The Impact of Court Decisions on Union Growth Around 1921

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THE IMPACT OF COURT DECISIONS ON
UNION GROWTH AROUND 1921

by
Vishwanath Prasad Singh

A Thesis Submitted to the Faculty of the Graduate School of Loyola
University in Partial Fulfillment of the Requirements
for the Degree of Master of Social
and Industrial Relations

February
1961
LIFE

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He was graduated from Seryani High English School, Dighwara, April 1948, and from the University of Bihar, August, 1952, with the degree of Bachelor of Commerce. Then he started his post-graduate studies in July, 1953 and graduated from the University of Patna with the degree of Master of Commerce in July, 1955.

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In September, 1958, he came to Chicago and started his graduate work at the Institute of Social and Industrial Relations, Loyola University.
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CHAPTER I

INTRODUCTION

A. PURPOSE AND OBJECTIVE OF THE THESIS

The subject matter of this research is "the courts and unions" in the period 1919-1921. This thesis is a part of a project conducted by the Institute of Social and Industrial Relations on union growth. In the framework of this project, the impact of certain social and political factors on union growth are going to be examined.

The purpose of this thesis is to analyze the effects of court decisions on union growth in the period of 1919-1921.

Many factors have been responsible for the slow progress of unions in the U.S.A. prior to the thirties, including the predominance of small industries, the existence of the frontier and free land for homesteading, a legislative and judicial atmosphere, and a strong widespread hostility among employers.

However, the unions in the period under examination saw a somewhat different climate for their growth and progress. Independent researchers have probed into the economic, social, and political malaises, and have pointed out several obstacles to a growing virile unionism in the 1920's. According to James O. Morris, reasons for the decline of union membership in and around 1920 are (1) unprecedented employer hostility to unionism (in such forms as resort to strike-breaking, use of yellow-dog contract, formation of company
unions, and development of schemes of welfare capitalism); (2) adverse court decisions, injunctions, and few laws favorable to labor; (3) the anti-radical hysteria which swept the United States after World War I; (4) technological changes and shifts in industrial location; (5) and the policies and leadership of the AFL itself.¹

Of these factors, only court decisions will be taken into consideration for discussion since the sole purpose of this thesis is to examine the impact of court decisions on union growth.

B. ROLE OF COURTS ON UNION GROWTH

Of all the agencies of government which have been used by employers in their fight against unions, the courts have been the most important. Courts are especially important in Anglo-Saxon countries where Common-Law can be as important as Statute-Law. The Doctrine of "conspiracy and restraint of trade" as applied by the courts to labor unions clearly illustrates the fact that courts can exert a very strong influence for the origin, growth and progress of unions. Courts can also declare legislation favorable to labor unconstitutional. The courts of the United States have proved this by applying the Sherman Anti-Trust Act to unions even though it was not the intention of the Congress that it should be so applied. The history of "organized labor" in this Country tells us that union growth has been hampered by the adverse decisions of courts on many occasions. The courts have many times declared the strikes, peaceful picketing, the use of boycott, attempts to organize workers against the will of the employer, to be illegal, and have consequently impeded the

growth of unions.

John T. Dunlop supports the afore-said statement in his essay "The Development of Labor Organization." He, in the course of his discussion about the long-run trends in union growth, points out that "Certain type of community institutions stimulate, and others retard, the emergence and growth of labor organization. The legal system may actually preclude organization, as would have been the case had the doctrine of the early conspiracy cases been generally applied." 2 Similar statement has been made by Joseph Shister in his essay "The Logic of Union Growth." He says that the legal framework in the nation or any given geographical sector of the union has an important bearing on the relevant patterns of union growth is painfully obvious. 3 He substantiates his argument by saying that "---as far back as the 1890's fifteen states passed laws outlawing yellow-dog contracts and providing some legal protection for organizing rights. The direct favorable impact of such legislation was nullified by state and federal judicial decisions. More important, legislators were discouraged from continuing the sponsorship of similar legislation precisely because of the expectation of judiciary obstruction." 4

Robert D. Leiter in his book Labor Problems and Trade Unionism has also mentioned that "the opinion of the courts have had profound influence on the


4 Ibid., p. 426.
development of the Labor movement." He further says that "Both employers and unions have sought the help of the courts and of legislative bodies to gain their objectives. For a long time employers had the advantage in these efforts. The common law accumulated court opinions depending on precedents, customs, and traditions - was generally unfavorable toward union organization."

It is generally considered legal that workers may quit work in a body, or strike, in order to maintain wages, secure increment in wages, obtain shorter hours of work and better the other working conditions. As long as strikes are meant for the purpose of advancing the interest of the employees or of the union and not for injuring others in their business are lawful, the courts uniformly refuse to interfere by granting injunctive relief to prevent such a strike.

However, the means employed by strikers, viz. boycott and picketing, to make strikes effective are questions of great intricacy, and have been brought to the notice of the courts in great number of cases. The third and fourth chapters of this thesis are exclusively devoted to examine such Herculean issues.

C. METHODS USED IN THIS RESEARCH

An attempt has been made to collect and collate all the possible cases related to labor disputes in this period, which were brought before the United States Supreme Court, United States District Courts and the highest State Tribunals. All the available materials relating to the subject, namely, *Federal Digest, American Law Reporters Annotated, Third Decennial Digest*  

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6 Ibid., p. 2.
(American Digest System), Index to Legal Periodical, Federal Reporters and United States Reporters have been used to research the subject. Besides these, many law reviews viz; Columbia Law Review, California Law Review, Harvard Law Review, Virginia Law Review including many other law journals have also proved to be of great help in the collection of cases related to labor dispute during the period under examination.

For the historical background of the union in and around the period, standard books on labor and available journals, etc., have consulted. The historical background will give a picture of the important events which have occurred and consequently brought about impact on union growth. Thus, the research is primarily based on library research work.

The period 1919-1921 is selected because there was a pronounced decline toward its end in union membership. Therefore, it is hoped that this thesis will throw light on how far courts have been responsible for the decline of union membership following the period under examination.

D. DEFINITION OF TERMS

The term, "boycott" is used in varying senses. Organized unions of employees may, by concerted action, cease dealing with a former employer with whom it has a grievance, and such action is known as primary boycott. When the strikers bring coercive pressure, actual or prospective, upon the customers of the employers with whom the strikers have a grievance, in order to cause such customers to withhold or withdraw their patronage from the employer through fear of loss or damage to themselves, should they deal with him, we have a case of what is known as secondary boycott. In the case of secondary boycott, emphasis is laid on handling, purchase and use of goods, not on production.
Picketing may be defined as posting individual or individuals by the union at employer's establishment to notify the public that labor dispute exists in order to encourage other workers to join the strike and others from entering or leaving the premises. Picketing, accompanied by threats, violence, force, and intimidation can be termed as non-peaceful picketing.
CHAPTER II

BACKGROUND OF TRADE UNION AROUND 1919-1921

The trade unions had a very favorable climate for their growth and development during World War I. Even after the war, unions gained good number of membership. By 1920, union membership increased to slightly more than five millions. Leo Wolman gives a table of American Trade Union Membership which shows the annual changes in total membership from 1918-1922.¹

AMERICAN TRADE UNIONS, ANNUAL CHANGES IN TOTAL MEMBERSHIP, 1918-1922

<table>
<thead>
<tr>
<th>Year</th>
<th>Average Annual Membership</th>
<th>Increase or Decrease Over Preceding Year</th>
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<tr>
<td>1918</td>
<td>3,467,500</td>
<td>+405,900</td>
</tr>
<tr>
<td>1919</td>
<td>4,125,200</td>
<td>+657,900</td>
</tr>
<tr>
<td>1920</td>
<td>5,047,800</td>
<td>+922,600</td>
</tr>
<tr>
<td>1921</td>
<td>4,781,300</td>
<td>-266,500</td>
</tr>
<tr>
<td>1922</td>
<td>4,027,400</td>
<td>-753,900</td>
</tr>
</tbody>
</table>

The table indicates that union membership increased in 1919 by 657,900 and in 1920 by 922,600. However, there was a sharp decrease in union membership in 1921 and in 1922. This decline in union membership can be attributed to many factors affecting union growth which will be discussed categorically.

A. FACTORS RESPONSIBLE FOR THE RISE IN UNION MEMBERSHIP

It will be very interesting, then, to examine first the factors which helped the unions in gaining their membership prior to 1921. During the war, both the employer and employee groups enjoyed government protection and strengthened their power. Mining, shipbuilding industries and railroad industries were operated by the government during the war, and consequently they had better opportunity to gain their membership. Business prosperity was the second reason for the growth and development of the union. Economic prosperity continued even after the Armistice was signed in the fall of 1918. In the beginning of 1919, industrial activities increased a great deal and this boom period continued up to the spring of 1920. The unions availed themselves of such golden opportunity and gained membership more than any time before. The task of organization became much easier because employees themselves were willing to join unions to protect the purchasing power of their wages against the steep rise in the cost of living. It is needless to say that the increased number of jobs also helped unions in increasing their membership.

