have a high sense of obligation to the public, and consider themselves to be on call for duty to the public.

The representative of the telephone workers agreed with all of these statements. With respect to the particular conditions of the telephone system, she pointed out that seventy per cent of New Jersey's telephones are now dial operated so that a strike would not now be as serious to the public as in former years. In non-dial areas, the Company used management employees for emergency service and, in addition, the Union has always offered to make emergency crews available.

It thus appears that the representatives of labor believe that the New Jersey statute is unnecessary and should be repealed. Most of them feel that any kind of legislation vesting the Governor with statutory powers would merely "pass the buck" to the Governor, "through the abdication by the parties to him of the duties of settling the dispute." Moreover, they stress the absence of strikes in the utility field before the statute, and the frequency of strikes thereafter. They suggest that "the most practical and efficient treatment of public utility disputes can be realized through a policy of voluntary mediation . . ." which "will impose a sense of direct responsibility upon the disputing parties."

The views of leaders of management are, as noted above, practically identical with the views of the Union representatives. Significantly, company representatives shared the view that the mere existence of the law causes the parties to come to the bargaining table with a chip on their shoulders and to "play coy with each other." This attitude "destroys" collective bargaining. Moreover, "so long as supervisors are willing to work (barring sabotage or extreme weather conditions), such disputes need not result in immediate jeopardy to public health and safety." If a real threat to public health and safety should ever occur, the general police power of the State can cope with it. Thus, employers also favor repeal, with the suggestion of strengthening mediation services and, possibly, enactment of a state labor relations act.

The opposition of employers seems to be particularly emphatic with respect to compulsory arbitration. The representative of the New Jersey Bell Telephone Company pointed out that New York, which has no similar statute, has had no telephone strike, and that New Jersey and Indiana (which has a similar law) suffered much more disruption of telephone service since 1947 than did other states with no such legislation. He was critical of the results of the arbitrations to which his Company had been required to submit. He gave examples to prove that statutory arbitration boards "do much worse than the parties" in arriving at sound wage determinations. There had been no telephone strike prior to the enactment of this statute since the early nineteen twenties, when tie-ups occurred in New England; similarly, the last strike of Public Service Electric and Gas Company employees in New Jersey occurred in 1923. All manage-

ment representatives agreed that there were no strike-happy unions in this field, and that employees generally have a high sense of public responsibility; that they are anxious not to incur public disfavor. There was also agreement that labor-management relations are better in those states which have not enacted public utility anti-strike laws. One management representative expressed the opinion that enactment of these laws was due to legislative hysteria before the consequences of the strike had even been assessed.

PART III

THE EXPERIENCE OF OTHER STATES

To aid in assessing the value and effectiveness of strike-control legislation for public-utility disputes, information was sought regarding the experience in other states having such legislation. Examination of their experience, it was thought, would help to answer such questions as the following: Have the results from this type of legislation differed significantly from state to state? Have such differences depended on the type of law or the character of administration? How has strike-control legislation affected the process of self-settlement by the parties themselves? Have strike-control laws reduced the incidence of public-utility strikes below that in neighboring or comparable states without such laws? What conclusions have groups in the state drawn from experience under such legislation?

The Committee prepared a questionnaire for the purpose of obtaining information with respect to such questions. The questionnaire, reproduced in Appendix B, was sent to 127 public officials, arbitrators, and labor and management officials, who were known or reported to have had experience with such legislation in the following nine states: Florida, Indiana, Massachusetts, Michigan, Minnesota, Missouri, Pennsylvania, Virginia, and Wisconsin. Pertinent response to the questionnaire was received from 49 of the 127 persons to whom it was sent.

The provisions of the laws of the nine states vary considerably in the methods of strike control embodied in the legislation, although some states may have patterned their laws after those of other states. Differences with respect to coverage and statutory provisions are indicated in Tables I and II. Table I contains a brief summary of the methods of state intervention, whereas Table II includes not only a more detailed statement of the salient features of the state laws but also sets forth experience under each of them—any amendments to the law, the number of times and the industries in which the law has been applied, attitudes toward the law, and court decisions with respect to it. As is evident from Table II, the experience under these laws has varied considerably.

Differences in legislative provisions and in experience under the various state laws make it difficult to summarize the views expressed in the letters that were received in reply to the Committee's questionnaire. For a particular state, the conclusions of management,

labor, and public representatives with respect to the operation of the law often differed, and this was occasionally true within one or more of the three groups. Some of the deficiencies in the material obtained are inherent in the questionnaire method of data collection, but this appeared to be the only feasible way for the Committee to obtain the information desired. Published material with respect to experience in a particular state was also reviewed.

A state-by-state summary of opinions and attitudes toward this legislation as reported by questionnaire respondents is presented in Table III. Placement of some replies in one of the categories was rather difficult and perhaps somewhat arbitrary, so that care needs to be taken in interpreting the statistics for a particular state.[1] Table III may, however, gave a fairly correct over-all view for the nine states as a group. It shows that the preponderant opinion is that the state strike-control laws for utilities have tended to inhibit collective bargaining; that organized labor has generally opposed them; that employers and especially the public, which may sometimes not be fully informed, have generally been in favor of such state intervention; and that, for the most part, the opinion is that the laws have been satisfactorily administered, although a significant minority view exists that labor often has not been adequately treated by the state administration of this type of legislation.

Many of the respondents wrote at length to explain or qualify their answers. Although it is not possible to present a satisfactory summary of such material, some idea of its significance is indicated in the brief statements under the following six headings:

1. *Coverage and use of the legislative provisions.* A number of correspondents stated either that the industrial coverage of their state's law was too broad or that the state government intervened too soon or too frequently. Some suggested that before the law is invoked a hearing should be held to determine whether a genuine emergency is involved.

2. *Effects on collective bargaining.* A frequently expressed conclusion was that the laws inhibited collective bargaining by creating mental states that make settlement more difficult or by providing one of the parties with an incentive to use the law. Weak unions may see an advantage in government intervention; utility managements may believe that wage increases through government action provide a better case for rate increases before utility commissioners. Some respondents concluded that compulsory arbitration kills free collective bargaining; others insisted either that collective bargaining had not been impaired under these state laws or that free collective

[1] It proved impossible to classify some parts of certain replies because they were not sufficiently specific, and in a few cases the reply has been recorded as both pro and con because the respondent reported both opinions or effects.

bargaining is not possible in certain public utilities because strikes should not be permitted to perform their function of forcing compromise.

3. *Strike control methods and procedures.* Most respondents strongly favored conciliation as an early step. Some complained that the procedures in practice consumed too much time or placed too great restraints upon concerted action by labor. A few suggested either that an equal burden be placed on both parties under such legislation or that seizure be made more onerous. In some answers, stress was placed on the need for flexibility in the procedure to be followed so that the type of intervention would be well adapted to the circumstances.

4. *Attitudes toward the law.* Opposition to their particular state law was expressed by representatives of all three groups; support was most frequently stated by utility managements. Some correspondents claimed that certain local labor leaders took public positions in opposition to the law but privately were much less unfavorable in their views.

5. *Administration and personnel appointed to boards.* Generally speaking, there has not been complaint of unfair administration of the laws. Some correspondents did suggest more participation by the parties in the appointment of boards; labor particularly complained on that score. Some management representatives stated that persons appointed to such *ad hoc* boards knew too little about the industry.

6. *Influence of economic conditions.* Some of the respondents pointed out that the state laws were applied mostly in the post-war years from 1947 to 1952, which was an inflationary period, and that the effects of such legislation might be somewhat different under other economic conditions.

Persons with experience with collective bargaining in utilities in a number of states have pointed out that strike experience has not been noticeably different in industrial states with, and those without, such legislation. The States of New York, Ohio, Illinois and California seem to have suffered no more from public utility strikes than other states like New Jersey, Pennsylvania, Indiana and Massachusetts, which have such legislation.

