CHAPTER 16

Labor Relations

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A. FEDERAL LEGISLATION

§16.1. Wage and hour act amendments. The Fair Labor Standards Amendments was one of the few federal labor enactments of the 1966 SURVEY year.[1] These amendments increased the minimum wage and extended coverage of the Wage and Hour Act to an estimated eight million additional workers. These included a half million farm laborers, and non-farm employees in retailing, transit, restaurants, hotels, motels, hospitals, schools, taxi companies, and laundry and dry-cleaning establishments.[2] For employees previously covered by the act and whose present minimum wage is $1.25 per hour, the 1966 amendments provide an increase to $1.40 per hour effective February 1, 1967, with a further increase to $1.60 per hour effective February 1, 1968.

Another major modification provided by the amendments is a change in the dollar amount in the definition of "enterprise," i.e., those retail and service establishments which are subject to the provisions of the act. The present amount of $1 million in gross receipts will be lowered to $500,000 on February 1, 1967, and to $250,000 beginning February 1, 1969.

§16.2. Bills not passed. There was more discussion and interest in the bills not passed by the second session of the 89th Congress than in those that were passed.[1] Repeal of Section 14(b) of the National

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§16.1. [1] Pub. Law 89-601, amending Fair Labor Standards Act of 1938, 29 U.S.C. §§201-219 (1964).

[2] Employees in the non-farm industries who are newly covered will be entitled to a minimum wage of $1.00 per hour beginning February 1, 1967, with periodic increases to $1.60 by 1971. The newly covered farm laborers must be paid at least $1.00 per hour starting February 1, 1967, with annual increases of 15¢ per hour to $1.30 on February 1, 1969.

§16.2. [1] One bill passed in the field of labor relations was an amendment to the Railway Labor Act, 45 U.S.C. §§151-188 (1964), which was signed into law on June 20, 1966. It permits the establishment of special adjustment boards to help eliminate the backlog of undecided minor disputes now pending before the National Railroad Adjustment Board. A further amendment to the act permits an employee who is aggrieved by an award of the Adjustment Board or any of its divisions to file a petition for review of the order in any United States District Court. Similar relief is provided for falure of the Adjustment Board to make an award.

Labor Relations Act, as amended,[2] was the chief goal of organized labor in 1966. Section 14(b) permits the states to prohibit a union shop contract. Such a state law is commonly referred to as a state "right to work" law. The bill to repeal Section 14(b) was passed by the House, but a filibuster blocked it in the Senate. Further consideration of the bill in the Senate during 1966 was dropped after three attempts to impose cloture failed.

Also failing to pass were bills relating to civil rights and employment, the imposition of federal standards for unemployment compensation, situs-picketing in the construction industry, and a special joint resolution designed to get the striking airline mechanics back to work.

B. Supreme Court Decisions

§16.3. Federal pre-emption. During its recent term, the United States Supreme Court considered several cases involving the issue of federal pre-emption in the labor relations field and decided that three cases fell within the exceptions to the general pre-emption rule.

In the first of these cases, *Linn v. United Plant Guard Workers of America, Local 114*,[1] the issue was the extent to which the National Labor Relations Act[2] pre-empts the maintenance of a civil action for libel under state law. The libel suit was brought under Michigan tort law. It was instituted in federal district court in Michigan on the basis of diversity of citizenship by Linn, who was an assistant general manager of the Pinkerton National Detective Agency, Inc. Suit was filed against the union, two of its officers, and a Pinkerton employee who was a union member and who had circulated the leaflets in question. In his complaint, Linn alleged that he had been libeled by leaflets circulated among employees,[3] since he was one of the managers referred to in the leaflets, and that the statements were "wholly false, defamatory and untrue."[4] Linn prayed for one million dollars in damages. Both the district court and circuit court of appeals dismissed the case on the ground that the National Labor Relations Board had exclusive jurisdiction, based on their reading of the *Garmon* case.[5] The Supreme Court reversed. The conclusion of the Supreme Court was that "where

2 61 Stat. 136, 29 U.S.C. §141 (1964).

§16.3. 1 383 U.S. 53, 86 Sup. Ct. 657, 15 L. Ed. 2d 582 (1966).

2 61 Stat. 151, 29 U.S.C. §164(b) (1964).