The most striking growth in union membership from 1915-1920 was in the textile, metal, transportation, clothing, and building trades groups of unions. Wolman writes that from 1915 to 1920, labor organizations gained 2,505,100 members altogether, out of which 1,862,200 members were gained by transportation, metal building and clothing unions. Building trades gained 556,200; transportation, 680,000; metal, 634,600; and clothing, 192,400.²

Thus the union movement, as a whole, made a tremendous progress from the war years to the years of prosperity. Tayback writes that "By January 1, 1920,

the A.F.L. boasted 4,078,000 members, another 1,032,000 in other unions, most of them in the railway brotherhoods, brought the total to 5,110,000. Organized labor in 1920 appeared stronger than ever.\(^3\)

B. FACTORS RESPONSIBLE FOR THE DECLINE IN

UNION MEMBERSHIP

From the facts mentioned above, it is understood that there was a remarkable increase in union membership. Nevertheless, one should not ignore the factors which adversely affected the growth of union. After World War I, the working class people experienced the economic pressure of the rising price level. The wartime rising trend in price continued unchecked in 1919 and cost of living went up intermittently and reached twice the pre-war level. The workers began to feel the effect of such inflationary trends inspite of the fact that they were receiving higher wages than before.\(^4\)

Because of such dislocation and changes that followed after the war, the American Federation of Labor optimistically proposed, at its annual convention in 1919, a progressive "reconstruction program." It called for democracy in industry, abolition of unemployment, higher wages, shorter hours, equal pay for women for equal work, abolition of child labor, the right of public employees to organize and bargain collectively, limitation on the power of courts, government ownership of public utilities, governmental development and operation of water power, and better regulation of corporations. It also demanded absolute freedom of expression and association, extension of workmen's


compensation, establishment of government employment agencies and the abolition of those conducted for private profit, the building of model homes by the government, and aid in enabling the workers to own their homes.  

To a certain extent the A.P.L. achieved some of these demands in the months immediately after the war but not in the way expected, because post-war years on the whole were not a period of peaceful advance. Thus this program remained a paper program for the next few years.

Both the labor and the management had developed attitudes different from those shown during the war since wartime restraints were removed and government surrendered such controls as had been exercised by the National War Labor Board. Labor, besides retaining the gains that had been made during the war, was very firmly determined to win further recognition of its rights. Management, on the other hand, was trying to free itself from all governmental control and also to put a check on any further advance of unionization.

Workers' success in some of the strikes by the end of 1918, was also responsible for bringing about changes in their peaceful attitudes. Amalgamated Clothing Workers of America had struck just four days after the Armistice and was able to establish a forty-four hour work week in the men's clothing industry throughout the nation.

In this way, workers and employers both were ready to settle their

\[\text{References:}\]


6 Dulles, p. 228.

differences not with peaceful means, but with severe fights.

The railroad industry was the first in which the workers tried their strength. In February, 1919, the railroad shopmen placed their demands before the Wage Adjustment Board for a raise in wages. President Wilson opposed their demand on the ground that the government was trying to lower the cost of living. Workers walked out in unauthorized strikes, but lost them since they were not general and at the same time they were opposed by the united forces of the government and railroad companies.

However, the railroad workers did not sit quiet for a long time. The Transportation Act which created the Railroad Labor Board was passed on February 28, 1920. Under this Act all controversies of the workers and employers engaged in the railroad industry were to be decided through a joint Adjustment Board. The railroad workers again tried their luck and demanded a raise in wages from the companies. The employers again refused to comply with their demands. Then they appealed to the Railway Labor Board. Just at this time, a foreman in the yards of the Milwaukee Road was discharged and was replaced by a road conductor from the Brotherhood of Railroad Trainmen. When the demand of the Brotherhood of Railroad Trainmen from the reinstatement of the Foreman was denied by the management, the workers went out on strike in Chicago Yards. The strike was again lost by the workers, but the impact of this strike probably was in favor of the workers in general. The Railway Labor Board granted a Wage increase for railway employees in July, 1920.6

A general strike in Seattle, Washington, in the shipping industry began

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6Perlman and Taft, pp. 453-455.
in February, 1919, when the demand of ship yard workers for higher wages was refused. The workers, under the leadership of James A. Duncan, who had control over the Central Labor Committee in Seattle, went out on strike. The workers lost the strike because of the withdrawal of the public support.9

Some months after the Seattle strike, Boston police strike took place. Policemen had formed a union which was known as the Boston Social Club. The rising price level during and after the war had affected the living standards of workers in general and public employees in particular. In order to get support for their grievances, the officers of the Boston Social Club attempted to affiliate their Club with the American Federation of Labor. Police Commissioner Curtis announced that no policeman would be allowed to join a union, and suspended nineteen police officers who were leading members. Because of this action of the Police Commissioner, the policemen went out on strike. The Mayor of the City had sympathy for the policemen and he tried to settle the dispute amicably, but his attempt was fruitless. A.F.L. President Samuel Gompers requested Calvin Coolidge, the Governor of Massachusetts to remove the Police Commissioner. But the Governor refused and said, "There is no right to strike against the public safety," ---by anybody, anywhere, anytime.10 Thus the policemen lost the strike.

The most significant strikes which occurred on a nation-wide scale were in the steel and coal industries.

The steel workers had fought many times in the past but they all were im-

10Ibid., p. 232.
significant as compared to the fight of 1919. The United States Steel Corporation was formed in 1901. Since then the workers attempted many times to better their conditions, but all their efforts proved futile.

World War I came as a boon for the steel workers. In 1918, Gompers called a conference of representatives from sixteen international unions. The conference formed the National Committee for organizing iron and steel workers. The National Committee was composed of one delegate from each of twenty-four international unions interested in the steel industry. Samuel Gompers was elected Chairman of the Committee, John Fitzpatrick, the Vice-Chairman, and William Z. Foster, was made Secretary-Treasurer.

The steel companies were also prepared to fight back the organizational campaign of the unions. Many workers were discharged and dismissed on account of joining the union. Thus, this posed a problem for the union. The workers sought protection in their unions. As Chairman of the National Committee, Gompers wrote to Gary, Chairman of the United Steel Corporation, on June 29, 1919, asking him to meet the representatives of the Committee. The letter was completely ignored by the Chairman of the Corporation. The National Committee then, decided to take a strike vote from the twenty-four cooperating unions. On July 20, 1919, representatives of the twenty-four unions met in Pittsburgh. The Committee drew up a set of demands to be submitted to the employers and also endorsed the taking of a strike vote. The demands were "...for the establishment of the right to collective bargaining, reinstatement of the workers discharged for joining the union; with pay for time lost; and eight hour day; one day's rest in seven; abolition of the twenty-four hour shift; increases in wages to guarantee an American standard of living;"
establishment of standard scale of wages in all trades and classifications; and double rates of pay on all overtime after eight hours, holidays, and Sundays; check-off union dues; seniority to be used in reduction and increase of work force; abolition of physical examination for applicants for employment.\textsuperscript{11}

United States Steel Corporation was not at all prepared to hear the grievances of the workers. The National Committee also requested President Wilson to negotiate the grievances of the workers with the Company before the workers were actually involved in strike. When the National Committee did not get any help from the President, it declared a strike. On September 22, 1919, 375,000 workers began the strike against the steel corporation. The employers faced the strike situation very boldly. Steel companies hired expert publicity men to produce the impression among the public that steel workers were getting high wages and that the majority of them were against the strike. William Z. Foster was attacked as a Bolshevnik hireling. Civil rights of the strikers were completely suppressed in Pennsylvania. Picket lines were smashed; no meetings were permitted; organizers were beaten and run out of town. Strikebreakers were hired. A large number of Negro strikebreakers helped the steel companies in restoring production to 76\% of normal.\textsuperscript{12}

Finally, the strike came to an end in January, 1920, with a great defeat of labor. The reason for the failure of the strike was not the shortage of finances. The National Committee was very careful in spending money during


\textsuperscript{12}Rayback, p. 287.
the strike. As a matter of fact, from November, 1919, to January 10, 1920, the AFL received $418,141.18 and at the end of the strike there was a surplus of almost seventy thousand dollars. The strike failed because of the lack of organization, failure to utilize given techniques, the absence of industrial unionism and the failure of the American Federation of Labor to give adequate support.13

Dulles writes that, "The results of the strike were not only back to the twelve hour day, but back to the controlled paternalism and anti-unionism, in the Country's most important industry."14

Another important event during the period under discussion was the coal strike. Prior to the end of the steel strike a dispute in the bituminous coal fields had already originated. The mine workers had felt the effect of soaring prices. Their wages were far behind the price level. The United Mine Workers of America in September 1919 terminated the Washington Agreement which was negotiated in the Spring of 1918. A scale committee which was formed by the United Mine Workers presented a list of demands before the mine operators. The demands were "...the six hour day from bank to bank, and the five day-week, a sixty per cent wage increase for all classes of labor and for all tonnage, yardage, and dead work, time and one-half for over time and double time for Sundays and holidays and the abolition of the penalty clause."15

But the operators rejected the demands of the union on the ground that the

13 Taft, p. 394.
14 Dulles, p. 236.
15 Perlman and Taft, p. 471.
old contract was still in effect. As a result, a strike was called for on November 1, 1919, under the leadership of John L. Lewis who had accepted the Presidency of the United Mine Workers.

Government took a different attitude toward the strike. An injunction was issued by the Federal District Court in the Indianapolis which prohibited any further strike activity by union officials and called upon them to cancel the strike order. The American Federation of Labor condemned the injunction and supported the strike whole-heartedly and promised the miners to give full cooperation in continuing their struggle. President Wilson declared the strike both morally and legally wrong. John L. Lewis also supported the Governmental action at the end. Editors throughout the Country applauded the use of the injunction. Thus the coal strike was brought under control by the issuance of an injunction. The unions did get the raise in wages, but not as much as had been demanded. Their other demands were completely ignored.

