DETROIT REVOLUTIONARY MOVEMENT RECORDS

BOX 10 OF 16

FOLDER 9

MCLL LEGAL PERSPECTIVES

Preliminary Legal Perspectives

Our biggest choice from the legal standpoint in the weeks ahead is whether our drive should be to initiate state legislation or to amend the constitution. There are various pros and cons to these two types of drives which stem from legal and political considerations.

Under the initiative drive, we would need to collect valid signatures totalling 8% of the vote in the last gubernatorial election, or approximately 240,000. After certification by the State Board of Canvassers, the legislature would have to either reject or enact our bill unchanged within forty days of session. Whether the law is approved or rejected, our bill would go to the people for the November 1974 elections. Both drives can appear on the ballot only in even years. However, the legislature may reject our seasure and propose another upon the same subject, and in such an event both the measures would be submitted to the voters at the next general elction. If both measures were passed, the one with the highest total of votes would become law ten days after the lection. The legislature would have the power, during the 1975 and subsequent legislatures to amend or repeal either measure which is passed, by a 3/4 vote of both houses. The above is provided for in Section 2, Article 9 of the State Constitution.

There have been several court decisions regarding these provisions which should be mentioned. For one thing there have been numerous decisions which ease various technical requirements for the petitioning process itself. All "unnecessary restrictions" have been declared unconstitutional. The details of this process, and court decisions changing them can be found under Michigan Statutes Annotated 168.471-168.484.

One decision stated that if the law we propose is actually enacted by the legislature without change, the measure wouuld not go before the voters unless an opposing group of citizens collected enough signatures, 5 %, to invoke the power of referendum.

Also, no law which can not be enacted by the legislature under the constitution can be enacted by the initiative process. However, no ~~prior~~ determination can be made by the courts until after it is enacted. There have been numerous decisions requiring the title of the law must be stated on the petition, and the point of a few of them is to limit the scope oflaws so enacted to one basic measure, the import of which is stated in the title. In other words, our bill could not both include a provision to outlaw strikebreaking and one to make strikes legal for public employees. Such an initiative could easily be stopped by an equity procedding charging we violate sections of the constitution and state law which define the scope of a proposed law embraces only one object.

Perhaps the most important court decision, in the case of the Wolverine Golf Club v.s. State of Michigan, April 5, 1971, the Supreme Court ruled that statutory provisions requiring that any petition for initiation of legislation be filed ten days before the start of the legislative session on the second Wednesday of January are restrictive and that there is no current reason for this. Thus we would not need to complete our petitions until after the session started. However, the court did not rule on a new deadline. We would have to have them in in time for the Board of Canvassers to rule on their validity and still give the legislature forty session days to consider the bill. Probably we should shoot for March at the latest or risk an adverse court decision stating that a current reason, i.e. proper legislative consideration, makes our petition too late. Nohnew statute as to the time of petition deadline exists in the supplements to the previous law.

Amending the Constitution

Under the process amending the constitution, we would have until 120 days before the November election to obtain signatures totalling 10%, or about 300,000. The deadline would be about July 10. This is according to Section 12, Article 2 of the constitution.

Several court decisions are worth mentioning here also. The most important is a decision which states, "The line of demarcation between legislation and constitutional provision is too indefinite to require that an arbitrary decision must be made in advance of submitting a proposal to the voters, as to whether a particular measure must be an initiative or a constitutional amendment." Thus we could pass our proposed bill as either, emen though the bill is worded more as a law. In an unrelated but interesting decision, in Millard v.x. Grey the state Supreme Court declared, "Sovereign power is in the people." Does this make revolution legal?

Another decision gives to the people, by the process of amending the constitution the power to add to or decrease the powers of departments of state government. Thus we could add powers of regulating strikebreaking to a branch of government as one form of enforcement. Under an amendment, the only other form of enforcement would be civil suit that the hiring of strikebreakers was unconstitutional.

In our provision, we would have to state "provisions in the existing state constitution altered or abrogated if adopted." This is tricky, as is the actual writing of the amendment, because various legal requirements as to the wording and punctuation of the amendment. O,,r petition could easily be declared void for such minor errors or for mistating which previous provisions would be deleted or altered by ours. Witness the trouble Perry Bullard had with the Marijuana Initiative. It took him three or four tries to get it right. However, a constitutional amendment can not be repealed, amended or set aside by the court after being passed.