TABLE I
STATE STRIKE-CONTROL LAWS FOR PUBLIC UTILITY DISPUTES

State	*Year of Enactment*	*Industrial Coverage*	*Methods of Strike Control*
Florida	1947	Electric power, light, heat, gas, water, communication and transportation	Strikes outlawed and provision for compulsory arbitration, with fines and court review
Indiana	1947	Electric, gas, water, telephone and transportation	Strikes outlawed and provision for compulsory arbitration under wage criteria with court review
Massachusetts	1947	Production or distribution of food, fuel, electric light or power, gas, hospital or medical services.	Governor is permitted to deal with emergency disputes in a variety of ways including seizure, fact-finding and arbitration.
Michigan	1939	Hospitals and utilities supplying water, light, heat, gas, electric power, transportation and communication	Fact-finding and recommendations with strikes postponed for 30-day fact-finding period, after which provision for 10 days of mediation on basis of fact-finding report, then a strike vote on employer's last offer conducted by the state before a strike can be called; compulsory arbitration abandoned in 1949 because State Supreme Court found law invalid due to procedural defects and U. S. Supreme Court invalidated strike-vote provision in 1950
Minnesota	1939	Business, industries and institutions which affect public interest	Fact-finding with recommendations with strikes postponed for 30-day fact-finding period
	1947	Charitable hospitals	Strikes outlawed with compulsory arbitration only with respect to maximum hours and minimum wages (interpreted as cost items)
Missouri	1947	Electric light and power, gas, heat, steam, water and sewer service, transportation and communication	Strikes postponed for 30-day fact-finding period; then if Governor decides strike would create emergency, he may seize property. Strikes forbidden during seizure.
Pennsylvania	1947	Electric, gas, water and steam heat but *not* transportation and communication	Strikes outlawed after mediator appointed, with last-offer strike vote preceding compulsory arbitration.
Virginia	1947	Electric light and power, gas, water, heat, transportation and communication	Governor may seize facilities in which a strike is threatened and state operates until settlement with financial losses on parties
Wisconsin	1947	Water, light, heat, gas, electric power, urban transit and communication.	Strikes and lockouts prohibited during 15-day concilation period and arbitration proceedings, with binding decision under compulsory arbitration effective for a period of one year. Invalidated by U. S. Supreme Court decision.

TABLE II

SUMMARY OF STATE EXPERIENCE

Florida

1. *Stimulus for legislation*—No specific events led to enactment of the law.
2. *Salient provisions of law*—The law makes it the duty of public utility employers and employees to exert every reasonable effort to settle labor disputes by collective bargaining. A conciliator is to be appointed by the Governor upon the petition of either party, and the Governor is required to appoint a conciliator should he deem the dispute, if not settled, would cause interruption of public service. Strikes and lockouts are prohibited during conciliation. If a possible 45 day period of conciliation is unsuccessful, a board of arbitration is appointed to hand down a binding decision within 90 days, which must conform with certain standards of comparison and which is filed with the Circuit Court. The Circuit Court may review the board's award, with appeal to the Supreme Court of Florida. Penalties for acting in concert to violate the law are, upon conviction, up to $1,000 or imprisonment in the County Jail up to 12 months, or both; and the utility and union may be fined not to exceed $12,000 a day for each day of interruption or suspension of operations. Violation of the Act may be enjoined and performance ordered by the court, with protection against compulsory labor.
3. *Amendments*—None.
4. *Use*—Law applied in one gas dispute (Jacksonville Gas Company) and three street railway disputes (Pensacola bus system, Jacksonville bus system, and Miami Transit Company).
   In Miami Transit case, union refused to comply with the law and, as a result, the union's president was arrested and the law was declared inoperative by the State Supreme Court in May, 1953.
5. *Attitudes toward the law*—Managements apparently approve in general; parts of organized labor are in opposition to the law.
6. *Court decisions*—State Supreme Court in Henderson v. State, 65 SO 2d 22, May, 1953, declared the law invalid on the grounds of the U. S. Supreme Court decision in the Wisconsin case.

Indiana

1. *Stimulus for legislation*—Public pressure following the Duquesne Light and Power Company strike in Pittsburgh.
2. *Salient provisions of law*—The law comes into operation only upon specific request of one or both of the parties to the dispute and then only if, after such request is made, the Governor decides to

comply with it. The initial step is conciliation, which is clearly defined. If that fails, the Governor has discretionary power to take action to bring about compulsory arbitration. The power and scope of the arbitrators is clearly defined, and the award must follow the prevailing pattern in the local labor market area both as to wages and fringe benefits. Either party can appeal to the courts from the decision of the arbitrators, and, if their decision is reversed on appeal, the Governor again has discretionary power to invoke anew conciliation and/or arbitration. At several points, the language of the Act invites settlement by collective bargaining, and makes no provision for seizure.

3. *Amendments*—None.
4. *Use*—Apparently used in 29 instances: street railways and buses, 14 times; electric power, 5 times; gas and electric combined, once; water, once; telephone, 8 times.
5. *Attitudes toward the law*—The views of managements and labor are apparently mixed, many leaders of organized labor seem to be opposed to the law.
6. *Court decisions*—Apparently no significant cases.

Massachusetts

1. *Stimulus for legislation*—With considerable organizing activity in public utilities and hospitals, several occasions arose when disruption of utility services was imminent.
2. *Salient provisions of law*—The dispute is first certified to the Governor by the Commissioner of Labor and Industries. The Governor may order both parties to appear before a moderator appointed by him, who tries to induce the parties to accept voluntary arbitration. If he fails in that effort in a period of 15 days, he reports the reasons for failure. The Governor can request both sides to submit the issue to a board of arbitration appointed by him. The Governor can declare a state of emergency and enter into arrangements with either or both parties to continue production and distribution. Or the Governor may seize the plant and appoint a fact-finding board to make recommendations for wages and conditions, which the Governor can put into effect during the period of seizure. Otherwise, the old rates of wages and conditions of employment remain in effect, and the union cannot strike because the Governor can obtain a court injunction.
3. *Amendments*—None, although some have been proposed by the Governor in 1954.
4. *Use*—The law has been applied in 6 cases, 4 of which occurred in 1953; the cases included 3 gas utilities, 1 electric light company, 1 milk case involving 12 companies; and a trucking industry case.

Four of the cases were settled by bargaining, arbitration was resorted to in 2 cases.

5. *Attitudes toward the law*—Evidently, management approves since no proposals for amendment have been introduced by management. The State Federation of Labor has filed a bill with the current legislature asking for repeal, although organized labor presented no objection at public hearings to amendments proposed by the Governor in 1954.
6. *Court decisions*—Apparently no significant cases.

Michigan

1. *Stimulus for legislation*—Partly prompted by a strike in an electric power company.
2. *Salient provisions of law*—After receipt of a notice from one or both of the parties, the Labor Mediation Board intervenes to mediate the dispute. If settlement cannot be reached through mediation, the Board is required to urge that the parties submit the dispute to voluntary arbitration. If within 30 days following notice to the Board, the matter has not been settled or submitted to voluntary arbitration, the Board is required to certify the dispute to the Governor for the appointment of a Special Commission, consisting of 3 disinterested persons and 2 non-voting members, one to be selected by each party. The Special Commission has 30 days, unless the Governor allows additional time, in which to conduct hearings and to prepare written findings and recommendations, which are not binding but must be made public by the Governor. Thereafter, the parties are obliged to resume collective bargaining for a period of 10 days, with the assistance of the Board. The Board must urge the parties to submit any unsettled issues to arbitration, and, in the event there is neither agreement nor a submission to arbitration, the Board certifies that fact and the remaining unsettled issues to the Governor. The Board is required to conduct a statutory strike vote with the employer's most recent offer on the ballot before a strike can be called.
3. *Amendments*—The law was amended to eliminate compulsory arbitration after Supreme Court ruling that the act was unconstitutional.
4. *Use*—The law has been used 28 times; 15 times in transportation, 11 in electric and/or gas utilities, once in the telephone industry, and once in a hospital case.
5. *Attitudes toward the law*—A number of managements consider the law helpful, but sections of both organized labor and management do not approve. Labor complains that the procedure takes too long and represents an unreasonable and unfair limitation on the the right to strike. Complaint has been made against mandatory

certification under the law and the view has been expressed that permissive certification would encourage bargaining, although the question exists whether that would be considered unconstitutional as an unreasonable regulation of the right to strike and vesting arbitrary powers in State Mediation Board.

