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COMMENTS

"REGULATION" OF BUSINESS BY LABOR:
Union's Right to Organize Reluctant Employees

By FREDRICK E. JONES*

THE LABOR LAW, which governs the legal relations between employer and employee, is of as much concern to the modern businessman as is the commercial law, which governs his dealings with customers. In either case the rights of the parties must be ascertainable. Recent California Supreme Court decisions have created uncertainty in California labor law as to the rights of organized labor in the business community. Prior to 1958 labor unions enjoyed substantial freedom in their efforts to extend their membership. *Garmon v. San Diego Building Trades Council*[1] decided in 1958 restricted labor union efforts to organize nonunion workers who had not solicited union membership representation. The change begun in this case was extended by the dictum in *Chavez v. Sargent*[2] decided in 1959.

Less than nine months later, both cases were overruled by *Petri Cleaners Inc. v. Automotive Employees Union*[3] and the court reestablished in California the labor policies which prevailed prior to *Garmon.* The overruling of these cases so soon after they were decided has caused uncertainty in labor-management relations in California. The latest supreme court pronouncement of California's labor policy is *Messner v. Journeymen Barbers Union*[4] where the *Petri* case was approved and the court stated that any major changes in California labor law must come from the legislature, not the courts.[5]

The Messner *Case*

Using the *Messner* case as a basis, this discussion will set forth certain rights of organized labor in the business community, the foundation upon which the rights are based, and the restriction of the rights that was attempted. (Inasmuch as the cases giving rise to this discussion had their effect on California labor law only, the federal law, applicable when interstate commerce is involved, will not be considered.)

In the *Messner* case the plaintiff was the owner of a barber shop and had four barber employees. None of the employees were union members and none desired to join the union. The defendant labor

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* Member, Second Year class.

1 49 Cal. 2d 595, 320 P.2d 473 (1958).

2 52 Cal. 2d 162, 339 P.2d 801 (1959).

3 53 Cal. 2d 455, 349 P.2d 76, 2 Cal. Rptr. 470 (1960).

4 53 Cal. 2d 873, 351 P.2d 347, 4 Cal. Rptr. 179 (1960).

5 *Id.* at 882, 351 P.2d at 353, 4 Cal. Rptr. at 185.

union requested plaintiff to sign a contract with the union, which would have required plaintiff, who worked in the shop, and his employees to join the union. Peaceful picketing of plaintiff's premises began when he refused to sign the contract. Plaintiff sought an injunction against the picketing and was successful in the trial court. On appeal the California Supreme Court reversed and held that a closed or union shop contract was a proper labor objective even though the union did not represent any of the employees directly involved, that peaceful picketing to achieve this goal was lawful, and that such activity could not properly be enjoined.

This holding of the court was based on the case law prior to *Garmon* and the Labor Code sections 920-23 as interpreted by those cases. The court stated:[6]

> Thus, for fifty years, until the four-to-three decision of this Court in *Garmon v. San Diego Building Trades Council*, 49 Cal. 2d 595, 320 P.2d 473, in 1958, it was the settled law of this state that union labor could freely compete for jobs in the labor market and seek to improve wages and working conditions by engaging in lawful concerted activities such as strikes and picketing. The law moreover recognized that union labor has a legitimate interest in organizing workmen in competing nonunion shops to insure the benefits of collective bargaining in union shops. Concerted activities to achieve that goal were legitimate even when the employees in the nonunion shops did not wish to join or be represented by the union.

This part of the *Messner* decision is the most important element, for it is this area in which the confusion has arisen and which formed the crux of the holdings in *Garmon* and *Chavez*.

Recognizing that other questions were involved which might arise on remand the court stated that it was lawful for the union to require the plaintiff employer-barber to become a member of the union because he was working in the trade and competing with organized workmen in the trade. Under California law, if the employer-worker is offered the same rights of membership as employee members, he is subject to the same means of persuasion as any other worker, and this includes peaceful picketing.[7]

Finally the court ruled that a clause in the proposed contract, which would require the plaintiff to charge no less than the prices specified for the services rendered in his shop, was not a violation of the Cartwright Act,[8] *i.e.*, an unlawful restraint of trade through price fixing, because its *primary purpose* was to establish the wages of union members, which is recognized as a lawful labor objective.[9]

The primary purpose test, which was applied in determining the

[6] *Id.* at 879, 351 P.2d at 351, 4 Cal. Rptr. at 183.

