WORK OF THE MICHIGAN LABOR MEDI ATION BOARD

Thesis for the Degree of M. A.

MICHIGAN STATE COLLEGE

William Beattie Crawford

1950

This is to certify that the

thesis entitled

"Work of the Michigan Labor Mediation Board."

presented by

William Crawford

has been accepted towards fulfillment
of the requirements for

MA degree in ~~Economics~~

Charles C. Killingsworth
Major professor

Date May 19, 1950

O-169

SUPPLEMENTARY
MATERIAL
IN BACK OF BOOK

WORK OF THE MICHIGAN LABOR MEDIATION BOARD

By

William Beattie Crawford

A THESIS

Submitted to the School of Graduate Studies of Michigan
State College of Agriculture and Applied Science
in partial fulfillment of the requirements
for the degree of

MASTER OF ARTS

Department of Economics

1950

THESIS

Table of Contents

Chapter I

Introduction

Generally when a person wishes to write upon a subject in the field of labor, he finds himself literally swamped with material. Countless books and articles have been written about unions, picketing, court decisions, the National Labor Relations Board,[1] and so ad infinitum. All that remains for the author to do, then is to assemble the parts, analyze the material and present his paper. The most difficult task is giving an intelligent analysis of the data.

However the Michigan Labor Mediation Act[2] has not been so fortunate. The Michigan mediation experiment definitely has not received wide acclaim. Articles concerning the Act and the Michigan Labor Mediation Board[3] are conspicious because of their absence. It can't be denied that the existence of the Act and the board is common knowledge, especially to the experts in the field. Nevertheless, the work of the board is a vague and hazy concept even to many of the experts.

It might be pointed out by some that the Michigan board is relatively unimportant and does not deserve the attention that, for example, the NLRB receives. It can't be denied that an act of national scope is of greater interest to the country as a whole. But it doesn't necessarily follow that the state act is unimportant. In the first place the act covers many people in the state that are engaged in small business. In addition, the board mediates disputes with the Federal

Conciliation Service as well as those cases that aren't considered to be under the interstate commerce clause. Second, many new experiments in labor legislation come from the state labor laws. If these were the only reasons, we couldn't be justified in saying that the Michigan Labor Mediation Board is unimportant.

One might contend with some justification that the work of the board is unspectacular and therefore attracts little attention. This is probably true in the sense that the board does not issue decisions in the manner of other labor relation boards. In fact a mediation body may well appear to be unspectacular. But when we consider that the Act places certain limitations upon the right to strike it is not logical to assume that the Michigan board is so unspectacular that it merits no attention at all.

Obviously then there must be a reason why the authors have avoided the Michigan Act. The logical reason appears to be that the information necessary to prepare such an article is not available. The board publishes no decisions or orders, or even attempts to gain the public eye via the newspapers. Even the Labor Relations Reporter of the Bureau of National Affairs[4] is unable to obtain much information concerning the Act or the board. Thus the information necessary to create an article about the board is hidden away in the files of the board or is stored in the minds of the members and employees

of the board. What lies under the surface of the Act can be obtained only from the board or the thousands of employees and employers whose c ses have been handled by the board. Consequently, most of the information in this report is due to the generosity of the Michigan Labor Mediation Board and its employees.

More information concerning the board could be helpful in many ways. For example the experience of the board could be passed on to others interested in the activities of the state labor boards. It might be possible for an index of the effectiveness of mediation to be shown in the analysis of the board's cases. Some knowledge of the results of the restrictions of the right to strike would certainly be of great value. Finally, the people of the state and the nation could have some scale to evaluate the procedures of the Act and have a basis for an intelligent vote.

It is indeed unfortunate that more publicity has not been given to the work of the Michigan board.

At this time I would like to make my basic assumptions clear. Much confusion and misunderstanding will be eliminated, if my personal beliefs in the subject of labor relation are brought into the open at the beginning of the report.

First of all, it is my opinion that the policy of collective bargaining is the best solution to labor

problems that is available at the present time. It is admitted that the policy of collective bargaining has many flaws and defects, but the advantages far outweigh the disadvantages.

There are three basic ways of settling labor disputes. These are:

1. Unilateral determination
2. Governmental determination
3. Collective bargaining

Unilateral determination is the settling of a dispute by one party alone. We usually think of this as being the settlement of the dispute by the employer. However, there is no reason to assume that the union could not issue decisions in the same manner if the opportunity presented itself. The determination of a dispute by one of the parties alone invariably involves an arbitrary decision. The opposing party has to accept the decision or else. If we as a nation believe in democracy, then the unilateral determination of labor disputes should be eliminated.

No one who has any knowledge of the United States would suggest that the policy of governmental determination of a labor dispute would be acceptable as a public policy. We are still skeptical of anything that smacks of government. As long as the government activity produces no monetary reward, the public is, if you will pardon the expression, "agin it." Thus government determination of

labor disputes can also be ruled out as against public policy.

We now find that we have eliminated two of our three possibilities as being against public policy. If for no other reason, collective bargaining is the victor by default. I shall not attempt to enumerate the advantages of collective bargaining. Such a discussion would be out of place in a report such as this. Needless to say, there are many advantages that could be enumerated that would show collective bargaining to be in the interest of the public.

Next I would like to point out that I believe some form of mediation and conciliation in a labor dispute will also protect the public. If the mediator can eliminate a strike or shorten the length of one, he is of value to the community and the nation.

Finally, I am of the opinion that arbitration should be the final step in the shop grievance machinery. The parties should have ample time to settle their own grievances, but if they cannot, the collective agreement should specify voluntary arbitration of the dispute. However, if the dispute is over the terms of a new contract, everything possible should be done to persuade the parties to settle the dispute themselves and not bring in a third party to make a binding decision.

1. Referred to hereafter as the NLRB.

2. Michigan Laws (1939) Public Act 176, effective June 8, 1939. Referred to hereafter as MLRA or "the Act."

3. Referred to hereafter as the "mediation board" or "the board."

4. Referred to as Labor Relations Reference Manual; cited as LRRM in the footnotes.

Chapter II

Origin and Development

Even before the enactment of the National Labor Relations Act in 1935, it had been the practice of many state legislatures to regulate industrial relations within their respective states. Some of the state acts have been encouraging to labor organization, others have been quite restrictive. It is signigicant to note that there was a state mediation board in Michigan as early as 1915. That board was a dead issue before the passage of the Michigan Mediation Act of 1939, but nevertheless it can be considered as a precedent for the framers of the Michigan law.

As a consequence of the many and sometimes violent disputes that occurred during the 30's and possibly from a firm belief that the National Labor Relations Act[1] had gone too far in the encouragement of union activity, some states passed laws to restrict the operation of unions. One result is the Michigan Labor Mediation Act of 1939.

One of the purposes of the Michigan Act was "to create a board for the mediation of labor disputes."[2] The framers of the Act were of the opinion that the prevention and prompt settlement of labor disputes was in the public interest. They stated "that the voluntary mediation of such disputes under guidance and supervision of a government agency will tend to promote permanent industrial peace

and the health, welfare, comfort and safety of the people of the state."[3] And thus was born the Michigan Labor Mediation Board.

Before we examine the operation of the board, it will serve us well to observe briefly the character of the Michigan Act. First, it must be recognized that the Act is "restrictive"[4] in nature. That is, it places certain obstacles in the path of labor organizations. Foremost among these restrictions is the strike vote provision which specifies no strike unless the procedures under the Act are followed. Furthermore the Act gives little encouragement to union organization other than a statement that collective bargaining is legal and listing five employer practices that are illegal.

Second, for violations of the Act the procedure is the "court technique."[5] That is, the court system is used to police the Act instead of conferring quasi-judicial powers upon the board as was done in the NLRA. Provision is made for fines and imprisonment or both in the Michigan Act.

Finally, as an overall observation the Act centers around the mediation activities of the board in <u>any</u> labor dispute in Michigan. Thus the central theme of the Act is the mediation approach to labor disputes.

Mediation Aspect

Probably the greatest confusion concerning the MLMB is the tendency for the casual observer to compare it to the NLRB. Nearly everyone is at least vaguely familiar with the work of the national board, and logically assumes that a state board performs the same duties with respect to the industries within a state that are not subject to the interstate commerce clause. But the operation of the Michigan board is fundamentally of a different character. It has no unfair practices to police, no authority to issue cease and desist orders, no power to protect the right to organize and bargain collectively; in fact it has few powers usually conferred on an administrative board. Perhaps the best comparison that can be made on a national scale is with the Federal Mediation and Conciliation Service. Actually the Michigan board may send a member to sit beside the federal conciliator in mediation proceedings within the state. Now no one familiar with labor relations would expect the Federal Mediation and Conciliation Service to function efficiently if it were given the responsibilities of the NLRB. Consequently it must be borne in mind that the term "board" has an entirely different meaning in the Michigan Act from the common usage of the term as derived from the NLRA. No one should be surprised that the Michigan Act does not follow the pattern of the NLRA because after all the title of an act should give some clue as to its contents.

In general then the work of the MLMB can be described by saying that they have the duty to intervene and mediate a labor dispute before a strike or a lockout occurs. If a strike occurs without a notice to the board it is deemed illegal and punitive action can be taken by the courts.

Legal Provisions for the Board

We shall now turn to the provisions for the board as given in the Act itself. The board is to consist of three men selected by the governor with the advice and consent of the senate. It will be important to notice that the Act states that the "members of the board are to be selected without regard to political affiliation."[6] One member shall be designated as chairman by the governor. The appointment is for a term of three years with a new appointment coming up every year. (Thus two of the three original members were appointed for terms of one year and two years respectively.)

The only requirements for a member that are set forth in the Act are: First, that the member be a citizen of the United States; second, that he shall be a resident of the state of Michigan; and finally, that he be a qualified elector of the state of Michigan for 5 years preceeding his appointment as a member. Obviously these requirements give no positive qualifications such as knowledge and experience. Apparently, it is expected that the

governor and the senate will select the best man available for the job. Furthermore the provisions preclude the selection of a qualified man from outside the boundaries of the state of Michigan. Naturally it isn't surprising that the legislature should be interested in employing the electors of the home state. While there may be many men outside the state who could qualify for the job it will give the employer some confidence if the man is a resident of the state and interested in his problem. There shouldn't be much difficulty in finding a man with the qualifications even if the area is restricted to the state of Michigan.

The member shall take the oath of office and continue to hold his office until his successor is appointed. If any vacancy occurs the new appointee shall hold office for the remainder of the unexpired term. In addition it should be pointed out that a vacancy or absence will not hamper the function of the board. Two members shall at all times constitute a quorum, but official orders require the concurrence of a majority of the board.

The removal of a member may be accomplished by the governor for "misfeasance, malfeasance, or misfeasance in office, after hearing."[7] Fortunately, this provision has never been used and remains a matter of conjecture as to its exact interpretation.

The monetary renumeration received by the members is not startling. When in actual pursuit of their duties

the members receive $20 a day with a limit of $5000 per annum. Actually the members have found that the job demands their full time participation and the $5000 is the equivalent of a salary. Actual traveling and other expenses incurred are added to this figure. In addition there is no restriction on other employment if the member can find time. While $5000 plus expenses is not a sufficient amount to attract the best men in the labor relations field, it may be considered to be in line with comparable positions in the state government. The complaint can nevertheless be made that the salary is too low to be of much interest to the expert who doesn't have a strong desire to serve his state.