There were many other strikes which took place during the period 1918-1920. Millis and Montgomery write that "...the number of strikes and lockouts increased from 3,353 in 1918 to 3,830 in 1919 and 3,411 in 1920..."17

However, only the above mentioned strikes were significant in examining the impact of certain factors on the growth and development of unions. All these strikes lost by the unions shook them to their very foundations, although actual decline in union membership was not seen before 1921.

As a matter of fact, employers had been preparing themselves since 1919 to

16Dulles, pp. 236-237.

crush the trade unionism. A combination movement – both vertical and horizontal – among the employers was started in manufacturing and banking industries. Because of mergers, many industries like iron and steel, machinery, textiles, food stuffs, etc., became very powerful.

The changes in the structure of industries brought about an impact on the unionism. Mass production due to technological progress made the task of union organization very difficult. The ratio of semiskilled and unskilled workers increased because of the partial destruction of important crafts. As a result of this, these new categories of workers found it difficult to fit into the jurisdictional framework of existing unions. 18

Relocation of industry also presented a problem to organized labor by reducing employment of union members. Increase in the real income of the wage earners and of the American people as a whole during the 1920's was another cause of the decline of trade unionism. Many workers were convinced that unorganized industries and trades had better wages than the unionized industries. They felt that unionism played a little part in bringing about the rise in hourly and annual real earnings. 19

In order to take revenge upon unions, employers started open-shop drives. They had already started the American Plan since the fall of 1920. The objective of this plan was nothing but to destroy the unions. Under this plan each worker was allowed to determine his own terms of employment with his employer without any negotiation of the business agent or union. By autumn of 1920, the Country had a great number of open-shop organizations. There were


19Ibid., p. 154.
fifty open-shop associations in New York State alone. In October 1920, the Illinois Manufacturers' Association offered aid to the employer who would fight to protect the open shop. Chicago alone had twenty-one open-shop associations.20

Besides this open-shop drive, the employers adopted other techniques to suppress the unions. They started a welfare and pension plan and gained the favor of workers. Dulles writes "-----the labor movement was also being killed by kindness. Industry complemented its aggressive enforcement of the open shop with a developing program of welfare capitalism. It sought to discourage trade unionism by making working conditions so favorable that the workers would no longer consider unions of any value...."21

The employers established many company unions. Yellow-dog contracts were freely used under which workers had to sign agreements that they would not join an outside union. Millis and Montgomery write, "...from 1920 on the yellow-dog contract was an important instrument for holding in check the organizational efforts of trade unions and forestalling the introduction of the closed shop. Together with the policy of maintaining the 'employer's closed shop,' this contract proved to be one of the most effective devices for breaking unions or preventing their spread and for stopping in its tracks the closed-shop advance."22

Post-war depression was another most important factor which gave a body

20Perlman and Taft, pp. 491-492.

21Dulles, p. 255.

22Millis and Montgomery, p. 167.
blow to the union movement. The United States was plunging into a post-war depression which had started in the spring of 1920. Causes for such an economic catastrophe were complicated: a reduction of European orders for American goods, drastic fall in government expenditures, a drop in the consumers' demands for goods because of higher prices and a decline in building activities since the investors thought that building costs had reached such a level that they would not get a reasonable return on investments. As a result of this, industrial production dropped from the level of 119 in 1919 to 102 in 1921. There was a sharp drop in employment in all industries. The number of wage earners engaged in manufacturing was reduced almost to 25%.23

The conservatism, if not timidity of the AFL, was also responsible for the decline of union membership. The AFL did not attempt to protect the workers from the anti-union drive of employers in the 1920's.24 The United States Supreme Court also favored the employers by issuing injunctions in the labor disputes. The Clayton Act was interpreted by the Supreme Court and turned in favor of the employers.

All these above discussed factors gave a body blow to the unions and consequently their membership declined very heavily by the end of 1921. Especially, those groups of unions, who had made a striking gain during the war and prosperous years, lost their membership very greatly. Metal, automobile, and railroad groups of unions became special victims of the open-shop drives of the employers. Wolman writes that "...the largest losers both absolutely and

23 Mayback, pp. 291-292.
24 Ibid., p. 255.
relatively were the transportation and metal groups, which together were responsible for more than 60% of the total loss of 1,330,800 members.²⁵

As the previous discussion indicated several economic and political factors had been at work in the period 1918-1921. They resulted in a decline of union growth from 1921 onward. Of these factors, however, this thesis is only concerned with the effects of the judicial arm of government.

²⁵Sollman, p. 39.
CHAPTER III

FEDERAL COURTS AND LABOR UNIONS DURING

THE PERIOD 1919-1921

There were five major cases decided by the Federal courts which affected the growth of labor unions during the period under examination. Of these five cases, one was decided by an United States District Court, another was decided by an United States (Circuit) Courts of Appeals and the other three cases were decided by the United States Supreme Court.

Because of the nature of the issues involved in the dispute, two cases decided by the lower Federal Courts can be discussed in one group. The other three cases which were decided by the United States Supreme Court in another group.

The two cases that come under contractual obligation were: (a) Nederlandsch Amerikaansche Stoomvaart Maatschappij v. Stevedores' and Longshoremen's Benevolent Society and, (b) Montgomery v. Pacific Electric Ry. Co.

A. CONTRACTUAL OBLIGATIONS

In the case Nederlandsch Amerikaansche Stoomvaart Maatschappij v. Stevedores' and Longshoremen's Benevolent Society, the plaintiff was the Nederlandsch Amerikaansche Stoomvaart Maatschappij better known as the Holland American Line, a Strip Line business. The defendants were the Stevedores' and

1265 F. 397 (1920).
Longshoremen's Benevolent Society and the Longshoremen's Protective Union
Benevolent Association which were incorporated associations.

Breach of contract by the defendants was the main cause of the dispute. The unions had entered into a contract with the plaintiff for three years. As per the terms of the contract, the plaintiff was to have the defendants furnish stevedores at a specified hourly pay, that is eighty cents per hour to unload the plaintiff's ships. Things were running smoothly since September 16, 1917. But on December 17, 1919 the unions took another course. The plaintiff had its vessel at the port of New Orleans waiting to be unloaded. Seventeen men of the stevedores of the defendants partially unloaded the ship and then refused to return to work unless they received an additional ten cents per hour. The plaintiff refused to pay it. As a result of this, the ship was delayed in unloading for some seven days.

The plaintiff sued the defendants in the District Court of Easter District of Louisiana for demurrage for the seven days' delay. The Court rendered a decision in favor of the plaintiff on April 6, 1920. It held that a contract between labor union and members of employers regulating wages and terms of employment, and absolutely binding the employers to employ none but the members of the union, if such members were available, imposed the reciprocal obligation on the members of the union to work according to the contract in good faith; and thus the unions were responsible for the action of their members who refused to unload the ship as per the contract. Accordingly, the plaintiff got the decree for the amount of demurrage with an interest of 5% from the date of the decree to that of payment.

The decision of this case had rather a retarding effect on the development
and progress of trade unionism. The Court clearly decided that unions and union members had to live up to their contractual obligations. Thus the decision indirectly was an impediment to the growth of unions because unions had to abide by the terms of the contract even though they were badly in need of securing better conditions of work for their members.

In the case Montgomery v. Pacific Electric Railway Company, the Pacific Electric Railway Company was the plaintiff while M. E. Montgomery and other officers of the Brotherhood of Railroad Trainmen were the defendants. The plaintiff was a common carrier of persons and property over its lines of railroad in the counties of Los Angeles, Orange, San Bernardino and Riverside. The plaintiff was engaged in interstate commerce, carrying a large number of passengers and handling a large tonnage of freight between points in the State of California and points in other states. It was also engaged in the transportation of war materials and munitions for the Government. It had altogether 1,500 employees and was running a non-union railroad.

The defendants, Brotherhood of Railroad Trainmen and Brotherhood of Locomotive Engineers were unincorporated associations, having headquarters at Cleveland, Ohio. Montgomery and Parquharson, officers of the Brotherhoods, were residents of Cleveland while other officers and agents were residents of Los Angeles.

Breach of contract was the prime cause of the dispute also in this case. The plaintiff (appellee) had entered into a contract with each of its employees that they should deal directly with their employer and not through any union

2258 Fed. 382 (1919).
or representative of the union. It was also a condition of the contract that none of the employees would join any labor union.

But the contract took the other course. However, the defendants started unionizing the employees of the plaintiff's company through intimidation, coercion, threats, inducements and persuasion knowing that it was against the terms and conditions of the contract. As a result of this organizing campaign they organized more than 1200 employees. These united employees declared that they would deal with the plaintiff only as an organization and not as individuals; and if the plaintiff would not recognize their organization, they would resort to strike on July 2, 1918, at 7 A.M. and withdraw themselves from employment.

The plaintiff took drastic action and discharged some of the employees who had joined a union and also refused to recognize and deal with the said organization. Then the defendants called a strike on July 2, 1918.

The plaintiff sought refuge in the Federal District Court of California and a restraining order was issued, on the same day. The strike was suspended until further order of the Court. After this, a considerable number of employees were not allowed to return to work.