An amendment to the constitution is a law for purposes of the contracts clause. Beacuse of that decision, while contract rights generally (including the right to hire and fire) can not be subject to abrigement by an amendment because of another decision which states that the people do not comprehend the ability to alter certain basic rights without a constitutional convention, our amendment, by functioning as a law making a contract with a strikebreaker illegal, can legally outlaw the hiring of scabs without interfering with the right to make contracts for legal purposes.

The law provides that all newspapers would be required to print the amendment, and asked to cover it to the fullest extent possible.

The above interpretations came from court decisions, statutary and constitutional provisions. The decisions themselves were not read, but only their summaries, and should be looked into further in the weeks ahead, especially those dealing with the specifics of the petitioning process, and the wording of the petitions.

Federal Pre-Emption

A review of the anit-strikebreaking laws of other states shows that none of them outlaw strikebreaking alltogether, although a New York City statute does. Several have laws probibiting the importation of strikebreakers from out of state or prohibiting the hiring of professional strikebreakers. Almost every state prohibits the use of armed strikbreakers to attack picket lines (isn't that nice), and a couple of dozen state that advertising for scabs must include notice of the strike. Two states used language in their statutes which is designed to demonstrate that their laws do not conflict with federal court decisions which uphold

the right of companies to replace economic strikers.

The doctrine of federal preemption generally prevents states from enacting laws which regulate activities in a contradictory manner from t that which is established federal practice, as determined by federal law and court or agency decisions.

However, in two court decisions, the Allen-Bradley and Garner cases, it was stated that the court will not deny to states their "historic Powers over such traditionally local matters as public safety and order and the use of the streets or highways." The Garner decisions permit the states to act in cases of "mass picketing, threatening of employees, obstructing streets or highways, or picketing of homes" even though the Labor Management Relations Act also regulates these activities. Other, less favorable cases, state that the ste states must yield when the activity regulated by a state statute is "arguably" or "potentially" subject to Taft-Hartley, either as protected activity under Section 7, or unfair labor practice under Section 8. However, the specificity of the Garner and Allen-Bradley decisions carries more import.

Garner also stated that all fields are open to state regulation if no law on a federal level regulates them, or if the activity is merely a "periferal" concern of Taft-Hartley. We have not yet found any law protecting the right to hire scabs, although one might exist, and we will soon know for sure. In fact, the large body of federal court decisions which do protect this right, all stem tangentially from a Taft-Hartley provision, in section 8A3 which stated that a company cannot discriminate against an employee for union activities. Federal preemption is weaker if based only on case law and agency decisions. Numerous cases were brought by workers, who after going on strike and settling, came back to work to find their jobs taken by scabs hired during the strike. The court has ruled that if the cabs were hired during an economic strike as opposed to a strike over unfair labor practices, and if the scabs were hired as permanent replacements as opposed to temporary ones, the striker remains an employee even if co isn't hired back right after the strike, meaning only that co is entitled to the next available job. Implicit in these decisions was that the company does have the right to hire scabs in an economic strike. The court has supposedly tried to strike a balance in its decisions between the powers of the workers and the company. As the years went by, the court has leaned to giving more rights to the workers, but t is trend is liable to be reversed under the Nixon court, and Nixon appointed federal judges.

In the Seventh Descennial Digest, Volume 4, Labor Relations, more court cases are discussed. In Steelworkers v.s. Gulf Naval, the federal court stated the rights of an employer in this manner: "Management may hire and fire freely except as limited by public law." In Gunter v.s. San Diego, the same opinion was repeated, which is generally favorable to our measure: "Employers have the right to hire and fire except to the extent th t right may be modified by public statute." A conflicing opinion, Ind. APP. 143, states: "An employer has the right to fire who he sees fit."

In UMW v.s. Gibbs is the strongest statement of the rights of states in the area of labor: "The states may deal with violence and threats of violence appearing in a labor dispute by employing a variety of remedial measures against the contention that state law was pre-empted by passage of federal labor legislation, but the permissible scope of state remedies in such areas is strictly limited to direct consequences of such conduct, and does not include consequences of peaceful picketing or other union activity." Many decisions such as these are not intended to give states the right to prevent strikebreaking, but establish the grounds to do so.

Many cases affirm the right of a union member to cross co's own picket line, and our law could not prohibit that, but only the hiring of new employees to break a strike.