The Executive Secretary is appointed by the members of the board. The governor, however, may recommend a selection to the board. The secretary attends the board meetings and takes the minutes of the session. At the present time the secretary functions as the head of the Lansing office because the members have their offices in Muskegon and Detroit. The secretary assigns the conciliator to the disputes and in some instances acts as a conciliator himself. Thus the Coordinator of Conciliation is a fancy name for another conciliator.

All employees of the board are under Civil Service except the Executive Secretary and the Coordinator of Conciliation.

1. 49 Stat. 449 (1935). Referred to hereafter as NLRA.

2. Michigan Laws (1939), Public Act 176, effective June 8, 1939, Preamble.

3. Ibid., Section 1.

4. For this term I am indebted to C.C. Killingsworth, State Labor Relations Acts, University of Chicago Press, 1948, chapter 11.

5. Ibid., pp. 132-133.

6. Michigan Laws (1939), Public Act 176, Section 3.

7. Ibid., Section 4.

Chapter III

General Labor Disputes[1]

Unlawful Strikes in General

Before we analyze the procedure followed for disputes in the Michigan Act, it is necessary to look for a moment at the conditions that will make a strike illegal and therefore subject to court action. These provisions will apply to all of the procedures that will be outlined below, so it will be helpful to keep them in mind.

Briefly from Section 22a of the Act, it is unlawful to call a strike or lockout:

1. Without first giving a notice to the board.
2. Without the authorization provided by strike vote.
3. While mediation is pending or proceeding, or before the board or the parties declare further mediation useless.
4. While mediation or an election is underway in a jurisdictional dispute.
5. While the machinery for settlement of public utility dispute is pending or proceeding.

Furthermore, such unlawful acts by an employer or a labor organization shall be punished by a fine of not more than $1,000 a day for each violation. Each day in

which the offense occurs or continues shall be counted as a separate offense.

The board, the attorney general, any prosecuting attorney on behalf of the people, or any individual or person may seek appropriate legal or equitable relief in any circuit court having jurisdiction. While the Act provides that the board may obtain an injunction, as a matter of policy, they do not. However, this has not always been the case. In the first years of the board's life they did petition for injunctions.[2] Clearly the injunction implies force; and force has no place in mediation, which is primarily a demonstration of tact. Court action against the board is bound to create adverse criticism by the interested parties. The solution quite obviously was not to seek the injunction.

The Provisions in General

Before a detailed examination of the "no strike" provisions for general business units is undertaken, an over-all picture of the action should be brought to our attention. This will serve to give the whole picture before the individual parts are explained. While it might be desirable to analyze the parts and then present the whole, I believe that a clearer picture will be obtained by presenting the material as a whole first and filling in the blanks later in the discussion.

The procedure to be followed by general business breaks down into the following steps:

1. Notification to the board 10 days before the threatened strike or lock out.
2. Mediation in good faith.
3. Election to strike by the employees.

Now we must add the meat to our skeleton and note what these three steps are in reality. The first question that comes to mind is, "What is a dispute?" If we look to the Act we will find that "the terms 'dispute' and 'labor dispute' shall include but are not restricted to any controversy concerning the association or representation of employees in negotiation, fixing, maintaining or changing terms of employment, regardless of whether the disputants stand in the proximate relation of employer and employee."[3] Apparently any disturbance that might lead to a strike or lock out is intended to be covered under this definition of "dispute." The last clause was added by the Bonine-Tripp amendment of 1947 and can be considered to be a direct inclusion of stranger picketing. So far there have been no court decisions that have clarified the definition of a dispute and the board has not been challenged on account of the non-existence of a dispute. Of course there has to be some difference of opinion or contro-

versy involved, so that a collective agreement shall not be dumped into the lap of the board and written by them. Thus the board usually refuses to handle "wildcat strikes" and requires some negotiations to have been carried on.

1. The notification

The notification of the impending strike or lock out is sent to the board by the union in case of a strike and by the employer in case of a lock out, as a general rule. However, either party may send the notice to the board.[4] The notice, in addition, includes a statement of the issues of the dispute. This notice has to be sent or delivered at least ten days before the threatened strike or lock out is scheduled to take place. It is important to understand that at the end of this ten day period, a strike may still be illegal. The main function of the notice is to bring the dispute to the attention of the board. As a secondary function, it implies that negotiations have been under way for a period of time and one of the parties has decided that it is time to resort to action.

The notification was extended from five to ten days because it was frequently impossible for the board to hold a mediation session before five days in many disputes. However it may be a matter of months before a strike may legally be called if the mediation

sessions continue.

Upon receipt of the notice, the board sends out a questionnaire.[5] Formerly, the board called the parties, but this proved to be quite expensive. This questionnaire is primarily for statistical purposes, but it does ask if the parties desire mediation. If the parties desire mediation a conciliator is assigned to the case. The conciliator, no later than the next day, contacts the parties and sets a suitable date for all three parties to hold a mediation session. The time varies, but as a general rule the case has entered mediation before ten days have expired from the first notification.

Provision is made also for emergency cases. Where the board feels that the issue is "hot" or a "wildcat strike" might occur, the dispute is given priority over preceding cases and is brought to mediation as soon as possible.

II. Mediation

Mediation, conciliation and arbitration are three terms that are quite common in newspapers and labor relations reports. However common these terms may be, it is evident that there has been some confusion over their meaning, at least to the general public. Michigan follows the generally accepted definition of the terms. Conciliation is accomplished by the parties themselves. That is, the conciliator merely keeps the group together

and depends upon his presence alone to bring about a settlement. In mediation proceedings the mediator (conciliator)[6], has the added advantage that he can suggest solutions and participate in the discussions. In other words the mediator (conciliator) can actually help the parties formulate their solution to the dispute. However, arbitration is essentially the settlement of the dispute by an outsider, whose decisions the parties agree to obey. Thus these definitions place mediation in the middle ground between conciliation and arbitration.

Section 10 of the Act sets down the framework for the board to follow during the mediation process. "After the board has received the above notice (notification of the impending strike or lock out), or upon its <u>own motion</u>, in an existing, imminent or threatened labor dispute, the board may and, upon direction of the governor, the board must take such steps as it may deem expedient to affect a voluntary, amicable and expeditious adjustment..."[7]

It shall be the duty of the board:[8]

a. To arrange for, hold, adjourn or reconvene conferences between the disputants.

b. To invite the disputants to attend such conferences and submit their grievances or differences.

c. To discuss such grievances and differences with the disputants or their representatives.

d. To assist in negotiating and drafting agreements for the adjustment or settlement of such grievances and differences.

The board and the conciliators have the power to hold public or private hearings at any place within the state. In addition, they may subpoena witnesses and compel their attendance, administer oaths, take testimony and receive evidence.[9] This provision gives the board an effective club that might be used to bring some recalcitrant union or employer back to the mediation proceedings. The mere presence of such a provision is probably enough to command respect, at least it has rarely been used. It is indeed questionable if the mediation aspect of the board could be maintained if such pressure activities as are suggested by this section were the rule instead of the rare exception. Nevertheless the power to subpoena witnesses assures that the parties will attempt mediation and not utterly disregard the Act.

When the mediator holds the first meeting his first step is to ask the party that turned in the notification to give its view of the disputed issues and to discuss their position. The other party is then given a chance to add to the issues and give their

position. After this is done, the conciliator adjourns the meeting.[10]

The next step is to meet with each party and determine the important issues. As the union usually makes the demands, it is convenient to meet with them first. The list of important objectives serves to eliminate the surplus issues that were thrown into the negotiations. These surplus issues are intended to warn the employer that the union regards them as important and may demand them next year.

The conciliator then meets with the employer and shows him the issues that he thinks should be settled first. Naturally the conciliator is careful not to imply that the other issues are not considered important by the union at this time. The employer then prepares to mediate these issues first. The mediator then brings the parties back together and attempts to work out a settlement. If this does not produce an agreement, the conciliator asks the employer to leave and attempts to draw up an offer of settlement with the union. This offer is then presented to the employer as a "package" and a settlement usually follows. In case all mediation efforts are exhausted the conciliator suggests that a strike vote be taken.

If the strike vote proposition is accepted by either

party, the conciliator urges the union not to begin the strike upon the receipt of the strike results. Instead the conciliator impresses upon the union the solidarity of the employees as expressed by the strike vote and advises them to approach the company again. The actual threat of a legal strike enhances the position of the union considerably and a settlement may be reached.

III. The Strike Vote

Before the Bonine-Tripp amendment to the MLMA in 1947, a five day mediation period after the notification to the board was the sole requirement before a legal strike could be called. The Bonine-Tripp amendment has extended the notification period to ten days and makes the further requirement that a strike vote be taken of the employees in the bargaining unit[11] before a strike is legal.

The parties to the dispute have the duty "to actively and in good faith participate in the mediation thereof"[12] before the strike vote may be taken. There is no penalty stated for not participating in mediation, but one of the parties could bring the case to court for enforcement. In practice the conciliator generally holds the meeting together with his prestige and the threat of a subpoena until the parties begin to mediate in good faith. It is interesting to note that several

all night sessions have been held to bring about mediation in good faith.

Either party or the board may call a halt to mediation proceedings, if it is thought that further mediation will be to no avail.[13] In other words, when there seems to be no probability of settlement of the case by the board, or one of the parties believe that a strike vote will aid its cause the mediation proceedings can be stopped. As might be expected, the union asks for the strike vote in a majority of the cases.

If either of the parties notifies the board that further mediation would be non-productive, the board must hold an election within ten days of such notice or if that is not practicable, the election shall be held within twenty days.[14] If the board terminates the mediation no time limit exists under the Act. However, in order to be congruent, the board applies the ten-twenty ruling when it causes the mediation proceedings to cease (which is very rare).

In a strike election, the conciliator files the Election Work Sheet[15] with the election supervisor. This work sheet states, among other things, the purpose of the election, the bargaining unit and the issues to appear on the ballot.

Every employee in the bargaining unit is eligible

to vote, thus including non-union employees.[16] The employer provides the election supervisor with a list of eligible voters, which is approved by all parties. The list is to include all hourly productive and maintenance employees excluding supervisory employees with the right to hire and fire, as of a certain specified date. If the parties cannot agree on the eligibility of an employee, he is allowed to vote on election day. However, either party may challenge the employee as an unqualified voter for cause. The election supervisor then places the employee's vote in an envelope marked "Secret Ballot" and seals the envelope. This envelope is placed in another envelope marked "Challenged Ballot Envelope"[17] and completes the information on the face of the envelope. The position of both the employer and employees are noted under the reasons for challenge. The challenged ballot is then set aside until the completion of the balloting. If the election results hinge upon the outcome of the challenged votes, the members of the board determine the status of the employee.

The board has excluded supervisors and executives, discharged employees, part time employees and those employees that are laid off with no immediate hope of returning to work. Included among employees are those on leave, sick leave, and employees temporarily laid off. If it

can be proven that an employee was discharged for union activity, he is deemed to be an eligible employee in the election. The policy of not rendering a decision on the eligibility of a voter unless the challenged ballots will determine the election has, of course, greatly reduced the decisions made by the board, and in fact such a decision is quite rare in strike elections.[18]

If an eligible worker is unable to be present at the election because of sickness of physical disability, a ballot will be mailed to him provided the employee notifies the board in writing of his inability to attend the election. This absentee ballot must be in the board offices at least twenty-four hours prior to the election or delivered to the election supervisor before the closing of the polls at the place of balloting.[19]

A notice is posted in prominent places about the place of business, stating the time, place, and purpose of the election. The notice also contains information regarding the eligible voters and absentee ballots.[20] The employees and the employer may designate one representative for each place of voting to observe the casting and counting of the ballots. These authorized observers or the agent of the board may challenge for cause the eligibility of any person to cast his ballot. There is to be no campaigning at the place of balloting

while the election is in progress.[21]

A statement of the employer's last offer shall be attached to, or incorporated in, the ballot, if either party makes this request.[22] It is the opinion of the board that if strike votes are to be held, a statement of the employer's offer is necessary if the procedure is to be democratic. They correctly assume that the employee should have some information on which his decision to strike can be based.[23] However, the issue is sometimes clouded by both parties insisting upon a great volume of information being included in the statement.

