

1-1-1949

An analysis of labor legislation in the United States with emphasis on the labor-management relations act of 1947

Arthur Edward Dowell
Indiana State University

Follow this and additional works at: <https://scholars.indianastate.edu/etds>

Recommended Citation

Dowell, Arthur Edward, "An analysis of labor legislation in the United States with emphasis on the labor-management relations act of 1947" (1949). *Electronic Theses and Dissertations*. 393.
<https://scholars.indianastate.edu/etds/393>

This Thesis is brought to you for free and open access by Sycamore Scholars. It has been accepted for inclusion in Electronic Theses and Dissertations by an authorized administrator of Sycamore Scholars. For more information, please contact dana.swinford@indstate.edu.

AN ANALYSIS OF LABOR LEGISLATION IN THE UNITED STATES WITH
EMPHASIS ON THE LABOR-MANAGEMENT RELATIONS ACT OF
1947

A Thesis

Presented to
the Faculty of the Department of Social Studies
Indiana State Teachers College

INDIANA STATE
TEACHERS COLLEGE
LIBRARY

In Partial Fulfillment
of the Requirements for the Degree
Master of Science

by
Arthur Edward Dowell
January 1949

The thesis of Arthur Edward Dowell,
Contribution of the Graduate School, Indiana State
Teachers College, Number 615, under the title
AN ANALYSIS OF LABOR LEGISLATION IN THE UNITED
STATES WITH EMPHASIS ON THE LABOR-MANAGEMENT
RELATIONS ACT OF 1947 is hereby approved as
counting toward the completion of the Master's
degree in the amount of 8 hours' credit.

Committee on thesis:

Raymond J. Pease

W. E. C. C. C.

Waldor F. Mitchell, Chairman

Representative of English Department:

Ola A. Jerry

Date of Acceptance February 28, 1949

TABLE OF CONTENTS

CHAPTER	PAGE
I. THE PROBLEM	1
Statement of the Problem	1
Importance of the Study	2
II. HISTORICAL BACKGROUND OF LABOR-MANAGEMENT RELATIONS	5
III. DEFINITION OF TERMS USED	21
IV. THE BASIC ISSUES OF LABOR LEGISLATION	26
The Closed Shop	26
Amending the Wagner Act	34
Prohibiting Industry-Wide Bargaining	37
Compulsory Arbitration	41
Federal Mediation	43
Status of Foremen	46
Increasing Union Responsibility	46
Outlawing Boycotts and Jurisdictional Strikes	49
V. CONGRESSIONAL DEBATE ON TAFT-HARTLEY LABOR LEGISLATION	54
Validity of Testimony and Procedures In Arriving At Committee Bills	54
Congressional Discussion on Content of Conference Bill	60
Main Changes from existing laws	60
Weak and strong points emphasized	62

CHAPTER	PAGE
Passage of Conference Bill in House and Senate	68
Presidential Veto and Congressional Overriding of Veto	68
VI. DIGEST OF THE LABOR-MANAGEMENT RELATIONS ACT OF 1947	71
Management's New Rights	72
New Responsibilities For Management	74
New Regulations For Labor	76
Increased Governmental Control	79
New Rights For the Individual Employee	83
VII. A YEAR UNDER THE LABOR-MANAGEMENT RELATIONS ACT OF 1947	85
BIBLIOGRAPHY	96
APPENDIX A	98

CHAPTER I

THE PROBLEM

For the people of America the drama of labor-management relations in the United States is second only in importance to the ticklish international situation of the day.

The problem of settlement of disputes between employer and employee is of vital interest to the economic and political well-being of the nation. It is of basic importance to the average individual because of his constant fear of the inability to acquire economic security. It is quite conceivable, also, to believe that the employer has to some extent the same fears, though possibly not on the same scale.

As a result of the efforts of these two groups, employers and employees, to secure and maintain the economic security that will assure them of the fulfillment of their basic needs in a modern society, one finds evidence of extremes of emotional reactions brought about by the conflicting interests of the two factions.

I. STATEMENT OF THE PROBLEM

It was the purpose of this study (1) to survey early labor legislation in the United States; (2) to show the steps

in the development of labor-management relations; and (3) to analyze current labor legislation, specifically the Taft-Hartley Act, or the Labor Management Relations Act of 1947, the official title.

II. IMPORTANCE OF THE STUDY

The present struggle between management and labor has attracted nation-wide attention--especially during the Congressional debates concerning passage of the Taft-Hartley Act. Although this problem is of vital interest to a very large majority of the people of the nation, a seemingly small minority is aware of the true facts that have led up to the situation. Congressmen and other leaders in the field of labor problems have stated that the Taft-Hartley Act, itself, is an intricate piece of legislation that would require much time and study to be understood satisfactorily.

This study attempts to alleviate the above situation by providing a convenient source where by the average person can get a practical view of the present labor-management situation. All technical language has been avoided as far as practicable with the view in mind of presenting the material for lay consumption.

On June 23, 1947, the Labor-Management Relations Act--better known as the Taft-Hartley Act--became the law of the

land. This act brought about the demolition of the Wagner Act of 1935, admittedly pro-labor, and substituted a law with unprecedented extensions of government authority over the labor-management relationship. It is an authority which rests upon severe penalties. It is justified on the theory that only through federal policing can the public interest be safeguarded. Encompassed in that conception of the public interest is the protection of management's right to manage, the right of the individual worker to refrain from joining a union, and the right of both to be shielded from coercive pressures.

The factors that brought about this new legislation were said to be (1) the alarm caused by the growing power of unions, (2) the abuse of power on the part of certain union labor leaders, (3) a so-called "mandate of the people" as a result of the Congressional elections of 1946, (4) the extensive public relations program sponsored by management associations of press and radio, and (5) the fear of Communist infiltration into labor unions.

Just which of these factors predominated is difficult to determine. It is certain, however, that each played some part in bringing about the new statute.

Extensive hearings were conducted on the subject by the respective House and Senate labor committees, at which

representatives of management and labor gave their reasons for or against the need for additional labor legislation.

Labor representatives decried the need for additional legislation and denounced current proposals as unworkable, totalitarian and "slave labor" tactics, asserting that the hearings were being packed with a few "spiteful employers" with pro-labor employers not being allowed to testify.

Management denounced the abuses of power on the part of various unions and demanded that Congress give management a "bill of rights" that would especially protect the "small businessman" from corrupt union tactics.

In both houses of Congress extensive debates were held on the subject with the minority of the committees asserting that they were not fully consulted nor allowed to participate fully in the formation of the committee bills. The minority also accused the majority of having presented a bill written, not by the committee, but by the representatives of the National Association of Manufacturers.

Finally, however, the bill was passed by an overwhelming vote in both houses over the veto of President Truman and was entered upon the statute books of the nation.

It is the immediate purpose of this study, then, to trace the developments that led to the enactment of this new legislation and present an analysis of it which will clearly

show its provisions and its functioning thus far in the affairs of management and labor.

CHAPTER II

HISTORICAL BACKGROUND OF LABOR-MANAGEMENT RELATIONS

Labor-Management relations in the United States have provided and still are providing the stage for the most lively domestic drama of the day. The problem has received foremost attention from Congress and from President Truman. Extensive Senate and House committee hearings were held to enable lawmakers to hear first-hand testimony on the basic issues of the controversy. Debate on the issues brought great crowds to the galleries of the legislative chambers. Labor and management marshalled their most competent forces to fight out the issues and to lobby congressmen in capitol corridors. Scarcely a day has gone by that the labor question has not been front page news.

With all this publicity the story of labor and management is an enormously involved and complex chronicle to all but those who have followed it, from day to day, over a period of many years. To get a balanced perspective of the labor picture in relation to the Federal Government involves looking back to the time when organized labor first began to pick up momentum.

At the close of World War I, two of the biggest and best organized of the labor groups were the American Federation of Labor and the Railroad Brotherhoods. The Federal Government, which had operated the railroads during the war, returned them in 1920, at which time Congress created a Railroad Labor Board composed of labor-management-public representatives to settle disputes. The board had investigatory powers, but its functions were purely advisory.¹ In the brief depression that followed the war there occurred, in the railroad industry, several disastrous strikes with which the Board was unable to cope. The railroads and the unions, as well as Congress, had the seriousness of the conflict brought home to them. The result was the Railway Labor Act of 1926.²

Under this law, railroad labor obtained certain protections in respect to its rights of organization. However, it may be noted that this was a period when Congress was friendly to industry and business; the law was motivated from the sincere desire on the part of all to avoid future disasters rather than from special Congressional sympathy toward business or a pro-labor philosophy. Regardless of

¹ Carroll R. Daugherty, Labor Problems in American Industry (Boston: Houghton Mifflin Company, 1933), p. 900.

² John R. Commons and John B. Andrews, Principles of Labor Legislation (New York: Harper and Brothers, 1936), p. 433.

purpose, railroad labor did get help from the Federal Government, principally from the clause reading:

Representatives, for the purpose of this Act, shall be designated by the respective parties in such manner as may be provided in their corporate organization or unincorporated association, or by other means of collective action, without interference, influence, or coercion exercised by either party over the self-organization or designation of representatives by the other.³

The Act also abolished the Railroad Labor Board and created the National Mediation Board to help adjust disputes in the railroad industry; it obligated both parties to attempt to reconcile their difficulties by mediation and provided a series of procedures to be carried out before a strike could be called.⁴ Organized labor outside the railroad industry was encountering tough sledding. This was the day of strike breaking and so-called "government by injunction." Frequent use was made by the "barons of industry" of the injunction procedure. Court judges, allegedly under the influence of business tycoons, were prevailed upon to halt strikes by issuing restraining orders to the unions. Organized labor, which had seen its membership climb to over 5,000,000 during World War I, unhappily watched its numerical strength dwindle to half

⁴ Commons and Andrews, op. cit., pp. 435-436.