Then the defendants appealed to the Circuit Court of Appeals, Ninth Circle, California to get the recognition of their union. The Circuit Court of Appeals made a decision on May 26, 1919 in favor of the plaintiff and clearly stated that the Constitution secures the right of free inviolable contract. The Court further held that the employer is as free to make non-membership in a union a condition of employment as the workingman is free to join the union; and that this is a part of the Constitutional rights of personal liberty and
private property, not to be taken away even by legislation.

The decision in this case had a profound adverse effect on the growth of unions. The court validated the yellow-dog contract to be practiced by the employers freely, and such practice very strongly impeded the growth and development of unionism.

B. SUPREME COURT CASES

The three cases which were brought to the United States Supreme Court were (1) Duplex Printing Press Company v. Emil Deering, (2) Truax v. Corrigan, and (3) American Steel Foundries v. Tri-City Central Trades Council. Of the three cases, Duplex Printing Press Company v. Deering was in connection with a dispute concerning the organizational activity of the union, while Truax v. Corrigan and Tri-City Central Trades v. American Steel Foundries were related to disputes concerning the terms and conditions of employment of the union.

In Duplex Printing Press Company v. Emil Deering, the plaintiff was the Duplex Printing Press Company, a Michigan Corporation, and manufacturers of printing presses at a factory in Battle Creek in the State of New York, and the defendants were Emil J. Deering and William Brenley, sued individually and as business agents and representatives of District Number 15 of the International Association of Machinists, and Michael T. Hoyland sued individually and as a business agent and representative of Local Lodge Number 328 of the same association.

The case was in connection with a dispute concerning the organizational activity of the union. The Company was not unionized. It had established a ten-hour workday and its wage scale was lower than that of the other three

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325 U.S. 443 (1921).
companies doing the same business.

The International attempted to unionize the Company, and enforce the "closed shop," the eight-hour workday, and the union scale of wages. When the Company refused to comply with these demands, the International warned customers that it would be better for them not to purchase, or, having purchased, not to install presses made by the Company, and threatened them with loss should they do so. They also threatened them with sympathetic strikes in other trades and coerced union men threatening them with loss of union cards.

In spite of all the pressures exerted by the union, the Company did not come to any agreement with the union. The International, in August 1913, called a strike against the Company in Battle Creek. The Company, in April 1914, asked the United States District Court for the Southern District of New York to grant an injunction restraining the union from interfering with the smooth running of the Company's business. The requested injunctive relief was denied. Then the Company went to the United States Circuit Court of Appeals for the Second Circuit. This Court also dismissed the Company's bill of complaint with costs thereby affirming the decree of the District Court.

The Company in January 1920, appealed to the United States Supreme Court, and the requested injunctive relief was granted on January 3, 1921. The basis of the decision was (1) the defendant's acts were not lawful in accordance with the Clayton Act; (2) business was a property right; (3) the Company was entitled to protection against "unlawful injury and interference;" (4) a combination to hinder the Company's business existed in the case; (5) the provision in Section 20 of the Clayton Act were limited to the disputes directly between the employer and the employees; (6) Section 20 did not justify
instigating sympathy strike and secondary boycott; and (7) the plaintiff had a "clear right to an injunction under the Sherman Act as amended by the Clayton Act."

This decision outlawed secondary boycott and sympathy strikes which have been some of the most effective weapons employed by unions to achieve their ends. This outlawing fatally affected the union growth and progress, because it stimulated the management to greater opposition to unions and also encouraged them to apply for injunctive relief then and there. This decision, as a whole, destroyed the very spirit of the Clayton Act which was meant for the welfare of labor. Although this decision did not invalidate all the rights owned by unions under the Clayton Act, it was a clear illustration of the fact that unions had little security in the law of the United States as it then stood. Francis Bowes Sayre said: "Viewed from its broader aspect, the general effect of the decision seems particularly unfortunate, because of the disappointment and disillusionment which it spells for the great rank and file of workers of our Country upon whose well-being and contentment our national welfare most largely depend."

Truax v. Corrigan belongs to a different category since the dispute was primarily related to terms and conditions of employment. In this case, William Truax and William A. Truax, co-partners, were the plaintiffs, and Michael Corrigan, Albert Shipp, Charles Brooks, members of Bisbee Local Number 380, Cooks and Waiters' Union, and Warren District Trade Assembly were the defendants. A dispute arose between the plaintiffs and defendants concerning

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5 257 U.S. 312 (December 19, 1921).
the terms and conditions of employment of the members of the union. When all the efforts to conciliate with the employers proved futile, the workers went on strike, and picketing and secondary boycott followed in its train.

The plaintiffs sought relief first in the Superior Court for Cochise County, Arizona, in April 1916 and then in the Supreme Court of the State in April 1920. The Superior Court dismissed the complaint and this judgment was affirmed by the Supreme Court of Arizona.

Finally, the plaintiffs went to the United States Supreme Court in June, 1921, and a decision was made on December 19, 1921. The court reversed the previous decisions and ruled in favor of the plaintiffs. The Court held that any kind of picketing was illegal. It was also held that any boycott, having for its object the destruction of or irreparable injury to one's business may be enjoined.

In the case under discussion, the union had adopted nonpeaceful picketing and secondary boycott. That these means were employed by the union is clearly revealed from the following fact. To win the strike and to coerce and compel the plaintiffs to comply with the demands of the union, the defendants and others, unknown to the plaintiffs entered into a conspiracy and boycott to injure the plaintiffs in their restaurant and restaurant business, by inducing plaintiffs' customers and others heretofore well and favorably disposed to cease to patronize or trade with the plaintiffs. The method of inducing was set out at length; and included picketing, advertising the strike, displaying banners, denouncing the plaintiffs as "unfair" to the union and appealing to customers to stay away from the "English Kitchen" and the circulation of handbills, containing abusive and libelous charges against the plaintiffs, their
employees and their patrons, and intimidations of injury to future patrons.

The United States Supreme Court's decision deprived union of its right to employ picketing and secondary boycott as most effective weapons to achieve their end. Thus, it shook unionism to its very foundation. All judicial power at the disposal of the United States Supreme Court was used against the union to defeat the favorable legislative intentions toward labor provided for in the Clayton Act.

*American Steel Foundries v. Tri-City Central Trades Council* also falls under the group of *Truax v. Corrigan* case. In this case, the plaintiff was American Steel Foundries, a New Jersey corporation in Granite City, Illinois, and defendants were Tri-City Central Trades Council of the same City and fourteen individuals including the officers of the Council not in the employment of the Company. The Tri-City Central Trades Council was a labor organization composed of representatives of thirty-seven trade unions of Granite City, Madison, Venice, and adjoining towns in Illinois. (All fourteen individuals sued, were not residents of the State of Illinois).

Reduction in wages of the employees was the main cause of the dispute. American Steel Foundries was shut down for about six months, leaving the workers unemployed all this while. Upon its reopening on April 6, 1914, only 350 out of 1600 employees were recalled to work, that even with a reduction in their wages. The Council appealed to the sense of justice of the employers, but all their effort was fruitless. Then the Council called a strike on April 22, and on the following day picketing began.

6257 U.S. 184 (December, 1921).
On May 18, 1914, the corporation went to the District Court for the Southern District of Illinois and secured an injunction order against the Council. This order prohibited any kind of interference with the corporation and its officers in the "free and unrestrained control and operation of its business."

The Council appealed to the United States Circuit Court of Appeals for the Seventh Circuit, Illinois. They relied on Section 20 of the Clayton Act to sustain their actions, "no injunction shall issue to restrain peaceful picketing etc." The Court rendered a decision in favor of the Council that injunctive relief in favor of the Corporation was unjustified. The Corporation appealed from this decision to the United States Supreme Court on January 17, 1919. The case was finally reargued on 4th and 5th of October, 1921.

The United States Supreme Court rendered a decision on December 5, 1921. It reversed that part of the decree of the Circuit Court of Appeals which legalized picketing and upheld that part which permitted peaceful persuasion. The District Court was directed to modify its original decree accordingly. Thus, the Supreme Court held that picketing, whether peaceful or non-peaceful, was illegal.

It is clearly revealed from the activities of the Council that the picketing was of a peaceful nature. They used all honorable means to persuade such persons not to take the places of the men on strike. They also admitted the participation of individual members in the picketing, but avoided threats, injury, violence or responsibility for violence.

This decision adversely affected union growth in two ways; first, by declaring any kind of picketing as illegal; and second, by limiting the pro-
tection to labor granted in the Clayton Act only to workers in the local community and excluded those union officers who were not in the employ of the Company involved in a labor dispute.

Thus, the decisions in these three cases of the United States Supreme Court narrowed down the area and application of Section 20 of the Clayton Act. The Clayton Act was supposed to protect labor in two ways: (1) by exempting labor unions from prosecution as conspiracies in restraint of trade; and (2) by putting limitation on the federal courts in the issuance of injunctions in labor disputes. The second objective of the Clayton Act which was provided in Section 20 for the welfare of labor completely ended in smoke by the decisions of the United States Supreme Court. Although, in theory, labor still had the right to organize, to strike, to picket, and to boycott, in practice said one of the ablest labor lawyers, "the rules have been hedged in by so many exceptions and weakened by so many modifications and departures that they have been reduced to the status of an abstract social philosophy rather than the statement of positive law."  