The board or its representative may keep the polls open as long as it deems necessary.[24] This provision is to enable all the employees to vote. Thus, if the line of voters is around the corner at the deadline, the polls are kept open until all of the employees have cast their ballots. Quite often the places of balloting are widely separated, in which case the polls are kept open until the ballots are assembled.[25]

The board shall count the ballots as soon as the polls have closed, or as soon as practical, if it is impossible to tabulate the votes immediately. The board or its representative then issues a certification[26] of the results to the parties.

An election may be contested by submitting a petition with reasons to the board within forty-eight hours after the election is closed. Within another forty-eight hours the board shall conduct an investigation of the charges and make a binding decision upon the parties as soon as it is possible.[27]

The results of the strike election shall be valid for a period of thirty days after the receipt of the certification from the board. This time may be extended by a written agreement between all parties concerned. If the employer requests the board to conduct the strike election, the results shall be valid for any period the board may decide, provided it is not less that thirty days.[28] Therefore, if the union does not win the strike vote requested by the employer it cannot call a legal strike or demand another election for at least thirty days plus any extension the board may desire. This prevents a union from working the election to death and of course places a great restriction on stranger picketing and union organization.

If a majority of the bargaining unit does not favor the strike, any strike that is called is considered to be illegal.[29] If the union wins (and they generally do), a strike may then legally be called.

The parties may desire further mediation and request

the services of the board. If the board chooses, it may intervene in the dispute and again attempt to accomplish a solution. It has been found that the mediation proceedings usually begin in earnest after the strike election. If the services of the employees may be terminated at any moment, both parties have an added incentive to reach an agreement. Thus, the true mediation of a dispute may begin only after the strike vote.[30]

The Theory and Evaluation of the Strike Notice

The basic idea behind a strike notice is to bring a labor dispute to the attention of the board before a strike has been called. It is thought that if a state agency can intervene in a dispute before the work stoppage has taken place, a settlement can usually be brought about without a strike. The issues that are brought before this agency are supposedly deadlocked and the agency will contribute to the settlement by the introduction of new ideas and wisdom drawn from the agency's wide experience.

The strike notice is not necessarily the signal for the Michigan board to begin mediation. It is rather a notification that a dispute may occur. The Taft-Hartley Act requires that a notice be sent to the Federal Mediation and Conciliation Service and state mediation agencies 30 days before the termination of a contract.[31]

Consequently, there are notifications that are merely a compliance with the law and do not require mediation at that moment. The board is nevertheless aware of a potential dispute.

The strike notice has in reality caused many unions to notify the board long before they actually plan to call the strike. In the extreme case, the questionnaire sent by the board is the first notice that an employer has of the dispute. The employer may rush to the union and determine what is wrong and make a settlement before those "outsiders" from Lansing arrive on the scene.[32] Moreover, it was the opinion of the Regional Office of the UAW-AFL that nearly 7 out of 10 disputes are settled by the mere notification of a dispute to the board. That is, the employer either agreed to the union's propositions, or he relaxes his position so that a settlement can be reached.[33] If fear of state intervention can persuade the employer to sign an agreement, who can blame the union for being early with their notification.

If the employer does not sign an agreement and the board enters the dispute before the parties have earnestly engaged in collective bargaining, the picture is changed. Here the board may find that it is writing the agreement for the parties. It may be recalled from the discussion of mediation above that the board <u>may</u> enter

the dispute and is not required to enter unless the governor so directs. This provision is included in the Act to prevent the premature entry of the board into the dispute. If there is an existing agreement, the parties shall have made an honest effort to settle their differences by collective bargaining. If there is no agreement, there must be a threat of a strike before the board will lend its services. If every time an employer said, "No", meant that a dispute existed, the board would be swamped with requests to mediate threatened recognition disputes when actually no real dispute exists. If the union in question gains enough power to effectively call a strike, then the board will attempt to mediate.

In actual practice, the strike notice has not been offensive. While it may have some undesirable effects, the good points outweigh the bad. If we are to have a public policy of mediation, there must be some method of calling disputes to the attention of the mediator before a strike is in progress. If the dispute is mediated before the union and management have taken an unretractable stand, neither party will "lose face" if it accepts something less than was hoped for in the beginning.

The correct timing of the entrance of the mediator is one assurance of success. There is no positive

method to assure that the board will enter the dispute at the correct moment, but the 10 day notice at least gives the board a chance to determine the moment of entry.

The strike notice is also intended to be a cooling-off period. This was obviously the case when the Act did not call for a strike vote. It has been found that the 10 day period is not too long to wait and may afford the parties an opportunity to prepare a statement of their position and arrange a meeting with the board. The parties may have been bargaining for weeks and the extra 10 days is not considered by the board to constitute a hardship for either party.

The board definitely believes that the strike notice has served a useful purpose and will continue to do so in the future. As long as the so called "cooling-off period" is only 10 days, I am inclined to concur in this opinion. If the period were lengthened and the parties were getting "hotter" the outlook would be different.

The Theory and Evaluation of the Strike Election

For a full appreciation of the strike election, we must consider the practices that prompted its passage. There were stories circulating at the time of the passage of the Bonine-Tripp Act about the methods that unions were using to call the members out on strike. Naturally these stories were heard by the legislature in Lansing.

One of these stories concerns a union that was contemplating a strike. One Sunday evening the local union met and conducted its own strike vote. The decision was against a strike. The next evening another meeting was called and this time the hall was extremely crowded and only a small portion of the membership could obtain a seat. The committee that was selected to investigate the desirability of a strike gave its vote orally and the answer was a firm "No" again. The union president, however, was not so easily discouraged. He called for a vote from the floor by "those in favor stand up." As the majority of the members were already standing the strike issue was easily carried.

One other tale that was being told at that time concerned another "prevalent" union practice. The members after a long and hard day's work attended a meeting to decide if they should strike. The meeting lasted, with many arguments, until well after midnight and still no vote was taken. Now the members had worked a full shift and had to return to work in the morning. So one by one they drifted out of the meeting and went home for some rest. Soon all that remained at the meeting were the radical union leadership and the vote to strike passed with no opposition. [34]

The strike vote was designed to prevent such union tactics and put the strike vote in the hands of a state organization for supervision. The strike vote quite effectively eliminated the practices that were described above and if we consider only that aspect, the strike vote has been a huge success.

It may be safely stated that the legislature had these evils in mind when it passed the strike vote provision. Many members of the legislature probably thought they were voting on a procedure that would eliminate only these undemocratic practices and did not attempt an investigation to substantiate the truth or frequency of these obviously undesirable practices. If all a strike vote did was to prevent the calling of a strike without the proper consent of the employees, the vote would be of some value if it ever prevented these undemocratic practices by a union.

I cannot say whether the legislature was aware of the ill effects of strike votes or not. If they were not, it is because the legislature did not observe the operation of strike votes as they were conducted under the War Labor Board, for example. Possibly the legislature may have thought that these shortcomings "can't happen here."

Well, it did "happen here." In the first place the strike vote nearly ruined the mediation aspect of the whole Act. It was found that the central theme of the

Act was fast becoming "strike vote" instead of mediation. Nearly every case was requiring a strike vote.[36] We might expect that the unions would wish to delay negotiation until they had a legal right to strike. It is rather surprising to find that the employers themselves were stalling negotiations until a strike vote was taken.[37] A partial explanation of this phenomenon may be the old idea that "our boys won't strike, it's just those union representatives that wish a strike." At any rate it was rapidly becoming a standard practice for both parties to delay true negotiations until after the strike vote was taken.

Now if the parties do not use the strike vote as a final step in negotiations the whole theory of the Michigan Act is overthrown. The parties are supposed to bring a deadlocked issue to the board and thrash the dispute out with the help of the board as mediator. When the parties make a mockery of this pre-election mediation the effectiveness of the Michigan Act is sharply curtailed. It is true that the board may enter into the dispute after the strike election but then we might just as well hold the election as soon as possible after the notification to the board and begin mediation after the vote. In the rush to prevent strikes the legislature seems to have forgotten the mediation

aspect of the Act.

If it could be maintained that a strike notice brought disputes before the board prematurely, this fault is multiplied by a strike vote. If the parties wish to have a strike vote taken and haven't honestly attempted to bargain, the services of the board may be useless. The old saying that, "You can lead a horse to water but you can't make him drink," is a useful analogy in this instance. The parties will wait until the vote is counted before they begin to actually engage in collective bargaining.

In addition, the strike vote is a restriction on the organizing activities of the union. If a strike is illegal before strike vote, the union will have to proceed with the utmost care.[38] If a picket line is established and is not considered free speech, an injunction will follow.[39] Thus if the employees of another concern picket a non-union establishment with the intent of calling a strike the picket line may be ordered dissolved.[40] If a union cannot protect its standards from the competition of non-union firms, it may find itself in the embarrassing position of having to forego a wage increase at a time when other unions are granted a wage increase. If we are interested in encouraging the policy of collective bargaining, then regardless of the "rights" of the parties, we must allow

the union to attempt to organize the non-union employer.

It must be remembered that the union is the victor in a strike election in nearly every case.[41] Now it would not be logical to assume that every union man wishes to go on strike. He may have been a party to a work stoppage before and certainly he will not quit work because it is fun. Most workers live too close to the margin to consider a strike humorous. If we can conclude that a majority of the workers do not wish to strike, then there must be another reason why the worker consistently votes for these strikes. The fact is that a strike vote has come to mean a vote of confidence for the union and not a decision to strike or not to strike. The worker has placed his faith in the union and usually will stand by this expression of faith.[42] To borrow a term from the psychologist, the strike vote is not a valid test. That is, it does not measure what it is supposed to measure.

Moreover, the strike vote is considered by the union leadership as a pledge to strike if they do not receive their demands. The union then feels that it is <u>obligated</u> to strike. Before the introduction of the strike vote the board might stave off a strike for weeks with mere persuasion. But now the union feels that it has to strike or lose face completely.[43] This cannot be considered in harmony with the reduction of strikes.

Such a lengthy discussion of strike votes is hardly necessary due to the recent U.S. Supreme Court decision that said these strike votes were unconstitutional because they were in direct conflict with the Taft-Hartley Act.[44] Thus if the company is determined to be engaged in activities affecting interstate commerce, the provisions of the Michigan Act have no application. Nearly every employer can be considered to be engaging in activities affecting interstate commerce, as the definition now stands. The Michigan board may find that if it enters a dispute, a strike vote cannot be taken in a majority of cases. Purely intrastate industries are the only exception to the interstate commerce clauses at the present.

An Evaluation of Mediation by the Board

An exact measurement of the effectiveness of mediation is a difficult task. About all that can be done is to look at the record, and then ask the parties their opinion.

