Shall Strikes Be Outlawed?

By

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Arbitration and The I. L. G. W. U.

By

LAZARE TEPER

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TABLE OF CONTENTS

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There Ought To Be A Law!

"STRIKE BEGINS!" scream the newspaper headlines. Excitement grips the entire community. For what lies ahead, once the angry waves of class war are whipped up? Perhaps clashes on the picket line, perhaps injunctions, riots, troops, and martial law. To the strikers the clash will bring a loss of income, suffering, hard and dangerous work, and, it may be, broken heads; to the employer it will bring headaches and heavy losses; to storekeepers, reduced sales; to the police, extra duty; to the general public, excitement, but also inconvenience. And, at the weekly meeting of the Rotary Club, the wholesale hardware dealer will say to the vice-president of the commission house, "This is terrible! There ought to be a law! Now if only we had compulsory arbitration!"

On all sides that cry has been heard, and it will be heard again. The public welfare, it is asserted, should be superior to the desires of any particular group. Harmony should be substituted for force, and judicial machinery for industrial warfare. The state is the impartial agency, so the argument runs, which can weigh the conflicting claims of employers and workers, and decide the issue peacefully and according to its merits.

Unfortunately this view is scarcely in accord with the facts. The state is not an impartial agency, but the instrument of whatever forces are dominant at any particular time. In a country such as the United States, where labor possesses little political power, the decisions would doubtless favor the employers. If the number of strikes was reduced, that would not prove that greater social justice had been achieved. In practice, however, compulsory arbitration has not had great influence on the number of strikes.

New Zealand led the procession of compulsory arbitration laws, as the nineteenth century was about to become history, and neighboring Australia soon followed. The World War brought compulsory arbitration or something akin to it to many countries, and the years following the war have witnessed numerous experiments with restrictions on the right to strike. Usually it has been the enemies of labor who have insisted upon compulsory arbitration, but sometimes labor itself has enacted such measures. Fascist countries have crushed the

free organization of workers, outlawed strikes, and bound the workers in chains which they are periodically forced to cheer. In Soviet Russia the position of the state as employer robs a strike of its function under capitalism, and makes the problem of production somewhat different.

Demands for Compulsory Arbitration in the U. S.

In the United States demands for compulsory arbitration have not been wanting. During the World War we stopped just short of it, and, after the war, Kansas did some experimenting, with none too happy results. Colorado, inspired by Canada, has tried compulsory investigation, under which strikes are temporarily forbidden while a governmental agency prepares a report and recommendations. A somewhat similar set of rules has governed railroad strikes in recent years. An attempt to enact a compulsory investigation law in the state of Washington failed early in 1937. It is perhaps significant that, of the American states, only the non-industrial ones of Kansas and Colorado have thus far interfered by legislation with the right to strike.

When the labor board system was created in the early New Deal days there were some fears, which thus far have not been justified, that compulsory arbitration might be an aftermath. The day the United States enters another major war will see a flood of compulsory arbitration measures introduced, and beyond much question there will be vigorous attempts to make strikes illegal during the war period. Those who dare to strike after Mobilization Day will be likely to find themselves either in concentration camps or in the trenches.

Compulsory arbitration, buried many times, has just as often popped out of its grave as soon as the happy mourners have departed. That is why it is important for Americans, and especially American workers, to understand the issues involved, and why a review of the history of compulsory arbitration here and abroad may prove interesting and profitable.

Will Arbitration End Strikes?

Those who advocate compulsory arbitration sometimes talk as though workers have in them some perverse streak which makes them want to strike. They have no understanding of the low wages, the long hours, the speed-up, the discrimination, and

the petty tyrannies that drive workers to desperation. Nor do they understand that workers usually strike only as a last resort, for they work in order to obtain an income, and that income is interrupted by a strike. To a youth, tired of drab factory life, a strike may indeed bring a touch of adventure and excitement, but a worker with family responsibilities is sobered by the thought of mounting debts. It is no fun to pound the pavements for hours in a picket line, in rain or snow, summer heat or winter cold. It is not pleasant to be charged by mounted police, to be slugged by hired hoodlums, or to be the target for tear gas bombs. Workers strike because they have grievances beside which these terrors are as nothing, and because they have learned by long experience that only a militant union, able and willing to strike when that becomes necessary, can wrest concessions from powerful employers.

But why not arbitrate, and save the suffering of the strikers, the losses to the employer, and the inconvenience to everyone else? When unions are powerful and well-established, and genuinely fair arbitrators can be found, arbitration may indeed prove satisfactory. In certain American industries, including coal mining and men's clothing, voluntary arbitration has been successfully employed over a period of many years. Needless to say, the crucial issue is who the arbitrators shall be, and what their social viewpoint. Often enough have supposedly impartial arbitrators revealed themselves as men with the employer's point of view to make workers somewhat suspicious, even of voluntary arbitration. And yet workers, both in the United States and in Great Britain, have called for voluntary arbitration many more times than have employers; for workers have usually been in the weaker position, and it is the weak who are most eager for arbitration. For arbitration usually insures some sort of compromise, whereas in battle the weaker party may expect complete defeat.

As for compulsory arbitration, that would place power in the hands of governmental appointees, who would doubtless reflect the attitude of the prevailing political party. Since American labor has been woefully weak on the political front, it is not surprising that it has consistently and vigorously opposed compulsory arbitration. That government whose police club strikers, whose judges issue injunctions

against them, and whose troops smash picket lines should not feign surprise if its arbitrators are looked upon with suspicion. Indeed, it would be surprising if the awards of arbitrators, as of other government officials, did not express the social philosophy of the group in control of the government.

In many discussions of strikes and compulsory arbitration the losses due to strikes have been exaggerated, as the problems involved in compulsory arbitration have been minimized. In an economic system with busy and dull seasons, frequent lay-offs, competition, and limited purchasing power, it is possible that a strike may not involve any loss to the community. Its effect may be merely to transfer work from one employer to another, and from one group of workers to another. Time lost at the beginning of a season may be added on at the end, or may be made up by overtime. If the strike is won, the loss in income to the strikers may speedily be made up by higher rates of pay, and the greater purchasing power thereafter may prove of permanent value to the entire community. This does not deny that strikes are usually costly to the workers, the employers, and the community; it merely asserts that the conventional method of assessing the cost involves a very great exaggeration.