7 Faulkner and Starr, p. 184.
CHAPTER IV

STATE COURTS AND LABOR UNIONS DURING THE PERIOD 1919-1921

Up to this time, the cases which were decided by the Federal Courts have been examined. In this Chapter, the cases which were brought to the State Courts for decision will be taken into consideration. State courts had made decisions on many more cases than the Federal Courts because before the thirties, the Federal Government generally avoided interference in the union-management relations. As a matter of fact, legal problems related to such relations were more or less left entirely to State Courts for rulings. Therefore, the decisions of the State Courts had a pronounced effect on the development and growth of union.

In order to make the points involved clearer and their analysis easier, the cases which are about to be considered and examined have been grouped into three categories: Cases involving disputes between (1) Management and Union; (2) Individual Members and Union; and (3) Local Union and International Union.

A. MANAGEMENT V. UNION

There were ten important legal cases in this area: (1) Diamond Block Coal Co. v. United Mine Workers of America; (2) United Traction Co. v. Droogan; (3) G. Heitkemper v. Central Labor Council of Portland and Vicinity; (4) Greenfield v. Central Labor Council of Portland and Vicinity; (5) A. J. Monday Co. v. Automobile Aircraft and Vehicle Workers of America, Local No. 25; (6)
Stuyvesant Lunch and Bakery Corporation v. Reiner; (7) Michaels v. Hillman;
(6) P. Reardon, Inc., v. Caton; (9) Auburn Draying Co. v. Wardell; (10) San
Antonio Fire Fighters' Local No. 84 v. Bell.

These cases may be subdivided according to the original issue which
created the dispute:

1. Union Organization
2. Terms and Conditions of Employment
3. Union Security

Union Organization

Out of the cases mentioned above, there are six cases which were related to
the issue of union organization. They were (1) Diamond Block Coal Co. v.
United Mine Workers of America; (2) Stuyvesant Lunch and Bakery Corporation v.
Reiner; (3) Auburn Draying Co. v. Wardell; (4) G. Heitkemper v. Central Labor
Council of Portland and Vicinity; (5) Michaels v. Hillman; and (6) San Antonio
Fire Fighters' Local Union No. 84 v. Bell.

In the case Diamond Block Coal Co. v. United Mine Workers of America,¹ the
plaintiff was the Diamond Block Coal Company, and the defendant, the
United Mine Workers of America. The Company was engaged in coal-mining business
in Perry County, Kentucky and had provided its employees with living quarters
and other benefits. The defendant union was interested in organizing the em-
ployees of the Company. The organizers of the union were peacefully canvassing
the workers to join the union promising them better quarters, food allowances,
etc., if they did so.

¹ 1222 S.W. 1079 (1920).
It was the contention of the employer coal company that organizational activities were illegal. In view of this purported illegality, the Company took this case to the Circuit Court of Perry County, Kentucky, seeking injunctive relief. The Court decreed that injunctive relief would not be granted because the means which the union used for organizational purposes were peaceful and therefore legal. This decision was affirmed by the Courts of Appeals of Kentucky on June 18, 1920.

The majority opinion of the Courts of Appeals pronounced that union organizers could go out and solicit new members so long as the means they used remained free of violence, intimidation and other illegal action. This decision also reaffirmed the old Collon Law which prescribed that, in order to sue an involuntary association, it was necessary to make every member thereof a party thereto.

The decision rendered in this case was particularly helpful to the area in and around Kentucky where there were numerous coal mines and workers who were generally unorganized. This decision stimulated growth of union activity and organization locally, and because the United Mine Workers Union was involved, this decision got national recognition and likewise stimulated the growth of labor unions throughout the United States. Also because this decision reaffirmed the old Common Law rule pertaining to suing an involuntary association, the unions were benefited in as much as it became more difficult and impractical to sue those organizations which had the status of voluntary association.

In Stuyvesant Lunch and Bakery Corporation v. Reiner\(^2\) case, Stuyvesant

\(^2\)181 N.Y.S. 212 (1920).
Luneh and Bakery Corporation was the plaintiff and Harry Reiner, a treasurer of the Waiters' Union, Local No. 1, an unincorporated association, was the defendant.

The plaintiff was running a restaurant employing about twenty to thirty people. The restaurant was operated as a non-union establishment. The defendant attempted to unionize the restaurant. The employees allegedly were not in favor of the union. They were satisfied with the wages and conditions under which they were working. The plaintiff also refused to help get his restaurant unionized.

Following the plaintiff's refusal to unionize, the defendant instituted picketing in front of the plaintiff's premises with its concomitants of threats and intimidation of the plaintiff's employees and of annoyance of its customers.

The plaintiff, then, requested the Supreme Court, Special Term, New York County for an injunctive relief against the activities of the defendant. The Court held the decision in February 1920 in favor of the plaintiff by making picketing a malicious act and unlawful, and accordingly an injunction was issued against the defendant's picketing. The Court ruled that the right to join a labor union implies the right not to join one. Picketing, even though ostensibly peaceable, may not be employed, when its purpose is in effect a malicious and wanton interference with another's business or vocation. Thus, picketing of such nature was made a malicious act and unlawful.

The decision of the Court in this case was adverse to union activities in general, and union growth in particular. The very decision of the Court that the right to join a labor union implies the right not to join one gave a blow
to the activities of the labor union. Union growth was severely impeded because the decision was made in New York, a state where union activities were very prominent.

In the case Auburn Draying Co. v. Wardell the plaintiff was a corporation engaged in the trucking business in the City of Auburn, New York. The defendant was the Teamsters' Union No. 679 of the same City.

The plaintiff had employed thirty to forty-five men, most of whom were not members of a labor union. The defendant warned the plaintiff that if they did not take steps to get their men to join the union, the Company would be placed on the "unfair list." The Union blacklisted it when the plaintiff neither forbade nor encouraged the employees to join the union. The defendant took further measures to have customers of the plaintiff, for example, ice deliverers, bakers, butchers, builders, plumbers, contractors, etc., to withdraw their business.

The plaintiff instituted a case against the defendant in the Court of Appeals, New York, seeking injunctive relief. The injunctive relief was granted on July 15, 1919 by the Court.

In this case, the legality of the union was recognized and its ultimate purpose, that is, united efforts for higher wages, shorter hours and better working conditions, was likewise recognized. But the Court held against the union on the ground that one cannot injure another's property rights by controlling the acts of third persons through coercion, duress, oppression or fraud. Thus, the combination of the defendant constituted an illegal conspiracy

3124 N.E. 97 (1919).
to injure the plaintiff's business and property, and their acts and means both were unjustified and unlawful.

The decision of the Court in this case again accorded theoretical recognition of unions. However, the growth of the unions in the State of New York was at a low ebb because the Court in each decision made it clear that the union had no business to encroach upon the property rights of others as a means of achieving their end.

In the case *G. Heitkemper v. Central Labor Council of Portland and Vicinity* the plaintiffs were different corporations and firms engaged in selling and engraving jewelry and repairing watches and clocks, at their respective places of business in the City of Portland. The defendant, with the Central Labor Council, was the Local Union No. 41 of the International Jewelry Worker's Union. Central Labor Council was a body of delegates appointed by and representing different labor unions and organization, including the defendant local union.

Union recognition was the main issue of this dispute. The defendant attempted to have its union recognized by the plaintiffs. In order to achieve its aim and objective, the defendant picketed the plaintiffs' places of business. The defendant, according to the plaintiffs, had a plan to injure and destroy their businesses by preventing customers from buying merchandise. The union was also alleged to have intimidated any annoyed their customers who were entering into the places of business by means of picketing.

First, the case was instituted in the Circuit Court, Multnomah County,
Oregon by the plaintiffs and injunctive relief was granted against the activities of the defendant. After this decision, the defendant appealed to the Supreme Court of Oregon. The Supreme Court also rendered a decision on October 1, 1920 in favor of the plaintiff.

The Supreme Court held that the statutes of the State of Oregon which declare unions to be lawful organizations do not legalize picketing an employer's place of business, and destroying his patronage, where the only question involved is the recognition of the union.

Obviously, the decision in this case was one which was generally adverse to the growth and progress of unions in the state of Oregon. Picketing, one of the strong weapons of the union to achieve its end, was restricted by this decision and consequently the growth of union was hindered.

In *Michael v. Hillman*[^5^], Joseph Michael and others who owned garment manufacturing factories in Rochester, were the plaintiffs and Sidney Hillman, the President of the Amalgamated Clothing Workers of America and others were the defendants in this case. The plaintiffs had been maintaining a non-union shop and were endeavoring to keep it such.

Recognition of union was the main issue of this strife. The Amalgamated Clothing Workers of America wanted to have recognition of its organization by the plaintiffs, who were not at all prepared to do so.

However, the defendants, with a view to forcing recognition of the union upon the plaintiffs decided to secure members in the plaintiffs' factories through a secret organizing campaign. The union succeeded in organizing 200

[^5^]: 183 N.Y.S. 195 (1920).
employees out of a total working force of about 1000 employees. The plaintiffs took drastic action and discharged those employees who had joined the union. They also started taking action on those employees who were active in soliciting members.

The defendant union, then declared a strike in the plaintiffs' factories and a large number of workers quit their jobs. Picketing followed in its train. In the progress of strike there were often from 800 to 1000 pickets and those who passed the picket lines were insulted and intimidated. Those picketings were of non-peaceful nature since violence, intimidation, and threat were involved.

The plaintiffs instituted a case in the Supreme Court, Monroe County, New York and requested injunctive relief. The Court rendered its verdict on June 25, 1920 in favor of the plaintiffs and injunctive relief was granted. The Court made illegal the "conspiracy" organized by a labor union to achieve its end.