As for the record, the board has done a remarkable job. As a rule the percentage of strikes to cases is something less than one or two percent.[45] This ratio isn't subject to the same criticism that is leveled at a ratio of cases received to cases settled. Almost every case is settled eventually and a board could easily attain 100% efficiency by keeping the cases open until they are closed. However, the number of cases

received is not an accurate measurement of the threat of strikes. As was stated above the board receives many notifications that will never need mediation or are settled with the minimum of assistance of the board. Without reading something into these figures that simply is not there, the Michigan record seems to be very good.

The employers and unions and other interested persons expressed a favorable reaction to the board with one exception.[46] From this admittedly small sample I will conclude that the mediation aspect of the board is functioning well.

1. My own term that excludes public utility and hospital, state employees and jurisdictional disputes.

2. Verified by Carlyle A. Gray, Executive Secretary of the board since 1944.

3. Michigan Laws (1939) Public Act 176, Section 2 (b).

4. The Taft-Hartley Act, Section 8 (d) (3), requires that a notice be sent ot the state mediation agency at the same time that notification is given to the Federal Mediation and Conciliation Service.

5. A copy of the questionnaire is included in the folder in the back cover.

6. Michigan defined its mediator as a "conciliator."

7. Michigan Laws (1939), Section 10.

8. Ibid., Section 10 (a), (b), (c), and (d).

9. Ibid., Section 11.

10. This description of a hypothetical mediation proceeding was supplied by James Greenfield, a conciliator with the Michigan board since 1940.

11. The term "bargaining unit" is defined in Chapter VI under the discussion of recognitional disputes.

12. Michigan Laws (1939) Public Act 176, Section 9. (2).

13. Ibid., Section 9a. (1).

14. Ibid.

15. A copy of the work sheet is included with the material in the folder under the back cover.

16. Michigan Laws (1939) Public Act 173, Section 9a. (1).

17. A copy of these envelopes is in the folder under the back cover.

18. For the discussion of strike election, I am indebted to Henry G. Trembly, an election supervisor.

19. Rules and Regulations Relating to Elections Pursuant to Act No. 176 as published by the board.

20. A copy of the notice is included under the back cover.

21. Rules and Regulations Relating to Elections.

22. Rules and Regulations Relating to Elections, also Michigan Laws (1939) Public Act 176, Section 9g.

23. From an interview with Carlyle Gray, the Executive Secretary of the board.

24. Rules and Regulations Relating to Elections.

25. Henry G. Trembley.

26. A copy of this certification is in the folder under the back cover.

27. Rules and Regulations Relating to Elections.

28. Ibid.

29. For a discussion of the validity of the strike vote see Auto Workers v. McNally 22 LRRM 2389, 22 LRRM 2170; Shakespeare Co. v. United Steel Workers 23 LRRM 2341; The Auto Workers case has been declared unconstitutional by the U.S. Supreme Court

30. James Greenfield.

31. Labor Management Relations Act (1947), Act of June 23, 1947 (80th Congress, 1st session), Section 8. (d). (3).

32. James Greenfield, conciliator with the Michigan board.

33. Dale Simons, Regional Office of the UAW-AFL, Lansing, Michigan.

34. These stories were given by James Greenfield as a reason for the passage of the strike vote by the legislature. They are not to be considered factual but merely to show the setting in which a seemingly innocent strike vote provision was passed.

35. It should not be implied that such practices as outlined were standard procedure.

36. James Greenfield.

37. Ibid.

38. Frank Corser, International Representative Sub-Regional Office of the UAW-CIO.

39. Shakespeare Co. v. United Steel Workers, (CIO), 23 LRRM 2341.

40. Consumers Sand & Gravel Co. v. Kalamazoo Building & Construction Trades Council, Michigan Supreme Court (1948) 321 Michigan 361, 22 LRRM 2119.

41. Carlyle A. Gray and John Greenfield. Unfortunately the facts and figures on strike vote are unavailable at this time.

42. Arthur H. Raab, Industrial Associates, Lansing, Michigan, and first chairman of the board.

43. Ibid.

44. Auto Workers v. McNally

45. See Appendix B.

46. The exception is Arthur H. Raab who expressed the opinion that the board had lost the confidence of both parties and was very partial to the union.

Chapter IV

Hospitals and Public Utilities

The procedure in General

The procedure followed by the board for disputes involving public utilities and hospitals follows the same general pattern as was observed in general labor disputes. However, there are certain additional requirements that have to be met, if a strike is to be considered legal. Again the general provisions will be outlined briefly before the full description is given.

The steps are:

1. Notification to the board 60 days before the strike or lockout is scheduled.
2. Mediation by the board.
3. Certification of the dispute to the governor within 30 days of the notification.
4. A special commission is appointed by the governor.
5. A report with recommendations by the special commission within 21 days.
6. Mediation for 10 days by the board,
7. Certification of the remaining issues to the governor by the board.
8. Strike election by the board

It is quite evident from this involved procedure that hospitals and public utilities are regarded by the legislature of the state of Michigan as being of prime

importance. A strike is delayed for roughly seventy days and even the public is brought into the picture via public recommendations. Thus Michigan views hospital and public utility disputes in much the same manner as Congress has viewed national emergency strikes. One big difference, however, is that the procedure is automatic in the Michigan Act and does not depend upon a declaration of an emergency. Thus we have a clear case of a state regulating the right to strike, in addition to mere mediation of the dispute subject to a strike vote.[1]

Logically, one of the first questions to be answered is,"What is a public utility and hospital?" In section 2 (h) of the Act "the term 'public utility service' means the furnishing for compensation of water, light, heat, gas, electric power, public passenger transportation (other than taxi service), communication, or any 1 or more of them, to the public of this state, but shall not include transportation rendered by an employer subject to the railway labor act."[2]

The Act states that "disputes concerning wages, hours or other terms or conditions or concerning the interpretation or application of a collective agreement"[3] shall be handled in accordance with the provisions of the Act. Strangely this wording excludes any reference to representation, which is included in the definition of a "labor dispute" in Section 2 (b). Thus the legislature

did not expressly encourage the board to mediate representation cases. The provision was designed to apply to unions that had already been recognized and may be considered to be a disagreement to union organization and recognition. However, disputes concerning representation are considered to be included in "other terms or conditions of employment."

Disputes are required to pass through the settlement procedure provided in the collective agreement. But if there are no settlement provisions, or the provisions do not terminate in voluntary arbitration, any unsettled dispute shall be handled in accordance with the provisions of the Act.

I. Notification has been described in the preceding chapter and the only change to be noted is that the mediation period has been extended to 60 days in the case of public utilities and hospitals.

II. Mediation

The general procedure in mediation was given under general labor disputes and need not be repeated again. There are some important changes in the exact procedure. The first step of the board is to intervene in the dispute and determine if "the parties have engaged in collective bargaining as herein defined. The parties to a hospital or public utility dispute shall be obligated... to

bargain collectively at all times. The parties are under the further obligation to participate actively and in good faith in the mediation of such disputes by the board."[5] Unfortunately "collective bargaining" is left undefined. The penalty is presumably left to the courts upon notification of the board. The board asks the parties how many meetings they have held and what progress they have made before they enter the dispute. The phrase "have engaged in collective bargaining" means that some attempt at bargaining has been attempted. This section is never enforced except that the board may not enter the dispute if no attempt has been made to reach an agreement and the case is referred to the governor.

The board shall urge arbitration if it concludes that further mediation is futile. Thus in the case of hospitals and public utilities the board determines when the mediation process shall be terminated.

III. Certification to the Governor

If the dispute has not been settled within 30 days following the receipt of the strike notice by the board, the board certifies the dispute to the governor.[6]

IV. The Special Commission

When the governor receives the certification of the board in the dispute, he submits the issue to a special commission. This special commission consists of three

disinterested persons appointed by the governor and two non-voting members, one from each of the disputing parties. The commission shall conduct public or private hearing at which both parties shall appear and be heard in person or by counsel or other representatives. The hearings shall be informal and the prevailing rules of evidence are not binding.[7] The commission "shall have the power to administer oaths, require the attendance of witnesses, and the production of such books, papers, contracts, agreements, and documents as may be deemed by the special commission material to a just determination of the issues in dispute and may for such purposes issue subpoenas."[8]

V. The Report of the Special Commission

Upon the conclusion of the hearings, or within 30 days after its appointment, the special commission submits a written report with recommendations to the governor. A majority vote of the members constitutes a recommendation. The findings and recommendations are made public, but are not binding upon the parties. These reports may not be given the newspaper space that would bring the issue to the attention of the public. In addition the newspaper article may misquote the commission and give only excerpts from the report.[9]

VI. Mediation Again by the Board and Recertification

The governor delivers a copy of the report and recommendations, together with a complete record of the case, to the board. For a period of 10 days the parties shall again attempt to settle their differences by mediation with the assistance of the board. The board again urges the parties to submit the dispute to voluntary arbitration. If the dispute is not settled or sent to arbitration at the end of this ten day period the board again notifies the governor and states the remaining unsettled issues.[10]

It must be remembered that during this entire period of approximately 70 days a strike is illegal and punishable by the courts.

VII. The Strike Election

After the above procedure is completed and an agreement has not been reached, a strike vote may be called.[11] The procedure for the strike vote is the same and need not be repeated. The same objection, that real bargaining may not be obtained until the strike vote is taken, is just as relevant here as it was in the case of general labor disputes. In fact the case may be even stronger. The company and union are in all probability larger and have more experience and therefore will not be frightened into signing an agreement by the presence of an official of the state of Michigan. Thus they will delay negoti-

ations until the strike vote is taken.

The Evaluation of the Special Commission

Public utilities and hospitals are a vital part of our economy.[12] Work stoppages in public utilities and hospitals may affect the public to a greater extent than the parties themselves are affected. For this reason the public has decided that the regulation of these disputes is necessary.

It would be a difficult task to devise a method whereby the dispute could be settled promptly and neither party would be unduly harmed. For example we may regulate the right to strike, but if the strike is delayed the union may be weakened to the extent that it is destroyed.[13] Also if the union's demands are met, it may force the employer into bankruptcy.[14] A method has yet to be devised that will reconcile the views of the public, the employees and the employer to the complete satisfaction of all.

A fact-finding board is one method of settling these public interest disputes. The special commission set up by the Michigan Act is a form of this fact-finding board. However, it is something more than a mere fact-finding body. In addition to making a report with recommendations, the special commission may attempt to mediate the dispute.[15] The function of the special commission is to bring the parties together and attempt a solution.[16] The members of the commission, if they are to deliver a use-

ful recommendation, will try to bring the demands and offers of the respective parties as close together as possible. If the difference can be narrowed by mediation, the job of the commission is much easier

It should be pointed out that the final recommendation should not be the practice of "splitting the difference." Fact-finding implies the board will know the position of each party and how far each will give on a issue. The special commission might be able to effect a complete settlement by bringing the parties closer to agreement and then submitting a recommendation that each party can accept. The special commission should check with the parties and ascertain if its recommendation are acceptable before it releases these recommendations to the public. If the recommendations are rejected the commission will probably reconsider its position and submit new recommendations. If it becomes apparent to the commission that no recommendations will be accepted before they are released, the commission will probably release the recommendations and trust to public opinion to compel the parties to accept. Any decision that will have to be made between the positions of the parties should be made with careful consideration and not by an arbitrary split of fifty-fifty. In any case the decision should be within the realm of expectancy of the parties if it is to be accepted.[17]

Fact-finding boards are usually not eager for pub-

licity early in the proceedings. If the positions of the parties to the dispute are printed in the newspapers, the parties may feel bound to stand behind these positions in order not to lose face. Thus the flexibility that is desired in order to have the parties accept the recommendation may be lost. The governor's office may handle the publicity and merely state that a panel of disinterested men has been appointed and is holding a hearing on the case.[18]

There have been at least seven special commissions appointed under the Act since the Bonine-Tripp Amendment of 1947.[19] These cases are:

1. Flint Trolley Coach Company. Flint, Michigan.
2. Detroit Edison Company. Detroit, Michigan.
3. Peoples Transport Lines. Muskegon, Michigan.
4. Twin City Lines. Benton Harbor-St. Joseph, Michigan.
5. Grand Rapids Motor Coach Company. Grand Rapids, Michigan.
6. Pontiac City Lines. Pontiac, Michigan.
7. Dearborn Coach Company. Dearborn, Michigan.