Should compulsory arbitration be adopted, however, will strikes be ended and their losses avoided? The history of compulsory arbitration everywhere suggests the contrary. Australia, New Zealand, Norway, and Kansas have all witnessed many illegal strikes under compulsory arbitration; and Canada and Colorado, under their systems of compulsory investigation, have had similar experiences. In all of these cases, moreover, the authorities have proved reluctant to invoke the penalties provided by the law for violations. For jail sentences do not mine coal, as the state of Kansas discovered, and thousands of strikers can scarcely be imprisoned. The authorities in many countries have learned that it is the course of wisdom not to threaten workers, but to seek to remove their grievances. A strike settled by compulsion, they have learned to their sorrow, is soon again unsettled. If the parties can voluntarily reach a mutually satisfactory agreement, however, the way to a lasting peace has been prepared. Thus the compulsory arbitration courts come more and more to function, for the most part, like mediators.

The task of any arbitrator is not an easy one. He may perform a useful service in remedying inequalities in pay between workers of the same skill, or between workers in different industries. He may avoid quarrels over movements in prices by adjusting wages to the cost of living. But how high should wages be? In forty years of effort arbitrators have been unable to develop a satisfactory formula, and indeed there can be none that will satisfy all parties. Labor properly demands an increasingly high standard of living; but how reconcile this with profits, productivity, and the demands of stock and bond owners?

And so the arbitrators have usually altered the distribution of income within the working class rather than between the working class and the employing class. The lowest wages have been raised, the sweated trades improved, and the unskilled laborer benefited. But the skilled workers in the better paying industries have seldom been helped. If countries with compulsory arbitration are compared to those without it, most authorities claim, the spread between the wages of skilled and unskilled is found to be much narrower. The unskilled and those in sweated trades, those who can form weak unions or none at all, those whose bargaining power is limited—these workers have usually been benefited by compulsory arbitration. But the skilled workers, who can form strong unions, win strikes, and bargain effectively, have usually gotten less than would have been theirs had free collective bargaining been allowed.

Still another result of compulsory arbitration is that wages remain relatively more stable than elsewhere, rising more slowly in periods of prosperity, and falling more slowly in times of depression.

Sometimes the industrial arbitration courts have functioned in practice more like minimum wage boards, with the additional function of mediation in other disputes. This has been true, for example, in the case of the Australian federal labor court, with power over disputes extending beyond a single state. Unions with fighting power have disregarded the court whenever they chose, and have reached their own agreements with employers. Their strikes were illegal, to be sure, but under the law there could be no prosecution without the court's consent. The court has thought it wisest to withhold such consent, to gain labor's good will. Those workers who have little fighting

power and whose wages are at or near the minimum tend to accept the decisions, since their strikes would likely prove to be failures. Employers usually accept minimum wage boards because competition based on substandard wages is thereby eliminated. Unions are usually satisfied if they possess the right to establish wages above the minimum through collective bargaining.

Trade Unions and Arbitration

As for the unions themselves, they have usually prospered, at least in membership, under compulsory arbitration. Nor is this surprising, for compulsory arbitration implies unionism. Under the New Zealand law, for example, the benefits of the law do not apply until after a union is formed in an industry and is registered under the law; under the 1936 amendment, in fact, trade unionism is made compulsory for workers in industries covered by awards or industrial agreements. Not only is it illegal for an employer to dismiss a worker for union membership or activity, but he may be required by the court to dismiss a non-union worker to give an unemployed union member the job. Since the union emphasizes arbitration court arguments rather than strikes and collective bargaining, workers who would have little bargaining power join more freely than in many other countries. If unions are strong numerically in countries with compulsory arbitration, however, it should be noted that their functions are somewhat different. It is the man who can present a strong argument in court who rises to leadership, rather than the man who can lead a strike or negotiate skillfully with employers.

Compulsory arbitration, it is interesting to note, has the curious effect of making the labor leader uphold the merit of the present order, while the employer paints a pessimistic picture. For labor representatives must argue that present or coming prosperity justifies higher wages and shorter hours. Employers, on the other hand, must with equal vigor maintain that hard times necessitate wage reductions and lengthened hours of work.

Inevitably compulsory arbitration forces the labor movement into political action in order to appoint arbitrators who are friendly to labor's point of view. Indeed, with a labor government in office, great gains may be achieved from such a court. This explains why New Zealand's first labor government in 1936 restored the compulsory

powers of the arbitration court that the employers' government had removed four years before; and similarly it was the People's Front in France that enacted a compulsory arbitration law on December 31, 1936, though no penalties were provided for its violation.

Special Problems of Arbitration in the U. S.

In the United States any attempt to enact compulsory arbitration legislation would encounter special difficulties. The Kansas law of 1920 was held unconstitutional by the United States Supreme Court, at least as far as industries not affected with a public interest were concerned. The same reasoning might be followed today, though the phrase "affected with a public interest" may be open to varying interpretations. The contention of the court, that a state compulsory arbitration statute violated due process of law by infringing upon the right of property and liberty of contract, might be applied equally to a federal law.

Nation-wide strikes in various industries have created special difficulties in states with compulsory arbitration, for unionized workers will respond to a national strike call, whatever their state laws may provide. Since industry is nation-wide, their remaining at work would help to break the strike, and this union men will not do. Otherwise they would find themselves working in cooperation with strike-breakers employed in other states. All the national strikes called while the Kansas law was in effect—the switchmen in 1920, the butcher workmen in 1921, and the railroad shop crafts and the coal miners in 1922—found the Kansas workers quitting with their union brothers in other states. Colorado had a similar experience under its compulsory investigation law, though coal strikes in particular were hampered by the Industrial Commission through use of injunctions and the state militia.

Nor should it be thought that the only difficulties under a system of compulsory arbitration will be with the workers. Sometimes employers have opposed compulsory arbitration laws only less bitterly than have workers. That was true of many employers in Kansas, for example, and it was an employer whose legal fight against the law led to its being held unconstitutional.

During the World War the refusal of Western Union to obey a decision of the National War Labor Board led President Wilson to

obtain from Congress authority to operate all telegraph lines. Similarly the plant of the Smith & Wesson Company was commandeered by the Secretary of War. With the more recent fights of Weir and others against the labor boards everyone is familiar. Employers who have strenuously fought the National Labor Relations Board might with equal vigor oppose the greater governmental control that compulsory arbitration would involve. In 1932 the employers of New Zealand, finding that the arbitration court stood in the way of an immediate and drastic reduction in wages, had the government amend the law, sharply limiting the jurisdiction of the court.