[7] *Id.* at 885, 351 P.2d at 354-55, 4 Cal. Rptr. at 187.

[8] CAL. BUS. & PROF. CODE §§ 16700-758.

[9] *Supra* note 4 at 886, 351 P.2d at 355, 4 Cal. Rptr. at 187-88.

legality of this alleged violation of the Cartwright Act, did not originate in the *Messner* case. In *Overland Publishing Co. v. H. S. Crocker Co.*[10] an agreement between a labor union and an employers' association was held illegal as a restraint of trade. The union had agreed that its members would only work for association members. The court found that the primary purpose was to restrain competition, and thus the agreement was illegal. The same test was applied in *Kold Kist Inc. v. Amalgamated Meat Cutters*[11] in holding that a proposed contract, which would have prevented the sale of prepackaged frozen meat after the fresh meat counter had closed, was designed to eliminate the competition of such products and was therefore in restraint of trade.

The *Kold Kist* case has been cited for the proposition that action which *is in restraint* of trade is illegal regardless of the objective of the parties and is also illegal if entered into for the *purpose* of restraining trade.[12] The *Overland* case was used to support the statement that the courts of California have held that the paramount objective of the Cartwright Act is satisfied if the *tendency* of the action or proposed action is to restrain trade.[13] Finally, it has been said that if the *purpose* of the agreement is to restrict trade *or* the agreement *tends* to restrict trade the agreement is against the objects of the Cartwright Act.[14]

Admittedly agreements such as the one proposed in the *Messner* case have a tendency to place some restraint on competition in trade. As Justice Schauer points out in his dissent in *Messner*, if all the barber shops in the area are organized under this contract, the price of barber services will be just as fixed as if the employers had agreed among themselves to eliminate competitive pricing.[15] It would seem, however, that the true test when the question arises is the primary purpose of the agreement.[16] In cases where the main purpose is lawful the courts have not held the agreement in restraint of trade merely because its operation incidentally restricts trade.[17]

This aspect of the *Messner* decision cannot be entirely disregarded for it raises many questions which are worthy of thorough investiga-

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[10] 193 Cal. 109, 222 Pac. 812 (1922).

[11] 99 Cal. App. 2d 191, 221 P.2d 724 (1950).

[12] Alpha Beta Food Markets v. Amalgamated Meat Cutters, 147 Cal. App. 2d 343, 305 P.2d 163 (1956).

[13] Kold Kist v. Amalgamated Meat Cutters, 99 Cal. App. 2d 191, 221 P.2d 724 (1950).

[14] People v. Sacramento Butchers Protective Ass'n, 12 Cal. App. 471, 107 Pac. 712 (1910).

[15] Messner v. Journeymen Barbers Union, 53 Cal. 2d 873, 907, 351 P.2d 347, 370, 4 Cal. Rptr. 179, 202 (1960).

[16] Schweizer v. Local Joint Executive Bd., 121 Cal. App. 2d 45, 262 P.2d 568 (1953).

[17] 33 CAL. JUR. 2d *Monopolies* § 9 (1957).

tion. Further consideration is not within the purview of this article.[18] The problem to be discussed here is limited to the first issue decided in *Messner*—the right of a union to picket even though it does not represent the employees involved.

Historical Development

The fifty years of authority to which Justice Traynor referred,[19] and which forms the basis of California's labor law began in 1908 with the case of *Parkinson v. Building Trades Council of Santa Clara County*.[20] In that case the union had submitted a union contract to the plaintiff, which he refused to sign. The union declared a strike and boycott of plaintiff's business. The court held that laboring men and labor unions formed by them, if not bound by a contract to continue work, could pledge themselves not to work for or handle materials from an employer of nonunion men, so long as they used no unlawful means. The court said, "Any injury to a lawful business, whether the result of a conspiracy or not, is *prima facia* actionable, but may be defended upon the ground that it is merely the result of a lawful effort of the defendants to promote their own welfare."[21]

The court added that if the object sought and means used were lawful, the motive inspiring the action was irrelevent. Thus the lawfulness of the objective became the primary consideration in determining the legality of activity by laboring men acting in concert. The following year the court decided *Pierce v. Stablemens Union*[22] and again recognized the right of the union men to strike to attain lawful ends, and to use moral intimidation to persuade others to strike or refuse to do business with the employer involved. However, the picketing in this case was enjoined because the court found it involved force and threats of violence.