The provisions of the Ferguson-Thomas Act of 1947 were challenged by the Transport Workers in the Detroit Trolley Coach case.[20] and the special commission did not function. The case went to the Michigan Supreme Court where the section pertaining to the special commission was declared unconstitutional the first time it was used.

The members of the mediation board have pointed to the Detroit Edison dispute early in 1948 as a prime example of the success of the special commission. Here there was no strike[21] and the disputing parties used the recommendation of the commission as a basis of settlement. If the Detroit Edison Company had been closed by a strike there would have been vast repercussions in the Detroit area due to lack of electricity. The board is of the opinion that the special commission proved its worth to the public by the prevention of this large public utility strike.[22]

The Peoples Transport Lines case presents another favorable example of the work of a special commission. A strike was called, but it was settled in a few days using the recommendations of the special commission as a basis.[23]

In the Twin Cities Lines Case the special commission received a surprise request by the union to arbitrate the case. The company agreed to arbitration and the dispute was settled without a strike.[24]

The Grand Rapids Coach case was also settled by

arbitration. Here, the contract and the franchise both provided for arbitration and the board also recommended it. The case was subsequently sent to arbitration and settled without a strike.[26]

The case for special commissions is further advanced by the Pontiac City Lines case. Here the parties accepted the recommendations of the board and the dispute was settled without recourse to strike action.[26]

The Dearborn Coach Company case is an example of the failure of a special commission. The union wished a raise in wages, among other things; the company maintained that it could not afford the raise. The positions of the parties remained steadfast and a long strike resulted. The union finally agreed to a contract substantially the same as the old one. It is doubtful if any method, short of compulsory arbitration, would have settled this dispute because of the inflexible positions of the parties.[27]

It is clear from the record of the public interest disputes under the Michigan Act as amended in 1949, that the special commissions so far have been a success. Whether this record will continue remains to be seen.

The success of the public commissions is due in part to the method of selecting the members of the commission. The governor usually selects a professional arbitrator or a man with arbitration experience and two

representatives of the public.[28] Instead of arbitrarily designating a commission, the governor has the parties to the dispute pass on each member of the special commission before he is appointed. This assures that the parties have confidence in the impartiality of the commission.

In addition, the success of these commissions may stem from the attempt to mediate the dispute. If the parties are brought closer together, the possibility of a settlement is greater. We saw in the Dearborn Coach case the effect of the inflexibility of the parties in the proceedings.

Furthermore, the policy of determining whether the parties will accept the recommendation undoubtedly has contributed to the success of the special commission. However, the new provision is only one year old and the real value of the present form of special commissions will be determined in the future. If the same success is met in the future, special commissions are here to stay.

Voluntary Arbitration

Arbitration of labor disputes was written into the Michigan Act by the Denine-Trieb amendment of 1947 which placed particular emphasis upon hospital and public utility disputes. It was noted above that the board is obligated to urge arbitration both before and after the dispute is sent to the special commission. Of course arbitration may be undertaken as a final resting place for the knotty problems of other establishments than hospitals and public utilities. But the board has not statutory authority to urge arbitration for general labor disputes. This does not rule out the possibility that the board could suggest arbitration to the parties.

Section 8d of the Act of 1943 outlines the new procedure to be followed for arbitration. First of all, it states that any dispute, other than a representation, may lawfully be submitted to voluntary arbitration under the Act.[29] It is difficult to conceive of a situation where the question of representation would be sent to arbitration. Aside from this rather logical observartion, the provision may be considered a restriction on the recognition of the union. Nowhere in the Act is a binding certification of a bargaining agent provided. If a union could obtain the permission of the employer to arbitrate, the decision would be binding upon the parties. But the Michigan Act leaves the decision of recognition

to the employer after the employees have voiced their decision to try collective bargaining.

In order to insure that the arbitration machinery of an existing agreement is used, the Act specifies that the provisions of such agreement are "binding upon the parties and shall be complied with unless the parties agree to submit the dispute to some other arbitration procedure."[30]

If no settlement by arbitration is provided in the contract, an agreement to arbitrate must be reached in order to send the dispute to arbitration. This agreement must be in writing and include a statement that both parties will abide by and perform the decision of the arbitrator. The written agreement or a supplemental agreement contains the issues to be arbitrated and the provisions for the payment of the arbitrator. If the board finds that either party is unable to bear the expense of arbitration the board may designate an arbitrator and he will be paid out of the general fund.[31] In order to escape criticism for being arbitrary, the board sends a list of arbitrators to the parties and they rule out anyone who is unsatisfactory. The arbitrator is then chosen from the remaining acceptable arbitrators.[32] This agreement to arbitrate is enforceable in equity by any circuit court having jurisdiction.[33]

The arbitrator (or arbitrators) is obligated to

conduct hearings within [illegible] days of his appointment. Reasonable notice of such hearings is given to the parties and they may appear and be heard both in person and by counsel or other representatives.[34] "Hearings shall be informal and the rules of evidence prevailing in judicial proceedings shall not be binding.[35] Any oral or documentary evidence that is deemed relevant by the arbitrator may be received as evidence. A transcript of the case is taken if the arbitrator so desires or if the parties request a transcript at their own expense.[36]

Within [illegible] days after the conclusion of the hearings the arbitrator shall formulate his decision. The arbitrator's award shall be in writing and mailed or delivered to the parties. The award shall be enforceable in equity as an agreement of the parties.[37]

Arbitration of labor disputes has been gaining favor in the eyes of the public for many years. Obviously, a final and binding decision is desirable from the viewpoint of the employer, employees and the public. Special attention has been focused upon the disputes that involve "public interest." Compulsory arbitration of such public interest disputes is not unknown. In fact the Michigan law contained a provision for compulsory arbitration of these public interest disputes in 1947, but more of this later.

A discussion of the merits of informal vs. the

legalistic approach to arbitration would be out of place in this paper. It is significant to note however, that the Michigan Act advocates the informal approach in the arbitration proceedings that are conducted under the Act. If either party does not approve of the informal approach or any other of the provisions of the arbitration section, they are still free to write a suitable arbitration clause into their agreement.

Therefore, I conclude that the inclusion of this arbitration section in the Michigan Act represents a mild incentive to make arbitration the final step in settling public interest disputes. True, the parties have to agree to arbitration; but if the board is urging arbitration, if the special commission recommends it, and if the public takes its stand with the board and the special commission, the pressure may cause the parties to agree to arbitrate.

It is quite possible that the parties would prefer to have a different type of arbitration than the one provided in the Act. Obviously, the parties may avoid the Act by including arbitration in the collective agreement.

Another reason for the parties having their own arbitration machinery is the fact that the Act may be amended to include compulsory arbitration of public interest disputes. If the voluntary procedure as now provided does not produce favorable results, and that may mean

the virtual elimination of public interest strikes, the public may decide to change the Act.[37] Compulsory arbitration would then take the place of the special commission for the settlement of new contracts as well as grievances.

Evaluation of Arbitration

We cannot leave the subject of state settlement of public interest disputes without more reference to arbitration. The Bonino-Tribe Act of 1947 provided for compulsory arbitration of public utility and hospital disputes. This provision was declared unconstitutional because a judge was required to serve in the commission and not because the court disapproved of compulsory arbitration. The court did not make a specific ruling on the legality of compulsory arbitration, but hinted that it would consider compulsory arbitration legal.[38]

There are two distinct types of arbitration: grievance arbitration and contract arbitration. In grievance arbitration the arbitrator bases his decision on the terms of the collective agreement and thus determines what the parties have said in their agreement. This type of arbitration is gaining favor among both unions and management as an effective replacement for a strike. Thus we may have the provision to arbitrate disputes that arise within the contract written into the collective agreement.

Contract arbitration is fundamentally different. Here the actual terms of a contract are written by the arbitrator. If the parties cannot agree to the wording or inclusion of a certain provision in the contract, this issue is then placed in the hands of a third party for a decision. Both unions and management have expressed reluctance to submit contract disputes to arbitration. They feel that the arbitrator will be invading their rights. That is, he will tell the union and the company how to run its own affairs.[1] Contract arbitration, aside from the fact that neither union or management desire it, is not in accordance with a policy of encouraging collective bargaining. Instead of the parties settling their differences by an offer and counter offer, the dispute is settled by the edict of a third party. The only defense for such a policy is that contract arbitration will be better than a strike. If this is not the philosophy of the people, then contract arbitration should be discarded.

Arbitration may be either voluntary or compulsory. That is, the parties to a dispute may enter into arbitration of their own free will or they are compelled to use arbitration by law. If the parties agree to submit their differences (even contracts) to arbitration, this may be considered an extension of collective bargaining because they mutually arrived at this decision. However,

when arbitration is compulsory, it practically destroys collective bargaining. One party may decide that it will gain more by arbitration than would be possible by collective bargaining and thus refuse to bargain the issue. The issue would then be arbitrated without a trace of collective bargaining.

Compulsory arbitration has another drawback beside its destruction of collective bargaining. This objection is that compulsory arbitration is a form of government determination of labor disputes. When the state (or any government) appoints an arbitrator, we are approaching government determination. But if the state is obligated to appoint an arbitrator for every unsettled dispute, government determination of labor dispute has in effect arrived. All that would be necessary for the example to be obvious would be for the governor to appoint himself as the arbitrator.[41] If we oppose government determination of labor dispute, then we cannot approve of the policy of compulsory arbitration.

Any decision regarding the type of machinery to be used for the settlement of public interest disputes will be based upon the rights of the public against the rights of the employer and the employees. If the rights of the public heavily outweigh the rights of the employer and the employees, we can condone even government determination. However, if we do not place great importance upon the rights of the public, then all of the special machin-

ery for the settlement of these public interest disputes must be discarded.

Michigan, for the time being at least, has replaced compulsory arbitration with voluntary arbitration used in conjunction with a fact-finding board. If the special commissions produce results, compulsory arbitration may not be considered necessary by the legislature.

1. For a discussion of the arbitration of public interest disputes see the decision of the Michigan Supreme Court in Transport Workers v. Gadola included in the folder under the back cover.

2. Michigan Laws (1939), Public Act 176, Section 3. (b).

3. Ibid., Section 13a. (2).

4. Ibid., Section 13a. (2).

5. Ibid., Section 17a. (3). (a).

6. Ibid., Section 17a. (3). (b).

7. Ibid., Section 16c.

8. Ibid., Section 16d.

9. These ideas were expressed in an interview with Professor B. E. O'Beirne of Michigan State College.

10. Michigan Laws (1939), Public Act 176, Section 15e (2).

11. This strike vote is conducted under the same provision as were outlined for general labor disputes. The strike vote has to be conducted if a strike is to be considered legal. This is subject now to the recent ruling of the U. S. Supreme Court in Auto Workers v. Mc Nally 22 LRRM 2389 which declared the strike vote to be in conflict with the Taft-Hartley Act and inapplicable to industries having an affect upon inter-state commerce.