6. *Court decisions*—The Michigan Supreme Court held the act unconstitutional as an attempt to confer non-judicial powers and duties upon judicial officers who were to serve as chairmen of the arbitration board, which was considered in violation of the state constitution. The 1949 Legislature then amended the act to provide for special commissions to serve in arbitration. In May, 1950, the U. S. Supreme Court ruled in the United Automobile Workers v. O'Brien, 339 U.S. 454, that the act, insofar as it affects interstate commerce, was in conflict with the Taft-Hartley Act and to that extent was invalid.

Minnesota

1. *Stimulus for legislation*—The difficult strike years of 1934-39 caused public demand for remedial legislation.
2. *Salient provisions of law*—They are:
   (a) 10 day notice of intent to strike or lockout must be filed with the State Conciliator. The provision is applicable only to intrastate industry.
   (b) When it appears to the State Conciliator that a strike in a public utility cannot be avoided he refers the dispute to the Governor.
   (c) The Governor may appoint a fact-finding commission. The appointment of a fact-finding commission stays further resort to economic action by the disputants for 30 days.
   (d) The law provides for compulsory arbitration of minimum wages and maximum hours in disputes involving charitable hospitals only.
3. *Amendments*—The 1947 Charitable Hospitals No-Strike Law.
4. *Use*—Conciliation is largely relied upon for the settlement of public utility labor disputes. Minnesota has had only one recent major utility strike, that involving the Duluth Superior Transit Company. The fact-finding provisions were not invoked because of the interstate nature of the operation which raised the question of jurisdiction. The dispute was settled by mediation.
5. *Attitudes toward the law*—Labor generally does not approve the law, although labor representatives have frequently requested that the law be invoked. Managements indicate the law may inhibit full collective bargaining. Public opinion generally ranges from indifference to approval.

6. *Court decisions*—The Minnesota Supreme Court held that the 10 day notice of intent to strike was unconstitutional except where limited to intra-state industry. (Missouri Supreme Court No. 35744, April 5, 1952). The compulsory arbitration features of the charitable hospitals provision of law is currently being reviewed by the Court.

Missouri

1. *Stimulus for legislation*—The strike of the employees of the Southwestern Bell Telephone Company which seriously affected telephone communications. The strike occured while the legislature was in session.
2. *Salient provisions of law*—The major provisions of the law are, as follows:
   1. Establishment of a 5 member tri-partite mediation board to mediate labor disputes in public utilities.
   2. The mediation board is empowered to appoint fact-finding boards which can make non-binding recommendations.
   3. The Governor may seize a utility in the event a strike is threatened or occurs which, in his opinion, threatens the public interest, health or welfare.
   4. During the period of operation of the utility by the state, strikes and lockouts are prohibited. Substantial penalties are provided for violation of these prohibitions.
3. *Amendments*—None.
4. *Use*—The mediation facilities has been used extensively, especially by smaller utilities. The seizure provision of the law has been invoked twice, both occasions involving public transportation facilities.
5. *Attitudes toward the law*—Managements, in general, seem to approve the law, while a majority of labor representatives indicate opposition. The law appears to have the support of the general public.
6. *Court decisions*—The attorney general advised the Missouri House of Representatives that "what was said by the Supreme Court of the United States about the validity of the Wisconsin law is, we believe, equally applicable to the Missouri law." The Missouri Supreme Court held that those sections of the law dealing with mediation and the establishment of fact-finding panels are constitutional. The Court did not pass on those sections of the law dealing with seizure and penalties (29 LRRM 2145).

Pennsylvania

1. *Stimulus for legislation*—The 1946 strike at the Duquesne Power & Light Company prompted the legislation.

2. *Salient provisions of law*—The law imposes the primary duty of settling public utility labor disputes on the parties. In the event of an impasse in bargaining, either of the parties or the Pennsylvania Labor Relations Board may request the Governor to appoint a mediator. Following the appointment of a mediator, from among the mediators employed by the Department of Labor and Industry, the status quo must be maintained until all the procedures provided for by law have been exhausted. In the event that mediation is not successful in resolving the dispute within 30 days, the mediator files a report to that effect with the Governor. The latter then direct the Pennsylvania Labor Relations Board to conduct an election among all of the employees in the bargaining unit involved in the dispute on the question "Shall the employer's offer be accepted?" In the event a majority fail to vote for the acceptance of the offer, the vote is construed as constituting a vote in favor of arbitration. Rejection of the employer's offers brings the statutory arbitration board, consisting of 3 members appointed by the Governor, into being. The board is directed to make written findings of fact, a decision and order upon the issues presented.

   Provision is made for appeal of an order to the courts on two basic grounds: (1) the usual common law provisions relating to arbitration and (2) an order not supported by the evidence.

   It is illegal to strike in violation of the provisions of the law and penalties for violation are provided.
3. *Amendments*—None.
4. *Use*—Reliance on the law is reported in 7 cases involving gas and electricity, (street railway, water and telephone are not covered by the statute). Basically, the state relies on its mediation facilities to settle public utility disputes, thereby obviating reliance on the other provisions of the law.
5. *Attitudes toward the law*—A state public official indicated that the law inhibited free collective bargaining. This view was supported by law. Management has a mixed view regarding the statute. It is the consensus that the public supports the measure in the belief that it receives protection from crippling utility strikes.
6. *Court decisions*—Several state court decisions have been made relative to the legality of specific sections of arbitration awards. There is no indication of a test having been made of the constitutionality of the statute.

Virginia

1. *Stimulus for legislation*—The threat of strikes of the employees of the Virginia Electric & Power Company in both 1946 and 1947

were the immediate causes of the enactment of the "Public Utilities Labor Relations Act."

2. *Salient provisions of law*—They are:
   (a) The parties are required to file with the Governor notice of negotiations and to file progress reports.
   (b) In the event of stalemate, the Governor can convene a conference. For the duration of the Governor's intervention the parties are obligated to maintain the status quo. The Governor at this meeting names representatives to attempt mediation. The state prepared for seizure.
3. *Amendments*—The "Public Utilities Labor Relations Act" was repealed in 1952 and a statute of general application was enacted. The Department of Labor was designated as the state agency authorized to mediate and conciliate labor disputes. If, in the opinion of the Governor, a strike threatens the health and welfare of the people, he is empowered to seize the utility or as much thereof as may be necessary and to operate it. Employees are given the opportunity to work for the state at the rates of pay and working conditions prevailing immediately prior to the seizure. The state is reimbursed from the income of the utility for expenses incurred in its operation. The utility receives 85% of the net income, as defined in the statute, of the property. Provision is made for the adjudication of differences between the state and utility by ultimate appeal to the Supreme Court of Appeals.
4. *Use*—Since 1947 there have been twelve seizures ranging in duration from 4 days to 10 months. The seizures involved transit companies 9 times, telephone companies 2 times and one ferry operation.
5. *Attitudes toward the law*—The labor unions express themselves as being opposed to the law. A management representative indicates that he believes management, generally, accepts the law as being a useful tool to insure continuity of service.
6. *Court decisions*—The Richmond Circuit Court held that the Virginia Public Utility Disputes Act is constitutional and denied an injunction against the use of the law sought by the Arnold Bros. Co. (32 LRRM T3).

Wisconsin

1. *Stimulus for legislation*—The strike of employees of the Milwaukee Gas Light Company and the 1947 telephone strikes were motivating factors leading to the enactment of the law.
2. *Salient provisions of law*—When an impasse in the negotiations between a public utility management and union has been reached and if such stalemate is likely to cause the interruption of an essential service, the Board (Wisconsin Employment Relations

Board) is directed to name a conciliator who will endeavor to settle the dispute. Fifteen days are provided for conciliation. If concilation fails, the Board designates a board of arbitration from a panel designed for this purpose. Such board is required to conduct a hearing and to base its findings on the evidence, certain standards being set up in the statute to guide the board in its deliberations. The order of the board of arbitration, after being filed, together with such agreements as the parties may themselves have reached, are binding and effective for one year from the date of filing.