3 These stated in part: "The men in Saginaw were deprived of their *right to vote* in three N.L.R.B. elections. Their names were not summitted [*sic*]. These guards were voted into the Union in 1959! These Pinkerton guards were *robbed* of pay increases. The Pinkerton manegers [*sic*] were lying to us — all the time the contract was in effect. No doubt the Saginaw men will file criminal charges. Somebody may go to jail!" (Emphasis in original.) 383 U.S. 53, 56, 86 Sup. Ct. 657, 660, 15 L. Ed. 2d 582, 586 (1966).

4 Ibid.

5 San Diego Building Trades Council v. Garmon, 359 U.S. 236, 79 Sup. Ct. 773, 3 L. Ed. 2d 775 (1959), discussed in 1959 Ann. Surv. Mass. Law §§13.7, 13.9. See also 1962 Ann. Surv. Mass. Law §14.2; 1963 Ann. Surv. Mass. Law §14.5.

either party to a labor dispute circulates false and defamatory statements during a union organizing campaign, the court does have jurisdiction to apply state remedies if the complainant pleads and proves that the statements were made with malice and injured him."[6]

Prior to the institution of the present action, the employer (Pinkerton) had filed unfair labor practice charges under Section 8(b)(1)(a) of the act. The Regional Director had refused to issue a complaint, finding that there was no agency relationship between the union and the employee who had circulated the offending leaflets.

In the *Garmon* case, the United States Supreme Court had established the doctrine that state court jurisdiction is pre-empted and state courts must defer to the exclusive jurisdiction of the National Labor Relations Board when the activity which is the subject matter of the state litigation is "arguably" protected by Section 7, or prohibited by Section 8 of the act. However, the majority opinion of Justice Frankfurter did recognize exceptions to the general rule, namely, that the states need not yield jurisdiction where the activity regulated was only a "peripheral" concern of the Labor Management Relations Act or where the regulated conduct touched interests "so deeply rooted in local feeling and responsibility that in the absence of compelling congressional direction it could not be inferred that Congress had deprived the states of the power to act."[7] The Supreme Court now holds that a suit for malicious libel falls within the exception.[8]

The Court did place some restrictions on its ruling since it was concerned with infringing the free speech rights granted under Section 8(c) of the federal act. It therefore limited the availability of state remedies for libel to "those instances in which the complainant can show that the defamatory statements were circulated with malice and caused him damage."[9] A plaintiff, then, may still not recover where a state court finds libel per se without proof of actual harm. But the actual harm may include general injury to reputation, mental suffering, pecuniary loss, or whatever form of harm would be recognized by state tort law. Moreover the party must establish that the "defamatory

[6] 383 U.S. 53, 55, 86 Sup. Ct. 657, 659, 15 L. Ed. 2d 582, 586 (1966).

[7] San Diego Building Trades Council v. Garmon, 359 U.S. 236, 243-244, 79 Sup. Ct. 773, 779, 3 L. Ed. 2d 775, 782 (1959). Mass picketing and violence are within the exception and such conduct is therefore subject to state regulation although it is also prohibited as a union unfair labor practice under Section 8(b)(1) of the act.

[8] According to the Court "the labor movement has grown up and must assume ordinary responsibilities and the malicious utterance of defamatory statements in any form cannot be condoned." 383 U.S. 53, 63, 86 Sup. Ct. 657, 663, 15 L. Ed. 2d 582, 590 (1966). The Court observed that the fact that the defamation occurs during a labor dispute does not give the Labor Relations Board exclusive jurisdiction to remedy the consequences of such defamation. Justices Black and Fortas issued strong dissents. Justice Fortas saw the arming of participants in a labor-management dispute with the weapon of libel suits as a real threat to what he referred to as painstakingly achieved stabilization in labor-management relations and as a potentially disruptive force thrown into the comprehensive structure created by Congress for resolving such disputes. The Chief Justice and Mr. Justice Douglas joined in Mr. Justice Fortas' dissent.