³ Ibid., p. 434.

that figure.

Then came the Wall Street crash of 1929 and lean years followed. The plight of many people who had been well off financially was bad enough; many laboring men who were being laid off or having their wages cut were on the brink of despair. Congress began to act. The pendulum had swung too far and the trend from business to labor was evidenced even before the 1932 elections had put the New Deal officially into office.

First real evidence of the new trend came in 1931. In that year two "liberal" Republicans, the late Senator George Norris of Nebraska and Representative Fiorello LaGuardia of New York, co-sponsored a bill to end the era of injunctions and to give the working man a "break."

The Norris-LaGuardia Act contained two provisions of major importance to Labor. First, it prohibited Federal courts from issuing injunctions against unions without a hearing by both parties; it drastically limited the types of activity against which restraining orders could be issued. Second, it outlawed the "yellow-dog" contract--a practice under which employers demanded, as a condition of employment, that employees agree not to join a union other than a company union. Affiliation with a labor organization in such instance meant dismissal.

In addition, the Act promulgated a declared policy toward labor unions in cases arising in Federal court; collective bargaining and the right of self-organization, free from interference of employers, were to be recognized in court as legal practices. It is under this act that the Federal courts have set the precedent of exempting unions from injunctions.⁵

Partly as a result of its earlier attitude toward labor and partly from the depression in the early thirties, business began to lose its leadership in the nation's domestic affairs. If, for a while, business was unaware of this fact, it soon discovered the situation with the advent of the New Deal.

First on the labor program of the New Deal came the National Industrial Recovery Act, passed in June, 1933.⁶ This Act, or a provision of it, actually formed the basis for the subsequent all-important Wagner Act. It provided codes of "fair competition" to fix minimum wages and maximum hours. It also set forth the right of workers to organize and to bargain collectively without employer interference. In other words, the policy stated in the Norris-LaGuardia Act in relation to court cases was

⁵ Commons and Andrews, op. cit., pp. 415, 421-422.

⁶ Commons and Andrews, op. cit., p. 57.

extended among the industries subscribing to such codes.⁷

The NIRA lived two years, and then a Supreme Court decision, *Schechter Corporation vs United States*, declared it unconstitutional.⁸ But union strength had increased measurably in those two years.

Congress was already at work, however, and in the following month, July, it passed the National Labor Relations Act, which became known, in some labor circles, as the Magna Carta of Labor.

The NLRA, more commonly referred to as the "Wagner Act," because of its chief sponsor, Senator Robert Wagner, New York Democrat, was and is the most far-reaching of the "labor" laws enacted in the United States. It provides fuel for some of the principal labor controversies today.

Briefly, the Act sets forth and defines certain unfair labor practices on the part of employers. These are: (1) Interfering with the employees' rights of self-organization; (2) Dominating or interfering with the formation or administration of labor organizations or contributing money to them; (3) Discriminating in the hire or tenure of a worker because of his affiliation with a union or encouraging or discouraging such affiliation

⁷ *Ibid.*, p. 423.

⁸ *Ibid.*, p. 424.

(the closed shop, however, is permitted); (4) Discharging or discriminating against an employee for filing charges or giving testimony concerning complaints against the employer under the Act; (5) Refusing to bargain collectively with the representatives of his employees.⁹

To administer the Act, a National Labor Relations Board was created. The NLRB has jurisdiction of all proceedings arising under the Act. It investigates, hears and prosecutes cases of unfair labor practices; it decides the issues; its orders are enforceable upon appeal to a United States circuit or district court. The Board has the further function of holding bargaining elections to determine the bargaining agent and of so certifying such agents.¹⁰

It does not, however, have any functions of mediation or arbitration, the government's part in that respect being handled by the United States Conciliation Service in the Department of Labor.

About this time the growing-pains of labor became evidenced by the internal split among AFL unions. Led by John L. Lewis, one faction broke away to form the new CIO., which became in a relatively short time equally powerful

⁹ Commons and Andrews, op. cit., pp. 424-429.

¹⁰ Commons and Andrews, op. cit., pp. 427-428.

with its mother unit.

In 1936, the Walsh-Healey Act was passed setting a prevailing wage scale as well as a 40-hour week, prohibiting child labor on all work done on Government contracts, and two years later, still riding the wave of labor-practice laws, Congress passed the Fair Labor Standards Act, which, next to the Wagner Act, has been most loudly applauded by labor organizations. The Act established a Wage-Hour Division within the Department of Labor and fixed wages and hours on a graduated scale for industry in interstate commerce. Sometimes known as the Wage-Hour Law, the Act provided, generally, that within seven years of its enactment minimum wages should be increased from twenty-five to forty cents an hour, and that within three years of its enactment the standard workweek should be reduced from forty-four to forty hours with time and a half for overtime.¹²

The Fair Labor Standards Act was the last big "labor" law passed before the nation became involved in World War II. During the war, organized labor reached its

¹¹ Benjamin Stolberg, The Story of the CIO (New York: The Viking Press, 1938), pp. 3-26.

¹² Orme W. Phelps, The Legislative Background of the Fair Labor Standards Act (Chicago: University of Chicago Press), 1939), p. 61.

greatest peak. Its membership was swelled by the influx of warworkers; it exercised its own policies, some good and some bad. Government was too busy to give much supervision or attention to labor practices. Industry was booming and there was profit to be made in war contracting. Besides, there was a general tendency to reconcile labor-management differences in the interests of the war. Still, there were strikes and some of them were costly.

In January of 1942, by executive order, the National War Labor Board was organized, composed of labor-management and public members, to settle labor disputes likely to affect the war effort.¹³

In 1943 Congress passed the War Labor Disputes Act, usually called the Smith-Connally Act. This law, which gave the Board statutory authorization, also prohibited the encouragement to strike in government-operated plants and provided penalties for violation. Thus if either party refused to accept the Board's decision in a dispute, the President could take over the plant or mine and there could be no strike without a vote of all workers. In actual practice, since the law did not make strikes illegal, the Act did not

¹³ "Labor Laws and Decisions," Monthly Labor Review, 64:853, May, 1947.

work out so well. The Board's administration was necessarily
14
loose and flexible.

The next chapter in labor-management relations takes in the period between VJ-Day and the convening of the 80th Congress, and marks the turning of the national temper toward labor. Following VJ-Day, organized labor was estimated to have more than 15,000,000 members; abuses among various unions, some admitted and some not, became a topic of conversation. The time was arriving when public opinion was to take a hand in forcing a change in governmental policy toward labor. Then followed a series of events such as these:

To compensate for what it held was loss of overtime and shorter hours due to the end of the war, labor asked for a thirty per cent increase in wages.

As a result some of the big unions went out on strike--the automobile workers, the steel workers, the coal miners.

The national economy, in a delicate state due to

14 "Labor Laws and Decisions," Monthly Labor Review, 64:854, May, 1947.

problems of reconversion, was considered by many to be seriously threatened. Under the great pressure resulting from this situation, the wage demands were partially met.

Under the wage-matching philosophy which seems to prevail among union leaders, more and more workers were called out on strike in the attempt to match the gains made by other unions. Prices were, in truth, going up rapidly. Workers could hardly be blamed for trying to increase their purchasing power.

In the spring of 1946, a crisis was reached when some of the brotherhoods of the railroad industry, which had not had a serious work stoppage in 22 years, went out on strike, completely tying up transportation. Mild-mannered President Truman marched to the Capitol and asked Congress for authority to draft into the Army workers who refused to return to work for the Government. The strike was called off and the request was not granted.

Congress passed the controversial Case bill, named for its author, Representative Francis Case, South Dakota Republican, which would have set up new Federal mediation machinery and provided for a cooling-off period before strikes could be called. On the grounds that more studied and permanent legislation was needed, President

Truman vetoed the bill.

At this point public opinion was rising more than ever against the great power that labor was allegedly attaining. The press and radio certainly kept this latter point well before the people, whether true or not.

Congress adjourned in August. Then, not long before the November elections were due, United Mine Workers' President John L. Lewis notified the Government that it was not living up to its contract with the miners. Mr. Lewis said he would notify the miners that the contract was terminated, which in effect meant that the miners would quit work unless their grievances were settled. The Government, which had taken over the mines as the result of an earlier dispute and was operating them through Secretary of Interior Julius Krug, refused to meet the requests of the miners.

In spite of the fact that the elections on November 5 put a Republican Congress in power for the first time in fourteen years, the miners quit work shortly thereafter. The fact that winter had set in and coal supplies were growing short did nothing to cool the already ruffled

15 "Case Labor Disputes Bill," Business Week, 112, March 2, 1946.

public temper. Indeed, the coal shortage was touching the homes of the individual laboring man, and upon casual observance of the reaction of the average person one might think that the old "selfish" motive might have helped in stirring up public opinion against John Lewis and his labor group, the U. M. W. A.