The decisions in these cases provided a basis for the rights of the union to combine for the promotion of labor in the business community. Though for a time there was some confusion as to the right of labor to use the picket line[23] to attain its objectives, by 1921 the court had established the right of the union not only to strike to attain its ends but to use peaceful picketing as a means of advertising its grievances with the employer and exerting pressure on him to accept the

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[18] See the following cases for treatment of this aspect of Messner v. Journeymen Barbers Union, *supra* note 15: Speegle v. Board of Fire Underwriters of the Pac., 29 Cal. 2d 34, 172 P.2d 867 (1946); Alfred M. Lewis v. Warehousemen, 163 Cal. App. 2d 771, 330 P.2d 53 (1958).

[19] See text at note 6, *supra*.

[20] 154 Cal. 581, 98 Pac. 1027 (1908).

[21] *Id.* at 603-04, 98 Pac. at 1036.

[22] 156 Cal. 70, 103 Pac. 324 (1909).

[23] See Moore v. Cooks Union, 39 Cal. App. 538, 179 Pac. 417 (1919); Rosenberg v. Retail Clerks Ass'n, 39 Cal. App. 67, 177 Pac. 864 (1918).

union demands.[24] The lawful objective test still controlled and the court continued to hold that a man could refuse to work for another or class of others and could agree with others to so refuse so long as no unlawful objective is sought.[25]

Statutory Enactments

In 1933 the California legislature first enacted legislation intended to establish the public policy of the state with respect to labor organizations,[26] and to define certain contracts between labor and management which were regarded as contrary to the public policy.[27] These statutes now appear as Labor Code sections 921 and 923. Labor Code section 923 provides:[28]

> In the interpretation and application of this chapter, the public policy of this state is declared to be as follows: Negotiation of terms and conditions of labor should result from voluntary agreement between employer and employees. Governmental authority has permitted and encouraged employers to organize in the corporate and other forms of capital control. In dealing with such employers, the individual unorganized worker is helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment. Therefore, it is necessary that the individual workman have full freedom of association, self-organization, and designation of representatives of his choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other material aid or protection.

In this statute the legislature not only recognizes the legality of labor organizations but declares, in effect, that it is *necessary* that labor organize to effectively bargain with employers. The declaration is in line with the decisional law up to the time of its enactment.

Labor Code section 921 provides, in effect, that a promise by an employee or prospective employee that he will belong to a labor organization, or will not belong to a labor organization, or will withdraw from the employment relationship if he belongs to a labor organization is unenforceable as against public policy. The section also applies to promises by the employer of the nature mentioned with respect to employer organizations. These sections according to *Shafer*

[24] See Lisse v. Local 31, Cooks Union, 2 Cal. 2d 312, 41 P.2d 314 (1935); Southern Cal. Iron & Steel Co. v. Amalgamated Ass'n of Iron Workers, 186 Cal. 604, 200 Pac. 1 (1921).

[25] Overland Publishing Co. v. Union Lithograph Co., 57 Cal. App. 366, 207 Pac. 412 (1922).

[26] Cal. Stat. 1933, ch. 566, § 1, p. 1478.

[27] *Id.* § 2.

[28] Cal. Stat. 1937, ch. 90, § 923, p. 208.

v. Registered Pharmacists Union[29] had been enacted to proscribe the use of yellow-dog contracts in labor management relations.[30]

Growing Labor Power

Backed by the case law and a legislative pronouncement which declared state policy to favor collective bargaining, labor organizations increased their power. An essential element of effective collective bargaining is the complete support of the employees involved in a particular establishment or industry. The closed or union shop—a shop in which only union members were employed—will effectively establish uniform support. Although the union shop was not a new idea, in 1940 the California courts firmly established the legality of such organization. That a closed shop was a proper labor objective, and that peaceful picketing to attain that objective would not be enjoined, were settled in the following cases.

In *McKay v. Retail Automobile Salesmen's Union*,[31] the nonunion employees sought an injunction against the union picketing to attain a closed shop. The court, affirming a denial of the injunction by the trial court, and recognizing the legality of a closed shop, said:[32]

> The closed union shop is an important means of maintaining the combined bargaining power of the workers. Moreover, advantages secured through collective action redound to the benefit of all employees whether they are members of the union or not, and members may resent nonmembers sharing in the benefits without liability for the obligations. Hence a closed shop policy is of vital importance in maintaining not only the bargaining power but also the membership of trade unions.

Lund v. Auto Mechanics Union[33] was substantially in accord.