12. The inclusion of small transportation companies as public utilities stretches the idea of public interest.

13. An example is the Sparrow Hospital case in Lansing.

14. An example is the Twin Cities Lines of Menominee, Michigan and Marinette, Wisconsin.

15. Professor E. J. Wyngarden, Dean of the School of Business and Public Service, Michigan State College.

16. Ibid.

17. Many of the ideas presented on special commissions were obtained from Professor Wyngarden.

18. Professor Wyngarden.

19. This figure was obtained from Marjorie Ward, secretary in charge of records of the board.

20. The text of this case, Transport Workers v. Gadola, is included with the material under the back cover.

21. This case is also used to demonstrate the usefulness of the strike vote because it is one of the few cases where the union lost.

22. Carlyle A. Gray.

23. Professor Wyngarden.

24. Clinton Fair, Governor's Office in the state capitol.

25. Ibid.

26. Ibid.

27. Ibid.

28. Ibid

29. Michigan Laws (1947), Public Act 176, Section 9d (1).

30. Ibid., Section 9d (2). (a).

31. Ibid., Section 9d (2). (b).

32. Carlyle A. Gray.

33. Michigan Laws (1965), Public Act 176, Section 9d (2). (b).

34. Ibid.,Section 9d (3).

35. Ibid.

36. Ibid.

37. Ibid., Section 9d (3) and (4).

38. For a sound basis for this opinion see the Flint Trolley Coach case (Transport Workers v. Gadola) pp. 7 and 8.

39. Transport Workers v. Gadola under the back cover.

40. Professor Wynegarden and Carlyle A. Gray.

41. A person controlled by the governor would serve the same purpose.

Chapter V

Jurisdictional Disputes

In General

The procedure for jurisdictional disputes is almost the same as the provisions for general labor disputes. However, the emphasis is entirely different. The procedure is briefly:

1. Notice by all parties to the board and to each other.
2. Mediation by the board.
3. Election by the board.

The term "jurisdictional dispute" as used in the Michigan Act, means that two or more unions are in disagreement over which one shall be the bargaining representative of the employees in a bargaining unit. We will comment on this definition later. Obviously, the employer may be caught in the middle of this inter-union warfare. As a matter of fact, the employer may have an agreement with one of the unions, and even have no objection to either union. Of course there are occasions when the employer invites union competition in order to destroy a union in his plant. The provisions of the Michigan Act are directed primarily to protect the right of the employer and only incidentally to protect a certified bargaining agent.

It can't be denied that it is in the interest of public policy to keep jurisdictional disputes to a minimum. While competition for membership by unions has

many desirable features, collective bargaining cannot exist if there is a constant undermining of a majority union by its rival. Even if there is no union established in the plant, neither union that is competing for recognition may be able to muster a majority. In addition, inter-union disputes are probably the most violent form of union activity today, and the public has the right to demand a maximum amount of peace in labor organization. If we exclude all other factors, jurisdictional disputes are still undesirable because they destroy collective bargaining.

The Michigan Act has not made jurisdictional disputes illegal. The provisions, however, make the spontaneous calling of a strike for jurisdictional reasons illegal. Thus the Act places limitations on the right to strike because of union competition, but does not eliminate that competition.

I. Notification

The notice, or "statement of claim" as it is called in jurisdictional disputes, is filed <u>at once</u> with the board and a copy of this claim is sent to each interested party. Within <u>5</u> days of the receipt of the statement of claim, the other interested parties shall answer this claim in detail under oath. The original document of the reply is sent to the board and at the same time a copy is served upon each of the other parties to the dispute.[1]

This notification alerts all of the parties and gives them time to prepare their case. It might conceivably scare one of the parties to the dispute and cause them to withdraw; however, such a possibility is indeed remote. The inclusion of "at once" in the Act is intended to force the settlement of the dispute at an early date and not when all of the parties have exhausted their efforts of organization. This provision undoubtedly gives the advantage to the labor organization that begins its organizational drive first. If the employer can foster a dispute before any union has a majority, the scales are tipped in favor of the employer.

II. Mediation

Mediation proceedings in a jurisdictional dispute are, quite obviously, not conducted under optimum circumstances, and usually end in failure. If either party believes that it has the slightest chance of winning an election, it will insist upon the election. And even if the party does not expect to win the election, it still may attempt to prevent its rival (or rivals) from obtaining a majority. The best result that can be reasonably expected from mediation is that it will persuade some party to withdraw its claim and thus avoid an election. If that is done, then the question of representation still remains.

III. The Election

The conciliator will obtain a stipulation from the parties that they will abide by the results of the election and then delivers the Election Work Sheet to the election supervisor.[2] The election supervisor then obtains a verified list of the employees that each labor organization claims to represent.[3] There may be a duplication of names in the union lists, but this is of no consequence if an election is to be held. The names will, however, have to check with the list given by the employer as on the payroll.

The supervisor then obtains from the employer a list of employees in the bargaining unit as of a certain date.[4] When the lists of employees from the labor organizations do not coincide with the names on the employers list, there is again a question of eligibility. However the parties still have the right to challenge the voters and the board will determine their eligibility if necessary. The election procedure is essentially the same in jurisdictional disputes as it was in the general labor disputes, and need not be repeated.

If the labor organizations obtain a majority of the ballots cast, and no one union has a majority alone, a run off election is held. This run off election is between the two competing unions with the highest plurality of votes.[5] Thus the Michigan board operates under the theory that the

majority of the employees have chosen collective bargaining and the remaining issue is to decide which union will represent the employees.

If an agreement exists with one of the parties to the dispute, the board will hold an election only at the termination of such contract.[6] The Act theoretically prevents the signing of an all union agreement with a minority union when it states that "nothing in this Act shall be construed to interfere with the right of the employer to enter into an all union agreement with 1 labor organization if it is the only organization established among his employees and recognized by him, by consent, as the representative of a majority of his employees."[7] The employer is also allowed to make an all union agreement with more than one labor organization if they represent a majority of his employees.[8] Thus the employer is, theoretically at least, forbidden to make a closed shop agreement with the union of his choice. However, the enforcement of this provision is delegated to the courts and is of no concern to the board.

If it is necessary to "preserve or restore production,"[9] the election may be held before the expiration of the contract. This weakens the above ruling to a considerable extent. It would appear, then, that if there is a danger of a strike, the election is to be held.

The board has thus given the rights of the employees a preference over the validity of the collective agreement. There can be no argument that collective agreements, if they are to have a meaning, should be enforceable. If a union has won the agreement by fair play, it should be free to exercise its "rights" at least until the expiration of the usual one year contract. If at the close of this trial period, the employees are dissatisfied with their bargaining agent, they should have the "right" to choose another. Obviously this argument leads to the endless discussion of "rights" and actually solves nothing. One party's "rights" is relevant to all other "rights" and the protection of one set of rights involves the suppression of another. Notwithstanding, we may still safely maintain that, if there is to be any stability in labor relations, the collective agreement must be enforceable--short of slavery.

Evaluation

The definition of a jurisdictional dispute excludes a dispute between two competing unions who are claiming a certain type of work for their own members. So the Michigan Act really applies to rival union disputes. The distinction is between the workers and the jobs for the workers.

It is admitted that an election for the true jurisdictional

dispute would be next to useless.[10] Before the strike vote was declared unconstitutional for industries engaged in interstate commerce, this type of strike was, of course, illegal without a notification to the board and a strike vote.

If the board is confronted with a true jurisdictional dispute, it notifies the national headquarters (Building and Construction Trades Department in the case of the AFL) and pleads for a prompt settlement. During the war this resulted in a decision in a matter of days. There has not been much occasion to notify the national headquarters since the war.

It is difficult to determine whether the provisions of the Act have encouraged or discouraged the private settlement of jurisdictional disputes. First of all there is no provision at all for a true jurisdictional dispute. These might not be affected at all by the Act unless we consider that the vote has an affect. At least we have no firm basis for an opinion. Furthermore there have not been many examples of rival union or jurisdictional disputes reported by the board in recent years.[11] We cannot be certain that the Act itself has encouraged the private settlement of the disputes. It can be maintained, however, that the parties <u>do</u> settle these disputes privately and thus avoid the Act.

The building trades, electricians, teamsters, UAW-CIO and UAW-AFL have avoided this provision of the Act. They have made a positive effort to settle their differences themselves without bringing in the law.[12] One of the conciliators has expressed the opinion that the spirit of craft unionism has changed in recent years. They seem to realize that if they do not put their own house in order, they will not be able to meet the competition of the industrial unions.[13] As the record now stands a true jurisdictional strike of any length is exceedingly rare in Michigan. There are, however, a number of short "wildcat strikes" called for this purpose.[14] If jurisdictional strikes in the true meaning of the term, become prevalent, the legislature will undoubtedly enact some sort of restriction upon this activity as it has done in the case of the strike vote.

The legislature directed its attack against rival union disputes as the real offender. The vote was indended to eliminate one of the unions as a contender for the right to bargain for the employees. The board has avoided entry into jurisdictional disputes;[15] and as we saw above, unions are inclined to avoid using the Act. It is not surprising then to find that the jurisdictional provisions have not been used over four times.[16]

The board will require a written stipulation to be given that the employer will recognize the union, if any, that obtains a majority of the employees.[17] This provision provides some logic to the vote, but it has no basis in the Act. It seems reasonable to assume that this requirement will be declared void, if it is challenged. The whole concept of recognition under the Michigan Act is a voluntary procedure and if the employer is required to recognize a union because of a mandatory jurisdictional election the spirit of the Act is violated.

The election procedure extends to the employees the right to determine their bargaining agent by free choice instead of a strike. The vote is positive action in the settlement of a rival union dispute and is not a provision that arbitrarily makes these disputes illegal. Furthermore the board requires the winner to be recognized. When viewed in this light the vote is clearly a device to further collective bargaining. Nevertheless this section of the Act is rarely used.

As will be pointed out later, a craft unit is allowed to be a bargaining unit, if demanded. There is the possibility that the two unions will be in competition for the same group of employees. But generally the disputes have been between a craft union that wishes to

represent the men in its craft[18] in the plant and an industrial union that wishes to bargain for all of the employees in the plant, including the men in the craft. If the craft unit is given upon request, the field of conflict is narrowed considerably. As long as the craft unit can be obtained for the asking, the possibility of a dispute for membership among rival unions is kept to a bare minimum.

1. From Michigan Laws (1939), Public Act No, 176, Section 9c;also Rules and Regulations Relating to Jurisdictional Disputes as published by the board.

2. This is the same work sheet described in Chapter III.

3. Rules and Regulations Relating to Jurisdictional Disputes.

4. Ibid.

5. Ibid..

6. Ibid.

7. Michigan Laws (1939), Public Act No. 176, Section 14.

8. Ibid., This provision is explained in Chapter VI.

9. Rules and Regulations Relating to Jurisdictional Disputes.

10. From a discussion with John Greenfield of the board and Guy Oswald, Busines Agent of the Carpenter's Union, Lansing, Michigan.

11. Carlyle A. Gray.

12. Based on interviews with the business agents of the Electricians, Carpenters, Teamsters Unions and the UAW - CIO and UAW-AFL international representatives.