The major point in our favor is that the justification for state regulation can be found in the exemption for federal preemption dealing with the basic police powers of the state.

Other States Laws

Anti-strikebreaking laws have been favored by labor as a furtherance of their rights, and by others as a protection against violence. Scabs, especially professional ones, tend to produce violence because, in the words of Fred Vigel, Chairperson of the Huron Valley Labor Council, "The scab is the lowest form of human life." The violence recently in Roscommon by building trades workers, while not directed against strikebreakers but at non-union workers, is only one example of dozens of incidents of violence in Michigan surrounding the hiring of scabs in the last decade. A serious riot broke out in Hillsdale a few years ago, and many people have been struck by cars, hundreds of people arrested for obstructing ingress and egress, homes and cars have been damaged, company property damaged, strikers brutalized, and policemen attacked. We of course, abhor this violence, right?

The language of the Maine and Massachusetts laws are a good example of the ways of stating that the law is part of the state's domain. Maine: "It is declared to be the policy of the State, in the exercise of its police power, for the protection of public safety and for the maintainence of peace and good order, and for the promotion of the state's trade, commerce, and manufacturing, to assure all persons involved in strikes or loclouts, freedom of speech and freedom from bodily harm and to prohibit the occasion of violence and disorder and in furtherance of these policies, to prohibit" professional strikebreakers. Mass: "It is hereby delcared that the employment of non-residents of the state as labor replacements or strikebreakers during a strike or lockout tends to produce and prolong industrial strife, violence and other crimes and disorders which would be to some extent mitigated if persons" hiring outstate scabs were required to register them.

The Michigan law, Pub. Act 150 L 1962, 423.251-423.254, states: "No person, partnership, firm, or officer or agent thereof, involved in a strike or lockout shall knowingly employ in place of an employee involved in a strike or lockout any person who customarily and repeatedly offers himself for employment in the place of an employee involved in a strike or lockout." It might be good to ask the legislature before our drive is finighed to strike everything after"any person" and add stronger penalties as one way to show the unwillingness of the legislature to act and one way to force the hand of liberals in the legislature to either support or not support our initiative or amendment.

New York City has the only la in the nation which completely outlaws the hiring of strikebreakers: "It shall be unlawful in the City of New York for any employer willfully and knowingly to employ any strikebreaker to replace employees who are either on strike against or lockedout by such employer." The definition of a strikebreaker here is not that the person is a professional but rather any person whosoever. The law was presumably passed with labor support and to prevent riots and was passed in 1962. The clauses against federal pre-emption were not included in the law, but David Goldstein has suggested they might be included in the minutes of the city council meeting. The law has not been ruled on directly as to its constitutionality, although in 1963 the Queens County Criminal Court said, "The legislation is within the allowable ambit of the Council's authority."

Political Considerations

In order to decide between the initiative and the constitutional amendment methods for our petition drive, we should strike a balance between two politically necessary goals for our drive, the dialectic between which will define many of the major politcal decisions we will have to make in the drive.

The basic belief of those of us working on the drive is that with the correct politics and organizationx we could definitely obtain enough signatures to get either measure on the ballot. Most of us are clearly pessimistic as to its chances of winning, even with the support of the union leadership andthe Democratic Party in its last months. Even so, the first goal (and we do not been to prioritize it) should be to be able to present our drive to working people around the state as somthing which is worth working on from their perspective, which would necessitate our drive being conducted in a manner which would make victory at the polls at least conceivable. Working people aren't interested in the esoterics of how this drive is good educationally even though it doesn't have a chance due to the attitudes and organizational forms we take. And without fulfilling the goal of making victory at the polls at least conceivable, we could fail to gain enough signatures as well for lack of organized worker support.

The other goal is to conduct the drive in a manner which will fulfill political goals we on the left have: To further socialist consciousness among working people; to give ourselves more practical experience in mass work; to develop working contacts with trade union members, non-union and unemployed workers around the state in areas we have not yet reached; to stimulate the organization of unorganized workers; to foster the ability of left organizations to cooperate on a minimal common program such as this drive; to promote when possible measures which expand the rights and strengths of labor against governmental and corporate attack. In order to achieve either of these goals, it is necessary to keep both of them in mind: To emphasize either one to too great an extent would result in both both goals being lost. More discussion is needed on the specific ways the two goals inter-relate as part of an effort to clarify the theory which is behind the drive, for at least an understanding of the different theoretical beliefs which motivate us on this drive is necessary for the drive to be at all coherent. But how do these two goals apply to our most immediate decision between the initiative and amendment drives?