Shafer v. Registered Pharmacists Union[34] decided the same day as *McKay* and *Lund*, held that Labor Code section 921 did not make the closed shop unlawful in California.[35] The court reasoned that the intent of the legislature must be considered in construing the statutes, and that if it were determined that section 921 meant a promise to join an independent union was unlawful, then that section would be exactly contrary to section 923 which declares a policy favoring the organization of labor for bargaining purposes.

In *C. S. Smith Metropolitan Market Co., Ltd. v. Lyons*[36] the court said, that there is no constitutional right to conduct a business as a

[29] 16 Cal. 2d 379, 106 P.2d 403 (1940).
[30] *Id.* at 388, 106 P.2d at 407.
[31] 16 Cal. 2d 311, 106 P.2d 373 (1940).
[32] *Id.* at 326, 106 P.2d at 381-82.
[33] 16 Cal. 2d 374, 106 P.2d 408 (1940).
[34] 16 Cal. 2d 379, 106 P.2d 403 (1940).
[35] *Id.* at 387, 106 P.2d at 407.
[36] 16 Cal. 2d 389, 106 P.2d 414 (1940).

nonunion shop.[37] The court in upholding the right of the union to picket to attain a closed shop contract stated the basis upon which such a contract is warranted:[38]

> The members of a labor organization may have a substantial interest in the employment relations of an employer although none of them is or ever has been employed by him. The reason for this is that the employment relations of every employer affect the working conditions and bargaining power of employees throughout the industry in which he competes. Hence, where union and nonunion employees are engaged in a similar occupation and their respective employers are engaged in trade competition one with another, the efforts of the union to extend its membership into the employments in which it has no foothold is not an unreasonable aim.

This statement by the court, while recognizing the closed shop as a proper labor objective, goes further and indicates that such an objective can be pursued by a union which does not represent any of the employees involved. It says ". . . the efforts of the union to extend its membership into the employments in which it has no foothold is not an unreasonable aim." This is the precise issue raised in the *Messner* case, and was there also decided in favor of the union. None of the employees in either case were members of the union and no dispute existed between the employer and his employees. The court in the *Smith* case said that the decisive question is whether the union is demanding something reasonably related to employment and the purposes of collective bargaining.[39] As indicated the court concluded that the objective was reasonably related to collective bargaining and that it was lawful for the union to demand that the unwilling employees become members of the union, and that the employer sign a union shop contract which would require him to employ only union members.

In the *Shafer*[40] case, the question of forcing unwilling employees to join the union was also raised, although in that case some of the employees were union members and the object of the union activities was to secure a closed shop. It was contended that Labor Code section 921-23 forbade a contract under which the employer must force his employees to join the union, for such action would be an interference by the employers with the voluntary choice of a representative by the employee, and would require that the employer exact a promise from the employee that he would become a member of a labor organization. The court rejected this contention and pointed out these sections of the code were enacted as a result of the efforts of labor to secure its

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[37] *Id.* at 398, 106 P.2d at 419, citing American Steel Foundries v. Tri-City Council, 257 U.S. 184 (1921).

[38] *Id.* at 401, 106 P.2d at 421.

[39] *Id.* at 400, 106 P.2d at 421.

[40] Note 34 *supra*.

position and to combat anti-union ("yellow-dog") contracts and company unions, which were means devised by management to combat the expansion of organized labor. The court stated that the California Labor Code does not guarantee employees freedom from *all* interference in selecting their collective bargaining agent, and does not place restraints upon workers' efforts to secure closed shop contracts.[41]

During the period following these cases the court continued to follow the principles which had been declared in the decisions and statutes as interpreted—that working men may organize to promote their welfare and may use peaceful economic pressure against the employer to attain objectives reasonably related to labor conditions; that the closed shop contract was such a proper objective; that the unionmen had a legitimate interest in the labor relations of nonunion workers in the industry and could seek to unionize them even though no dispute existed between them and their employer; and that such activities were lawful and gave rise to no legally recognized compensation for detriment to those resisting the demands.[42]

Reversal of Trend—The Garmon *Case*

In 1958 the court in *Garmon v. San Diego Building Trades Council,*[43] on remand from the United States Supreme Court[44] granted damages allegedly resulting from picketing by a labor union for the purpose of coercing the employer to sign a union shop contract. According to the court the demand of the union was directly contrary to the public policy of the state as declared in Labor Code section 923, for the agreement would have required plaintiff to interfere with the bargaining rights of employees, and coerce them as a condition of employment to accept a representative not of their own choosing.[45] The court concluded that this activity, in that it would have forced employees to enter an unlawful contract within the meaning of California Civil Code section 1667, was itself unlawful activity giving grounds for recovery of damages. An order for an injunction against the picketing, which had been granted by the trial court, was reversed because according to the California Supreme Court, the United States Supreme Court had held the state court had no jurisdiction to give equitable relief where the labor dispute substantially affects interstate

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[41] Note 34 *supra* at 388, 106 P.2d at 408.