Employers may object to compulsory arbitration, just as workers do, because it limits their freedom of action. Or they may object because an arbitration court forces them to pay higher wages to women or unskilled workers, or because it prevents the sharp cutting of wages in a depression. Another objection might be that a decision raising wages does not apply to all competitors. To guard against that objection, the court, as in New Zealand, may have authority to apply a decision to an entire industry. An employer who disobeyed an order might be punished by fine or imprisonment; or, as in Kansas, the court might be given power to take over and operate the company.

A Cooling Off Period

If compulsory arbitration is beset by so many difficulties, it is urged by some, we should try compulsory investigation instead. Canada led the way in this effort, and Colorado has followed. On the railroads in the United States provision for compulsory investigation exists, and is proving fairly satisfactory. Under this system strikes and lockouts are outlawed only for a time, until a governmental body can investigate, draw up a report, and recommend terms of settlement. There is no compulsion for the report to be accepted, however, and a strike or lockout is lawful after the report has been published. The pressure of public opinion is relied upon to force acceptance of the award.

The difficulty is that labor is left in a position that is relatively much weaker. The employer retains the power of individual discharge, which may be as effective as a lockout, whereas the right of an individual worker to quit is valueless. The element of surprise is eliminated, to labor's great disadvantage. The waiting period gives em-

ployers ample time to prepare for a strike, and many of them have availed themselves of the opportunity. In a seasonal trade a strike must be called at or near the peak of the season, or the chances of its proving successful are limited. There is such a thing as the psychological moment for a strike, from the point of view of morale as well as of business conditions. Especially is this true of previously unorganized workers, who frequently engage in their first strike under great emotional stress. An enforced cooling off period might leave them with their morale shaken or broken. Chiefly in non-seasonal industries such as the railroads, where the unions are powerfully organized and accepted as permanent institutions, is compulsory investigation likely to prove satisfactory. Elsewhere a compulsory investigation law, if rigidly enforced, may indeed promote industrial peace, but social justice is likely to suffer.

The demand for limitations on the right to strike will be most insistent for those industries in which the health, safety, or convenience of the public is most immediately affected. A strike that blocks transportation, and especially a railroad strike, is of this class. The railroad workers are so powerfully organized, however, that the operators accept them and deal with them, and a delay, should one be required, finds the unions just as well equipped to strike successfully.

In other public utility fields the workers are poorly organized. A strike of electric, gas, and power workers would obviously result in great inconvenience to the community. The workers in these industries do not wish to cause unnecessary inconvenience to the public, if only because public antagonism would react unfavorably against them. If they are to forego strikes, however, their interests must be amply protected in other ways. That public which interests itself in the working conditions and living standards of public utility employees will have a greater claim to uninterrupted service. Thus far such interest has been notable for its absence. Similar considerations apply in the case of hospital attendants, building service workers, and other groups upon whose work the general public is peculiarly dependent.

Compulsory Investigation in Practice

Canada was the pioneer in compulsory investigation, with its 1907 law passed by the Dominion following a bitter strike of Alberta coal miners. Under the law strikes and lockouts were forbidden in public utilities, railroads, and mines until a board of

conciliation and investigation had made its report. Upon agreement of the parties the act could be extended to other industries. Thirty days' notice by either party of an intended change in terms of employment was required. During the World War all esssential war industries were brought under the law. In 1925 the Privy Council of England declared the act unconstitutional on the ground that the Dominion or federal government lacked the power to regulate disputes that lay wholly within a province. The law was then amended to apply only to inter-provincial industry, with permission to provinces to place their disputes in public utilities, railroads, and mines under the law. Almost all the provinces have done so.

The Canadian law has not prevented strikes, whether of the legal or the illegal variety. Seldom has prosecution for illegal strikes been attempted. In practice the boards tend to function, not as they were intended, but primarily as agencies of conciliation. The labor movement first strongly opposed the law, but now accepts it and proposes modification. Unions that are too weak to win strikes are helped somewhat by the law, for they are likely to obtain some improvements in conditions. Strong unions, on the other hand, are handicapped by the inability to strike legally when conditions are most favorable.

The Colorado law of 1915, modeled after the Canadian legislation, was likewise an outgrowth of a bitter strike of coal miners and of the tragic burning of the strikers' tent colony at Ludlow. Under the Colorado law strikes and lockouts were prohibited in industries affected with a public interest until the Industrial Commission could make its report. As in Canada, thirty days' notice of an intention to change conditions of employment was required; but no strike or lockout could be declared until the commission had reported, even though that took longer than the thirty days. After the report was made a strike or lockout could legally be declared, but even then no picketing was allowed. In 1923 the law was extended to all industry except agriculture, domestic service, and establishments employing fewer than four. Two years later the commission's jurisdiction was limited to public utilities, mines, and intrastate railroads.

A number of illegal strikes have occurred in Colorado, in most of which the commission has taken no action. The commission has the power to obtain mandatory injunctions in cases of violations, however, and especially between 1919 and 1922 was this done. In the

butcher workmen's strike of 1921 alone, 34 workers were sentenced for contempt of court for violating such an injunction. In the early years especially labor had a well-founded complaint against unreasonable delays. The investigation of the Denver tailors' case in 1915, for example, lasted almost six months. Other states have enacted laws for compulsory investigation of labor disputes without postponing the right to strike.

Compulsory investigation has also been applied, with more success, to the railroads of the United States. Beginning in 1888, Congress has passed a series of laws in an attempt to promote peaceful settlement of labor disputes. Most of these emphasized mediation and promoted voluntary arbitration. In 1920 the Railroad Labor Board was appointed to hear cases and make recommendations. These recommendations did not have to be accepted, however, and the right to strike was not postponed until the report was made.

The existing machinery for adjusting labor disputes was established under the Railway Labor Act of 1926, as amended in 1934. Under it the emphasis is placed on mediation, with voluntary arbitration urged if mediation fails. Voluntary adjustment boards, established by the operators and the workers, interpret and apply the agreements. The National Mediation Board administers the law. If a dispute cannot otherwise be settled, and the board finds that danger exists of a substantial interruption of transportation, it can recommend to the President of the United States the appointment of a special board to investigate the dispute and recommend terms of settlement. A strike or lockout is illegal until after the report has been made. This law, passed with the support both of the carriers and of the unions, has thus far promoted peace and satisfied both groups.