[9] Id. at 65, 86 Sup. Ct. at 664, 15 L. Ed. 2d at 591.

statements [were] published with knowledge of their falsity or with reckless disregard of whether they were true or false." The plaintiff must also show that he has suffered some sort of compensable harm as a prerequisite to the recovery of additional punitive damages.[10]

A second pre-emption case, *Hanna Mining Co. v. Marine Engineers Beneficial Association*,[11] involved the intriguing issue of whether a state is excluded from regulating picketing aimed at organizing supervisors. In Wisconsin, where the case arose, organizational picketing is unlawful and enjoinable. Pre-emption principles would prohibit the courts of such a state from enjoining organizational picketing where the employer being picketed is within the jurisdiction of the National Labor Relations Act. In the present case, although the employer was subject to the federal act, the individuals (marine engineers) within the particular group involved were supervisors who, under the definition of the term "employees" in the federal act, are specifically excluded from its coverage. The United States Supreme Court held that in such a situation state action was not pre-empted. The picketing, which was designed to organize supervisors, was held to be neither protected nor prohibited by the federal act. The possibility that the union's conduct might involve secondary activity prohibited by the federal act was disregarded as "too minimal to deserve recognition."

The supervisors involved had been covered by a contract with the union, but a majority of them informed the company by written petition that they no longer wished to be represented by the union. When the company declined continued recognition of the union, the union started picketing. The company tried to get relief from the NLRB by seeking an election and by filing an unfair labor practice charge, but was unsuccessful because of the supervisory status of the individuals involved. The Court appeared sympathetic to the company and its supervisors, who lacked any federal remedy, and unsympathetic with the union's purpose, which it described as "forcing its representation on unwilling engineers."[12]

A third case dealing with pre-emption arose under the Federal Railroad Compulsory Arbitration Act.[13] In *Brotherhood of Locomotive Engineers v. Chicago, Rock Island and Pacific R.R. Co.*,[14] interstate railroads operating in Arkansas brought an action in the United States District Court. They prayed that the court declare two Arkansas statutes unconstitutional and enjoin the State Attorney from enforcing

[10] Ibid.

[11] 382 U.S. 181, 86 Sup. Ct. 327, 15 L. Ed. 2d 254 (1965).

[12] Id. at 181, 86 Sup. Ct. at 328, 15 L. Ed. 2d at 255. The Linn and Hanna Mining cases led Sanford H. Kadish, Professor of Law at the University of California, Berkeley, to express the view that the Supreme Court had taken the "escape hatches" in Garmon and enlarged them into "jagged holes." Sanford H. Kadish, in an address before the Section of Labor Relations Law, American Bar Association, in Montreal, August 8, 1966.

[13] Pub. Law 88-108, 77 Stat. 132, 45 U.S.C. following §157 (1964), and Arbitration Award Number 282 pursuant thereto.

[14] 382 U.S. 423, 86 Sup. Ct. 594, 15 L. Ed. 2d 501 (1966).

the statutes, on the basis that they were pre-empted by the Arbitration Act. The Arkansas statutes involved were so-called "full crew" statutes, enacted prior to World War II, which provided for a minimum number of employees in designated job classifications (including that of fireman) on train crews. The railroads contended that the state statutes were in conflict with the Federal Railroad Compulsory Arbitration Act of 1963 and, specifically, with Arbitration Award Number 282. The United States Supreme Court upheld the position of the state of Arkansas on the pre-emption issue, finding that the history of the act indicated that Congress' only intent in enacting the legislation was to avert temporarily a railroad strike. The dispute over crew size and makeup, particularly in respect to firemen, was the basic cause of the bargaining impasse which in turn prompted the passage of the Arbitration Act. But the Court held that the scheme of the act and the awards under it were not intended to produce ultimate resolution of the issues of feather-bedding and full crews, but only to avert a threatened rail strike with reliance in the final instance being placed on the processes of collective bargaining to produce the desired and uniform standards for train crews. Hence, the Court concluded that no conflict existed between the state's full crew laws and the Congressional act.

In a fourth case,[15] the Court overturned a verdict in favor of a former supervisor who brought suit against an International Union for loss of employment due to violence and secondary boycott activities, partly on pre-emption grounds.[16]

§16.4. Section 301 suits. In *United Auto Workers v. Hoosier Cardinal Corp.*,[1] the United States Supreme Court was faced with the question of what time limitation to apply to a Section 301 cause of action. Nowhere in the act is there a provision for any time limitation upon the bringing of an action under Section 301 for violation of a collective bargaining agreement.