13. John Greenfield.

14. Guy Oswald, Business Agent, Carpenters Union, Lansing.

15. Carlyle A. Gray.

16. Marjorie Ward, Secretary in the Lansing Office of the board in charge of records.

17. Carlyle A. Gray.

18. The board has apparently used a broad definition of the term "craft" and applied it to anything the AFL has demanded.

Chapter VI

Recognition and the Bargaining Unit

Representation Elections

The Michigan law does not compel the employer to bargain with the union even if the union has signed a majority of the employees. The employer must agree to recognize the union. Thus there must be an agreement between the union and the employer to accept the union before the representation election is held. For this reason the Michigan board labels this procedure a "consent election."

First of all the parties must determine the bargaining unit. If they are in agreement on holding an election by the board, there is no difficulty in reaching an agreement on the bargaining unit. They merely stipulate the unit and that job is finished.[1] If either of the parties didn't want to hold the election, the argument over the bargaining unit could rage on indefinitely and the board would be powerless to act.

The parties sign an "Agreement for Consent Election"[2] under the direction of the conciliator and it is approved by a member of the board. The board makes every effort to determine if the petitioning union represents a reasonably substantial number of employees as an assurance that the election will be able to designate a colledtive bargaining agent. The consent election does not have its

basis in any section of the Michigan Act and is considered to be an extra service of the board. As the state will pay for the election, the board is of the opinion that the union should present substantial evidence that they have a majority before the election is held so it will be certified as the bargaining agent. As a matter of fact it is a rare case indeed when the union requests and loses.[3]

The Agreement for Consent Election contains statements of the bargaining unit, the time and place of the election, notices of the election, the observers and the eligible voters. In addition, the agre ment provides that if the majority of the eligible voters select the union, the board will certify that labor organization as the bargain ng representative. The results of this election are binding upon all parties if there are no objections to the election or if the board refuses to recognize these objections.

As an alternative to an election the parties may agree to a "cross check."[4] Under this procedure, the board checks the union cards and applications for membership against the payroll of the company. The company, if it has agreed to the cross check, is thus at least morally bound to recognize the union if it has a majority. However, if the board suspects that the employer will not recognize the union even if they have a majority, the board may have the parties sign a written stipulation

to the effect that the union will be recognized if it obtains a majority. [5]

It may appear that the voluntary aspect of union recognition would mean that the employer is perfectly free not to recognize the union. However, this is an overstatement. If a union has signed a majority of the employees, it can force a dispute. The mediation board will then enter the dispute and attempt to settle it. The board will explain to the employer that an election would be the democratic way of determining the issue. The board might point out that it is no concern of the employer or the board whether the employees choose to be represented by the union; it is the wishes of his employees that are important. With the threat of a strike at hand, the employer may consent to hold the representation election.[6] However, if he does not give his consent to an election, then a strike will usually follow and the issue of representation will be settled by economic power.

These consent elections for recognition are becoming more and more numerous. The unions are realizing that the Michigan board is available for such elections.[7] If the union is able to obtain the consent of the employer, the election may be held by the Michigan board. However, if the election is challenged it may be voided because the NLRB's jurisdiction is supreme if employees are engaged in

an industry affecting interstate commerce.[8] If the employer is subject to an election by the NLRB, where recognition is mandatory, he may consent to an election held by the board, where he agrees to recognize the union. As the word has spread of the availability of the board to give recognition election, the case load of the board has increased.

It is significant to note that the Michigan Act does not state that strikes are diminished "by encouraging the practice and procedure of collective bargaining."[9] The Act does not recognize that "the denial by employers of the right of employees to organize and and the refusal by employers to accept the procedure of collective bargaining leads to strikes and other forms of industrial strife and unrest."[10] The Michigan Act is, however supposed "to protect the rights and privileges of employees, including the right to organize and engage in lawful concerted activities."[11] From the foregoing presentation we may conclude that this protection is limited. However, the Michigan legislature was consistent in omitting any reference to encouragement.

The Bargaining Unit

Closely related to recognition disputes is the determination of a "collective bargaining unit." However the board's broad definition of the "bargaining unit"

and "craft" has virtually eliminated disputes over the appropriate unit.

An outline of the provisions for the bargaining unit determination is as follows:

> "The board, after consultation with the parties, shall determine such a bargaining unit as will best secure to the employees their right of collective bargaining." This unit will be:
>
> 1. The employees of one employer in one plant or business enterprise, but shall exclude supervisory and executive positions.
> 2. Or a craft unit.
> 3. Or a plant unit.
> 4. Or a subdivision of any of the foregoing units.
>
> "Provided, however, that if the group of employees involved in the dispute has been recognized by the employer or identified by certification, contract or past practice, as a unit for collective bargaining, the board shall adopt such a unit."[12]

The bargaining unit is considered to be the hourly productive and non-productive employees including maintenance men. Supervisors, executives, watchmen and guards, confidential clerks and salaried and office personnel are generally excluded. The plant unit is usually chosen, however, a craft unit is considered appropriate if it is demanded.[13]

If the craft union requests that the workers in its trade be separated from the larger plant unit, the request is granted. The bargaining unit may be as small as one employee, if that employee represents a distinct craft in the plant and he votes in favor of being represented by the craft union.[14]

It will be remembered from the preceding section of this chapter that an employer is allowed to make an all union agreement with more than one labor organization if they represent a majority of the employees. Thus if a majority of the employees composing a craft unit desire to be represented by a craft union, the employer may sign a union shop agreement with the craft union. If there are many craft units in the plant there may be many collective agreements. The union may not be able to present a united front to the employer. This may have the effect of dividing the employees so that their collective strength is not as great as that of the employer.[15]

The bargaining unit may cover several cities if the parties are willing to recognize such a unit or it has been identified by past agreements or practices.[16] City-wide bargaining units are common with unions such as the teamsters, plumbers and carpenters.[17] But as a general rule the bargaining units are of the industrial type in one plant as described by the Act.

In connection with bargaining units, it is surprising to note the number of plants that are represented by the UAW-AFL. While there is no comparison in membership with the UAW-CIO, it is significant that the AFL, a predominantly craft union, has an active industrial union in the state. This competition on an industrial basis may be a partial explanation of why the bargaining unit has not created much difficulty in Michigan.

There are almost no cases in which the bargaining unit has come under surveillance. If the craft unit is recognized if demanded and if the board is bound by past practice in regards to a unit, the area for a conflict is indeed small. This together with all the restrictions on a union before it may strike has made a dispute over the collective bargaining unit almost non-existent.[18]

1. It should be remembered that any unit could be considered to be included under the Act. If the parties agree to the election and there is a dispute over the unit, the election supervisor will determine the unit, subject to review by the board.

2. A copy of this agreement is included under the back cover.

3. Carlyle A. Gray.

4. A copy of this agreement is included under the back cover.

5. Carlyle A. Gray.

6. Ibid.

7. Ibid.

8. This is true if the employer is considered to be engaged in interstate commerce.

9. 49 Stat. 449 (1935), Section 11. This Act is generally referred to as the "Wagner Act."

10. Ibid.

11. Michigan Laws (1939), Public Act 176, Preamble.

12. Michigan Laws (1939), Public Act 176, Section 9e.

13. Carlyle A. Gray, John Greenfield and Henry Trembley.

14. John Greenfield.

15. Frank Corser, International Representative, Sub-Regional Office, UAW-CIO, Lansing, Michigan.

16. Carlyle A. Gray and John Greenfield.

17. Ibid.

18. Ibid.

Chapter VII

The Hutchinson Act

The Hutchinson Act of 1947[1] is the Act that forbids public employees to strike, but it gives the employees the right to take grievances to the board for mediation.

The procedure outlined in the Act, concerning the labor mediation board consists of two parts, one for the individual and one for the group. The individual has the right to petition the board for a review of his discharge under the Act, and the group may have its grievances mediated by the board. The procedure is as follows:

I. The Individual

   A. The employee may request a hearing by his superiors regarding his discharge.

   B. The employee may petition the board to review the decision of the superiors.

II. The Group

   A. A majority of the group or the supervisor may petition the board for mediation of its grievance.

   B. The board shall mediate the grievance.

The definition of a public employee is " a position by appointment or employment in the government of the state of Michigan, or in the government of any 1 or more of the political subdivisions thereof, or in the public

school service, or in any public or special district, or in the service of any authority, commission or board, or in any other branch of the public service."[2]

If the board is to review discharges resulting from a strike, it is necessary to know what constitutes a strike. The definition of a strike is contained in Sections 1 and 6 of the Act. "As used in this act the word 'strike' shall mean the failure to report for duty, the wilful absence from one's position, the stoppage of work or the abstinence in whole or in part from the full, faithful and proper performance of the duties of employment, for the purpose of inducing, influencing or coercing a change in the conditions, or compensation, or the rights, privileges or obligation of employment...."[3] Notwithstanding the provisions of any other law, any person holding such a position who, by concerted action with others, and without the lawful approval of his superior, wilfully absents himself from his position, or abstains in whole or in part from the full, faithful and proper performance of his duties shall be deemed to be on strike: Provided, however, that such person, upon request shall be entitled...to establish that he did not violate the provisions of this act."[4]

The discharged employee, if he desires, files a written request for a hearing to prove that he was not on strike as defined by the Act. This request shall be

filed with the officers or body having power to remove the employee within 10 days after the regular compensation of the employee has ceased. Within 10 days the officer or body having the power to remove the employee, shall begin a proceeding to determine if the employee has violated the Act. The decision of this proceeding is made within 10 days. If the employee is held to have violated the Act, this decision may be reviewed upon petition to the labor mediation board.[5] No one recalls a case ever having been presented to the board by an individual because he was discharged due to a strike.

If a majority of any group of public employees sign a petition and present it to the board, their grievance will be mediated. Grievances will also be mediated at the request of any public official in charge of the employees.

The Act was designed to prevent state employees from striking. The theory behind this is that the state is sovereign and no one should be able to strike against the sovereign. However, the Act gives the employees a vent for their problems through the mediation board.

Many of the grievances handled by the board are questions of recognition. Municipalities and some state agencies are not allowed to sign a contract with a union. These employees are governed then by a memorandum of the minutes of, for instance, a council meeting. The agreement to recognize the union is included in these minutes and

next year the council may have a different idea about recognizing the union.[6] If the officers in charge of these employees are firm in their decision not to recognize the union, the mediation activity of the board will mean nothing. There is nothing that says the employees' union has to be recognized and there is no chance of a strike.

If the grievance is some question other than recognition, the board may use its prestige and ability to persuade the parties to come to an equitable agreement. It must be remembered that the employer (the state) has the upper hand because it is illegal for the employees to strike.

Collective bargaining and thus mediation are effectively throttled when the employees cannot engage in a strike. The legislature has without a doubt restricted collective bargaining with the passage of the Hutchinson Act. The emphasis is definitely on the elimination of strikes by edict rather than the settlement of disputes through collective bargaining. The legislature did recognize that laws will not eliminate grievances and provided for the settlement by mediation of arbitrary decisions of state officials. This procedure is much the same as providing mediation as the last step in a plant grievance machinery--the difference being that the union could strike if it thought that the mediation proceedings were to no avail..

The provision for the mediation of state employees' grievance gives these employees another recourse in law instead of the right to strike. The provision was not included to further the policy of collective bargaining.