Wartime Strikes and Labor Boards

It is with voluntary labor boards, rather than with compulsory arbitration courts, that the United States has had most experience. Such boards were first tried during the World War, only to be discontinued soon after peace was reestablished. During the recovery period beginning in 1933 they played a leading part in the New Deal program sponsored by President Roosevelt. When the Supreme Court held the National Labor Relations Act constitutional in the spring of 1937, the labor board system became a well-established feature of American industrial relations.

Soon after the United States entered the World War there was a demand from some sources for the prohibition of all strikes during the emergency. Such a law was actually passed by New Hampshire in 1917, and in Minnesota in the following year an order to the same effect was issued by the Public Safety Commission. A dozen states enacted compulsory work laws, requiring every able-bodied man outside the military service to be gainfully employed. In some cases these laws were used against strikers. Several injunctions were based on the theory that strikes in wartime were illegal, and there were many arrests of union organizers and pickets by local officials or by military authorities.

The national administration, however, used conciliation rather than coercion to obtain the cooperation of labor. It gave representation to labor on important war boards, and appealed for industrial peace instead of forbidding strikes. The executive order to all men to work or fight was held not to apply to pickets, and the Secretary of War ruled that strikers did not lose their draft exemption.

During the war no fewer than 13 agencies for the settlement of labor disputes were created. A number of important industries had special boards appointed for them, and jurisdiction over all other essential war industries was given to the National War Labor Board. The board's principles called for no strikes or lockouts during the war. The board was given no power to enforce its decisions, in the absence of an agreement by the parties to be bound by them. In practice, however, the vast authority of the government was used to compel acceptance, with overwhelming success. A great many strikes did occur during wartime, to be sure, but many were outside the essential war industries and the remainder were small and of short duration.

Toward the close of the war the government became increasingly intolerant of strikes. When Bridgeport, Conn., machinists struck in September, 1918, President Wilson forced them to return to work and abide by the award of the National War Labor Board.

"If you refuse," Wilson wrote to the strikers, "each one of you will be barred from employment in any war industry in the community in which the strike occurs for a period of one year. During that time the United States Employment Service will decline to obtain employment for you in any war industry elsewhere in the United States, as well as under the War and Navy Departments, the Shipping Board,

the Railway Administration, and all government agencies, and the Draft Boards will be instructed to reject any claim of exemption, based on your alleged usefulness on war production."

This was an extreme case, to be sure, but it might well have become the model for later strikes, at least in the war industries, had not the Armistice been signed two months later.

It was after the Armistice was signed that labor was most thoroughly aroused against the wartime restrictive measures. The Lever Act was a wartime law prohibiting conspiracies to restrict the production of war necessities. Labor had been assured by members of Congress and other administration leaders that this act would not be used against strikers, but in 1919 Attorney General Palmer made it the basis of an injunction to prohibit the calling of a bituminous coal strike. Since the peace treaty had not yet been signed we were still technically at war, and wartime legislation remained in force. Palmer's effort failed, and the government learned that injunctions mined no coal. Again in 1920 the Lever Act was used against the switchmen. By that time labor was as ready as were the employers to scrap the elaborate machinery for industrial peace created during the war. Soon all the agencies had disappeared, and only for the railroads was other legislation passed to replace them. Nevertheless the experiences of these wartime boards helped to guide the new set of labor boards created in the New Deal period.

The National Labor Relations Act

Under the National Labor Relations Act, passed in 1935 and upheld by the United States Supreme Court two years later, labor is given the right to organize and bargain collectively through representatives of its own choosing. Employers have the duty to bargain with the unions chosen by their workers, and are forbidden to interfere in their operation or discriminate against union members. The National Labor Relations Board exists solely for the protection of labor, and only labor may file cases with it. There is no compulsion to do this, however, and unions may instead strike, or even file a case and strike at the same time. The act expressly states that there shall be no limitation of the right to strike. Purely local industry, not coming within the jurisdiction of Congress, is not subject to the federal law. In several states boards with comparable powers have been established to deal with such local industries. The National

Labor Relations Board does not determine wages or hours, but merely forces employers to stop unfair labor practices. The law seeks to promote industrial peace by eliminating those practices of employers that cause strife, and by forcing employers to bargain collectively with the proper representatives of their workers. The National Labor Relations Board was not intended to be an agency of mediation, but in practice the board and its regional directors perform valuable services of this nature.

The federal government also operates a Conciliation Service in the Department of Labor, to aid the parties to reach a voluntary and satisfactory agreement. This service had its beginning in 1913. Most states have some legislation for conciliation or voluntary arbitration, usually enacted before 1900. The first such law was passed by Maryland in 1878. Almost all these laws are dead letters, but New York, Massachusetts, Pennsylvania, and some other states provide conciliators. These often urge voluntary arbitration, and the Massachusetts board has frequently served as a board of arbitration in minor cases. Several cities likewise possess agencies to assist in the peaceful settlement of labor disputes.

The right to strike did not always exist in the United States, however, and before 1842 there were a number of prosecutions for criminal conspiracy of workers who sought higher wages through collective action. More recently the injunction has been used to restrain the necessary activities of strikers, while their theoretical right to strike remained unimpaired. Certain types of strikes are held illegal in some states, even when no picketing is attempted. Strikes for the closed shop, strikes in violation of contract, and sympathy strikes are the ones most usually objected to by the courts. In some states the highest courts, while admitting strikes to be legal, have held all picketing illegal, on the ground that picketing necessarily involves violence.

"The Land Without Strikes"

So many countries have experimented with compulsory arbitration, or with some lesser form of strike restraint, that only a review, country by country, can adequately describe their experiences and portray the problems that have been encountered. New Zealand led the way with its law passed in 1894. No strikes occurred for the first dozen years that the law was in effect, and New Zealand

won a world-wide reputation as "the land without strikes." Since then not a year has passed without its quota of strikes.

Under the New Zealand law a single court of arbitration was established, supplemented by district boards of conciliation which were to try first to adjust disputes. Strikes were absolutely forbidden only in public utilities and certain other essential industries. Unions in other industries lost the right to strike only if they chose to register under the law. Those that failed to register retained the right to strike, but could not use the machinery created by the law.