Seven years after the original claim occurred, the union filed suit on behalf of the employees in the federal district court in Indiana for vacation pay alleged to be owed under a collective bargaining agreement. The suit was dismissed on the basis that it was barred by the Indiana six-year statute of limitations. The union in its appeal argued that it was for the federal courts to devise a uniform time limitation since federal labor law, according to the *Lincoln Mills*[2] and *Lucas*

15 United Mine Workers v. Gibbs, 383 U.S. 715, 86 Sup. Ct. 1130, 16 L. Ed. 2d 218 (1966).

16 The verdict was for $174,500, including $100,000 in punitive damages. The Court held that part of the damages was due to peaceful picketing which began after the first two days of violence, and was therefore pre-empted in part. Another ground for reversal was the lack of "clear proof" of the international union's authorization or participation in the violence, which is required by Section 6 of the Norris-La Guardia Act.

§16.4. 1 382 U.S. 808, 86 Sup. Ct. 1107, 15 L. Ed. 2d 58 (1966).

2 Textile Workers Union of America v. Lincoln Mills, 353 U.S. 448, 77 Sup. Ct. 912, 7 L. Ed. 2d 972 (1957). See 1957 Ann. Surv. Mass. Law §25.1; 1959 Ann. Surv. Mass. Law §13.17; 1962 Ann. Surv. Mass. Law §14.1.

Flour[3] cases, applies to Section 301 suits. The Supreme Court decided that, as a matter of federal law, the timeliness of a Section 301 suit is to be determined "by reference to the appropriate state statute of limitations."

C. Federal Decisions in Massachusetts

§16.5. Jurisdictional dispute: Arbitration. During the 1966 Survey year, the First Circuit Court of Appeals decided a relatively large number of labor cases.[1] A particularly interesting decision, *Sheet Metal Workers International Union v. Aetna Steel Products Corp.*,[2] involved a confused situation relating to the arbitration of a jurisdictional dispute between two unions under "Local Board" and "Appeals Board" procedures recently set up to deal with such disputes in the construction industry. The action was under Section 301 of the Labor Management Relations Act and the Declaratory Judgment Act to enjoin the enforcement of an arbitration award. The court stated that no less support should be given agreements between unions to resolve jurisdictional disputes than to collective bargaining agreements between management and unions. The question of whether the arbitration award was a nullity because of alleged procedural defects, which one of the unions sought to have the court review, was itself subject to resolution by the as-yet-unexhausted arbitration machinery as set up by the parties. By leaving this matter to the arbitration process, the court said that it was only giving support to the "arbitral jurisdiction."[3]

The facts of the case tend to show that the arbitration process itself can become as complex as some court litigation and that arbitration does not always provide either a speedy or effective resolution of a labor dispute.

§16.6. Duty to bargain. The employer's duty to bargain under Section 8(a)(5) of the National Labor Relations Act was involved in several of the First Circuit decisions. In the case of *Sylvania Electric Products, Inc. v. NLRB*,[1] the court upheld the Board's finding that the employer had violated its statutory duty to bargain by refusing to furnish the union with a breakdown of the cost of its proposed "package" which included improvements in existing welfare programs. The union requested the cost information on the company's proposed welfare package for the asserted reason that it might prefer higher wages

[3] Teamsters, Local 174 v. Lucas Flour Co., 369 U.S. 95, 82 Sup. Ct. 571, 7 L. Ed. 2d 593 (1962).

§16.5. [1] In addition to the cases discussed in the text of this section and those noted in §16.7., note 5, *infra*, the court decided Local No. 2, International Brotherhood of Telephone Workers v. International Brotherhood of Teleprone Workers, 62 L.R.R.M. 2666 (1st Cir. 1966), in which it held that an increase in union dues was void because the statutory requirements had not been complied with.

[2] 359 F.2d 1 (1st Cir. 1966).

[3] Id. at 7.