Claiming that the Lewis action was a breach of contract endangering the welfare of the general public, the Government hailed Lewis into court and obtained an injunction to put the miners back to work. The miners wouldn't go without Lewis's order. In a District of Columbia Federal Court, Lewis was found guilty of contempt and his miners were ordered to pay a large sum of money in damages to the operators--in this case, the Government. Lewis, who had meanwhile sent the miners back to work, appealed the case on the grounds that the injunction obtained by the Government was a violation of the Norris-LaGuardia Act which meant that his action could not be illegal. The case went to the Supreme Court.

In upholding the contempt citation against the United Mine Workers and its president, the Supreme Court ruled (1) that the provisions of the Norris-LaGuardia and Clayton Acts, which bar Federal Courts from issuing injunctions in labor disputes except under specified conditions,

are not applicable in a case involving a dispute between the Federal Government and its own employees; (2) that the workers in the Government-seized mines were employees of the United States; (3) that in any event the Federal district court had the authority to issue a restraining order to preserve existing conditions while it was considering its authority to enjoin the union and its leaders, and disobedience of the restraining order is punishable as criminal contempt; and (4) that the fine imposed on the union by the district court was excessive.¹⁶

This brings us up to the point where, apparently, a definite break occurs in the Government's relationship with labor: the expiration of the 79th Congress and the convening of the 80th Congress, January 3, 1947.

People who expected the new 80th Congress to regard its election as a mandate to revise the national labor policy were not displeased. Congress convened, and immediately a flood of bills were introduced to amend existing labor laws, or to write new ones.

As soon as the Republicans had organized the Congress and committee members were assigned, the Senate and House Labor Committee began to hold hearings. At first

¹⁶ "Recent Decisions of Interest to Labor," Monthly Labor Review, 64:855, May, 1947.

the newly introduced bills dealt with amendments to the Wagner Act or comparatively mild innovations of Labor policy. But as strong support was in continued evidence, in spite of the relatively quiet labor scene, more stringent bills were introduced.

On the Senate side, Senator Joseph H. Ball, Minnesota Republican, took the lead in sponsoring labor reform legislation. In collaboration with Republican Senators Taft of Ohio and Smith of New Jersey, Senator Ball introduced a revised version of last year's "Case Bill." Next came Senator Ball's measure to outlaw the closed shop, a vital point of contention. A similar bill was introduced by Senator Harry F. Byrd, Virginia Democrat. As hearings progressed, Senator Ball then introduced a bill to outlaw industry-wide bargaining, another highly controversial issue, and finally a bill to amend the Wagner Act in great detail.

In the House, the first extensive measure to revamp labor laws came from Representative Howard Smith, Virginia Democrat. Republican Representatives Clare Hoffman of Michigan and A. L. Miller of Nebraska sponsored bills to outlaw the closed shop. Representative Francis Case came forward with a new bill to amend the Wagner Act. Probably just as drastic were bills introduced in the House by Republican members James Auchincloss and Clifford Case,

both of New Jersey, to provide compulsory arbitration in disputes affecting the basic industries. Senator Homer Ferguson, Michigan Republican, also announced a measure to set up a system of labor courts for the settlement of labor disputes.

Thus we have the situation on labor legislation during the 80th Congress. Before going into the basic issues of the proposed labor legislation, we must list a few identifications of certain labor terms that will be discussed. Such will be the content of the following chapter.

CHAPTER III

DEFINITION OF TERMS USED

Closed Shop. In union agreements, a closed shop is established by a provision requiring union membership as a condition of employment in the plant or occupation covered by the agreement. That is, the individual seeking the job must belong to the union before he can be hired.

In its strictest sense, a closed shop contract is one under which the employer agrees to hire and retain in his employ union members only. As a general practice the union has charge of obtaining new employees and of instigating dismissals.

Union Shop. In a union shop the employer may hire whom he pleases. He is the judge of the prospective employee's qualifications, but all new employees must, within a given time, join the union.

Preferential Shop or Preferential Hiring. There are several types of such agreements. For example, a contract may stipulate that in the hiring of equally qualified personnel, the union man will be given preference; in the assignment of certain jobs, shifts, etc., the union man receives preference; when lay-offs are necessary the union man will not be discharged until

after the non-union man, etc.

Open Shop. This term generally refers to a business establishment in which any worker, regardless of his affiliation with a labor organization or lack of it, is acceptable as an employee provided his qualifications are adequate.

Closed Union. This term does not apply to any type of contract agreed upon between labor and management. It is rather a practice engaged in by some unions which have closed shop contracts, and consists of union refusal to admit any new members to its organization. It is a practice admittedly in restraint of trade and does not have the general sanction of labor.

Maintenance of Membership Clauses. This term does not require new workers to join the union, but union members at the time the contract is signed and workers who later join the union are required to remain members in good standing for the duration of the contract or lose their jobs.

Check-Off System. This is a term referring to the practice of many unions which allows a certain amount of workers' wages to be withheld for payment of union dues and fees. It is somewhat similar to the withholding tax system used for social security and income tax payments.

Yellow Dog Contract. This term refers to the new extinct type of contract which some employers required of their employees in past years. It demanded that the worker refrain from joining a labor union, other than a company union, as a condition of his employment.

Jurisdictional Strike. This is a strike in which two or more craftsmen groups within a single union are disputing as to which group shall have jurisdiction over a particular job element. Carpenters and sheet metal workers, for example, might dispute over who job it is to install window casings. An organizational strike resulting from the efforts of two or more unions to gain bargaining rights with the same employer is also called a jurisdictional strike.

Secondary Boycott. The term refers to the concerted refusal of a union to handle goods or commodities produced by a rival union or by a firm of which the union does not approve. An AFL carpenters' union, for example, might refuse to work with lumber products produced by an independent, non-union lumber mill.

Industry-wide Bargaining. The term means a system of bargaining for a work contract whereby practically all employees of a certain industry are in effect represented by a single bargaining agent at a single conference.

International Unions. Some of the big CIO and AFL unions which are nation-wide have affiliations with a few locals in Canada, also. In such cases the unions sometimes refer to themselves as "international," meaning simply that the national union has a minor Canadian branch.

Featherbedding. This is the practice of padding the payroll by using more workers than are actually necessary to handle the job.

Slowdown. This term refers to the efforts to increase the time required to complete a job through a concerted slowing of work or sub-standard efficiency.

Mediation and Arbitration. Mediation is merely collective bargaining with an impartial third party sitting in as mediator. The mediator attempts to effect an acceptable compromise. Conciliation is the same thing. When both parties agree to abide by the recommendations of the impartial third party, the system is called arbitration.

Union Responsibility. This term actually covers a wide field, but when the phrase "increasing union responsibility" occurs, reference is usually to proposals to make unions suable in Federal Court by a Federal Law

and to proposals requiring the annual filing of financial statements by unions to their members and to the Government.

CHAPTER IV

THE BASIC ISSUES OF LABOR LEGISLATION

The Closed Shop. This was probably the most controversial and hotly contested of all the issues. Proposals to outlaw the closed shop were fought all the way down the line. Both proponents and opponents were strong, able, and determined. The union leader contended that the closed shop was vital to the life of his organization, while the opposition claimed most strongly that the closed shop violated the rights of the individual to work when and where he pleased.

In an effort to see this issue from the vantage point of both management and labor, let us observe statements made by William Green, President, AFL., before the House of Representatives Committee on Education and Labor. In connection with the point in question, Mr. Green states:

There is probably no right other than the right to strike which organized labor deems more consecrated or more indispensable to its continued maintenance and wellbeing than the right to seek and obtain union-security agreements through the process of collective bargaining.¹⁸

¹⁸ Hearings Before the House of Representatives Committee on Education and Labor, "Amending the Wagner Act," Vol. 3, (Washington, D.C.: U.S. Government Printing Office, 1947), p. 1631.

As to the opposition's argument that the closed shop denies the right of the individual to work, Mr. Green is quite emphatic in the following pronouncement.

Protagonists of laws to outlaw the closed shop adopt as their slogan 'the right to work' and assert that the closed shop denies that right. This is nothing but propagandistic hogwash. It is not a little ironic to witness the spectacle of the same reactionary employer groups that for years sponsored and enforced such vicious practices as the blacklist now trying to obscure their selfish interests behind the smoke screen of the individual's right to work.¹⁹

In commenting on the necessity of labor organizations Fiorello LaGuardia gives an opinion to a member of the Senate Committee on Labor and Public Welfare.

The improvement of labor conditions, economic conditions, has kept the pace with the strength of labor organizations, and if you did not have labor organizations today, Senator, you would have exploitation.²⁰

I just want to repeat that the individual worker in the United States, or any other country, without a strong labor organization to protect him, has not got a chance. There is just that conflict of interest.²¹

Next, William Green lists the advantages of the closed shop for the members of Congress as follows:

¹⁹ Hearings, House Committee, op. cit., p. 1632.

²⁰ Hearings Before the Senate Committee on Labor and Public Welfare, "Amending the Wagner Act," Pt. 4, 1947, p. 2028.

²¹ Ibid., p. 2035.

The labor movement believes, and with historical and practical justification, that the all-union shop constitutes an effective, indeed, an indispensable, means of achieving:

1. Job security and protection from employer discrimination by removal of motives to discharge or demote because of union activity.

2. Equality of bargaining power, with consequent betterment of working conditions by insuring labor unity in the contest for a fair share of the joint products of capital and labor.