Until 1906 the arbitration machinery functioned smoothly. It was a period of rising prices, and the court dealt chiefly with labor's repeated requests for wage increases to match the rise in living costs. Employers brought no cases to the court in that period. Since registration was voluntary, and subject to withdrawal on short notice, labor in effect enjoyed the option of voluntary arbitration, with an enforceable award. In 1907-8, however, changing conditions led to illegal strikes, and New Zealand has been far from strikeless since then. Besides the many illegal strikes, there have been a great number of legal ones, conducted by unions not registered. One cause of dissatisfaction, increasing the number of strikes, was the failure of the court to reach decisions promptly in periods of rapidly rising living costs.

Registration has not remained an entirely voluntary action on the part of the New Zealand unions, however, for in a number of instances employers have forced them to register by refusing otherwise to recognize them. The New Zealand unions have never been very powerful, perhaps because of the compulsory arbitration law, perhaps because of other unfavorable conditions. In New Zealand, as in Australia and elsewhere, the penal provisions of the law have seldom been enforced, and the tendency in recent years has been to emphasize direct negotiations between the union and the employer rather than arbitration.

In 1932 the court proved a hindrance to employers, who wished to cut wages drastically. The coalition government of Liberals and Conservatives then in control adopted the proposals of the employers, and limited the jurisdiction of the arbitration court to disputes involving women, and those referred to it by the almost unanimous consent of the parties. It was still compulsory to submit disputes to the conciliation councils, but there was no obligation to accept their proposals or carry the case higher. The weaker and smaller unions, which

relied most upon the court, suffered most by the change. Even the strongest unions, however, which had never needed the court, were resentful of the manner, purpose, and timing of the new legislation.

When New Zealand's first Labor government took office, therefore, one of its earliest acts was to restore and increase the powers of the arbitration court. Under its amendment of June 8, 1936, the compulsory powers possessed by the court from 1894 to 1932 were restored. The court was required to fix basic wage rates applying to all workers covered by awards and agreements. Every award or agreement must contain a provision making it illegal to employ an adult who is not a union member. Wherever applicable the law provided that the forty-hour, five-day week was to be put into effect.

Australia Tries Compulsion

THE experience of Australia has been in certain respects different from that of New Zealand, though the two are often grouped in discussions of compulsory arbitration. Whereas the labor movement has been relatively weak in New Zealand, it has been very strong in Australia, both in its economic and political aspects. Throughout the entire period of compulsory arbitration in Australia a powerful labor party has existed. The Australian legislation, moreover, is complicated by the division into state and federal spheres of authority. In Australia compulsory arbitration courts and wage boards have developed together.

Wage boards were experimented with first, with the state of Victoria passing the first law in 1896. This law applied only to industries that paid notoriously low wages. The first compulsory arbitration law in Australia was passed by New South Wales in 1901. West Australia passed a compulsory arbitration law in 1902, followed by the Commonwealth act two years later applicable to disputes extending beyond the limits of any one state. South Australia and Queensland enacted similar legislation in 1912. The states of Victoria and Tasmania, however, have relied upon wage boards instead of compulsory arbitration, and have not restricted the right to strike.

Conflicts over jurisdiction between the Commonwealth and the various state courts have complicated the problems of compulsory arbitration in Australia. In the same industry, in a number of cases, both state and federal awards have been in effect, sometimes applying to

members of different unions working in a single establishment. The judges have never been able to decide just which industry is intrastate, and which is interstate. Unions, accordingly, have brought their cases to whichever court was thought most friendly. In some states the federal courts are used as much as the state courts, whereas elsewhere the federal courts are scarcely used at all.

Another major problem was the standard to be employed in fixing wage rates. Where state interference is limited to mediation and voluntary arbitration, with no limitation of the right to strike, the relative economic strength of the parties really determines the agreement. With strikes outlawed, however, another standard must be developed. In Australia, in a famous decision of 1907, the cost of living was used to fix a basic wage, with differentials above it based on skill. That standard has been used since, at least in theory; in the current depression, however, wages and hours have been fixed more in accordance with the alleged needs of industry, and with less regard to living standards.

Australia has always had many illegal strikes, and has thought it wisest, for the sake of future good will, to do little about it. Under the Commonwealth Act of 1904, for example, no prosecution for violating the prohibition against strikes could be undertaken without consent of the arbitration court. Thus far such consent has never been given. In proportion to its population Australia has had many more strikes than England, which has kept compulsion at a minimum. As in New Zealand, moreover, many strikes may legally be called. Under the New South Wales law of 1918, for example, strikes are prohibited only in the government service, on railroads, in public utilities, and in industries where arbitration awards are in effect. For the rest strikes are legal, provided 14 days' notice of the intent to strike is given. In Queensland strikes are illegal only if they are started without a referendum by the union.

The Supreme Court Rescues Kansas

IN THE United States it was the predominantly agricultural state of Kansas that embarked upon the only state experiment in compulsory arbitration that has yet been witnessed. Labor fought the Kansas measure bitterly from the start, and the sentiment of employers was divided upon it. The arbitration court's short years

were stormy, with labor battling it all the time and employers likewise launching attacks upon it. Then the United States Supreme Court galloped to the rescue, and with its trusted weapon of unconstitutionality saved fair Kansas from the clutches of the villain.

It was the militancy of labor during and immediately after the World War that led to agitation for compulsory arbitration, as similar militancy in the recovery period of 1933-37 revived discussion of it. A strike of coal miners in 1919 stopped production in Kansas as elsewhere, and Governor Henry J. Allen sent strikebreakers, under military protection, into the mines. The legislature, called into special session, enacted Allen's measure prohibiting strikes in public utilities and in the fuel, food, and clothing industries.

Except as allowed by the Industrial Court created under the law, it was made illegal to suspend the production and transportation of the necessities of life. The law applied to the manufacture and preparation of food products, the manufacture of clothing, mining or production of fuel, transportation, and public utilities, all of which were declared to be affected with a public interest and therefore subject to state supervision. Compulsory arbitration proceedings could be started before the court on the petition of the employer, a union, unorganized workers, or a group of citizens. Under the law, enacted early in 1920, labor was theoretically given the rights to organize and bargain collectively, but in practice it was denied the exercise of those rights by the prohibition of strikes, picketing, and boycotts, and by the refusal to permit active organization by union members or officials. The employer retained the right of individual discharge and the workers their right to quit as individuals, but it was declared illegal for them to quit in any organized fashion or to induce others to leave their work. Severe penalties of fine and imprisonment were provided for violators, and the court was given power to operate any industry that was suspended, a fair return being guaranteed to the company and to the workers.