§16.6. [1] 358 F.2d 591 (1st Cir. 1966).

over increased benefits. The employer had not raised inability to pay as a factor and refused the request for the information on the grounds that "it bargained on the level of benefits, not costs."[2]

In 1961, in a case involving the same company, the First Circuit in reversing the Board, held that an employer did not violate its duty to bargain when it refused to comply with the union's request to furnish information as to the current and past costs being paid by the company for its non-contributory group insurance plan.[3] The court there held that although the benefits to employees from the plan constituted "wages" as to which the employer must bargain, nevertheless, the *cost* of such a plan was neither "wages" nor a "condition of employment" within the meaning of the act. In the 1966 case, the First Circuit did not overrule its previous holding, but ruled that meaningful bargaining as to wages and conditions of employment, which are mandatory subjects of bargaining under the act, may require a party to disclose information on matters which are not themselves subject to mandatory bargaining. In other words, a party who refuses requested information that would "significantly aid" the bargaining process, only for the sake of keeping the other party in the dark, may not be complying with its statutory duty to bargain.

In *NLRB v. David Buttrick Co.*,[4] Local No. 380, affiliated with the International Brotherhood of Teamsters, had alleged before the Board that the Buttrick Company had refused to bargain in good faith. Buttrick responded by arguing that Local No. 380 was subject to a "disqualifying conflict of interest." One of the international union's pension funds had outstanding a loan of nearly five million dollars to Whiting Milk Company, a major competitor of Buttrick. Buttrick alleged that the local's subservience to the international union, and the international's interest in protecting this very substantial loan, could cause action to be taken by the local that would be adverse to the interests of both Buttrick and its employees.

The Board found a violation of Section 8(a)(5) and ordered Buttrick to bargain with Local No. 380. The court declined enforcement of the Board's order, and remanded the case to the Board for reconsideration. The court, in an exhaustive and scholarly treatment of the issue, saw in the growth of union pension funds an increasing possibility of conflict between investment protection and worker representation motives. The court viewed the essential issue as "the interrelationship of powers and temptations created by the Fund's loans to a competitor of respondent."[5] The Board should have considered not only the matter of the innate dangers involved but also the effect these dangers might have on the bargaining process. The court suggested that the Board consider the feasibility of devising reasonable safeguards against

2 Id. at 592.

3 Sylvania Electric Products, Inc. v. NLRB, 291 F.2d 128 (1st Cir. 1961), noted in 1966 Ann. Surv. Mass. Law §13.9.

4 361 F.2d 300 (1st Cir. 1966).

5 Id. at 304.

such dangers. "What might have been a unique case twelve years ago will be a commonplace of tomorrow if suitable guidelines and safeguards are not devised."[6]

§16.7. Bargaining unit. Two cases in the First Circuit involved the question of the propriety of the Board's finding that a single store in a chain was an appropriate bargaining unit. The Board had in both cases held the single store appropriate. In *NLRB v. Primrose Super Market of Salem, Inc.*,[1] the court enforced the Board's order to bargain and upheld the Board's conclusion that the commission of Section 8(a)(1) violations barred the company from asserting a defense of a good faith doubt as to the appropriateness of the unit. The court distinguished a subsequent Board case, *Clermont's, Inc.*,[2] in which the Board ruled to the contrary, on the ground that the Section 8(a)(1) violations in *Clermont's, Inc.*, were "minor and unconnected with the refusal to bargain" as compared with "a substantial and continuing course of misconduct" in *Primrose*. In the second case on this issue, *NLRB v. Purity Food Stores, Inc.*,[3] the court declined to enforce the Board's order and remanded the case on the grounds that the Board's finding "ignores substantial parts of the record and misstates and misconstrues other parts." The severe criticism of the Board's findings was accompanied by a footnote reminder that "there is a heavy burden on parties who seek to claim that the Board's findings are not warranted."[4] This cautionary comment was added "because counsel in other cases have, in the past, taken far too much encouragement from our occasional reversals of the Board."[5]

Another appropriate bargaining unit issue was involved in *S. D. Warren Co. v. NLRB*.[6] The court upheld the Board's finding that the engineering division of a plant was an appropriate unit. It was one of ten separately supervised divisions of a paper mill and its functions were maintenance, construction, utilities, and related operation work.[7]

[6] Id. at 309.