[42] Park & Tilford Import v. International Bhd. of Teamsters, 27 Cal. 2d 595, 165 P.2d 891 (1946); Emde v. San Joaquin County Central Labor Council, 23 Cal. 2d 146, 143 P.2d 20 (1943); Magill Bros. Inc. v. Building Service Employees Union, 20 Cal. 2d 506, 127 P.2d 542 (1942); Sontag Chain Stores v. Superior Court, 18 Cal. 2d 92, 113 P.2d 689 (1941); Imperial Ice Co. v. Rossier, 18 Cal. 2d 33, 112 P.2d 631 (1941).

[43] 49 Cal. 2d 595, 320 P.2d 473 (1958).

[44] San Diego Building Trades Council v. Garmon, 353 U.S. 26 (1957) (remanded on issue of jurisdiction).

[45] Note 43 *supra* at 607, 609, 320 P.2d at 480.

commerce and is therefore within the cognizance of the Labor Management Relations Act.[46]

The court then declared that the *McKay*[47] case had been superseded by the Jurisdictional Strike Act,[48] inasmuch as the dispute was between the defendant union and the employee union formed by the plaintiff, and declared that many of the other cases previously decided in California had been superseded by legislative enactments and decisional law. According to the *Garmon* case, it was contrary to the California labor policies for a union to use economic pressure to obtain from an employer a closed shop contract unless the employees involved desired to join the union.

This holding was by way of dictum followed and extended in 1959, when the same court decided *Chavez v. Sargent*[49] and *Retail Clerks Union v. Superior Court.*[50] *Chavez* is distinguishable from *Garmon* in that in *Chavez* both the employer and his employees desired to join the defendant union and to have a closed shop contract but a "right-to-work" ordinance in San Benito County prohibited it. The court ruled the ordinance was invalid for the state had occupied the field and the ordinance was contrary to the state labor policy.[51] However, in arriving at this conclusion the reasoning of the court approved the *Garmon* holding and attempted to further define the labor policies of the state in accord with that decision.

The court held that the Jurisdictional Strike Act was applicable when the employees involved did not want to join the demanding union, for such a conflict of interest was a jurisdictional strike. In so holding the court said:[52]

> Thus, any group of employees, organized or unorganized in the formal, conventional sense, who are free of the proscribed employer influence and who determined and informed their employer through their authorized spokesman that they were unwilling to accede to the demands of an organizer or unwanted union, and that they were satisfied with the terms and conditions of their employment and wished to continue in the established employee-employer relationship, would thereby act as and constitute a "labor organization" within the meaning of [Labor Code] sections 1117 and 1118.

It is important to notice that neither *Garmon* nor *Chavez* declared that the closed shop was unlawful in California. In *Chavez* the court said that a union must be the authorized representative of a *majority* of the employees involved before it has the right to demand a closed

[46] 61 STAT. 136-58 (1947), 29 U.S.C. §§ 141-87 (1958).
[47] 16 Cal. 2d 311, 106 P.2d 373 (1940), discussed in text at notes 31-32, *supra.*
[48] CAL. LABOR CODE §§ 1115-20.
[49] 52 Cal. 2d 162, 339 P.2d 801 (1959) (dictum).
[50] 52 Cal. 2d 222, 339 P.2d 839 (1959).
[51] *Supra* note 49, at 213-14, 339 P.2d at 833.
[52] *Supra* note 49, at 203, 339 P.2d at 826.

shop contract.[53] Such a requirement was not recognized in California prior to the *Chavez* and *Garmon* cases. *Retail Clerks Union v. Superior Court*[54] was decided the same day as *Chavez* and generally affirmed the reasoning in that case.