The Industrial Court was in difficulties from the very first day. When the enactment of the law was announced, 4,000 miners, against whom the law had been chiefly directed, celebrated with a strike. The strike was ended after one day, but by the district president of the United Mine Workers, not by the court. The sole reason for ordering the men back to work was that the strike had not been authorized

by the district officers. Alexander Howat, the miners' district president, showed his attitude by refusing to confer with the attorney general of the state, or anyone else connected with the enforcement of the law. The district convention of the United Mine Workers, meeting shortly thereafter, decided to levy a $50 fine on any miner who appeared before the Industrial Court. Any official of the union who made such an appearance was to be fined $5,000.

A test case soon arose, with a refusal of coal miners to work with an engineer who had helped the governor to mine coal during the national strike. Howat and other officers of the miners were ordered to appear before the Industrial Court, and upon their refusal they were sentenced to jail for contempt of court. Within two days nine-tenths of the Kansas mines had been closed by strikes. The miners tested the conviction in both the state Supreme Court and the Supreme Court of the United States, arguing that the law was unconstitutional. The conviction was upheld in both courts, however, the U. S. Supreme Court holding that constitutionality could not be challenged in contempt proceedings. In protest against the jail sentences for their leaders the miners engaged in further strikes. In the end the miners were beaten, not by the court, but by their own national officers, who removed Howat from office and revoked the charters of 81 locals that followed his leadership. Howat had refused to discipline locals for engaging in an unauthorized strike, and had defied President John L. Lewis, the international executive board, and the international convention.

Later the court attempted to fix hours and wages in the plant of the Charles Wolff Packing Company. The company raised the issue of constitutionality in the courts, and twice carried the case to the Supreme Court of the United States. Both times, first in 1923 and again in 1925, the decision went against the Industrial Court. In the earlier case the Supreme Court held that the act, in so far as it permitted the fixing of wages in a packing house, was in conflict with the Fourteenth Amendment, in that it deprived the company of property and liberty of contract without due process of law.

In the later case the Supreme Court used similar reasoning with respect to the fixing of hours, and declared this portion of the act unconstitutional so far as the manufacture of food products was concerned. The act compelled the owner and the workers to continue

in business on terms not of their own choosing, said the justices, thus infringing upon the right of property and the liberty of contract guaranteed in the Fourteenth Amendment. The decisions turned on the point that the food industry was not a public utility, and their effect was to hold the entire compulsory arbitration scheme unconstitutional for industries not peculiarly affected with a public interest. Later the law was held unconstitutional with respect to mining. The question of what is a public utility, however, still remains. By expanding the meaning of that term in the future, it should be noted, compulsory arbitration might be held constitutional in all vital industries.

Meanwhile the Industrial Court had been having other troubles at home. In all the national strikes while the law was in effect, the Kansas workers struck along with the rest. The Industrial Court had some pickets arrested, but the strikes continued. William Allen White, a leading editor of the state and originally a supporter of the arbitration law, was arrested for expressing sympathy with the striking railroad shop craftsmen in 1922. In the state election of that year the court was the leading issue, being praised by the Republicans and repudiated by the Democrats. A Democratic governor and a Republican legislature were elected, but the end of the court was in sight. Its funds were reduced. After 1923 it heard no cases, and in 1925 its duties and powers, in limited form, were transferred to the Public Service Commission.

The act has never been repealed, and how much of it still remains law in Kansas has never been determined. Since 1925 no attempt has been made to enforce the provisions not declared unconstitutional, but such an attempt might conceivably be made in the future. The compulsory arbitration provisions of the law may still be valid with respect to railroads and public utilities. Strikes are still legally prohibited in coal mining and the production of food and clothing, as well as in transportation and public utilities. The Supreme Court merely held that wages and hours could not be fixed by the Industrial Court in industries not public utilities. The question as to whether strikes can be prohibited constitutionally in those industries has never been passed upon.

From time to time American employers who favor compulsory arbitration point to Great Britain as the model that we should follow in labor legislation. And yet, among the great industrial nations, Britain has been outstanding for its reliance on the voluntary action of the parties to adjust industrial differences. During the last century compulsion has been employed for only a short period, while the World War was in progress. In Britain, however, as elsewhere, it is only in the modern period that strikes and unions have been allowed at all. For some time Britain had a primitive form of compulsory arbitration, the direct fixing of wages and other conditions of employment by Parliament and the local justices. When this fell into disuse, workers were not allowed the protection of united action. The general Combination Acts of 1799 and 1800, extending earlier legislation, made the mere formation of unions illegal. Efforts of workers to win higher wages, whether by strike or otherwise, were punished as criminal conspiracies. In 1824-25, however, the Combination Acts were repealed, and labor was given, with some important limitations, the right to organize, bargain collectively, and strike. This sort of development ocurred in other countries as well.

There followed a period in which most employers refused even to meet with union representatives, instead treating the fixing of wages and hours as their own private concern. This was the period during which the union, as the weaker party, strove for voluntary arbitration. Unionists reasoned that this would involve some degree of collective dealing, insure some gains, and fix common standards instead of varying individual ones. With the growth in the numbers and fighting strength of unions, employers were forced to deal with them or suffer periodic strikes. In the third quarter of the century, as a result, there was a rapid increase in the machinery to aid voluntary settlement of labor disputes, with many Boards of Conciliation and Arbitration being established. Since the passage of the Conciliation Act in 1896 the government has helped by furnishing mediators.

Not until the World War was compulsion tried again, and then only temporarily and with indifferent success. Early in the war the government negotiated an agreement with labor leaders providing that disputes in all essential war industries were to be settled without strikes. Under the Munitions of War Acts strikes were outlawed in

these industries. Early in the war few strikes occurred, but, as the conflict dragged on, the number of strikes increased. These strikes were usually organized by local committees, without the approval of the national union leaders. The government seldom prosecuted the strikers, instead usually conceding their demands. These strikes grew in number, partly because of the long delays experienced under the compulsory arbitration system, and partly because the influence of the conservative national union heads diminished. As soon as the war was over the compulsion was ended, with the approval both of workers and employers, and a voluntary body, the Industrial Court, was set up. This court has no power to undertake an inquiry or render a report except with the consent of all parties to the dispute. Awards of the Industrial Court are not binding, and there is no obligation to hold up a strike or lockout pending its reports. In practice, however, its awards have usually been accepted.