§16.7. [1] 353 F.2d 675 (1st Cir. 1965).
[2] 154 N.L.R.B. No. 111 (1965).
[3] 354 F.2d 926 (1st Cir. 1965).
[4] Id. at 930 n.19.
[5] Ibid. The First Circuit upheld in full the NLRB's orders against employers in these three cases: NLRB v. Lipman Brothers, Inc., 355 F.2d 15 (1st Cir. 1966); NLRB v. Yale Manufacturing Co., 356 F.2d 69 (1st Cir. 1966); NLRB v. Sea-Land Service, Inc., 356 F.2d 955 (1st Cir. 1966). The court also upheld in full the NLRB order against a union in a secondary picketing case. NLRB v. Local 254, Building Service Employees International Union, 359 F.2d 289 (1st Cir. 1966). But the Board was reversed in NLRB v. Silver Bakery Inc., 351 F.2d 37 (1st Cir. 1965), on the ground that the act's six-month statute of limitations was a bar. The initial charge, which was within the six-month period, had been withdrawn with the Board's consent. The court commented that this should not "leave in the Board a roving discretion to determine that so-called equities warrant the reinstitution of the proceedings without limit of time" and it is immaterial that "the Board may feel that its discretion is benignly exercised."
[6] 353 F.2d 494 (1st Cir. 1965).
[7] The court held the unit was not a "gerrymander," nor was it "irrational," "arbitrary," or "capricious."

§16.8. Discharge for union activity. *NLRB v. Joseph Antell, Inc.* and *NLRB v. Malone Knitting Co.* were decided together by the First Circuit.[1] Both cases presented the issue of whether the Board was correct in finding that employees were discriminatorily discharged because of their union activity in the absence of any direct evidence that the employer knew of this activity. In *Malone* the court upheld the Board, finding that the inference of knowledge of such activity was justified. In *Antell* the Board had relied on the "small plant doctrine," under which it inferred knowledge because of "the small number of employees in the store."[2] The First Circuit reversed the Board and refused to apply the doctrine to the facts. "To apply a small plant rule in such circumstances would in effect put an entirely arbitrary burden on operators of small establishments — a burden that we could not support."[3]

§16.9. Grievances: Arbitrability. Two cases before the First Circuit involved the recurring issue of the arbitrability of grievances under a collective bargaining agreement. In *Trailways of New England, Inc. v. Amalgamated Assn.*[1] the court affirmed the district court's order to arbitrate since the jurisdiction of the Board was clear although the employer claimed it had such a strong case on the merits that "no reasonable man could find against it." In *Camden Industries, Inc. v. Carpenters Local Union, No. 1688,*[2] in which the question of the arbitrator's jurisdiction was doubtful, the court also affirmed an order to arbitrate, but noted that after the arbitrator had found the subsidiary facts, the question of arbitrability may then be reviewed judicially on a petition to vacate or enforce the award.

D. Massachusetts Decisions

§16.10. Employment security. The Supreme Judicial Court handed down two cases under the Massachusetts Employment Security Act during the 1966 Survey year, but neither was of major impact. *DeFino v. Director of the Division of Employment Security*[1] involved a procedural point concerning the joinder of the United States as a party in proceedings in the Massachusetts District Court. Joinder was sought by a former federal employee under a federal-state arrangement providing that the Massachusetts Division of Employment Security act as agent for the Federal Government in administering unemployment compensation claims by federal employers. The second case was *Faria v. Director of the Division of Employment Security.*[2] The claimant of

§16.8. [1] 358 F.2d 880 (1st Cir. 1966).
[2] Id. at 882.
[3] Ibid.

§16.9. [1] 353 F.2d 180 (1st Cir. 1965).
[2] 353 F.2d 178 (1st Cir. 1965).

§16.10. [1] 1966 Mass. Adv. Sh. 621, 215 N.E.2d 757.
[2] 350 Mass. 397, 215 N.E.2d 90 (1966).

unemployment benefits owned a one-fourth interest in and was president of a carpentry corporation (his three brothers owned the remaining interest). During a business "slowdown," i.e., a "dull season," the claimant was unable to obtain work as a carpenter from his own corporation or from other employers. The Division of Employment Security and the district court denied him benefits on the ground that he was "not attached to the labor market in the broad sense." The Supreme Judicial Court reversed, pointing out that no improper action by the claimant or the corporation was shown, e.g., there was no evidence that he or his corporation caused his unemployment. The Court refused to entertain an argument that allowing unemployment benefits to be paid to employees who own and control the employing corporation offers the opportunity for abuse. It is for the legislature to decide to what extent financial interest in the business of a claimant's principal employer should be a disqualification for unemployment benefits.