This decision also adversely affected the growth of union in the State of New York because the labor union could no longer organize to effect its end since the Court made such activity illegal.

In San Antonio Fire Fighters' Local Union No. 84 v. Bell, the plaintiff was the San Antonio Fire Fighters' Union No. 84. The defendants were Sam C. Bell, the Mayor, and the Commissioners of the City of San Antonio, Texas.

The plaintiff union accused the defendants that they had unlawfully conspired for the purpose of breaking up and disrupting and destroying the San

6223 S.W. 506 (1920).
Antonio Fire Fighters' Local Union No. 84, and were seeking and endeavoring to intimidate the members of the city fire department, who were members of the plaintiff union by threatening to discharge them unless they withdrew their membership from the plaintiff union.

Injunctive relief was sought by the plaintiff against the defendants to prevent the discharge of the members of the union, first from the District Court, Bexar County, Texas. After the unfavorable decision from this District Court, Bexar County, Texas, the case was brought to the Court of Civil Appeals, San Antonio, Texas.

The Court of Civil Appeals held the decision in favor of the defendants on June 19, 1920, and denied the injunctive relief. The Court ruled that an association, labor union, or the like, cannot sue in its own name unless property rights in which the association membership is jointly interested are involved, and a labor union could not maintain a suit in its name to restrain a city from discharging certain members of the fire department, there being no contract between the labor union and the city corporation.

This decision certainly adversely affected the union growth in Texas because the labor union could not sue in its own name, nor could it sue a city corporation in the absence of a contract between a labor union and the corporation.

Terms and Conditions of Employment

There were two cases which were related to the issue of terms and conditions of employment. They were: (1) Greenfield v. Central Labor Council of Portland and Vicinity; and (2) United Traction Company v. Droogan.
In the case Greenfield v. Central Labor Council of Portland and Vicinity,7 George H. Greenfield was the plaintiff who was engaged in operating two retail stores for the sale of boots and shoes in the City of Portland. The defendants were Local Union No. 1257 of the Retail Clerks International Protective Association, an unincorporated union, and the Central Labor Council of Portland, a body of delegates appointed by and representing numerous labor unions, including the defendant local union.

Trade dispute was the main issue of this strife. The plaintiff alleged that the members of the defendant union had formed a plan of federation and conspiracy to injure and destroy his business by preventing his customers from entering into his two places of business and buying his merchandise. It was also alleged that defendants by picketing conspired together to intimidate and annoy the customers who were entering into the two stores by picketing. It was further alleged that the defendants were wearing banners inscribed with the words "unfair to organized labor" and warning and advising the plaintiff's customers not to patronize the plaintiff. The defendants, on the other hand, denied any intimidation or conspiracy and alleged that there was a trade dispute between them.

First, the suit was brought in the Circuit Court, Multnomah County by the plaintiff against the Central Labor Council of Portland. Injunctive relief was granted in favor of the plaintiff. The Circuit Court held a decision enjoining and prohibiting the defendants from harassing, annoying or obstructing the plaintiff in any manner in the conduct of the business. Picketing was legalized

7192 P.A.C. 783 (1920).
but only two pickets during the business hours of each day were allowed. After this decision, both the parties appealed to the Supreme Court of Oregon.

The Supreme Court also made the picketing permissible. But it modified the decision of the Circuit Court by limiting the number of pickets to one only and that also on the outer edge of the side walk. The Court also stated the area in which they could picket. The Court enjoined such acts of violence, arguing with customers, harassing the plaintiff or any of his employees at his said place of business and intimidation, threat, etc.

The effect of this decision was, to some extent, unfavorable to the growth and development of unionism in the State of Oregon because the Court restricted the use of pickets to only one and made picketing ineffective.

In United Traction Co. v. Droopen, United Traction Company was the plaintiff, and Joseph S. Droopen, the President of Division 148 of the Amalgamated Association of Street and Electric Railway Employees of America, was the defendant in this case.

Existence of some kind of trade dispute was the main cause of the conflict in this case. The defendants were engaged in a strike and carrying on allegedly unlawful acts in order to win the strike. A temporary injunction was already issued by the Supreme Court, Albany County, New York, against the defendant, and the plaintiff had asked for further continuance of the injunction.

The Court extended the temporary injunction by its decision on June 27, 1921 and also gave general law in regard to strikes, unions and liability of members. The Court held that organizations engaged in strikes are responsible

8189 N.Y.S. 39 (1921).
for all lawlessness growing out of strikes which they could have avoided by reasonable discipline imposed upon their members by publicly counseling that peaceful means alone be used, by protesting against and disavowing lawlessness, by taking such reasonable measures as to assist in preventing or punishing it, and by doing all of these things unequivocally and in good faith.

The Court further held that every member of a labor union on strike is responsible for the unlawful acts of the others, and particularly for the acts of any officer committed for the purpose of carrying out the object of the union to secure a successful strike.

The decision of this case limited and curtailed the activity of the union in the State of New York inasmuch as it held that each and every member of the union would be held responsible for the wrongful acts of fellow members.

**Union Security**

There were two cases which were related to the issue of union security. They were: (1) P. Reardon, Inc. v. Caton; and (2) A. J. Monday Co. v. Automobile Aircraft and Vehicle Workers of America, Local No. 25.

In the case P. Reardon, Inc. v. Caton,9 P. Reardon, the owner of an extensive public trucking business, was the plaintiff and Daniel Caton, the President of the Steamship Clerks' Union, Brooklyn and Staten Island, Local No. 975, I.L.A., an unincorporated association, including other officers were the defendants.

The plaintiff was running his business on an open-shop basis in the City of New York. The defendants wanted to unionize the plaintiff's entire

9178 N.Y.S. 113 (1919).
business and on this issue a dispute arose. In an effort to affect this unionization, the union members refused to handle merchandise and freight which were brought and handled by drivers, chaufleurs, and truckmen who were not members of the union. The defendants insisted that the primary object of their refusal to deal with the plaintiff's non-union employees was to better the conditions of workers with regard to wages and working hours.

The plaintiff asked for injunctive relief in the Trial Court of New York for restraining defendants from practising any discrimination against non-union employees, and preliminary injunction was issued.

At the issuance of such injunction, the defendants appealed to the Supreme Court, Appellate Division, Second Department, New York. The Court reversed the decision of the Trial Court and ruled in favor of the defendants on November 21, 1916. It held that employees of common carriers, who refuse to accept freight hauled by non-union truck drivers, will not be restrained from doing so in an action by a corporation owning trucks, there being no show of malice against the plaintiff. It further held that boycotting is not unlawful where the primary purpose is to better the condition of the boycotters as laborers, and not to do irreparable injury to the party boycotted.

This decision affected the growth of union favorably in the State of New York. It was clearly accorded recognition to the right of union members to boycott by this decision. Boycott was allowed as a means to the union to gain recognition and to effect its demand.

In A. J. Monday Co. v. Automobile Aircraft and Vehicle Workers of America, Local No. 25,10 the plaintiff was the A. J. Monday Company engaged in the

10177 N.W. 687 (1920).
business of building, painting, and trimming automobile bodies, and the defendants were the automobile Aircraft and Vehicle Mechanics of America, Local No. 25, a voluntary unincorporated organization including officers and representatives of Local No. 25 not in the employ of the same company.

An attempt to establish a closed shop was the prime cause of the dispute. The defendants attempted to establish a closed shop and a union shop committee in the plaintiff's establishment. When their attempts were strongly opposed by the Company, they called a strike on September 5, 1919. They also started picketing the plaintiff’s place of business. The Company then, brought a suit in the Circuit Court, Milwaukee County, Wisconsin, and asked for a temporary restraining order prohibiting the defendants from picketing activity. The order was issued against the defendants.

Later on, both the plaintiff and the defendants moved to the Circuit Court. The plaintiff moved to amend the first order in certain areas and the defendants moved to vacate that order. It was the contention of the defendants that the injunction should not be issued because of a State Statute which denied the injunctive relief to an employer against a union.

The Court, this time, modified the original order. It denied the motion of the defendants. It also denied the plaintiff's motion to extend or amend the injunction. The Court rather changed the original injunction order and permitted the defendants to advise the employees and persuade them by peaceful and lawful means to abstain from the plaintiff's business.

From the order so modified, the plaintiff appealed to the Supreme Court of Wisconsin on December 22, 1919. The Supreme Court rendered a decision on June 1, 1920 in favor of the plaintiff. It held that State Statute which denied
the plaintiff the relief of an injunction, does not apply in cases where the only question involved is that of a closed shop. In order to invoke the State Statute there must be a dispute as to wages, hours, etc. It also held that an employer has the constitutional right to employ whom he pleases.

The impact of this decision was rather significant because the Court recognized the right of union member to picket but at the same time restricted the use of pickets to certain disputes only. The growth and development of union in the State of Wisconsin was hindered by this decision because the union could no longer adopt picketing to gain a closed shop.

B. DISPUTE BETWEEN INDIVIDUAL MEMBER AND UNION

This area is particularly important because it was in such decisions the Courts protected certain rights of union members and it imposed certain duties and responsibilities on the union. There were five important cases in this area of individual member v. union: (1) Burger v. McCarthy; (2) Stenzel v. Cavanaugh; (3) Gilmore v. Palmer; (4) Clarkson v. Leiblan; and (5) Baskins v. United Mine Workers of America.