3. Protection of working standards by preventing cutthroat wage competition by nonunion employees.

4. Equality of sacrifice by insuring that all who enjoy union wages and working conditions, achieved through years of struggle and deprivation, share the costs of such benefits as members of the union rather than as 'free riders'.

5. The preservation and maintenance of organization once organization has been achieved so as to free union energies for constructive rather than defensive uses.²²

The question that undoubtedly will arise in the mind of the reader now may be: Are there any employers who favor the closed shop? Mr. Green provides an answer with the following:

Now, employers in the nation are as much in favor of closed shop agreements as workers. Why? Because the employer sees in the operation of the union shop stability, full production, continued production, without interference, no dispute because of a union member or a nonunion member but through cooperation between all, united in a common

²² Hearings, House Committee, op. cit., pp. 1631-32.

cause, and the employer has found out from experience, in the building trades, in the printing trades, in the power industry, in the pottery industry, in the amusement industry, that the best results, cheaper production, full production, can be maintained through the elimination of controversy and the substitution of genuine cooperation, and that is what happens where contracts are entered into providing for closed-shop agreements.²³

Another good example of the closed shop working for the betterment of all concerned is exemplified in the quotation of an article which appeared in the Pioneer Press, St. Paul, Minnesota, and was brought to the attention of the Senate Committee by Secretary of Labor Schwellenbach.

Why should it be illegal or against public policy for a newspaper or printing plant to make a contract whereby it designates a union as its agent to supply it with qualified printers in any and all numbers that may be needed from day to day? This is simply an efficient and convenient method of turning the supply of this skilled group of workers out on contract.²⁴

The Secretary of Labor in his testimony goes on to say, "Employers argue that such provisions deprive American citizens of their right to work. I do not know what percentage of the employers who took this position were as much interested in the rights of the individual

²³ Ibid., p. 1633.

²⁴ Hearings, Senate Committee, op. cit., Pt. 1, p. 68.

as they were in their desire to prevent effective union organization."²⁵

Along that same line Louis Waldman, New York lawyer, states, "I am quite fearful that unwittingly those who so gleefully advocate the outlawing of the closed shop would open the door wide for elements to enter and capture a sufficiently strong part of American labor so as to become a very great menace to our institutions, far greater than the closed shop ever was or could be, even from the standpoint of those who oppose it. Some employers will play with the devil himself if it is going to undermine the union and the closed shop."²⁶

To summarize the position of the pro-labor group in opposing anti-closed-shop legislation we find that labor believes that abolition of the closed shop will destroy the effectiveness of their unions in achieving job security and protection from employer discrimination, will upset the collective bargaining equilibrium, will bring about cutthroat wage competition by nonunion employees and will force the union to devote all its energy to defensive rather than constructive uses.

²⁵ Hearings, Senate Committee, op. cit., Pt. 1, p. 68.

²⁶ Ibid., p. 401-2.

What management thinks about the abolition of the closed shop is quite ably presented in the following. Homer Hartz, President, Morden Frog and Crossing Works, Chicago, Illinois, gives the policy of the United States Chamber of Commerce in reference to this issue.

We assert that the closed shop is a monopolistic practice which vests in the labor organization claiming it tremendous economic power and denies or curtails the individual's right to work. It makes application for employment a futile gesture unless the applicant can and does join the union. Labor unions are enabled by the device of the closed shop to dominate or control employment or economic opportunity by plant or by area, or even, in the case of very large unions, by industry.²⁷

The testimony of Movie Producer Cecille B. De Mille created quite a furore in the Senate committee and provided the anti-labor group excellent ammunition in their effort to abolish the closed shop. It seems that Mr. De Mille belonged to the union of radio artists. Mr. De Mille was approached by the union and asked to make a contribution for political causes in California. Mr. De Mille refused and was subsequently "kicked out" of the union. Since that time he has not been able to appear on the radio programs with which he had formerly been associated. In showing his disapproval toward his treatment Mr. De Mille

²⁷ Hearings, Senate Committee, op. cit., Pt. 1, p. 534.

was stumping the country voicing his personal opinions concerning the unfair treatment accorded him by the union because of the closed shop contract.

Many advocates of strong labor legislation consider the closed shop as the worst of labor practices. They bring out the point that it is a sad commentary on the American way of life when the union with the closed shop contract is stronger than the government. In making this kind of statement, they say that the only way the government can take away the individual's right to work is by due process of law, having been convicted of some crime. Even then the government assumes the responsibility of his keep. On the other hand, however, when the leader of a closed-shop union becomes displeased with one of his members, the employer of that member must automatically discharge him, and such ex-employee must then find employment outside a labor union or starve.

Anti-closed shop advocates further believe that the individual should have the right to join or not to join a union. This policy, well expressed by Homer Hartz, is the policy, also, of the USCC.

The right to work should not be curtailed, abridged, or denied in war or peace. A worker should be free to join, or not to join, a labor organization. A labor union should recruit and hold its members on its merits and not by making membership in any organization a condition of employment.

This basic right is in serious jeopardy. The law should protect every individual and his family from interference with this right by force, violence, threats or compulsory unionism.

We call upon all governments, Federal, State and Local, to take immediate and effective action. Remedial legislation should be enacted and this legislation should be administered without fear or favor.²⁸

Another abuse of the closed shop is the goal of the closed union. This is a labor organization which limits membership in some way, or makes it difficult for any new member to get in. For example, a worker trying to get into the printing trades may find it impossible because in many cases the union has closed its books. A skilled worker trying to get a job in the building trades may be told to get on a waiting list, if he does not already belong to the union.

This is the kind of restriction that is objected to by many because it allegedly creates those labor monopolies that deny jobs to many deserving workers.

Those whose thoughts on the closed shop go along the lines presented above further feel that a man should be given the right, if he desires, to join a labor union, because he feels it is in his best interests to do so not from fear, not from want, not just to get a job. And he

²⁸ Hearings, Senate Committee, op. cit., Pt. 1, p. 534.

should have the right to remain a member of that union only because he is satisfied with the way its affairs are directed. He should have the right to support the leaders of his union, or, if he so chooses, to work for such leaders' defeat in a fair and impartial election. In short, if a labor union is so impotent as to be unable to furnish to its members sufficient benefits as to attract them into its ranks without coercion, it has, in good morals, no excuse for existence.

Amending the Wagner Act. Proposals to amend the Wagner Act (NLRA) were widespread. It was quite evident that it would not get by without being revised extensively. The proposals included guaranteeing the rights of "free speech" to employers, requiring unions to bargain collectively (previously only employers were so required), granting employers the right to call for a bargaining agent election whenever he feels it is necessary, removing foremen from the meaning of "employee" as defined in the Act, and watering down the functions of the NLRB which had both administrative and judicial functions. Most of the amending bills were to remove the board's judicial powers, defining unfair labor practices for employees as well as for employers and attaching penalties for the violation of them. In a few words the new bills were to equalize management and labor responsibilities and rights under the Act.

Management, on this question, took up the ball with the accusation that the New Deal "put one over" on a trusting Congress that brought about a labor relations act which produced a great burden on the employer and the public. Their inference is that labor holds the balance of power now and that the employers' right should now be given equality with labor. Some of the changes advocated are: Deny workers the protection of the Wagner Act when they break a contract arrived at by collective bargaining; deny workers the protection of the Wagner Act when out on strike involving issues not relating to wages, hours, and normal working conditions. Give employers the right of free speech; allow employers to petition the NLRB for an election when the majority representation is in doubt or where a union claiming bargaining rights threatens to strike, and to equalize collective bargaining.

Labor representatives say that to refer to the Wagner Act as "one sided" is a thorough confusion of ideas. They state that prior to the Wagner Act the rights of employers and employees were completely out of balance. Employers had the uncontested right to pool their resources and engage in collective action through the formation of corporations. The corporations themselves were permitted to band together for the purpose of presenting a united

front to labor on the matter of wages, hours, and working conditions.

On the other hand, the worker was helpless as an individual to cope with the enormous concentrated bargaining power of the employers. The employer possessed and used many highly effective weapons to destroy unions. Discharge, blacklisting, and espionage were but a few of the weapons available to him for such purposes. The employee, however, had the bare legal right of self-organization--and nothing more.

Also the employer's business and property were protected against interference from his employees by the injunction and the whole body of laws, civil and criminal, protecting property rights. The worker found no assistance, however, in police regulations or the injunctive process in protecting his job and the standards under which he worked.

The purpose of the Wagner Act was to relieve, at least in part, this glaring inequality. It did so simply by forbidding the employer to use his economic power to destroy the right of self-organization of his employees. Thus, according to the news of labor, since the Wagner Act merely restored a partial equality where enormous inequality existed before, it is difficult to see how it can be called one-sided.

Labor admits it is true that the Act imposes obligations only upon employers rather than employees - but think that to attribute one-sidedness for that reason is silly. Labor points out that a good example of the way in which critics of the Act create false issues to hide their real purpose is the "free speech" issue. Many critics of the Act complain that while an employee enjoys free speech under the Wagner Act, an employer does not. The NLRB has held in scores of cases that the employer is free under the Wagner Act to discuss trade union matters with his employees and to advance argument to them against unions. It is only when an employer's speech carries threats of discharge or warns of economic reprisal that the Labor Board holds that an unfair labor practice has been committed. Labor says that the cry of "free speech" is merely raised as a smoke-screen to justify amendments to the Act which in fact would permit employer intimidation.