The statute prohibits the calling of a strike or the instituting of a lockout. Compliance may be sought by the Employment Relations Board by the filing of an action for an injunction in the state courts.

3. *Amendments*—None.
4. *Use*—The law has been invoked in the following number of cases: gas utilities 4; electric utilities 22; gas and electric 2; street railways 2; telephone 9; and once in the Western Union. Note should be made that many of the electric utility cases accounted for are small, rural cooperative R.E.A.'s, whose experience in bargaining is very limited.
5. *Attitudes toward the law*—It appears that managements generally approve the law, although some management dissents are indicated. Similarly, unions are publicly on record as being opposed to the law although it is reported that some labor leaders were happy to avail themselves of its provisions.
6. *Court decisions*—The United States Supreme Court in the matter of the Amalgamated Association v. Wisconsin Employment Relation Board (February 26, 1951) held that the law was inconsistent with the federal law and hence invalid.

TABLE III

ATTITUDES AND OPINIONS ON STRIKE-CONTROL EXPERIENCE

STATE	Incidents of Strikes Reduced		Effect on Collective Bargaining			Law Approved by Organized						Administration Satisfactory		
	Yes	No	Little, if any	Enhances	Inhibits	Labor Yes	Labor No	Industry Yes	Industry No	Public Yes	Public No	To All	To All Except Labor	To None
Florida														
Labor (1)		1			1		1	1		1			1	
Utility Management (1)	1			1			1	1		1			1	
Indiana														
Labor (1)		1			1		1							
Utility Management (2)	2		1	1	1			1		2		1		
Public (1)					1		1							
Massachusetts														
Labor (3)		3			3		3	3		2			3	
Public (1)			1				1	1		1				
Michigan														
Utility Management (2)	2			1	1		2	2		2		2		
Public (2)	1				2		1			1		1		
Minnesota														
Labor (1)		1		1	1		1					1		
Utility Management (2)		1	1	1		1	1	2		2		2		
Public (2)	1			1	1	2		2		2		2		
Missouri														
Labor (2)		2			2		2	1	1	1		1	1	
Utility Management (2)	2			1	1		2	2		2		1	1	
Public (2)	1		1	1			2	2		2		2		

TABLE III (Continued)

ATTITUDES AND OPINION ON STRIKE-CONTROL EXPERIENCE

STATE	Incidents of Strikes Reduced		Effect on Collective Bargaining			Law Approved by Organized						Administration Satisfactory		
						Labor		Industry		Public				
	Yes	No	Little, If Any	Enhances	Inhibits	Yes	No	Yes	No	Yes	No	To All	To All Except Labor	To None
Pennsylvania														
Labor (2)	1	1			1		2	1	1			2		
Utility Management (1)	1			1			1	1		1		1		
Public (1)		1			1		1	1		1				
Virginia														
Labor (2)		1			2		1	1	1	1				
Management (1)														
Wisconsin														
Labor (1)		1			1		1	1	1	1			1	
Utility Management (1)					1	1	1	1	1	1			1	
Public (1)			1				1	1		1			1	
TOTAL														
Labor	1	11		1	12		12	6	4	6		4	6	
Utility Management	8	1	2	6	4	2	8	11	1	11		7	3	
Public	3	1	3	2	5	2	7	8	2	8		5	1	

NOTE: Totals will not add because of the failure of some respondents to answer all of the questions. Questionnaires were returned by officers of two major international unions which could not be included in the breakdown because of general character of the replies.

PART IV

THE LEGAL PROBLEMS

1. Seizure

The New Jersey Statute provides that the Governor may

> "take immediate possession of the plant, equipment or facility for the use and operation by the State of New Jersey in the public interest" (N.J.S.A. 34: B-13); thereafter, "such public utility shall become for purposes of production and operation a State facility and the use and operation thereof by the State in the public interest shall be considered a governmental function of the State of New Jersey" (N.J.S.A. 34:13 B-1).

This language would seem to contemplate temporary operation of the utility by the State which would imply loss of control by the owners and transfer of managerial powers to the Governor or the official designated by him. Although this is designed as a temporary measure, it would, nevertheless, amount to a taking of private property for public use which requires the payment of just compensation to the owners (N. J. Constitution, Art I, par. 20; 5th Amendment to U. S. Constitution).

In actual operation, however, seizure has been a mere formality in that the State administrator appointed by the Governor has never interfered with the management of the seized utility, nor did the State ever pay compensation. In fact, no claim for compensation was ever made. None of the New Jersey companies to which the statute has been applied operated at a loss at the time of seizure.

Significantly, the New Jersey statute contains no provisions for compensation. By contrast, Massachusetts provides that when the Governor declares an emergency, the owners of the seized plants may waive all claims to receive the proceeds of operation during seizure and

> "receive in lieu thereof fair and reasonable compensation for the appropriation and use of his property . . . In determining the amount of compensation to be awarded in such proceedings . . . there shall be taken into account the existence of the labor dispute which interrupted or threatened imminently to interrupt the private operation of such plant or facility, and the effect of such interruption or threatened interruption upon

the value to the petitioner of the use of such plant or facility." [Acts of 1947, Ch. 596, Section 4 (a) (B)]

The Virginia statute requires payment of 85 per cent of net income during seizure to the utility "as compensation for the temporary use of its business, facilities and properties." But the state or the utility may challenge this amount by attempting to prove that reasonable compensation required a lower or a higher payment (Acts of 1952, Ch. 696).

Enactment of seizure provisions similar to those of Massachusetts was also repeatedly considered by Congress as an alternative to the present provisions of the Labor-Management Relations Act of 1947 dealing with national emergencies. (See Senate Rep. No. 2073, 82d Cong. 2d, Sess; National Emergency Labor Disputes Act; S. 1919, 83d Cong., 1st Sess.; Congress. Record, May 15, 1953).

All of these provisions were designed to meet objections against mere token seizure as used heretofore in New Jersey. Obviously, the seizure device was intended to bring pressure on the parties to terminate their dispute and to dramatize the public interest in the continuation or resumption of vital services by having the State take over operations pending settlement of the dispute. To achieve this and, during seizure "it shall be unlawful for any person employed at such plant or facility to participate in or aid in any strike, concerted work stoppage or concerted refusal to work for the state as a means of enforcing demands of employees against the state" (N.J.S.A. 34:13 B-19). The pressure on employees is thus made effective. But this is an entirely one-sided scheme, since token seizure leaves management practically in control of the plant and permits continuation of revenues at a time when, but for the law, a strike might have temporarily eliminated earnings. Consequently, it has been argued with considerable force that seizure which is not equally onerous to both sides, is unfair and impracticable and can create only resentment. (See Willcox and Landis: *Government Seizures in Labor Disputes,* 34 Cornell L.Q. 155, at 170 (1948)).

On the other hand, the examples of Massachusetts and Virginia indicate that seizure in substance rather than form involves considerable legal difficulty. Foremost among these are, of course, the questions of the degree and method of control (including the determination of wages and working conditions) to be given to the state, the allocation of profits and losses between the state and the company, and the determination of just compensation. (See Willcox and Landis, *supra,* at pp. 167-176). As to the latter question, a distinction must further be made as to whether the company, at the time of seizure, was operating at a profit or at a loss. Although the latter situation did not arise in New Jersey, it would, nevertheless, have to

be faced in the event that provisions for real rather than token seizures were to be proposed; otherwise, the aim of the statute could be totally perverted by encouraging companies in financial difficulties to bring about seizures in the hope of receiving compensation awards. But even where the company was operating at a profit up to the time of the strike, seizure should not be made attractive by the prospect of a compensation award lest the usefulness of the device as a means to induce agreement by collective bargaining be destroyed.