In Burger v. McCarthy, Marker, F. Burger and others, railroad conductors residing in the City of Hinton, West Virginia, were the plaintiffs and T. J. McCarthy and thirteen others, constituting the general grievance committee of the Brotherhood of Railroad Trainmen were the defendants.

Protection of seniority right was the main issue of this dispute. The plaintiffs had several years of seniority on their jobs. By virtue of a new regulation which was going to be implemented, the senior men on the line did

11 100 S.E. 492 (1919).
not have the same rights they formerly had under the old regulation.

The plaintiffs instituted a case in the Circuit Court of Summers County, West Virginia. They claimed that because of their service in the railroad from fifteen to eighteen years they had acquired property rights and they were entitled to injunctive relief.

A temporary injunction was awarded, but on final hearing on October 14, 1918 it was dissolved and the plaintiffs' bill was dismissed, and from that decree the plaintiffs had taken this appeal to the Supreme Court of Appeal of West Virginia.

The Supreme Court of Appeal made a decision on October 7, 1919, and affirmed the decree of the Circuit Court on the ground that the new regulation adopted by a general grievance committee of the Brotherhood of Railroad Trainmen was for the general good of the Brotherhood, and the old rule giving preference in making rungs of trains according to seniority did not create a property right in plaintiffs such as to justify the interference by a court of equity to prevent the operation of the rule. The Supreme Court also mentioned that the grievance of the plaintiffs was not reviewable by the courts since that was neither in conflict with any rule of public policy nor destructive of vested property rights.

The right of the union to make decisions in the formulation of its policies was very clearly recognized by the decision of this Court and hence it might have stimulated the growth of unions in the State of West Virginia.

Stenzel v. Cavanaugh.12 William C. Stenzel was the plaintiff and William

12 189 N.Y.S. 883 (1921).
Cavanaugh, the President of the International Jewelry Workers' Union, Local 39, was the defendant in this case.

The case was brought by the plaintiff against the defendant to the Supreme Court, Equity Term, Monroe County, New York because he was expelled without giving any written charge against him. The plaintiff had asked the Court for mandatory injunction.

The Court held a decision on July 1921 in favor of the plaintiff. The Court ruled that the expulsion of the plaintiff by the defendant was illegal. The judgment of the court was based on the following facts: That expulsion of a member of a labor union, a voluntary association, is illegal, when made contrary to its by-laws, which require written charges, reference of the charge to a committee with the right of challenge of members of the committee, and a right to a fair and impartial trial; all of which were not observed.

Hence, mandatory injunction was issued against the defendant to give relief to the plaintiff from an illegal expulsion and for damages by unincorporated labor union.

The decision in this case adversely affected the growth of union in the State of New York because it put certain checks and restrictions on the power of the union. Unions could no longer expel any member without giving written charge even though he would be guilty.

In *Gilmore v. Palmer*, Thomas Gilmore and Joseph Sigmaster were the plaintiffs, and Arthur Palmer, the President of the Boot and Shoe Cutters' Protective Association, Local Assembly No. 2028, Knights of Labor was the defendant.

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1379 N.Y.S. 1 (1919).
Suspension of the plaintiffs by the defendant was the main issue of this dispute. The plaintiffs had been suspended by the President of the trade union without notice and without opportunity to be heard, or a trial. It was the contention of the defendant that he had the authority to exercise his power under Section 30 of the trade union's Constitution against disruptive attitude of any member and therefore he had suspended the plaintiffs.

The plaintiffs requested the Supreme Court, Monroe County, New York to issue an order cancelling their suspension. A decision was rendered by the Supreme Court on December 27, 1919 in favor of the plaintiffs. The Court held that the suspension was not valid since the defendant union did not abide by the rules and regulations which provide for a fair trial before any action could be taken against any of its members.

The decision of this case was restrictive to the growth and development of the union in the State of New York because it put certain restrictions on the power of the trade union with regard to the expulsion of its members. The Court, very explicitly, stated that if the union rules were not adequate enough to guarantee a fair and impartial hearing, it would intervene to safeguard the rights of individual members.

In Clarkson v. Laiblan,14 the plaintiff was Janus L. Clarkson, a journeyman roofer by occupation. The defendants were the roofers' union and its officers including Frederick Laiblan, the President of the Unions.

The plaintiff had brought this case to the Court against the defendant union and its officers for the damages he sustained on account of the wrongful

14 216 S.W. 1029 (1919).
acts of the defendants. Formerly, the plaintiff himself was one of the members
of the roofers' union working as a roofer. After a few years, the plaintiff
started his own business, and for that reason he ceased to be a member of the
defendant union. Then again after a few years, the plaintiff sold his business
to another roofing company, as a condition of the sale he obtained employ-
ment with the same company. The defendant union refused to allow the plaintiff
to work with the company to which the plaintiff sold his business unless all of
the unemployed members of the roofers' union were first put back to work. Be-
cause of the threats of strikes, violence, boycott, etc. by the defendants, the
said roofing company refused to allow the plaintiff to start work. Then the
plaintiff entered into a contract with the company as an independent contractor.

Again the defendant union asked the roofing company to annul the contract
with the plaintiff. The defendants also threatened to call a strike against
the roofing company unless the plaintiff was prevented from working under the
said contract. Consequently, the roofing company annulled its contract with
the plaintiff.

The plaintiff now sued the defendant union and its officers in the Cir-
cuit Court, St. Louis. The Circuit Court ruled in favor of the plaintiff.
Then, the case was brought to St. Louis Court of Appeals, Missouri. St. Louis
Court of Appeals rendered a decision on December 2, 1919 and affirmed the de-
cision of the Circuit Court.

The St. Louis Court of Appeals held that where the officers of a labor
union, through business agent appointed by them, resorted to threats of strikes
etc. which deprived the company of its free will in the matter of carrying out
its contract with a former member of the union, who had gone into business for
himself and then sold that to the company on condition that it should employ him, the acts of the officers of the union were the proximate cause of damage to the former member thus deprived of employment, and gave him a cause of action against them. Here the business agent had the authority of the union to act as he did, and for this reason the officers and the members of the union were held liable, as the union is bound by the acts of its agent when the said act is within the scope of the agency.

Thus, the verdict was in favor of the plaintiff asking the defendants to pay a sum of $55.00 as compensatory damages and of $1200.00 as punitive damages.

This decision to some extent adversely affected the growth and development of union in the State of Missouri since it restricted the power of the union. The union could no longer force an employee to join the union even though he had formerly been a union member.

In Baskin v. United Mine Workers of America, the plaintiff was the widow of John Baskins, and the defendant was the United Mine Workers of America. A suit was instituted in the Court with a view to recovering $100,000.00 as damages towards the death of her husband. Her husband was a non-union member, and was killed by union members when a strike, called upon by the union, was going on against the Prairie Creek Coal Mining Company.

The suit was filed in the Circuit Court of Appeals, and the summons was issued against the United Mine Workers of America. The Circuit Court of Appeals, Arkansas, quashed the said summons on the ground that unions could

16234 S.W. 465 (1921).
not be sued under their society name.

Finally the plaintiff appealed to the Supreme Court of Arkansas. The Supreme Court of Arkansas rendered a decision on November 7, 1921 and sustained the rulings of the trial court. The Supreme Court made it clear that an unincorporated association cannot, in the absence of a statute authorizing it, be sued in its society of company name, but all the members must be made parties. Where an association cannot be sued in its society name, the issuance of a summons to one of its agents is insufficient for the purpose of bringing the association into a court.

By virtue of this decision, unions which were unincorporated became less amenable to law suit in the State of Arkansas. Therefore, it might have stimulated the growth of unions there since they were less apt to be burdened with numerous suits which would impede the development of unions.

C. DISPUTE BETWEEN LOCAL AND INTERNATIONAL UNION

This area is important because the growth of union was affected by the decisions made on the issues arising between local union or its members and the International Union. There were four important cases in this area: (1) Bricklayers' Plasterers' and Stonemasons' Union v. Bowen; (2) O'Connor v. Morris; (3) Busse v. Weber; and (4) Gardner v. Newbert.

In Bricklayers' Plasterers' and Stonemasons' Union v. Bowen, the plaintiff was the Bricklayers', Plasterers', and Stonemasons' Union, Local 39, and the defendants were William J. Bowen and others who were the executive officers of the International.

183 N.Y.S. 855 (1920).
Suspension and expulsion of many members of the Local by the defendants were the main cause of the strife. Ever since the affiliation of the Local to the International the executive officers of the International had been exerting much pressure on the Local. They suspended and expelled many members of the Local without giving notice or an opportunity for trial.

The plaintiff requested the Supreme Court, Monroe County, New York to restrain the enforcement by defendants of certain removals and suspensions decreed by such executive officers and further interference by them with the affairs of the Local.

The Supreme Court made a decision on August 2, 1920 in favor of the plaintiff. The Court held that unions are accorded the privilege by the courts to settle disputes among themselves and in their own rank, but unions are not above the law and members cannot be expelled without being given a fair hearing on the charges against them. The Federal Court controls the activities on the International, and it guarantees the right to a fair hearing. The Court further held that provisions in the constitution of a general union for the removal or suspension of officers and members of a subordinate union for violation of laws or rules of the union without a hearing are invalid. When the national union executes such unauthorized acts, the local union is free to seek relief from the courts.