1. Michigan Laws (1947), Public Act 336, effective October 11, 1947.

2. Ibid., Section 2.

3. Ibid., Section 1.

4. Ibid., Section 6.

5. Ibid.

6. Ibid., Section 7.

7. Ibid.

Chapter VIII

Conclusions and Recommendations

The Board

Michigan has been quite fortunate in obtaining competent men for commissioners on the board. Most of the members have been successful practicing attorneys.[1] They have generally taken the job as a commissioner not because of the salary, but because they were interested in serving the state in labor relations. However, there is no assurance that men of the same caliber will be chosen in the future. It is a positive fact that these men were chosen because of their political activities, for nearly every member is or has been active in party politics. A Democratic governor choses a Democratic member and a Republican governor selects a man from his party. Thus the provision in the Act which states that "members of the board shall be selected without regard to political affiliations,"[2] is in reality meaningless. It is evident then that the board might at some time in the future be filled with party "hacks" that know nothing about mediation or labor relations. Indeed, we are lucky that it has not been filled with incompetent political appointees.

Politics and a mediation board will not mix. If either party to a dispute distrusts the members of the board because of their political affiliations then the mediation board will not serve a useful function.[3]

However it is difficult to separate politics from mediation in a government agency. It is quite evident that the election of board members would not help the situation and might make it worse. We may have to trust to the better judgment of the governor and hope he will honestly appoint the best man available, because it would be practically impossible to devise a test that would select a competent mediator. If the precedent of appointing a member of your own party was bfoken, perhaps the political aspect of the board would disappear. At least the governor should be held closer to the letter of the law than has been the practice in the past.

We cannot expect capable men to forego lucrative positions and accept the salary that is paid to the commissioners on the board. Thus the law field has been a fertile recruiting ground for board members because of the fact that lawyers may carry on their law practice in addition to their duties as a member of the board. Professional arbitrators could be considered for the position of commissioner, but it is doubtful if an arbitrator could continue arbitrating cases while at the same time serving as a mediator. It is quite evident that if a member has to handle two jobs to keep up his standard in the community, at least one of these positions will suffer. We must then offer the board members a salary large enough to insure that a commissioner's job will be considered a full time position.

The Mediation Aspect

The mediation aspect of the Michigan board should be taken into consideration whenever a recommendation is made concerning the board. It must be remembered that the board is primarily a mediation agency. As a result the board should not be given duties that imply force or arbitrary decisions. If such duties were assigned to the board cries of "strike breaker" or "pro-union" would be heard and the mediation activities of the board would be destroyed.

Thus no matter how firm a beleiver in collective bargaining you may be, board enforcement of union recognition is out of the picture. If the board is to mediate disputes, that should be its sole job. It might be desirable to set up another agency for enforcement similar to the NLRB, but the enforcement duties should not be handled by the mediation board.

Therefore, if the board experiences difficulty with such things as the determination of bargaining units, eligibility of voters and jurisdictional and representation elections, these activities should be placed in the hands of a different state agency. So far there has been little antagonism attached to these activities, but we cannot assume that the future will be as bright.

Finally, it should be pointed out that an analysis of the statistics on strikes has been purposely omitted

from this report. The number of strikes and their duration is not an exact indication of the effectiveness of mediation. There are far too many variables other than mediation that enter into the problem. For instance the attitude of the parties, the seasons of the year, the conditions in other plants, and even the wives of the parties may all have a share in the settlement of a dispute. However, the available statistics of the board are given in Appendix B.

The Strike Vote

The strike vote procedure has been partially throttled by the U.S. Supreme Court decision in Auto Workers v. McNally. The position of the board at the present time is that they will not accept any new cases involving interstate commerce. However, they will continue to accept cases involving intrastate commerce as before.[4] The board was pleased with the Supreme Court decision because it keeps the board from taking an election in large companies which they disliked to do.[5] However, it would be best to delete the strike vote from the Act. The implication involved in the apparently innocent provision for a strike vote was given in Chapter III and need not be repeated.

There have been times when the strike vote has been considered for inclusion in the national act. Michigan has been a proving ground for this provision and

the experience of this state should be helpful in reaching an intelligent decision on the strike vote. It should be evident from the discussion that the strike vote has been tried and found a hindrance to mediation and labor organization. The opponents of the strike vote can point to Michigan as an example of the failure of the strike vote.

Arbitration and Public Interest Disputes

We noted in Chapter IV the affects of compulsory arbitration. All that is needed now is to emphasize the point that every method of settling a dispute should be attempted before compulsory arbitration is used. This is especially true in disputes over new contract provisions. There may be times when compulsory arbitration is the only solution to a labor dispute. However, if compulsory arbitration is used in <u>every</u> case where the mediation board cannot bring about a settlement within 50 days the provision becomes extremely objectionable. Minor disputes that could and should be settled by the parties <u>might</u> go to arbitration in a majority of cases. Compulsory arbitration is a method to be used as a last resort and is far from a cure-all for labor disputes.

If the special commissions are as successful in the future as they have been in the past year, Michigan may have a solution to the public interest disputes. It is forgotten by many people that disputes are normal and they

cannot be legislated away. The important fact to keep in mind is not the dispute itself, but the results that are obtained in settling the dispute.

Agreement rather that force should be the rule in the settlement of labor disputes. If the parties themselves agree to the solution, a lasting agreement is usually reached. Much of the success of the present special commissions is due to the fact that emphasis has been placed upon mutual agreement and not on force. Everyone connected with the settlement of the dispute has tried to have the parties reach an agreement. If a decision is forced upon the parties we cannot maintain that a settlement has been reached. A strike may be avoided, but the dispute is still present and was not eliminated because a third party rendered a binding decision in the matter. Successful labor relations depend to a great extent on the mutual agreement of the partiesl

If the legislature and the people of the state are expected to make an intelligent decision on labor legislation, the work of the board will have to receive more publicity than it has in the past. The people of the state should be acquainted with at least the mediation proceedings of the board. Probably not one person in a hundred realizes that the board may have as many as 2,000 open cases on its books. The board may move in and settle a dispute and not receive a word of publicity unless it is

a large company or a strike is near. If the people of the state pay for the services of the board, they should be entitled to know the accomplishments of the board. Thus if the board needed money for expansion, the people could ask, "Well, what do you do?" and the board would be in an embarrassing position.

Aside from the self interest of the board, there is another reason why more publicity should be given to the board. The Michigan Act contains many controversial issues, such as the strike vote, special commission, jurisdictional disputes, and closed (union) shop provisions. There has been no factual analysis of these provisions that I am aware of. Nor could there be because of the method of filing cases by the board. A case is a case to the board and there is no separation of the cases into types. There can be no valuable contribution to the education of the public if the results of the provisions of the Act cannot be obtained. The decisions of the legislature on many of these provisions would still have to be based upon broad generalizations. But the information is in the mediation board's office awaiting tabulation. If we are to gain the maximum use of the services of the mediation board, the records of the board will have to be classified.

1. For the list of personnel of the board see Appendix A.

2. Michigan Laws (1939), Public Act 176, Section 3.

3. Arthur H. Raab maintains that this has already happened. I cannot concur in this opinion to the full extent that Mr. Raab meant it.

4. Philip Weiss, a commissioner on the board per Carlyle A. Gray.

5. Carlyle A. Gray.

Appendix A

The Personnel of the Board

The Personnel at the Present Time - June 1950

Board Members

Fox, Noel P.	Chairman	Muskegon Attorney
Weiss, Philip	Commissioner	Detroit Attorney
Frederick, John F.	Commissioner	Muskegon Attorney

Conciliators

Lansing Office

Greenfield, James

Detroit Office

Cranson, R.P. Dr.

Humphrey, Ray C.

Lomasney, Robert E.

Mohler, Walter E.

Patterson, Walter J.

Sims, Archie E.

Muskegon Office

Ricketts, Paul R.

Malarney, Philip J.

Matych, George E.

Unclassified Employees

Gray, Carlyle A.	Executive Secretary
Bruetch, Joseph J.	Coordinator of Conciliation

Election Supervisors

Trembly, Henry G.

Malmberg, Warren E.

Former Board Members

Raab, Arthur H. First Chairman	Flint, Real Estate and Insurance
Hoers, Walter	Lansing, Typographers Union
Lappin, A. C.	Detroit Attorney
Donahue, Thomas	Detroit Attorney
Fox, Joel P	Muskegon Attorney
Ricketts, Paul	Flint, Movie Projectors Union
Vokes, David	Detroit Attorney
Rice, Elmer	Detroit Attorney
Cranson, Rex P. Dr.	Detroit Dentist

Former Executive Secretaries

Scott, Kingsbury	Newsman Capital Beat
Killeen, G. Franklin	Flint Attorney
Ricketts, Paul	Flint
Patterson, Walter J.	Detroit Musicians Union
Zartman, Wayne	Flint, Building Trades Union

Former Conciliators

Olmstead, Lowell E.

Owen, Edward E.

Kolodziejski, Frank

Rooks, William

Churchill, Charles

Appendix B

Strike Record Due To

Labor Management Disputes In Michigan 1934-49

Table I

Strike Record in Michigan[1] before 1939

Year	Stoppages	Persons	Man days Idle
1934	63	25,400	200,000
1935	55	17,000	137,000
1936	45	27,000	214,000
1937	306	354,500	3,995,000
1938	95	77,000	350,000

Table II

Strike Record in Michigan[2] after 1939

Period	Cases	Strikes	Persons	Man days Lost
1939-40	666	66		
1940-41	905	156	222,221	1,441,425
1941-42	1,326	239		
1942-43	229	221		
1943-44	1,225	553	312,144	1,052,022
1944-45	1,435	713	627,491	1,702,130
1945-46	2,163	425	301,165	4,766,287
1946-47	3,301	272	165,239	2,767,651
1947-48	4,771	107	142,117	1,967,521
1948-49	6,416	143	110,227	2,409,767

1. Based on data provided by the Bureau of Labor Statistics, United States Department of Labor.

2. Data of the Michigan Labor Mediation Board

Table III

Cases Received an Strikes by Months[3]

Month	1946-47 Cases	1946-47 Strikes	1947-48 Cases	1947-48 Strikes	1948-49 Cases	1948-49 Strikes
July	212	35	122	20	293	22
Aug	109	23	250	22	246	25
Sept	140	31	502	5	443	16
Oct	437	15	406	7	376	17
Nov	72	12	172	2	272	11
Dec	82	6	243	2	426	10
Jan	161	23*	563	6	407	6
Feb	206	13	293	0	540	2
Mar	336	13	379	7	745	3
Apr	550	26	705	8	994	7
May	603	23	291	3	439	12
June	313	37	356	20	555	7
	3,301	278	4,771	107	5,416	143

* One lockout

3. Taken from the annual reports of the board.

BIBLIOGRAPHY

Books

Kaltenborn, Howard S. Government Adjustment of Labor Disputes. Chicago: Foundation Press, 1945.

Killingsworth, Charles C. State Labor Relations Acts. Chicago: University of Chicago Press, 1948.

Taylor, George W. Government Regulation of Industrial Relations, New York: Prentice-Hall, 1948.

Articles and Periodicals

Labor Relations Reference Manual (cited in the footnotes as "L.R.R.M."

Smith, J, M, "Bonine-Trion v. Taft-Hartley: Compulsory Arbitration of Labor Disputes in Public Utilities." Detroit Law Review, IX (1948).

Smith, R. A. "Taft-Hartley and State Jurisdiction Over Labor Relations," Michigan Law Review, XLVI (March 1948).

S T

Strike

1. Th

2. MA

3. If
Me

4. Fo
ma

DO YOU WISH TO AUT

YES