These problems are well illustrated by the decision of the highest court in Virginia in *Anderson v. Chesapeake Ferry Co.,* 186 Va. 481, 43 S.E. (2d) 10 (1947) involving the determination of just compensation for the owner of a Ferry Company which had been temporarily seized by the Commissioner of Highways as a result of a labor dispute, pursuant to a special statute applicable to ferryboats only. The court emphasized that the Ferry Company "was not a going concern at the time of the taking," since the ferries "were then producing nothing for their owner, had done so for more than two weeks, and would not and could not earn anything for the Ferry Company so long as the strike continued." Consequently, "the profits that have been made by the Highway Commissioner do not represent money that has been taken away from the Ferry Company" and "are not the measure of just compensation to be paid the Ferry Company." This money was earned by the Commissioner "by using the power of the State to quicken into action an idle enterprise" which "would have remained idle and without any capacity to earn for its owner except for the exercise of the State's authority. *That authority should not be used to make money for the owner that the owner could not have made for himself.*" (Emphasis supplied). The court remanded the case to the trial court with direction to ascertain according to principles stated above, "the fair market value of the right to use the properties of the Ferry Company, including its right to take tolls."

The trial court would have to consider what a purchaser of that right "could afford to pay under all the circumstances" which include "the risks of operation, of further regulation of the tolls he could charge, as well as the necessity of meeting or compromising the demands of labor."

It is apparent that the principles expounded in this decision are reflected in the wording of the Massachusetts statute quoted above. They would certainly go a long way in discouraging employers of strike-bound or strike threatened seized enterprises to apply for just compensation, since such compensation would necessarily be of little comfort; agreement with the union, which would restore the freedom of action for both sides, would be immensely preferable.

There can be no doubt about the soundness of the Virginia decision as a matter of constitutional law. In fact, the United States

Supreme Court, in *U. S. v. Pewee Coal Co.,* 341 U. S. 114 (1951), recently dealt with the comparable question of just compensation for temporary war-time seizure of a mining enterprise which had been operating at a loss prior to the time of seizure. The court held that the government was not responsible for operating losses other than losses which were incurred by governmental acts, such as increased wage payments in accordance with a War Labor Board order.

2. Constitutionality of State Legislation

The paramount question is whether the State of New Jersey has power to enact public utility anti-strike legislation. The United States Supreme Court has held that federal labor legislation encompassing all industries "affecting" interstate commerce applies to privately owned public utilities whose business is carried on wholly within a single state. (*Consolidated Edison Co. et al v. Nat. Lab. Rel. Board,* 305 U.S. 197, 219-224 (1938)). Hence, it has been vigorously urged that state public utility anti-strike laws are unconstitutional because of conflict with the National Labor Relations Act of 1935 and the Labor Management Relations Act of 1947 which are the supreme law of the land under Art. VI of the Constitution of the United States.

In February, 1951, the United States Supreme Court held the Wisconsin Public Utility Anti-Strike Law invalid on that ground (*Amalgamated Assn. of Street, Electric Railway & Motor Coach Employees of America et al v. Wisconsin Employment Relations Board, United Gas, Coke & Chemical Workers of America, C.I.O., et al v. Same,* 340 U.S. 383). The Wisconsin act was in many respects similar to the New Jersey statute: Both declared a public policy of preventing labor disputes between public utilities and their employees which threaten interruption of essential services and provide that such disputes are to be resolved by compulsory arbitration; the decision of the arbitrators, subject to judicial review, is binding on the parties; strikes and lockouts are prohibited. The majority of the court held that these provisions forbade the exercise of the right to bargain collectively protected by the federal law.

Justices Frankfurter, Burton and Minton dissented on the ground that the Taft-Hartley Act did not deal with the problem of local strikes in public utilities. In fact, Congress had considered and rejected special provisions for public-utility disputes. This, according to the dissenters, merely indicated that Congress "did not wish to subject local utilities to the control of the Federal Government," particularly since such utilities have traditionally been subject to state regulation.

It is possible to argue, as did Governor Driscoll in a public statement commenting on the court's decision, that the New Jersey statute

is different from the Wisconsin law and that the validity of our statute is not effected. It is true that the New Jersey prohibitions against strikes and lockouts and the compulsory arbitration proceedings become effective only after the Governor has taken "immediate possession of the plant, equipment or facility for the use and operation by the State of New Jersey in the public interest"; the Governor may take such action if it is necessary to prevent or stop a strike which, in his opinion, "threatens to impair the operation of the utility so as to interfere with the public interest, health and welfare." (N.J.S.A. 34: 13B-13). The utility then "shall become for purposes of production and operation a state facility and the use and operation thereof by the State in the public interest shall be considered a governmental function of the State of New Jersey." (N.J.S.A. 34: 13B-1). The Wisconsin law contains no comparable provisions; indeed the United States Supreme Court emphasized that the Wisconsin statute "does not require the existence of an emergency" and that it had been invoked to avert a strike of clerical workers of a utility. [(See, also, *Garner v. Teamsters Union,* 346 U.S. 485, 488 (1953)]: "We have held that the state still may exercise its historic powers over such traditionally local matters as public safety and order . . ."). On the other hand, the court also called attention to the fact that Congress had considered and rejected compulsory arbitration or seizure to outlaw peaceful strikes for wages, hours and working conditions.

Under these circumstances, it is not possible to predict whether the Supreme Court could be persuaded to distinguish the New Jersey from the Wisconsin statute. Therefore, the constitutionality of the New Jersey statute is now a matter of considerable uncertainty. We do not know whether Governor Driscoll's failure to appoint statutory arbitration boards subsequent to the decision in the Wisconsin case was attributable to this uncertainty. Among the ten of our sister states with comparable legislation (see above, Part III), Virginia repealed its original statute (Code of Va. 1950 §40-75 et seq., repealed by Acts of 1952, c. 697), but replaced it with a more elaborate new act providing for state operation of public utilities, which was intended to avoid the charge of inconsistency with federal law. This new statute (Acts of 1952, c. 696, 1952 Supplement to Code of Va., §56-509 et seq.) declares the public policy not to permit "any substantial impairment or suspension" of utility operations; it authorizes the Governor to seize a public utility if he finds an "imminent threat of substantial curtailment . . . in the operation of any public utility" which, in his opinion, will constitute "a serious menace or threat to the public health, safety or welfare." The utility may refuse to turn over its plant to the State if it believes that there is no danger of substantial curtailment of its services; in that event the issue as to

the validity of the seizure order will be judicially determined. Similarly, the amount of compensation to be paid to the utility for the period of state operations will be decided by the courts, unless the parties agree. In any event, the state shall pay 85 per cent of net income from operations during the period of seizure. The statute contains no prohibition against strikes, but simply authorizes the Governor to replace those employees who do not wish to work for the State; wages and working conditions in effect before the strike shall govern during the period of state seizure, it being the express intent of the law "that any disputes as to such matters shall be settled by collective bargaining." The State Commissioner of Labor may offer mediation and conciliation (Acts of 1952, c. 697, 1952 Supplement to Code, §40-95.3). The highest court of Virginia recently rejected an appeal from a lower court decision which had held this new anti-strike statute "valid in all respects." A petition to the U. S. Supreme Court for review of this case is now pending. [See New Jersey Law Journal, July 22, 1954, P.1 and France: Seizure in Emergency Labor Disputes in Virginia, 7 Industr. and Lab. Rel. Rev. 347, 348 (1954)]

The Florida Public Utility Arbitration Law which, like the Wisconsin Act, grants no seizure powers but can be invoked only if the Governor finds that interruption of service would inflict "severe hardship . . . on a substantial number of persons" was held unconstitutional by the Florida Supreme Court on the basis of the Wisconsin decision *Henderson v. State,* 65 So. (2d) 22 (1953); but we are informed that the 1953 Florida Legislature refused to repeal the statute in the hope that its effectiveness might be revived by Congress (Florida Statutes 1953, Chapter 453).

In Missouri, which has a statute almost verbatim identical with ours, (Mo. Rev. Stat. Annot. Section 10178.101 et seq.) the State Attorney General, in a letter to the members of the House, dated March 19, 1951, advised that the statute was unconstitutional and void.