It is probably that this decision mildly stimulated the growth of local unions in the State of New York since the local union and its members got more protection against the undue pressure of the International Union. Because of this decision, the International could no longer exert dictatorial pressure on the Local or its members.
In *O'Connor v. Morrin*, the President of Local No. 35 of Long Island of the International Association of Bridge, Structural and Ornamental Ironworkers and others were the plaintiffs, and Patrick J. Morrin, the President of the International Association of Bridge, Structural and Ornamental Ironworkers and others were the defendants in this case.

Suspension of the individual members and the Local No. 35 was the main cause of the dispute. The defendants had suspended the individual members and their union Local 35. On this issue, the case was filed by the plaintiffs in the Supreme Court, Kings County, New York for an injunction against the defendants. The plaintiffs claimed that the said Local No. 35 and the individual members thereof had been illegally suspended by the parent organization and that by reason of such suspension they had suffered and were likely to suffer damage to what they called their vested rights in the organization.

The defendants, on the other hand, contended that the plaintiffs' proper forum was within the organization itself and that the alleged wrongs could be regulated within the organization.

The Supreme Court, Kings County, New York held a decision on November, 1919 in favor of the defendants and denied the application for injunction. The Court held that the local union and the members thereof must seek relief as provided for by the rules, regulations and by-laws for alleged wrongful suspension from the parent organization. Relief by injunction would not be granted where the member suspended was provided remedy by union rules.

This decision probably adversely affected the growth of unions in general.

17179 N.Y.S. 599 (1919).
and local unions in particular in the State of New York, since it strengthened the power of the International over the local union. This decision made it quite clear that local unions shall have to live on the mercy of their parent organization for settling their dispute even though they and their members could have been legally suspended.

In Kunze v. Weber, Arthur Kunze and other seven, all directors of the Musical Mutual Protective Union were the plaintiffs and Joseph H. Weber, the President of the American Federation of Musicians and others were the defendants.

The Protective Union was a membership corporation organized under the laws of the State of New York. The American Federation of Musicians was an unincorporated association having members in different states. As per the by-laws of the American Federation of Musicians, any musical union could be affiliated to it and the Protective Union was so affiliated.

Suspension of Finkelstein, the President of the Protective Union by the plaintiffs was the prime cause of the strife in this case. Because of some difference with the Board of Directors, Finkelstein was suspended and given a notice of hearing. After his suspension, Finkelstein went to the Defendant Weber, the President of the Federation for reinstatement. Weber issued an order asking the directors of the board not to take any action against Finkelstein. The directors of the Protective Union disregarded the order saying that the Federation had no jurisdiction to issue such an order. The directors, plaintiff in this case, instituted a case against Weber and others.

18 168 N.Y.S. 944 (1921).
the defendants to the Supreme Court, Appellate Division, First Department, New York and requested the court to issue a permanent injunction. The Supreme Court rendered a decision in May 1921 in favor of the plaintiffs. The Court held that an unincorporated association has no right to interfere with the internal management of the one which is incorporated. Accordingly an injunction order was issued.

This decision mildly but favorably affected the growth of local unions in the State of New York because an incorporated local association got superiority over the one which was unincorporated and national in character. The incorporated associations probably got encouragement to strengthen their power and membership by themselves enjoying freedom from the interference of the ones which were unincorporated.

In Gardner v. Newbert,19 Harry R. Newbert and others, the members of the local lodge known as Lakeside Lodge No. 39 were the plaintiffs and George Gardner, the President of the International Brotherhood of Boiler Makers and Iron Ship Builders and Helpers of America and others were the defendants.

An attempt to expel the plaintiff's lodge from the International by the defendants was the main cause for this dispute. The plaintiffs' Lakeside Lodge No. 39 was affiliated with the International Brotherhood of Boiler Makers and Iron Ship Builders and Helpers of America. Due to some reason, the defendants attempted to expel the plaintiffs' lodge from the International simply by giving them written notice and requesting that they return their charter without any hearing. At such activities of the defendants, the plaintiffs had taken

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19128 N.E. 704 (1920).
this case first to the Superior Court, Lake County, Indiana. After the unfavorable decision from the Superior Court, the plaintiffs appealed to the Appellate Court of Indiana, Division No. 2. The plaintiffs (appellees) requested the Appellate Court of Indiana for mandatory injunction in order to protect their personal property of the value of $4000.00 in which they were jointly interested.

The Appellate Court of Indiana rendered a decision on November 17, 1920 in favor of the plaintiffs. The Court held that it has jurisdiction to protect the member of a trade union from unlawful or arbitrary suspension or expulsion and to compel reinstatement to membership, provided property rights are involved, and that could apply to both incorporated and unincorporated unions. The Court further said that the members of a local union which possess personal property have right to be protected. Expulsion of a member or a local union without notice of the charges or opportunity to be heard is void, and deprives the member of his property rights without due process of law.

This decision in some way was favorable to the growth of local unions in the State of Indiana since local unions and their members got protection against the unlawful acts of the International Union.
CHAPTER V

CONCLUSION

The purpose of this thesis was stated in the first chapter of this undertaking. Now an attempt is made to evaluate the impact of all the decisions made by either the Federal Courts or the State Courts in relation to labor disputes.

In order to arrive at a definite conclusion, distinction should be made first between the attitudes of the Federal Courts and those of the State Courts toward unionism. We have discussed altogether twenty-four cases in the foregoing chapters. Of these, three cases were decided by the United States Supreme Court, one by the United States (Circuit) Court of Appeals, one by the United States District Court, and the remaining nineteen cases were decided by the various State Courts.

Now, viewing the attitude of the Federal Courts, the conclusion may be drawn that Federal Courts were very strongly opposed to organized labor in the period under investigation. The United States Supreme Court, in its rulings on the three important cases, has clearly proved that the attitude of the Federal Courts was not at all favorable to labor unions, at least during the period 1919-1921. Secondary boycott, picketing and sympathetic strike, which are among the most important weapons for the unions to achieve their ends, were made illegal by the decisions of the United States Supreme Court. The unions
could no longer fight back with the employers by adopting such strong weapons. As a matter of fact, the Clayton Act, because of the interpretation of the United States Supreme Court, was turned in favor of the employers.

The decision of the United States Court of Appeals in California, also adversely affected the growth of unionism by upholding the validity of yellow-dog contract to be practiced by the employers. Similarly, the United States District Court of Louisiana, by its verdict, hindered the growth of union movement. As a result of this decision, union and union members were made liable to abide by the terms of the contract under all circumstances.

In this manner, the evaluation of the decisions made by Federal Courts reveals that the growth of union was very severely impeded during the period under examination.

Let us now evaluate the decisions made by the various State Courts. In the State of New York, seven cases related to labor disputes, were decided against, and three cases in favor of, unions. It may be remarked that the number of cases decided by the Courts is not the only important factor to examine the impact, but we have also to take into account the nature of the issues involved in the dispute.

In connection with the issue of organizing union, the courts in the State of New York, on three occasions, rendered decisions against unions. Again, in a case involving the issue of terms and conditions of employment, the Court made a decision adverse to unionism. Similarly, the New York Courts, in two cases which were brought before them by the individual members against their unions showed unfavorable attitude to the union and consequently the growth of union
was adversely affected. In another case which was related to the dispute between the local and the International Union, the Court by its decision in favor of the International Union hindered the growth of union in general and the local union in particular. However, the decisions in the last three cases were of less importance because they were concerned with the internal union affairs.

The other three cases which were decided by Courts in the State of New York in favor of the unions, one decision was concerned with the important issue of union security, and boycott was permitted to be employed by the union as a lawful means of achieving its end. The remaining two decisions were concerned with the difference of opinion between the local unions and the national or International Unions; and although the Courts showed a favorable attitude to either of the two, this was not a matter of great importance.

In the State of Oregon, one Court, on the issue of organizing union, rendered a decision against the union and made picketing illegal. In another decision, on the issue of terms and conditions of employment, picketing, although it was legalized, impeded the growth of union rather than stimulating it, since the number of picketing was limited to only one in a given dispute. Hence, on the whole, the growth of union in the State of Oregon was adversely affected by the decisions of the Courts.

In other states, namely, West Virginia, Arkansas and Indiana even though decisions were made in favor of the unions, they were of little significance since the issues involved in the disputes were not important. A decision made by a Court in the State of Kentucky, on the other hand, affected unionism very favorably and stimulated the growth of union at a national level. There were
two reasons for such a favorable result: first, organizing union, which is one of the most important issues, was decided in favor of the union; and second, United Mine Workers Union, a well-reputed organization throughout the United States of America, achieved a victory over the management.

In the States of Texas, Wisconsin, and Missouri, the Courts rendered decisions against the interest of the unions and consequently impeded the growth of union. The issues involved were also of great importance for the growth and progress of union (such as organizing union, union security, etc.).

As a whole, the impact of the State Courts' decisions was also detrimental to the growth and development of union in that period. Out of nineteen cases, ten were decided against the interest of the unions. The fact that the number of cases was greater and the issues more important, the decisions made by the Courts against the unions could influence the downturn of union growth.

The comparative study of the decisions made by the Federal Courts and that of the State Courts indicates very clearly that Federal Courts' decisions had a greater bearing on the progress and development of the union than that of the State Courts' decisions. It is needless to say that the issues brought to the Federal Courts for decisions were very important for the growth and progress of the union.

Thus, the author after analyzing and evaluating the impact of the Court decisions on the growth of union arrives at the conclusion that the growth of unions in general was severely impeded by the decisions of both the Federal Courts and the State Courts in the period under examination.
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