Prohibiting Industry-Wide Bargaining. Another of the issues over which there is a deep cleavage between labor and management is an industry-wide bargaining. Proposals, such as Senator Ball's, to bar it would restrict bargaining between employers and employees to those working in certain defined areas. The purpose of the above proposal is to break up the powers of labor leaders, such

as the coal miners' John L. Lewis, whose influence extends over an entire industry, and thereby prevents nationwide strikes in any one industry. The issue centers around methods of preventing strikes harmful to the public.

Other proposals in this category are those such as banning unions in essential industries, conscripting strikers and bringing labor unions within the scope of the anti-trust laws. Next to the closed shop, this is probably the most controversial of the issues.

Proponents of legislation to prevent industry-wide bargaining believe that if Congress is to succeed in its efforts to prevent strikes in key industries from devastating the nation, it will have to put a crimp in industry-wide bargaining. They believe further that if extension of this type of bargaining is not curbed, there is reason to believe that it will undermine the freedom of both American business enterprise and American wage earners. For, while increasing the destructive power of labor disputes, the general spread of industry-wide bargaining would so concentrate the fixing of wages-- by far the greatest element in the cost of production-- that government regulation would be a next short step. With that step taken, freedom for business enterprise and freedom for labor would be well on the way out.

Industry-wide bargaining presents certain advantages to both employer and employee. For example, union advocates of such bargaining generally stress the fact that industry-wide agreement on wages protects wage standards from being undercut by lower wage areas and lower wage employers. By much the same token, however, employers who like it often emphasize the fact that industry-wide bargaining may save certain well-managed and prosperous companies from being singled out for particular heavy wage exactions.

According to its opponents, industry-wide bargaining has a clear-cut effect upon the public. It is defined as a concentration of economic power which can make industrial conflict devastating to the public welfare. At least five times within about a year--in steel, on the railroads, in the maritime industry and twice in the soft coal industry--strikes prompted by union efforts to impose industry-wide agreement about wages and working conditions have paralyzed large parts of the nation's economic life.

Those who favor industry-wide bargaining from labor's side explained before the Congressional Labor Committee Hearings that it was the employer, who had no experience with such bargaining, who opposed it.

They feel that prohibition of industry-wide bargaining would not promote industrial peace. It would reject any possibility of settlement of collective bargaining relations in an industry as a result of a single major negotiation, the establishment of a pattern, or any other device calculated to promote uniformity, stability, and prompt over-all disposition of the collective bargaining problems of the industry. All this it rejects in favor of encouragement of hundreds of thousands of separate negotiations, separate disputes, separate strikes.

Labor advocates want to know: Will that reflect progress toward industrial peace?

As Phillip Murray said before the Senate Committee on Labor and Public Welfare, February 19, 1947, "But I can say and without hesitation that a government policy which condemns in advance any and every effort to establish or promote uniformity and stability in working conditions among members of any industry is a thoroughly irresponsible suggestion and one which can emanate only from ignorance of the realities of industrial life or from a deliberate desire to promote confusion in the collective bargaining process."²⁹

²⁹ Hearings, Senate Committee, op. cit., Pt. 1, p. 540.

Labor leaders further interpret proposed legislation on this issue as an attempt to prohibit national unions. This would mean the breaking down of the big unions into local units where there could be no uniform agreements in any one basic industry. This, they say, would foster further disagreements, would cause more strikes, and would enable the employer to destroy unionism piece by piece.

Compulsory Arbitration. This issue does not predominate, but was nevertheless considerably in evidence at labor committee hearings. Compulsory arbitration, even among those favoring radical changes in the labor laws, drew more criticism than support. Senator Homer Ferguson, Michigan Republican, and Representatives Auchincloss and Case, both New Jersey Republicans, are the chief sponsors in the Capitol for compulsory arbitration in the basic industries. The idea behind compulsory arbitration is to make the settlement of labor disputes in essential industries mandatory in order to protect the public from loss of vital utilities. But both sides appeared somewhat afraid of the general theory, principally because they felt it would place too much regulatory power in the hands of the Government. House and Senate leaders

indicated they would prefer to try other methods first.

Those who oppose compulsory arbitration believe that such proposals would be a mistake. They bring out the point that the government would soon find itself obligated to spend vast sums of money for adjudication of the large number of grievances which arise during the life of a contract. Present methods of settlement of controversies over contracts would be handicapped by statutory compulsion or by the establishment of special courts to handle grievance disputes. Mr. Vincent P. Ahearn, Executive Secretary National Sand and Gravel Association, gave a convincing appeal for non-passage of such legislation before the Senate Committee on Labor and Public Welfare, February 6, 1947.

Let me emphasize my hope that compulsory arbitration will be rejected. Compulsory arbitration may have an appeal to those who seek to spare this country from the agony of strikes which affect the health and welfare of the people, but compulsory arbitration has two immediate objections: it will ultimately destroy our free society, because governmentally-imposed solution of wage and associated problems will ultimately require governmental direction of every phase of our economy; and there is no basis, so far as I am aware, for the assumption that compulsory arbitration will settle or avoid all strikes.³⁰

Further objections stem from the fact that it would be unusual and impractical for Congress to clothe any body

³⁰ Hearings, Senate Committee, op. cit., Pt. 1, p. 590.

of men with the authority to issue an arbitration award binding as a matter of law on all the parties when no definite standards have been established for the conduct of such arbitration. In addition, development of such standards would not be feasible.

Federal Mediation. The Ball-Taft-Smith Bill of 1947, as well as the Case Bill of 1946, would have created a new system of Federal mediation, outside the Department of Labor and administered by a board. Duties of the United States Conciliation Service, which was headed by a director from within the department, would be transferred to this board. On this issue the controversies divided into two camps: First, should the Government's mediation system be an independent agency completely divorced from the labor department; and second, should the mediation agency have powers of intervention in labor disputes which would require a cooling-off period before a strike vote could be taken. Many of the pending bills provided for a revised and improved mediation with such powers. It was a popular idea, by no means, however, uncontested.

Advocates of a change in the Conciliation Service charge it with being seriously defective. They maintain that its location in the Department of Labor is a major

source of difficulty. By law the department is charged with the task of actively promoting the interests of the workers. Secretaries of Labor have on occasion said that in conciliating disputes it is the task of the department to represent the interests of labor. An agency attempting to conciliate disputes obviously has its efficiency reduced if it is obligated by law to promote the interest of one of the parties as against the other. The second defect in its operation is its policy of pursuing peace at any price.

The Brookings Institution Report as given in the Congressional Digest, March, 1947, makes the following recommendations:

The performance of the conciliation function by the National Government could be greatly improved by a few changes. The Conciliation Service should be removed from the Department of Labor. Its functions should be performed by an independent agency, headed by a board of three or five members, all of whom should be completely disassociated from employer and employee interests. Congress should clearly state that it is not the function of this agency to promote the interest of either party. The legislature must indicate that peace at any price is not and should not be its policy.³¹

In advocating no change in the present status of the Conciliation Service, Secretary of Labor Schwollenbach made the following comments:

³¹ Harold Metz, "Should An Independent Federal Mediation and Conciliation Board Be Established," Congressional Digest, 26:94, March, 1947.

I am convinced the job is not one to be done by a board; it is one which can be operated successfully only by a director--this for the reason that the solution of labor disputes requires flexibility of action. Every case is different; the issues are different; the personalities are different. It takes different types of individuals to handle different cases. During the last year and a half we have acquired in the Department a very intimate knowledge of the problems of each industry and the various companies within the industry. We know the background and the mental attitude of the negotiators on both sides. No super-duper board can handle that kind of a task. I say that regardless of the character, ability and experience of the men who might be appointed to such a board. A board is a board and no matter what it might desire to do it would soon find itself in a position where every question would have to come before at least a quorum of the board for decision. This would result in delays which often would be fatal in the work of assisting the collective bargaining process.³²

The Secretary further stated that great pressures would be imposed upon such a board and that the natural thing for it to do would be to yield to such pressures. In addition he felt it unwise to cast aside all of the efforts that have been put forth for the development and strengthening of the Conciliation Service without giving the Service an opportunity to prove what it can do under the program which has been effectuated.

³² Louis B. Schwollenbach, "Should An Independent Federal Mediation and Conciliation Board Be Established," Congressional Digest, 26:95, March, 1947.

Status of Foremen. There are likewise two different opinions with relation to industrial foremen: Should foremen be allowed to unionize, and, if so, should they be included as employees under the Wagner Act? Most employers who have appeared before the committees have only mild objection to the first question, but they object strongly to the second. They contend that the duties of foremen automatically make such workers representatives of management, and that therefore they must not belong to rank and file unions with Wagner Act status.

Legally, the question of foremen is much up in the air; they do not know how they stand. The situation stems from fluctuating decisions on the part of the NLRB. For a while the board seemed to go along on the theory that foremen were "employees" as defined in the Wagner Act. At the present time, in 1947, the issue is before the Supreme Court. So, prior to current legislation, the pro and con line-up is decidedly clear-cut; management claims foremen unanimously and so does organized labor.