Return to Prior Position—The Petri *Case*

In January 1960, the *Garmon* and *Retail Clerks* cases were overruled, and the reasoning in *Chavez* disapproved by the California Supreme Court in *Petri Cleaners Inc. v. Automotive Employees Union.*[55] The trial court had, based on the Jurisdictional Strike Act, granted plaintiff an injunction against defendants picketing for recognition and had denied a motion by defendant that plaintiff be compelled to bargain with the defendant union instead of the "inside" union formed by the employees. The supreme court found that the "inside" union had been organized after the picketing began and that it had been aided and interfered with by the employer, and it was therefore not a labor organization within the meaning of section 1117 of the Labor Code. The dispute was not between labor organizations within the meaning of section 1118 of the Labor Code and was therefore improperly enjoined as a jurisdictional dispute.

The trial court's refusal to grant defendant's motion to compel the plaintiff to bargain with defendant union was affirmed. The court ruled that the decision of the employer to bargain or not would be determined by the free interaction of economic forces, and that compulsory bargaining was not the law in California.[56] The cases and the interpretation of Labor Code sections 921-23 which had prevailed prior to *Garmon* were reaffirmed, and the court said the *Garmon* decision was directly contrary to the settled rule that labor has the right to engage in concerted activity to attain a closed shop.[57] Turning to the *Chavez* case the court said:[58]

> . . . [T]his court departed from rules based on the free interaction of economic forces and determined that collective bargaining must be pursued or not according to the wishes of the majority of the employees directly involved . . . and . . . by going further and setting up a new system of labor law based on majority rule instead of the free interaction of economic forces, the case would turn our trial courts into labor relations boards without legislative guidance or necessary administrative machinery.

The conclusion in the *Petri* case was that closed shop contracts are lawful in California, and that concerted activity to obtain them is

[53] *Supra* note 49, at 212-13, 339 P.2d at 832-33.

[54] *Supra* note 50.

[55] 53 Cal. 2d 455, 349 P.2d 76, 2 Cal. Rptr. 470 (1960).

[56] *Id.* at 469, 349 P.2d at 85, 2 Cal. Rptr. at 479.

[57] *Id.* at 473, 349 P.2d at 87, 2 Cal. Rptr. at 481.

[58] *Id.* at 473-74, 349 P.2d at 88, 2 Cal Rptr. at 482.

lawful whether the employees directly involved desire such agreements. If the rule is to be changed the legislature must do it, not the courts.

As was indicated at the outset, the case of *Messner v. Journeymen Barbers Union*[59] followed the *Petri* case, and held that the defendant union could picket to coerce the plaintiff to sign a union shop agreement and in turn require his employees to join defendant union. Two cases have followed the *Messner* case and without detailed discussion have adopted the same view as *Messner* and *Petri.*[60]

Conclusion

California courts have returned to the position of the half century preceding the *Garmon* case by the reasoning in *Petri, Messner,* and the cases following. No doubt the social and economic conditions existing at the time when *Parkinson*[61] was decided and during the period when sections 920-23 were enacted and interpreted have changed in California as throughout the United States. Labor organizations have struggled from a position of relative impotence in those earlier days to the status of strong, effective, nation-wide organizations possessing real power at the bargaining table. It may be that the modern labor union has gained such a position of power relative to that of organized business that the time has come for California to impose some restrictions on their power. If it is time for such a change the present majority in the California Supreme Court has made it clear in the *Petri* and *Messner* cases that it must come from the legislature.

In the *Messner* case Justice Traynor gave the reasons of the court's majority. Referring to the *Petri* decision he said:[62]

> Nevertheless . . . [the *Petri* opinion] felt bound to respect the traditional principle of separation of powers that gives to the legislature the responsibility of making any major changes in social and economic policy. It made clear that the court would not establish by judicial legislation a little Taft-Hartley Act for California that only the legislature can properly consider and enact. The legislature is uniquely able to amass economic data and hold hearings where it can give heed to many representatives of the public besides parties to a controversy. It can best determine whether there should be further governmental regulation of peaceful competitive economic activity.

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[59] 53 Cal. 2d 873, 351 P.2d 347, 4 Cal Rptr. 179 (1960). See discussion in text at note 4, *supra.*

[60] Bemis v. Beauticians Union, 184 Cal. App. 2d —, 7 Cal. Rptr. 695 (1960); Laundromatic v. Laundry Workers Union, 180 Cal. App. 2d 854, 4 Cal. Rptr. 861 (1960).

[61] Parkinson v. Building Trades Council, 154 Cal. 581, 98 Pac. 1027 (1908). See discussion in text at note 20, *supra.*

[62] Messner v. Journeymen Barbers Union, *supra* note 59, at 882, 351 P.2d at 353, 4 Cal. Rptr. at 185.