Although all of these statutes remain on the books, enforcement of compulsory arbitration has practically ceased in most places since the *Wisconsin* case. In his message to the Congress of January 11, 1954, the President of the United States recommended an amendment to the federal Labor-Management Relations Act which "should make clear that the several states and territories, when confronted with emergencies endangering the health or safety of their citizens, are not, through any conflict with the federal law, actual or implied, deprived of the right to deal with such emergencies." Accordingly, the Senate Committee on Labor and Public Welfare, on March 31, 1954, reported favorably S. 2650, introduced by Senator Smith of New Jersey, which proposed to add the following provision to the national labor act:

"Nothing in this Act shall be construed to interfere with the enactment and enforcement by the States of laws to deal in emergencies with labor disputes which, if permitted to occur or continue, will constitute a clear and present danger to the health or safety of the people of the States . . ." (See 33 L.R.R. 429).

Senator Smith explained that enactment of this provision would have the effect of taking away any doubt about the validity of such emergency-strike legislation as the New Jersey Law on Public Utility Disputes (33 L.R.R. 412).

However, on May 7, 1954, after debate, the Senate voted to return the bill containing this provision to the Labor Committee (34 L.R.R. 23). During the discussion preceding the vote objections were made on the ground that the meaning of the phrase "clear and present danger" was obscure in this context and that the bill would permit any Governor with a controlled legislature to engage in arbitrary strike-breaking (34 L.R.R. 50).

Under these circumstances the validity of state statutes dealing with strikes in public utilities appears more uncertain than ever because of the Senate's rejection of a proposal which was designed to recognize the constitutionality of such state legislation. The rejection might conceivably be interpreted as an implied approval of the *Wisconsin* decision of 1951.

In this connection we should point out that the doctrine of federal supremacy in the field of labor legislation has recently received additional support by the unanimous decision of the United States Supreme Court in *Garner v. Teamsters, Chauffeurs and Helpers Local Union,* 346 U.S. 485, 74 S. Ct. 161 (December 14, 1953). In that case the Court affirmed the dismissal of a petition by employers filed in the courts of Pennsylvania asking for an injunction against peaceful picketing on the ground that the complainants' grievance fell within the jurisdiction of the National Labor Relations Board to prevent unfair labor practices, and that state remedies were, therefore, precluded. Proceedings before the Board had not been initiated, nor was it clear how the Board would decide the case if it ever were presented. Indeed, the Court noted that the injunction suit in the state courts would have no merit even if the National Labor Relations Board should ultimately absolve the union from the charge of having an unfair labor practice; said the Court:

"For a State to impinge on the area of labor combat designed to be free is quite as much an obstruction of federal policy as if the State were to declare picketing free for purposes or by methods which the federal Act prohibits." (346 U.S. at 500; 74 S. Ct., at 171; the rule of the *Garner* case was applied in

Busch & Sons, Inc. v. Retail Union of New Jersey, 15 N.J. 226, 104 A. 2d 448 (1954).

In addition, we note that the N. J. State Board has consistently taken the position that it has no remedial or preventive authority in cases where alleged unfair labor practices are said to interfere with its determination of bargaining representatives (See MacDonald: *Compulsory Arbitration in New Jersey,* NYU Second Ann. Conference on Labor, 625, 653-658), and in view of the exclusive jurisdiction of the National Labor Relations Board in the prevention of unfair labor practices in industries affecting commerce, state legislation granting such authority to the New Jersey State Board would probably be held invalid under the authority of *Garner v. Teamsters Union,* 346 U.S. 485 (1953). Moreover, findings of the New Jersey State Board as to the appropriate bargaining unit could be challenged as inconsistent with federal law even in the absence of any proceedings before the N.L.R.B. Indeed, N.J.S.A. 34-13B-3 states that:

> "it shall be the duty of the State Board of Mediation to recognize as an appropriate bargaining unit any craft, group or class of employees of a utility, the majority of whom desire to be represented as such class."

This might well lead to unit determinations different from those which the N.L.R.B. would make pursuant to Section 9 (b) of the National Labor Relations Act, as amended. If so, the federal court would set aside the finding of the State Board because "these are the very real potentials of conflict which lead us to allow supremacy to the federal scheme even though it has not yet been applied in any formal way to this particular employer." *La Crosse Telephone Corp. v. Wisconsin Employment Rel. Board,* 336 U.S. 18, 26 (1949).

Perhaps this statement reinforces the conclusion to be drawn from the *Wisconsin* decision that compulsory arbitration and seizure are incompatible with federal law.

On the other hand, the *Garner* opinion contains this significant dictum:

> "We have held that the state still may exercise 'its historic powers over such traditionally local matters as public safety and order and the use of streets and highways.' Allen-Bradley Local No. 1111, United Electrical Radio and Machine Workers v. Wisconsin Employment Relations Board, 315 U.S. 740, 749. Nothing suggests that the activity enjoined threatened a probable breach of the state's peace *or would call for extraordinary police measures by state or city authority.*" (346 U.S. at 488, 74 S. Ct. at 164) (Emphasis supplied)

This recalls the statement in the *Wisconsin* case, mentioned above, that the Wisconsin statute was *not* emergency legislation. Thus, there remains the strong inference that the United States Supreme Court might approve State legislation in this area *only if* it could be persuaded that the particular facts of the case in which the statute was applied constituted an "emergency," or "would call for extraordinary police measures."

B. Even if the amendment set forth above had been enacted by the Congress, there would have remained some conflict between state and federal jurisdiction. We are referring to its Section 2-7 (N.J.S.A. 34:13 B-2 through 7) which have no reference to emergency situations created by actual or threatened strikes but lay down general rules as to the right of public utility employees to bargain collectively without employer interference, (§2) certifications by the State Board of Mediation of the appropriate bargaining unit and of the number of employees who are entitled to vote in an election, (§3), duration and renewal of labor agreements (§4), and requirements for notices of intention to change the terms of such agreements (§7); (sections 5 and 6 refer only to conditions existing at the time of the first enactment of the Statute and are, therefore, obsolete).

Some of these provisions are similar to those contained in the National Labor Relations Act, as amended; others, like the provision of N.J.S.A. 34:13B-4 relating to duration and renewal of contracts, cover subjects left open by the national act. The proviso in N.J.S.A. 34:13B-2 legalizing the closed shop is clearly invalid as being in direct conflict with federal law.

Insofar as this part of the New Jersey statute delegates to the State Board of Mediation authority to make determinations in representation proceedings, this part of our statute could hardly be considered as a necessary part of legislation designed to cope with emergencies.

PART V

THE COMMITTEE'S FINDINGS AND RECOMMENDATIONS

1. The Committee finds that:

a. State laws designed to outlaw strikes in the public utility or other essential industries are now of doubtful constitutionality because of conflict with federal law on the subject, under recent decisions of the United States Supreme Court.

(1) The failure of the Congress to act on the President's recommendation to delegate such authority to the states has added further doubt.

b. Collective bargaining and the promotion of equality in bargaining power constitute the essential part of the industrial policy of both the United States and the State of New Jersey, and it is imperative that the course followed by the State be consistent with this policy.

c. The most successful restraints on the use of the strike seem to have been those which the parties have voluntarily imposed on themselves.

(1) In contrast with compulsive types of legislation which have tended to arouse resentment and antagonism and thereby to have made their voluntary efforts at settlement less productive.

d. Upon review, it appears that laws which aim to prohibit strikes have been detrimental to the process of collective bargaining, not only in this country but in Great Britain, Australia and New Zealand as well.

(1) The existence of such laws has acted as a restraint on the bargaining parties; they are disinclined to make concessions, expecting their differences to be settled ultimately by the techniques provided in the law rather than through their own efforts.

e. Such laws have not diminished the frequency or threats of strikes; states without such laws have fared at least as well as those which have such laws.

(1) In New Jersey the instances in which public utility strikes have occurred or have been threatened have increased since the law was enacted in 1946.

f. Public utility industry and labor representatives have demonstrated over the years a serious concern for the public welfare, and it is a mistake to relieve them of this sense of duty.