Increasing Union Responsibility. Among proposals along this line are these: Require unions to incorporate; make unions suable in Federal court for breach of contract; require the filing of financial

statements by unions annually to the government and to union members; cut off NLRA protection from unions and members striking in violation of contract, and permit court injunction in such cases. However, since unions at the present time are suable under certain state laws and since many unions already follow the practice of submitting financial reports, this issue did not receive as much heated discussion as some of the others did. Union leaders indicate they consider such proposals as requiring annual financial statements to be "just a nuisance," but they claim that a Federal law making unions legal entities would breed suspicion and ill will between employer and employee.

In opposing legislation on this issue labor spokesmen term such proposals as inventions of imaginary evils in labor relations and that now Congress and anti-union employers are proposing a cure which if adopted would result in profound injury to sound labor relations and in a weakening of labor organizations themselves. The real purpose, according to labor, of those who are pressing for an amendment to make unions suable is not merely to smear labor organizations and to create in the minds of the public the idea that labor is irresponsible both in fact and in law. Their purpose goes further than this. Anyone who is familiar with the field of labor relations recognizes that

a lawsuit is the simplest and most effective way to destroy harmonious labor relationships. Employers and labor organizations with a bona fide desire to live in peace and harmony strive in every way possible to free themselves of legalistic technicalities. There can never be good relations between an employer and a labor organization if a lawsuit is the end product of a breach of a collective bargaining agreement.

Labor further objects to this issue because of a fear of post-World War I days returning. For example: In those days the union was held responsible for the actions of its individual members and it was quite easy for an employer to slip in a spy who could join the union and violate the union's agreement with the employer, thereby making the union responsible for that individual's conduct which resulted in the union's being sued by the employer for breach of contract.

William Green objects to the filing of a union's financial position in giving the following statement to Congress.

Since through public filing, a union's financial position is made known to the employer, that employer's willingness to bargain and his good faith in making counterproposals may very well be conditioned by his estimate of the union's ability to weather either a lockout or a strike. It is certain that public disclosures,

which mean disclosures to the employer, will result in a crippling of the bargaining process.

If the Congress should find it necessary to enact legislation requiring registration and financial accounting, then common justice and equal treatment demand that the same requirement be imposed upon employers, trade associations, and all fraternal organizations.³³

Advocates of making unions legally responsible by federal law feel that the sound and liberal solution of this problem of paralyzing industrial strife is not to delegate vast arbitrary powers to the executive branch of government to deal with crises, but to correct it in the law, applying equally to all, the underlying causes that breed the crises. Their approach was to eliminate or condition the special privileges and legal immunities of unions, to make their vast economic power responsible to the public interest and to prevent those monopolistic practices which are clearly harmful to the public and dangerous to freedom.

Outlawing Boycotts and Jurisdictional Strikes.

Feeling against jurisdictional strikes and the secondary boycott runs very high. Proposed methods of handling such practices included loss of Wagner Act protection for those

³³ Hearings, House Committee, op. cit., p. 1641.

engaged in them; making them subject to anti-trust action; outlawing them directly; requiring union representation elections upon petition of the employer; and allowing courts to enjoin unions so engaged. Thoses favoring labor reform laws are solidly together in denouncing these practices and asking that they be outlawed, while labor's chief reply was that work stoppage because of the jurisdictional strike is but an insignificant fraction of the total and does not need to be the subject of legislation.

Everyone, however, knew that Congress was certain to do something about preventing these practices.

William Green very ably presented the labor viewpoint on this very controversial subject when he spoke before the House Labor Committee. Speaking of Secondary Boycott legislation he stated,

Whether intended or otherwise, this objective, if achieved, would go far toward restoring the intolerable evil of the sweatshop and all of the disastrous economic consequences that the sweatshop implies.

That is so because in many instances it is impractical or impossible for a host of reasons to establish decent work standards save by peaceful economic pressure brought to bear on the customers or suppliers of unfair employers. The operation of a substandard plant means that the fair and humane employer, anxious to maintain decent work standards and adequate mass consuming power, must, out of pressure competition, either be forced out of business or abandon his fair and humane practices It means the decimation of one of the most constructive contributions made by organized labor to American progress and the American

way of life, namely, the elimination of competitive advantages based solely on the crude exploitation of human beings. It means, finally, that the working people of this country would be compelled by law themselves to destroy the standard of living achieved over the years.³⁴

On the subject of jurisdictional strikes Mr. Green went on to state that,

Basically, the jurisdictional strike involves the right to do a certain type of work and hence the right to earn a livelihood. They are most acute in times of depression and in times of an overcrowded labor market. When striking is the only alternative to starving, are such strikes to be outlawed? Until and unless our society is prepared to provide employment for all who are willing to work, attempts to outlaw jurisdictional strikes can have no moral justification. It is a great mistake, which persons make, to think that jurisdictional disputes occur among workers only. In essence, disputes over jurisdiction are part and parcel of the fundamental fact of competition, and hence they occur in every phase and on every level of society. They occur even in the political arena. All of us recall, for example, the many disputes that have existed among various executive agencies of government and among committees of Congress.³⁵

Proponents of bills advocating the outlawing of secondary boycotts feel that there is no justification for an employer to suffer when he has nothing whatsoever to do with the firm on strike except being one of its customers. A few examples will illustrate this problem. There have been such instances in disputes with newspaper publishers.

³⁴ Hearings, House Committee, op. cit., p. 1635.

³⁵ Hearings, House Committee, op. cit., p. 1641.

The unions picketed the advertisers of such papers, even though representing none of the advertisers' employees whose relations with their own employees were excellent.

A company making and selling cosmetics and operating a beauty parlor was picketed because the organization from which it bought one of the ingredients was engaged in a labor dispute. Many other examples of a similar nature could be listed.

It is felt that Congress should take steps to curtail such activity. Management considers it a clear-cut example of union abuse of power. It feels that such abuses are disruptive of commerce and unjustifiable when used under any situation to bring pressure on employers not interested in the original dispute. The balancing of the various factors involved in all secondary activity shows that the inconvenience to the employer and the public far outweighs any alleged advantages that labor might claim from them.

Management maintains that strikes in aid of jurisdictional disputes are utterly indefensible. Almost everyone seems to agree that they should be eliminated from the national economy, whether one is an employer, a labor leader, or a member of the general public. Strikes to force an employer to award certain types of work to the members of one union over those of

another are strikes in which the employer is truly an innocent third party. He is caught in the middle between two competing unions; he is the only one concerned in the dispute who cannot provide a solution because the law forbids him to favor one union over the other. Thus, management says that since unions cannot solve such disputes, it is up to Congress to provide an effective means of settlement.

In the foregoing paragraphs the pro and con arguments of the major issues concerning proposed labor legislation have been presented. These arguments were heard by the House and Senate Labor Committees. The next step in following the evolution of labor-management legislation is to observe the committee bills as they go back to the floor of Congress for debate.

³⁶ The writer wishes to note at this point that the majority of the evidence presented in the hearings was anti-labor, should an opposite inference have been taken by the reader.

CHAPTER V

CONGRESSIONAL DEBATE ON TAFT-HARTLEY LABOR LEGISLATION

Debate on the question of the passage of proposed labor legislation such as put forth by the Taft and Hartley bills was quite hot and heavy during the many hours of discussion. The following puts forth the high-lights of the Congressional arguments on the subject.

I. VALIDITY OF TESTIMONY AND PROCEDURES IN ARRIVING AT COMMITTEE BILLS

Validity of testimony. Constant attacks on the part of the minority in both houses and upon the part of labor spokesmen were made against the formulators of the Committee bills. Allegations were made that the minority's views were not considered; that the minority was not informed of what was happening in the committee; that pro-labor employers were not called in to testify at the committee hearings; and that the committees were being steered in their policies by the representatives of the National Association of Manufacturers and other pro-management factions.

Congressman Kelley was one of the most out spoken on the subject when he commented, "Whatever else might be said about the great array of witnesses who appeared

before the committee, it cannot be said that these witnesses bore complete or accurate testimony on the basic problems affecting labor-management relations." He went on to say, "Strangely enough there was very little testimony before our committee with relation to the average wage today, the cost of living today, the inevitable depression which is coming, although these are basic considerations in the problem."³⁷

Congressman McConnell, coming to the defense of the majority, cast a capable rebuttal in, "The words of the testimony piled up story after story of violence, intimidation, and extortion, community paralysis, conspiracies, to stop the necessities of life--food, fuel, transportation, and communications--conspiracies to restrict production and to control prices; denial of rights to employ or be employed; denial of free speech; invasion and suppression of democratic processes by the Federal Agencies, in collusion with union tyranny; denial of home rule to workers; communistic infiltration and un-Americanism."³⁸

³⁷ Congressional Record, 80th Congress, 1st Session, Vol. 93, Pt. 3, (Washington D. C.: U. S. Government Printing Office, 1947), p. 3548.

³⁸ Ibid., p. 3459.

Continued attacks were made in the American Federationist by the AFL Executive Council. "To justify the drive against organized labor, our opponents in Congress have sought to give the public a distorted picture of the state of labor-management relations in this country by bringing in a few recalcitrant and spiteful employers to air their grievances at open hearings, while they have studiously ignored the many thousands of American employers who enjoy satisfactory relations with unions."³⁹ "Unfortunately the American people have been kept ignorant of the fact that collective bargaining is working successfully under our present laws wherever and whenever management practices it sincerely with trade unions, and that there are thousands of unpublicized cases of agreement between employers and unions for each disagreement which is played up in the headlines."⁴⁰

Evidence that certain pro-labor employers were excluded from the Committee Hearings is provided by the following, "Outstanding employers joined in the denunciation of the Taft-Hartley Bill. One of these, Patrick

³⁹ William Green, "Executive Council Launches All-Out War on Slave Bills," American Federationist, 54:3, May, 1947.