Voluntary machinery for the settlement of disputes, developed during the war, has been retained and extended since then. In order to aid the speedy settlement of minor disputes, joint bodies of workers' and employers' representatives, known as Whitley Councils, were organized. In many industries joint industrial councils have been established since the war. In addition there are work committees to settle grievances; these should not be confused with company union plans that use somewhat similar names in the United States. Trade boards, moreover, fix minimum wages for many industries. First established toward the end of the war for the sweated industries, the system of trade boards is now fairly widespread. The Minister of Labour can intervene in a dispute to seek a voluntary settlement, but he has no power to compel arbitration or enforce a settlement.

Following the British general strike of 1926, some limitations on the right to strike were enacted. Under the Trade Disputes and Trade Union Act of 1927 a strike is illegal if it is designed to coerce the government, or if it is called for any object other than the furtherance of a trade dispute. General strikes, and also sympathy strikes, are illegal under this provision. These limitations on the right to strike are potentially dangerous, but at present the British unions are subject to a minimum of governmental interference and control.

THE Scandinavian countries, true to their tradition in other fields, have sought a middle way between compulsory arbitration and purely voluntary action. In Sweden the law provides for compulsory mediation; in Norway compulsory arbitration was used temporarily in certain classes of disputes, and is not in force today; and in Denmark compulsion is likewise found only in temporary legislation. All three countries, however, prohibit strikes over the interpretation of agreements.

Under the Swedish law of 1936 a union with more than 300 members may register with the Social Board, and temporarily give up its right to strike. In that case the employer automatically loses the right of lockout. If no agreement can be reached the services of a mediator are first employed, and then a board of arbitrators investigates the dispute, and publishes its findings. Within the next month either party may notify the other and the Social Board of its intention to reject the award. The "peace agreement," as it is called, then expires, and the parties again possess the right of strike or lockout. If employers and workers are not subject to a peace agreement, they are nevertheless required to attend a conference arranged by a mediator. Failure to attend may be punished by fine or imprisonment. Notification of an intended strike or lockout must be given at least seven days in advance to the mediator and to the other party, with reasons.

Sweden also possesses a labor court, with jurisdiction over the validity and meaning of collective agreements. If one party brings a dispute to it the other party is required to appear. The decision must be obeyed, and a strike or lockout is illegal. In practice the fines imposed by the court for violations are small and chiefly for moral effect.

In Norway efforts to impose compulsory arbitration have led to militant protests from the workers. The compulsory features of the 1915 bill were removed only when the unions prepared for a general strike. In 1916 a temporary act was passed, providing for compulsory arbitration in disputes that might involve danger to the community. A general strike was also the answer to this. After five days, however, the general strike was called off, the unionists believing that a temporary law was not worth a more protracted struggle. After several renewals the law was allowed to expire, with both employers

and the unions opposed to it. Employers opposed it because it had proved powerless to prevent strikes, and unions hated it because of the attempted restrictions upon their rights.

Denmark's experience with compulsory arbitration is much more recent. Early in 1936 a number of serious strikes were in progress, and agreements in other industries were about to expire. A law was thereupon passed applying compulsory arbitration to all agreements to be made in 1936. The conservative groups had favored a permanent compulsory arbitration law, but labor's determined opposition had prevented its passage. The victory of the Social-Democratic Party in the late 1936 elections removed the danger that compulsory arbitration would then be made permanent. In the spring of 1937, when the agreements in the iron and metal industries expired, the mediator's proposals were accepted by labor but rejected by the employers. The mediator's proposals were then enacted by law, and the agreements extended for two years. During that time strikes and lockouts because of disagreement on hours or wages were made illegal.

Other European Experiences

Of the various compulsory arbitration laws that have been passed, that of France is one of the most recent and in some respects the most novel. The French law, enacted by the Popular Front government on December 31, 1936, was an aftermath of the wave of strikes that had swept France during that year. Under it all labor disputes in commerce and industry must be submitted first to conciliation, and then to arbitration. The arbitration award is binding and final. However, there are no penalties for violation, public opinion providing the only pressure for enforcement. The law, recognizing that fines will prove ineffective, tries to define moral responsibility. Labor leaders approve of the law, insisting that its acceptance does not imply abandonment of the right to strike.

In fascist countries the right to strike does not exist, and the only organizations of workers permitted are those into which they are marshaled by the state. These, closely controlled by reactionary officialdom, are even more useless than the company unions with which American workers are familiar. Under the corporative system of Italy all industries, trades, and professions are divided into 13 groups or corporations, the leaders of which control working conditions. Each corporation embraces a number of syndicates of employers and workers of particular trades and regions. Only these legally recognized associations can enter into collective labor agreements or take legal action. All workers and employers are bound by their action whether or not they are actual members. Disputes that cannot be adjusted otherwise are settled in a special labor court. Since the government is in full control of the corporations, the syndicates, and the court, its will is always obeyed.

In Nazi Germany the leadership principle has been applied to industry, with the employer becoming the leader and the workers the followers. Within certain limits the employer is empowered to fix wages and working conditions. The employer is chairman of the shop council, which can make suggestions to him and help to adjust disputes. The final decision remains with the employer, but the council possesses the right of appeal to one of the 13 labor trustees. These trustees, who are appointed by the government, may try employers in their "social honor courts" for maliciously exploiting their workers or insulting their honor. If found guilty, the employer may be fined, imprisoned, or deposed. Workers may also be tried for endangering labor peace, and fined, imprisoned, or discharged. Special honor and disciplinary courts enforce the rules of the German Labor Front, to which virtually the entire working population must belong. These courts seek also to weed out enemies of the Nazi state. The courts may expel a worker from the Labor Front, which means certain unemployment. Under the earlier German republic the government had wide power to prohibit strikes that imperilled the safety of the nation. This power was frequently used, even in relatively unimportant disputes.