(1) The industry has submitted to voluntary arbitration to spare the public the hazards of a strike.
(2) It is the policy of major labor organizations not to strike without first offering to submit their differences to voluntary arbitration.
(3) In time of strike, other than in transit, company supervisors man the work stations for long hours to provide as much service as possible.
(4) During strikes, the unions have not seriously tried to prevent supervisors from continuing such operations and have in some instances volunteered to render assistance in case of serious breakdowns due to accident or adverse weather conditions.
(5) Considering the tensions inherent in a strike situation, there is a reasonably good record of observance of our existing laws set up to protect public utility facilities and to prevent interference with their functions.

g. Despite fears to the contrary, we have never suffered a paralyzing emergency because of a strike of the kind contemplated by our Public Utility Labor Disputes Law, and there is no reason to expect that we shall in the foreseeable future.

(1) On the contrary, since the validity of the law became questionable in 1951, the law has never been fully employed in accordance with its terms, and the parties seem to have been able to make progress in their negotiations without unduly inconveniencing or harming the public.
(2) It is not the threat or even the commencement of a strike that creates the hazard which is feared but rather its undue prolongation, except at times of unusual stress.

h. If we should nevertheless be faced with a shutdown of public utility operations which causes a genuine threat to the health, safety, or welfare of the people, we would not be helpless or impotent to protect ourselves.

(1) The Governor's inherent powers as chief executive would then be exercised, in the same sense in which he could act to meet other types of disaster or emergency.

(2) The Governor could very quickly convene our Legislature in special session to work out the course to be followed or to ratify and approve the steps which he has already taken.

i. It is unwise and unwarranted to give the public a false sense of security by having a law of doubtful effectiveness on the books.

(1) In most instances when such laws have included severe penalties, it has ben found that they should not be enforced, and promptly after efforts were made to enforce them they have been modified or repealed.
(a) This happened, for example, in New Jersey in 1947, and in Great Britain in 1951.

j. It is incompatible with our tradition and with our basic philosophy to undertake to regulate wages and working conditions by government directive rather than by agreement of the parties.

(1) Moreover, the most effective means of minimizing strikes have been those which have been developed by the parties themselves.

k. If circumstances change because of unfavorable attitudes or irresponsible behavior on the part of these industries or their employee groups, or because we enter into a period of war or other stress, we can then review the problem and do what may then seem appropriate and necessary in the light of all the facts and developments.

2. The Committee recommends that:

a. The Public Utility Labor Disputes Law and its several amendments be repealed.

b. Chapter 100, Laws of 1941, under which the New Jersey State Board of Mediation was created, be amended to require both the union and the company, in all cases in which a strike in a public utility is scheduled to start at a definite time, to inform the New Jersey State Board of Mediation thereof at least 72 hours before said scheduled time, and, if a strike occurs, to report to said Board every 48 hours while the strike is in effect indicating the status, the progress, and the efforts then being made to terminate the strike.

c. The Legislature adopt a joint resolution expressing:

(1) Its confidence in collective bargaining as the proper and most efficient means of resolving differences between public utility management and labor, under our declared industrial policy.

ıfidence that in reposing reliance on the parties to ɔut their differences through negotiations at the bar- g table, the parties will conduct themselves in a er consistent with the public interest in the main- ɛe of essential services.

ɜire and hope that before a public utility strike is the parties, in the public interest will in good faith the services of the State Board of Mediation, and ıd to reasonable suggestions made by that agency or e Governor of means that may be employed to re- their differences.

ɜire and hope that before a public utility strike is the parties will in good faith give full consideration possible use of voluntary arbitration or voluntary ıding with recommendations as a means for settling differences and thereby avoiding harm to the public.

ɲpectation and desire that if a public utility strike ɗ occur which critically affects the health, safety or ɾe of the people of the State or of any community, overnor will exercise his authority as chief executive diately to alleviate the condition and if necessary, ptly convene the Legislature for the purpose of de- ning what additional steps should then be taken for rotection of the public.

Respectfully submitted,

THE GOVERNOR'S COMMITTEE ON PUBLIC UTILITY LABOR DISPUTES LEGISLATION

ɪnting Labor

RLES D. CICCHINO
ACE S. DOVE
ɪY H. HANSCOM

Representing Industry

LUKE A. KIERNAN, JR.
ARTHUR T. CARPENTER
ROBERT C. SIMPSON

Representing the Public

CARL H. FULDA
RICHARD A. LESTER
DAVID L. COLE, *Chairman*

ERRATA

MR. LUKE KIERNAN'S NAME APPEARS IN ERROR ON PAGE 55 AS A SIGNATORY OF THE MAJORITY REPORT. MR. KIERNAN'S MINORITY REPORT BEGINS ON PAGE 60.

APPENDIX A

Responses to Questionnaire

L. M. Ayres, Pennsylvania Gas Company
J. H. Barnes, Indiana-Michigan Electric Company
K. A. Bradshaw, Virginia Transit Company
John Connelly, Clifton Bus Company
Robert DeCamp, DeCamp Bus Lines, Inc.
G. H. Frieling, Kansas City Transit Company
F. U. Gleason, Minnesota Power Company
Clyde W. Hough, Labor Relations Counsel to City of Detroit
F. L. Larkin, Wisconsin Electric Company
S. F. Leahy, Detroit Edison Company
J. H. Lucas, Milwaukee Transport Company
E. W. Morehouse, New York Public Utility Company
W. A. Paul, Indiana Public Service Company
J. R. Ramsey, Public Service of Indiana
E. H. Werner, Jersey Central Power and Light Company
H. G. Williams, Florida Power and Light Company
H. K. Wrench, Minneapolis Gas Company

Harry Boyer, President, Pennsylvania CIO Council
M. J. Boyle, Vice President, 6th District, I.B.E.W., Illinois
Julian F. Carper, Executive Vice President, Virginia CIO Council
G. M. Freeman, International Vice President, I.B.E.W., Ohio
William Gunn, Secretary, Minnesota State Federation of Labor
G. A. Haberman, President, Wisconsin State Federation of Labor
K. J. Kelley, Secretary, Massachusetts Federation of Labor
J. W. Liggett, International Vice President, I.B.E.W., New York
Louis Marciante, President, New Jersey State Federation of Labor

Leo C. Brown, St. Louis University
Morrison Handsaker, Lafayette College
Arthur Lesser, Jr., Stevens Institute of Technology
Lois MacDonald, New York University
Russell A. Smith, University of Michigan
Maurice S. Trotta, New York University
Lewis Tyree, Rutgers University
Fred Witney, Indiana University

George Bowles, Chairman, Michagan Board of Mediation
Jesse Friedin, New York Attorney
Laurence Gooding, Chairman, Wisconsin Relations Board
Harry Hanson, Conciliator, Minnesota Board of Conciliation
Christian Herter, Governor, State of Massachusetts
Thomas L. Parsonnet, New Jersey Attorney
Daniel Rogers, Chairman, Missouri Board of Mediation

APPENDIX B

GOVERNOR'S COMMITTEE ON PUBLIC UTILITY LABOR LEGISLATION

Questionnaire

1. What, in your opinion, are the salient points of your state law dealing with labor disputes in public utilities?
2. What events prompted the enactment of this legislation?
3. What developments resulted in amendments, if any?
4. Was the incident of strikes in public utilities reduced after the enactment of this law? And if so, why?
5. Since the passage of the law
   a. How many times has it been invoked?
   b. In what types of cases (check the appropriate ones)
      1. Gas
      2. Electricity
      3. Street Railway
      4. Water
      5. Telephone
      6. Other (specify)
6. What criteria were used to determine the existence of an emergency, if such determination is a feature of the law?
7. In your judgment, does this statute
   a. Enhance free collective bargaining?
   b. Inhibit free collective bargaining? (Please amplify your response)
8. What part or parts of your state statute would you retain as representing effective legislation in assuring service to the community and justice to management and labor?
9. In your opinion, does this law have the approval of
   a. Labor
   b. Utility Managements
   c. The public in your state?
10. In your opinion, what is the view of
    a. Labor
    b. Management
    c. The public

    Toward the administration of your state statute? Specifically, indicate your views regarding the attitude of the above groups toward such statutory boards as may have been created, in terms of their composition, their techniques of operation, the time permitted to them, etc.
11. If you were drafting a law designed to promote peaceful industrial relations in public utilities consistent with protecting the tripartite interests involved, what features would you incorporate in such a law? And why would you include those particular features?