§16.11. Minimum wage and overtime law. There is an exception for "garagemen" under the Massachusetts statute requiring overtime at time and one-half for work in excess of 40 hours per week. In *Fitz-Inn Auto Parks, Inc. v. Commissioner of Labor & Industries,*[1] the Supreme Judicial Court determined that parking lot attendants were not "garagemen" within the meaning of this exception. During the litigation, the legislature amended the statute to provide for coverage of parking lot attendants.[2] The Court's decision is of interest on one point of interpretation of the state minimum wage and overtime law. The employer argued that the intent of the legislature was to include within the exceptions those businesses that could not operate on an overtime-pay basis because they must be open long hours but cannot charge customers a higher price for the services rendered during the extra hours. The Court rejected this argument with the comment: "The legislative intent does not appear to us to be related to the price charged the customers for the services rendered."

E. Massachusetts Legislation

§16.12. Miscellaneous. During the 1966 session of the Massachusetts legislature no important labor relations bills were enacted. The Municipal Employees Collective Bargaining Act[1] was amended to remove the disqualification on police from engaging in collective bargaining with a city or town.[2] The law restricting the hours of labor for women and children[3] was amended to remove these restrictions upon women who are declared by the Commissioner of Labor to be employed in a professional, executive, administrative, or supervisory

§16.11. [1] 350 Mass. 39, 213 N.E.2d 245 (1965).
[2] Acts of 1965, c. 416, amending G.L., c. 151, §1A.

§16.12. [1] G.L., c. 149, §178G.
[2] Acts of 1966, c. 156. The public employees covered by the act are prohibited from striking.
[3] G.L., c. 149, §56.

capacity or as a personal secretary.[4] The weekly payment of wages law[5] was amended to include within the definition of "wages" any holiday or vacation payments owed an employee under an oral or written agreement.[6] Penalties for violation of the minimum wage law[7] were increased.[8] The law authorizing payroll deductions from state, county, or municipal employees' salaries on account of union dues[9] was modified to include permission for checkoff of such dues from nurses' wages to the Massachusetts Nurses Association.[10] The minimum wage law[11] was amended to increase the present minimum hourly wage to $1.40, as of February 1, 1967, and to $1.60, effective February 1, 1968.[12]

There were two amendments to the Unemployment Compensation Law. The first permits employees in one union to collect benefits when another craft union's strike shuts down the project on which both were working.[13] The second extends from one week to two weeks the period during which an employee may continue to receive benefits after he becomes disabled by illness while unemployed.[14]

§16.13. Antidiscrimination legislation. The Massachusetts statute prohibiting discrimination[1] was modified in respect to age discrimination by extending the protection of the law prohibiting discrimination because of age to persons 40 years of age.[2]

The powers of the Massachusetts Commission Against Discrimination[3] were extended to permit the giving of advisory opinions upon questions submitted to it by any employer, employment agency, or labor organization concerning whether a particular requirement for employment involving sex, age, or creed is a bona fide occupational qualification.[4]

A third act,[5] amending the anti-discrimination law,[6] provides that the keeping of records by an employer as to race, color, or national origin as may be prescribed by the Federal Equal Employment Opportunity Commission and the Federal Fair Employment Practices Act will not be a violation of the Massachusetts anti-discrimination law.

4 Acts of 1966, c. 183.
5 G.L., c. 149, §148.
6 Acts of 1966, c. 319.
7 G.L., c. 151, §19.
8 Acts of 1966, c. 22.
9 G.L., c. 180, §17(a).
10 Acts of 1966, c. 39.
11 G.L., c. 151.
12 Acts of 1966, c. 679. The Massachusetts and federal minimum wage rates will be the same beginning February 1, 1967. See §16.1 *supra;* 1965 Ann. Surv. Mass. Law §15.7 n.2.
13 Acts of 1966, c. 382.
14 Id. c. 528.

§16.13. 1 G.L., c. 151B.
2 Acts of 1966, c. 405.
3 G.L., c. 151B, §3.
4 Acts of 1966, c. 410.
5 Id., c. 351.
6 G.L., c. 151B, §4.