In the Union of Soviet Socialist Republics, where capitalism has been replaced by collective ownership, the functions of the unions are somewhat different than in the remainder of the world. The unions, as organs of the state, regulate working conditions, enforce health and safety laws, administer social insurance, carry on educational and recreational activities, and help determine what part of the national income shall be paid out in wages. In return they share responsibility for raising the level of production. Nor should this be surprising, for in a socialized country the workers' objective is naturally greater productivity in which to share, whereas under capitalism it is for a greater share in production.

The plant committee of the union, the management, and the cell of communist workers make up the "red triangle" that controls the plant. Final authority, however, usually resides in the director appointed by the governmental trust or syndicate operating the plant. Complaints against managers and foremen as well as against fellow-workers are heard by the plant committee. Protests against dismissals or wage rates come before a conciliation board on which both workers and management are represented. If no agreement is reached, the case goes to an arbitration commission, and then to a still higher body. Beyond that point a strike is theoretically possible, but in practice virtually impossible.

It must be borne in mind that the abolition of capitalist production does not automatically end the need for genuine unionism. The exploitation of sections of the working population may still exist, and in the determination of working conditions and the distribution of the national income grave conflicts may arise. Even in a socialist state there is a need for vigorous unions that are more than organs of the state, and that carry on protective economic as well as educational and cultural functions. Many advocates of a socialist society feel that the right to strike must always be preserved.

Several lesser countries of Europe have legislation deserving of brief mention. In Poland strikes may be prohibited and awards of an arbitration board made binding if there are serious economic and social reasons justifying such action. Rumania prohibits strikes in a number of the more essential industries, as well as in all plants employing more than ten. Hungary prohibits strikes in public utilities, and permits them elsewhere only after conciliation has failed. Belgium is one of the few countries of Europe without any compulsion in labor disputes. The government's only effort is to provide machinery for conciliation.

Other portions of the world, being less industrial, have less legislation on the subject. Turkey prohibits all strikes. The Union of South Africa prohibits strikes on the railroads and public utilities. Since 1920 Colombia has had compulsory arbitration of disputes in transportation and public utilities, as well as in the nationally owned mines. Bolivia requires one week's notice for strikes of railroad or public utility employees, and five days' notice for other workers. Further legislation in South America, Asia, and Africa may be expected as modern methods of production are introduced to a greater extent.

Can Strikes Be Prevented?

This review of efforts to maintain industrial peace demonstrates that compulsory arbitration is not a promising device to employ. The inevitable bias of the arbitrators, and the absence of standards for those who seek to be fair, inevitably cause a lack of confidence in decisions, and periodic refusals to abide by them. Under modern capitalist economy, labor feels that its right to strike is its surest guarantee of fair treatment. Only when labor has great influence in the government can the determination of wages and hours be entrusted to governmental appointees. Agencies established to enforce compulsory arbitration again and again find themselves acting primarily as mediators, and refusing to punish participants in illegal strikes in order not to sacrifice good will. It is possible, of course, to enforce penalties against strikes rigidly, as it is possible to outlaw trade unions. Such actions may indeed enforce industrial peace, but at the expense of social justice.

The part of wisdom is to attempt, not to outlaw strikes, but instead to remove the just grievances of workers. If that is done, if employers are forced to bargain collectively, to establish proper working conditions, and pay adequate wages, relatively few strikes will be declared. The longest and most severe strikes have occurred, not where labor was powerfully organized and management willing to deal with it, but where the right to organize was not granted, and genuine collective bargaining denied. In the United States some industries, such as stove molding, have a history of many years of satisfactory collective bargaining without a strike. It is where unions are weak, not where they are strong, that strikes are to be most expected. No responsible and experienced labor leader will sanction a strike if continued negotiations offer promise of a satisfactory agreement. Most agreements, moreover, provide that there shall be no strikes until the expiration date has been reached. Where outlaw strikes occur, it is usually due to a combination of unfair practices on the part of the employer and inexperience on the part of the workers. Governments, both state and federal, will be wise to devote their attention to safeguarding the right to organize, and to promoting real collective bargaining.

The United States is making genuine progress now with its National Labor Relations Act, under which the right of collective bargaining is guaranteed and enforced, and a number of unfair practices on the part of the employer prohibited. If wage boards fix minimum rates for the sweated industries, and the National Labor Relations Board protects the right of workers to organize and bargain collectively for rates above the minimum, relatively few strikes need occur. Conciliation and mediation services should be continued, and voluntary arbitration encouraged. If, despite this progress, compulsory arbitration should be attempted, industrial relations would be embittered, perhaps as many strikes would occur anyway, and another unenforced and unenforceable law would encumber the statute books.

That would be the path of stupidity and futility. Along the path of voluntary collective bargaining lies the greatest hope of satisfactory industrial relations.

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ARBITRATION AND THE I. L. G. W. U.

INDUSTRIAL peace can best be maintained when workers are strongly organized and the relations between labor and capital are governed by trade agreements. Collective agreements then become the supreme law of the industry. This is particularly true when the agreements set up arbitration machinery to handle disputes.

When, in 1910, a "Protocol of Peace" was signed in the cloak industry of New York, it was widely hailed as opening a new era in industrial relations. Under this agreement, which covered the workers of the entire market, arbitration machinery was set up in which the manufacturers, the I.L.G.W.U., and the public were represented. The Arbitration Board considered disputes which the union and employers could not settle by themselves. Pending the Board's decisions, no strikes or lockouts could be declared.

From that time on the International Ladies' Garment Workers' Union has embodied arbitration provisions in its collective agreements. In the larger centers arbitrators (usually known as impartial chairmen) have found it necessary to devote full time to their work. Their decisions are binding. The extent of the arbitrator's task is shown by the fact that in the New York cloak industry during a two-year period ending May, 1935, two hundred and forty cases were submitted to the impartial chairman, while in the New York dress industry the case load during a similar period reached 2,584. The number of cases handled by impartial chairman is silent testimony to the effectiveness of this system in averting industrial strife.

The institution of arbitration, and the mutual confidence it fosters, not only makes for peace during the life of an agreement, but frequently helps to smooth the difficulties involved in negotiating a new agreement. In a number of recent instances, employers and the I.L.G.W.U. submitted their differences to impartial chairmen, whose decisions were embodied in the new collective agreements.

The experience of the I.L.G.W.U. in the field of industrial arbitration clearly demonstrates the success of the policy of settling disputes without governmental intervention. It may well serve as a lesson to those employers who clamor on one hand for industrial peace, and on the other hand refuse to sit at the same table with labor.

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