APPENDIX C

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The Governor's Committee on Legislation Relating to Public Utility Labor Disputes

MINORITY REPORT AND RECOMMENDATIONS OF LUKE A. KIERNAN, JR., COMMITTEE MEMBER

The Committee, of which I am a member, was charged with the obligation of making recommendations to the Governor which would assist him in formulating legislation concerning labor disputes in public utility industries.

I have carefully read the majority report and recommendations. It is suggested therein that the present Act regulating labor disputes in public utility industries be repealed and that the Legislature adopt a joint resolution which, in substance, would define the public policy of this State on the subject of labor disputes in utility industries.

The problem which confronts the Committee is a very realistic one and requires a more affirmative approach. I sincerely believe

that a procedure is necessary which would protect the rights, insure the responsibility of the parties and, at the same time, afford a maximum of protection to the citizenry of New Jersey. . . .

Essential public utility services, of which heat, light, gas, power, communication and transportation are typical, should not be jeopardized by a labor dispute between the utility company and its employees. In our present day mode of life these facilities are in the category of necessities. Actually, the Legislature of this State has recognized the importance of these services for many years past by establishing regulatory bodies and boards, of which the Public Utility Commission is an outstanding example. Thus, utility companies have been regulated for the convenience and necessity of the public, on the basic premise that a utility in the named category is affected with a "public interest" and, therefore, its operations should be regulated in the public interest.

Of paramount importance, in a matter such as the one here involved, is a consideration of the public interest. It is my earnest feeling that the convenience, welfare, health and safety of the people of New Jersey should not be jeopardized by the failure of a utility company and its employees to agree upon the terms of a new collective bargaining agreement. The innocent victim of every public utility strike is the public itself. A procedure that does not bar the right to strike, but rather utilizes, on the other hand, every available facility before that extreme measure is undertaken, is reasonably consistent with the public welfare.

As an active practitioner in the Courts of this State for the past quarter of a century, I fully realize the implications in that part of the majority report which discusses the legal and constitutional aspects of the problem. Even so, there is a substantial amount of legal opinion which would permit this State to regulate, within certain prescribed limits, labor disputes in public utility industries. Actually, our present Supreme Court of New Jersey and the Appellate Division of the Superior Court of this State have already indicated unequivocally the correctness of such opinion.

The Majority report several times mentions the desire of labor and management to cooperate in the public interest. I would give both management and labor a very realistic opportunity to show that public interest by the enactment of legislation which, in substance, would prescribe the following procedure in labor disputes which would jeopardize essential public utility services, in lieu of the procedure contained in the present law:

A. That the parties to a labor dispute be given a free and completely uninhibited opportunity to resolve their differences by collective bargaining negotiations.

B. When the parties to a labor dispute are completely deadlocked and unable to agree upon a collective bargaining agreement or a renewal of the old one and the Chairman of the State Mediation Board certifies that the parties are unable to agree, and, as a result thereof, essential public utility service is jeopardized, then and in that event, a fact finding board be impanelled, one member of which is to be selected by the Union; the other member by the Company; the third, or public member or chairman thereof, to be selected by the Chief Justice of the Supreme Court of New Jersey.

In connection with the procedure described in subdivision B, it is my opinion that the selection of a chairman of such board should be completely removed from the field of politics. There is no reason why the present, or any other Governor of this State, should be embarrassed politically by having the obligation of selecting the dominant personality of such a Board. I suggested the Chief Justice as the one to select the public member because thousands of litigants and their counsel appear in the Courts of our State every year to have their disputes determined by a final adjudication and I can think of no other forum in which there is more public confidence and which would merit the confidence of both parties to the labor dispute. It is my personal opinion that retired members of the judiciary would be eminently qualified to act in such capacity, since men in that category have spent many years evaluating facts in light of the existing law. By training and background they possess all the necessary qualifications to decide such matters on the issues presented by the parties in light of the standards which are hereinafter referred to.

C. When the fact finding board has been thus composed it would proceed to a hearing in which both sides could present whatever evidence, exhibits, data, or testimony they have pertinent to the issues involved. At the conclusion of such hearing the board would make its findings of fact, conclusions and recommendations within a period of 45 days from the date of the appointment of the chairman of the board unless the parties, by mutual consent, agree to extend the time limit.

D. When the Board has concluded the procedure outlined in subdivision C., it would file its report with the Chairman of the State Mediation Board and a copy thereof with the Chief Justice of the Supreme Court of New Jersey, and a copy to each of the contending parties.

The recommendations of the fact finding board would not be binding on either party.

E. Within 10 days after the filing thereof the Chairman of the State Mediation Board would convene the parties to the dispute in an effort to resolve their differences.

In connection with the procedure outlined in subdivision E, it is my feeling that as a result of the fact finding, public opinion would crystalize and, in that way, exert pressure on both parties to settle their differences in light of the conclusions and recommendations of the board.

F. In the event that the parties are unable to agree or accept the recommendations of the fact finding board, the State Mediation Board would then conduct, under its supervision, a secret ballot of all the employees in the particular bargaining unit involved in the dispute, to determine whether the latest offer of the company, subsequent to the fact finding reports, is acceptable to them or whether, in lieu thereof, they would prefer to strike. A majority vote of all such employees would control.

In connection with the procedure outlined under subdivision F, it seems to me that the continual and constant statements concerning the right to strike have dimmed the inherent right of every American to work, and in a matter which so seriously affects the latter's right, every employee in a public utility industry should have the right to say, by secret ballot, whether or not he will risk the discontinuance of his own employment by way of a strike rather than accept the latest proposal of the company.

The entire procedure outlined above would oblige the parties to a labor dispute to exhaust all the remedies contained therein, which would include complete freedom of collective bargaining, fact finding if the parties could not agree, and a secret strike ballot subsequent to the filing of the fact finding report, in an all-out effort to avoid the extreme measure of a strike. Pending this procedure and the utilization of such facilities, the Courts of this State, having jurisdiction of injunctive suits in labor disputes, would be empowered to enjoin any strike, work stoppage or lockout.

G. In connection with the fact finding hearing there should be, in my opinion, standards by which the board is bound in determining the issues between the parties. Standards are necessary, because in the absence thereof the tendency to compromise and be guided, in part, by expediency as distinguished from objective considerations and real right, is inevitable. This is especially so in the utility field where the rights of third parties, namely the public, are concerned. Under the circumstances, the necessity of standards is peculiarly apparent. I, therefore, propose the following set of standards:

1. The interest and welfare of the public.
2. Comparison of the wages, hours and conditions of employployment of the employees involved in the fact finding proceedings, and the wages, hours and conditions of employment of the employees of other similar utility companies operating in New Jersey and the adjoining wage-market areas.
3. Comparison of the wages, hours and conditions of employment of the employees involved in the fact finding proceedings, and the wages, hours and conditions of employment of the employees of other industries operating in the territory served by the utility involved.
4. Consideration of the overall compensation presently received by the employees involved in the fact finding proceedings, including but not limited to, vacations, holidays, premium pay, pensions and other welfare benefits.
5. Consideration of the job security and tenure of employment of the employees involved in the fact finding proceedings.

The issues to be determined by the fact finding board are those upon which the parties to the labor dispute are not in agreement at the last collective bargaining session.

In connection with the fact finding hearing the board shall not, under any circumstances, consider or take into account the position of the parties during the course of their negotiations, nor the offer of the company or the demand of the union during such negotiations.

The procedure which I have suggested does not outlaw strikes in public utility industries but it does oblige the parties to utilize the facilities of such procedure in an all-out effort to protect the public interest and at the same time, to do substantial justice to the parties involved in the labor dispute. Neither labor nor management in the utility industries should hesitate to have the facts of their respective positions determined by a fact finding board rather than resort to what is so often referred to as "a test of economic strength" at the expense of the public.

Respectfully submitted,

LUKE A. KIERNAN, JR.