Which form of drive is more likely to create a conceivable victory at the polls and if it were not overturned in the courts, substantive change in the rights of labor? Clearly it is the initiative drive. Voters are much more conservative when it comes to constitutional change than statutary change because statutary change carries with it the possibility of later repeal or amendment. People also shy away from the use of constitutional amendments which are in essence laws, though such measures are legal according to court decisions. In the constitutional amendment drive we would be constanly asked, Why a constitutional amendment? Why not amend the present anti-striebreaking law to go beyond professionals? Labor, also, would ask, why not get our Democratic legislators to pass it? Of course, we could couple an amendment drive with introducing the measure through "friendly Democrts" and seeing it fail, but there are few arguments we could use against the obections mentioned other than, "but the legislauture could introduce a more cnnservative measure, add their's would be the noe to pass. If our's passed it could be amended or repealed by a 3/4 vote!" ifwe used the initiative prodedure.

It is our opinion that if the legislature proposed their own measure for the ballot, they might be able to water down the criminal penalties provided in our initiative, or limit damages awarded in a civil suit, but they would have a hard time taking away the basic right of injunction to stop strikebreaking. They would also have a hard time proposing a

measure which didn't really outlaw strikebreaking against recognized unions who are striking for recognition or a new contract, without redefining"strikebreaker". And how could they do that without resorting to the old discrediting langauge outlawing only professional strikebreakers? To do so would be politically quite stupid. If our measure included provisions for public employees right to strike, the legislature could ax one of the other in their measure, but since they favor neither, and since we can't include both measure in our law anyway, the most likely thing the legislature will do is that a few elements will support it but it will be rejected quietly if possible, and the legislature will not introduce its own version. However, demonstrations in Lansing for the bill and lower level union support will make it hard to ignore the bill. They would more easily be able to ignore a constitutional amendment because it does not involve the legislature at all.

Which would be the easier to enforce? Surely county prosecutors and police would not enforce it, but theinitiative bill could have both criminal provisions and a better defined process of civil injunction than the civil enforcement the amendment could offer. It would be harder for judges to ignore a clear statute than a vague constitutional amendment.

On the other side of the balance we must strike, which form of drive would make it easiest to get across in some way the politics of the drive, to obtain some of the goals mentioned? Clearly it is also the initiative drive. Such a drive would force the Democrats and Republicans to take a clear stand on the bill. The struggle would take place in the public limelight for a longer period of time because the deadline for petitions is sooner. An initiative would be better recieved by the people we discuss the petition with. Because of the criminal penalties involved in the initiative, we could potentially expand labor disputes at the work site into protests against police refusal to stop scabbing.

Because after considering both goals, the initiative is most appropriate for both, we recommend that this be the form of the drive.

Committee Structure within HRP

In the state convention a motion was passed to make the strike-breaking drive the highest priority non-electoral activity of the party in the year to come, and to set up a committee to report back on progress at the next statewide meeting.

Since then our committee has done some preliminary legal research and has organized to seek legal assistance in the campaign. We have talked with the Lawyer's Guild and the Motor City Labor League about ways to implement the drive.

We feel that a drive of this kind requires a stable committee composed of people who see the drive as their primary political committment at least once the petition process itself begins. Many decisions will have to be made about how to relate to other left organizations, to union rank-and-file v.s. local leadership, to the Democratic Party, how to word the petition, which areas of the state to concentrate in first, how to conduct publicity, how to raise funds, will have to be made. Regular attendance at state steering committee meetings and state open meetings will serve to keep the party informed as to the progress of the drive. We hope to present as many decisions to be made by the state open meetings as possible, but will want to take an adversary role with our recommendations as a committee, with possible disagreements within the committee stated openly. Continueing contact with the statewide organizer will further serve to insure the fullest possible participation by the party as a whole. Hopefully local chapters will see a responsibility to contribute to the drive on a quota basis much as fundraising quotas are established. In order to act effectively in a coalition with other groups, primarily at this time with the Motor City Labor League, we need a a committee the ability to establish a basic continuity of policy, and for this reason we seek a degree of decision-making authority as a committee