⁴⁰ Ibid., p. 4.

McDonough, who operates steel plants in Oakland, California, revealed that he was refused an opportunity to testify against the anti-labor legislation when the Senate and House labor committees conducted their hearings. Many other employers who have harmonious and profitable conditions in their enterprises as a result of dealing squarely with organized labor were similarly turned aside by the committees.⁴¹

In asserting that the proposed legislation is the mandate of "big business" and not that of the American people, George Meany, legal counsel for the AFL states, "The Hartley bill would definitely effectuate the NAM program. For example, the NAM urged that the protection of law should be extended to strikers only when the majority of employees in the bargaining unit, by secret ballot under impartial supervision, have voted for a strike in preference to acceptance of the latest offer of the employer. The Hartley bill accepts this proposal in toto--in fact, almost word for word. This situation prevails all through the bill. Throughout the sixty-eight pages of the Hartley bill we find the ideas and the very language of the NAM's

⁴¹ William Green, "AFL Leads the Fight," American Federationist, 54:3, June, 1947.

anti-labor program lifted bodily and incorporated into the bill. There is no doubt on this score. The Committee minority has stated quite definitely that during the period of the hearings the representatives of the NAM working behind the scenes were writing the legislation."⁴²

Attesting to the tremendous amount of pressure being exerted on members of both houses, Senator Aiken stated, "We have been subjected to the most intensive, expensive and vicious propaganda that any Congress has ever been subjected to."⁴³

Chairman Hartley of the House Labor Committee was quite vehement in answering charges that National Association of Manufacturers' representatives wrote his committee's bill in stating, "I say that as far as the Chairman of the committee is concerned, there have been no more visits to the Committee by representatives of industry and farm groups than there have been by representatives of labor groups. And, I will add that the Chairman is having difficulty in getting certain leaders

⁴² George Meany, "The Mandate of Big Business," American Federationist, 54:5, May, 1947. See Appendix for the complete text of the NAM recommendations to Congress.

⁴³ Meany, op. cit., p. 5.

of the labor movement to visit with the committee and only yesterday had to serve a subpoena upon Mr. Petrillo to meet with us."⁴⁴

Blasting the tactics of the majority, the minority declared that it did not consider the bill a committee bill. It was pointed out that no general meetings of the committee were held for discussion of the measure, despite its far-reaching effects, if enacted.

The minority report also said, "It strikes from the hand of labor its most effective weapon--the right to strike. It discourages collective bargaining by encouraging individual bargaining, though our experience from 1920 to 1929 proved that individual bargaining can only result in reduction of wages and consequent depression."⁴⁵

Michigan Congressman Lesinski, minority leader, had the following to say concerning the majority's slighting of the minority's views. "The minority had no hand in shaping or writing this bill I realize that there have been rumors. I do not have any knowledge. I have

⁴⁵ George Meany, "NAM's Bill Found Aimed At Labor's Heart," American Federationist, 54:7, May, 1947.

⁴⁴ Congressional Record, op. cit., Pt. 3, p. 3537.

not attended any meetings. We were not called in, and I do not know what happened until the bill came before the committee."⁴⁶

II. CONGRESSIONAL DISCUSSION ON CONTENT OF CONFERENCE BILL

Main changes from existing laws. A. Amendments to Wagner Act. (1) Supervisory employees--places them outside the act. (2) Closed shop and union shop--out-laws closed shop agreements by making it an unfair labor practice to carry them into effect. Permits union shop agreements only where supported by a vote of a majority of employees eligible to vote. No employee is eligible to vote if he is on strike for straight economic reasons and has been replaced. (3) Discharge of employees for other reasons than non-payment of dues. Whenever the employer has reason to believe that the union is unfair to an employee who offers to pay his dues, he must retain the employee even in spite of a union shop contract or be guilty of an unfair labor practice. At the same time the union cannot cause his discharge from the union and employment on any grounds except non-payment of dues. (4) Restraint or coercion by labor unions--The conference

⁴⁶ Congressional Record, op. cit., Pt. 3, p. 3537.

bill makes it an unfair labor practice for labor unions to restrain or coerce employees in the exercise of their rights. (5) Prohibition of certain legitimate activities-- Under section 8 (b) (4) of amendments to the Wagner Act, unions are in effect prevented from refusing to handle goods even if the object is to organize competing plants, to protect fair union labor standards, or to quell an attack which threatens the organization's existence. This is done by failing to distinguish between inexcusable boycotts and legitimate economic action. These activities would also be made subject to employer damage suits in the Federal courts and to court injunctions required to be sought by the Board. (6) Featherbedding Practices--Under section 8 (b) (6) of the amendments, featherbedding practices are prohibited as unfair. (7) Strikes at the end of existing agreements in violation of 60-day notice provision--If an employee strikes in violation of a required 60-day notice provision regarding renewal of existing agreements (section 8 (d) he could forever be barred from employment by the employer. (8) By section 9 (c) (2) of the amendments the Board must put company dominated unions on the ballot for an election side by side with the bona-fide union even if the former has been ordered disestablished the day before.

B. Conciliation and Mediation. (1) Abolishes Conciliation Service in Department of Labor and sets up an independent agency for this purpose. (2) Directs Federal injunctions against strikes constituting national emergencies.

C. Suits by and against unions. (1) Waives present jurisdictional requirements in Federal Courts of diversity of citizenship and amount in controversy where suit involves breach of collective agreement.

D. Political Activities. The measure provides that unions and corporations cannot spend any money in any way to help defeat a candidate for elective Federal office.⁴⁷

Weak and strong points emphasized. The following weak points of the conference bill were pointed out by Congressman Madden, Indiana, in an effort to prevent passage of the bill.

"Section 8 (a) (3) pretends to permit union security such as maintenance, union shop, and so forth, but it provides that the union must secure affirmative vote of a majority, not only of those who participate in the vote, but of all the employees in the entire

⁴⁷ Congressional Record, 80th Congress, 1st Session, Vol. 93, Pt. 5, (Washington D. C.: U.S. Government Printing Office, 1947), p. 6389.

unit (including those who failed to vote). Imagine the difficulty involved in a provision like this where twenty or thirty thousand men work in one separate plant, like an automobile factory or a steel mill.

"It also provides under Section 9 (e) (2) that after the union has cleared all the impeding hurdles involving elections, contracts, and so forth, in the above section, that after one year, a minority group of thirty percent of the employees can secure a new ballot to take away the right to union security.

"Under Section 9 (f) (g), even if the employees succeed in organizing themselves, the bill discovers new ways of preventing them from achieving collective bargaining rights.

"An unfair employer could evade any obligation to bargain with a union representing any or all of his employees if he can show that among all the members of the international union throughout the country, there may have been one union member who did not receive the required financial report. As a matter of fact, under the bill, the employer would not even have the burden of proving this because the burden is on the union to show that it has furnished to all of the members such a report.

"Section 9 (c) (2) welcomes back to the industrial scene the insidious company dominated union.

"Section 10 (j) (1) brings back once more the hated Government injunction from which labor thought the Norris-LaGuardia Act had forever freed it.

"Section 3 (d) places sole authority over the investigating and prosecuting functions of the Board in its general counsel, calls for centralization of excessive power in one individual and, in effect, makes the Board itself subject to him.

"Section 9 (c) (3) denies the right to vote in a representation election to employees then on strike because of an economic dispute. This provision is particularly vicious because it enables an employer, by a petition for an election filed by either himself or a minority of his employees, to secure the rejection of an established bargaining agent at the very time that the public interest makes it particularly urgent that collective bargaining continue.

"Numerous new functions are added to those which the National Labor Relations Board already finds itself handicapped in performing because of lack of funds. For example, the Board must resolve jurisdictional disputes, secure injunctions and police the internal affairs of unions. It must make such determinations as the reasonableness of union initiation fees and what constitutes feather-bedding, with vague standard or none

at all to guide it. Its work is needlessly increased by the prohibition of such useful and timeproven devices as prehearing elections and consent-card checks, and is hamstrung in conducting its hearings by the requirement that it do so in accordance with strict rules of evidence-- a requirement made of no other governmental administrative tribunal working in a specialized field."⁴⁸

In presenting the argument for the strong points of the conference bill, Congressman Landis of Indiana has this to say, "The proposals in the conference report are not harsh or punitive. Labor still has the right to strike, and the rank and file of labor will have the right to take a greater part in their problems through the right of the secret ballot. Labor will still have the right to bargain with management on the local plant level, region, or on an industry-wide basis. Labor will still have the right to the voluntary check-off and the right to bargain collectively on wages, hours, safety measures, and better working conditions. Craft unions will get more protection under the globe doctrine which is written in the bill.

"This conference report will take care of labor abuses without destroying labor's rights. It completely

⁴⁸ Congressional Record, op. cit., Pt. 5, p. 6385.

outlaws jurisdictional strikes, wildcat strikes, and secondary boycotts.

"We added the following sections to the Senate bill: Barring political contributions and expenditures by labor unions, as well as by employees, separation of functions, rules of evidence, bars strikes against the government, make it a violation of the law for a union to try to compel an employer to pay its members for services not performed, initiation fees of unions are to be controlled by the NLRB, plant guards can organize in a separate organization, and the rank and file of labor will be permitted to take a secret ballot on the last offer of the employer.

"The NLRB will be expanded to five members and take on judicial functions. The general counsel of the NLRB will become the key labor-enforcement officer of the government. He will head the staff in the regional offices. He will have final authority over whether complaints of unfair-labor practices shall be filed against employers or unions. The general counsel is to be selected by the president and confirmed by the Senate."⁴⁹

In criticizing the powers given the general counsel in the conference bill, Senator O'Mahoney of Wyoming is

⁴⁹ Congressional Record, op. cit., Pt. 5, p. 6386.

quite explicit in his opposition. "The independent officer, appointed by the president, with the advice and consent of the Senate, is authorized by the bill before us, as clearly stated in the conference report, to act for the board, 'but independently of any direction, control, or review by, the Board in respect of the investigation of charges and the issuance of complaints of unfair labor practices.' He acts for the board, but independently of it, independent of any direction, review or control. Make no mistake about it, Mr. Businessman, he will be telling us, not asking us, just as he will be telling the board."⁵⁰

Continuing his attack, Senator O'Mahoney further states his objections. "Observe that the board is given complete and plenary power to delegate any or all of its power to any group of three, and then too, any two members of that group of three can speak for the Board." And in further lamenting such extended delegation of powers, the Senator goes on to say, "So we have a bill which not only authorizes the Board to delegate its powers, and all of them, to less than a quorum of the Board."⁵¹

⁵⁰ Congressional Record, 80th Congress, 1st Session, Vol. 93, Pt. 6, (Washington D.C.: U.S. Government Printing Office, 1947), p. 7525.

⁵¹ Ibid., pp. 7525-7526.

Passage of the Conference Bill in House and Senate.

After much discussion, hot words and even name-calling in both houses over the merits and demerits of the proposed labor legislation, the conference bill was finally brought to a vote before both houses.

Because of the heatedness of the six months of debate over the bill one might have expected a closer vote, but as the results showed, both houses voted overwhelmingly in favor of passage. Interesting also is the fact that a majority of the Democrats favored passage of the bill.

The results in the House were: 320--Yes; 79--No; 30--not voting.

The results in the Senate were: 54--Yes; 17--No; 24--not voting.

Thus, the next stop for the measure--The President.

Presidential veto and Congressional overriding of veto.

President Truman's veto of the Taft-Hartley Act did not come as a very great surprise to anyone. Republican leaders of the House and Senate felt that they would have very little difficulty in overriding the veto if it came.

In his veto message the President covered every aspect of the bill in detail, explaining specifically the reasons for his disapproval. In his introductory statements he said, "The bill taken as a whole would

reverse the basic direction of our national labor policy, inject the Government into private economic affairs on an unprecedented scale, and conflict with important principles of our democratic society. Its provisions would cause more strikes, not fewer. It would contribute neither to industrial peace nor to economic stability and progress. It would be a dangerous stride in the direction of totally managed economy. It contains seeds of discord which would plague this nation for years to come."⁵²

Mr. Truman listed the following "test points" in his veto, showing how the bill did not meet any of them. (1) Whether it would result in more or less Government intervention in our economic life. (2) Whether it would improve human relations between employers and their employees. (3) Whether the bill is workable. (4) Whether it would be fair.

President Truman thus vetoed the bill on the premise that it did not pass, favorably, any of the above tests and should not become the law of the land.

The fate of the bill, therefore, was returned to the members of the House and Senate. In the House the veto was quickly overrode, without any additional debate,

⁵² Congressional Record, op. cit., Pt. 6, p. 7485.

by an overwhelming vote of: 331--to override; 83--to sustain the veto; and 15--not voting.

In the Senate, the Republican majority tried to rush the vote through quickly, but agreed to extend the debate over a week end, thus bringing about a vote on the following Monday. Pro-Truman Senators had treated to filibuster if the majority did not agree to postpone the vote, thus allowing time for further study and debate.

The extension did not avail the minority faction much, however, since the vote to override turned out to be quite as impressive as the original vote on the bill. The final vote was: 68--to override; 25--to sustain the veto; and 2--not voting.

Accordingly, on June 23, 1947, Labor-Management Relations Act, (the official title of the bill) became the law of the land.

Immediately after the bill's passage, President Truman pledged himself to the efficient administration of the new legislation.

CHAPTER VI

DIGEST OF THE LABOR-MANAGEMENT RELATIONS ACT OF 1947

With the passage of the LMRA over the veto of the President, management finally won a battle it had been fighting, for at least twelve years--that of attaining legal recognition. New rights and new responsibilities were created for management by the act and now management is more than ever a life-sized factor in the labor-management set-up.

The period of the Wagner Act has come to a halt. The consequences of this factor can have far-reaching implications as labor-management relations continue to have their effect upon the political and economic life of the United States.

A definite check has been put upon the advance of the labor movement by (1) arming management with a new set of legal rights; (2) by imposing new rules on collective bargainers and on union operations; (3) by granting to the individual employee who is opposed to unionism a legal status which he never before enjoyed.

The Wagner Act has been demolished through the extension of government authority over management and labor. It is an authority which rests upon sever penalties. It is justified on the theory that only through federal policing can the public interest be safeguarded.

I. MANAGEMENT'S NEW RIGHTS

Some of the most significant of these rights are: Supervisors and their unions, no longer have any standing whatsoever before the National Labor Relations Board. Management does not have to treat with them in any way.

Management is protected against union efforts to make it discharge or discipline any of its employees who may be in trouble with the union.

A business is protected against boycotts.

Employers and the self-employed are protected against being forced into either a labor or an employer organization.

Management has sole authority to say who gets the work--thereby being protected from jurisdictional strikes.

Management is protected against "exactions" for services not performed--thus featherbedding is prohibited.

Free speech for management in that the expression of any view--so long as it does not contain a threat or a promise of benefit--can no longer be considered evidence of an unfair labor practice.

Management will not have to prove good faith by making concessions.

Management is protected against the sudden termination of contracts by a provision that a 60-day notice of intent must be given in such cases.

Management may, at any time, bargain with any individual or group of employees, whether or not they represent a union, as long as the outcome does not violate an existing contract.

Management cannot be forced to bargain with company guards if the union of guards is affiliated either directly or indirectly with organizations admitting other employees.

Management may petition for a collective bargaining election whenever one or more individuals come to him asking for union recognition.

Management cannot be presented with a demand to make union membership a condition of employment in any form unless that demand has been voted for by a majority of the employees it would cover--not simply a majority of those voting--in a secret NLRB-conducted election.

Management is protected against having to deal with unions under subversive leadership by the new legal requirement that every union official must file an affidavit swearing that he is not a Communist.

Management wins its battle against the informal NLRB hearing by the following provision: "The rules of evidence shall be applicable in such proceedings."

Management's final offer in a dispute which, in the opinion of the President, could imperil the national health

or safety will be submitted in a secret ballot to employees.

Management may sue a union for any kind of damages resulting from the acts of any union representative, regardless of whether the act was actually authorized by the organization. This includes steward-led wildcat strikes and any other contract violation sanctioned by a local union official.

Management will not have to check off union dues unless it has a specific written assignment from the individual employee, revocable after 12 months.

Management is protected against demands that it make any payment into a welfare fund, unless it has equal representation with the union in the administration of that fund, and unless the purpose of that fund is set forth in detail in writing.

II. NEW RESPONSIBILITIES FOR MANAGEMENT

The first of the new management responsibilities is the requirement that employers must not in any way interfere with employees' rights to refrain from joining a union or participating in union activities.

Management is prohibited from making union membership a condition of employment in any way unless new employees are given a 30-day grace period before they must become union members.

Management cannot have union membership a condition of employment in any form unless the NLRB has first conducted an election among its employees.

Management cannot discharge or discriminate against an employee at the union's request or because that employee does not pay his union dues if there is reasonable ground for believing that the employee was not offered admittance to the union on the same terms and conditions which apply to other members.

Management cannot discharge an employee under a union-shop contract when the employee's relations with his union are the point of issue, as long as that employee continues to pay his regular dues.

Management will be held responsible for putting no undue difficulties in the way of any of its employees who at any time choose to circulate a petition indicating employee preference for or against a union-shop agreement. If such petitions attract the support of 30% of the employees covered by the contract, NLRB conducts a poll on the question.

Employers as well as unions are bound by the new rules of collective bargaining: (1) They must meet at a reasonable time with the other party and confer in good faith; (2) They must serve written notice upon the other party 60 days before any change in the existing contract

or any changes from the old contract to go into a new one can be effective; (3) They must, within 30 days after initiating the discussion of contract changes, if the issue is still open, notify the federal and state government that a dispute exists; (4) They must, for the 60-day period beginning with the filing of the original notice, hold in effect without change all existing terms and conditions of employment.

Management is required to afford the union representative an opportunity to be on hand whenever the grievance of any individual employee is adjusted.

III. NEW REGULATIONS FOR LABOR

In addition to giving management new rights and privileges, the LMRA took away many of the privileges which labor had gained in the past twelve years. Another objective of the lawmakers was the desire to protect the individual employee against a union tyranny which, in their judgment, could be worse than employer oppression. As a result, some of the most significant provisions in the new act change the rules under which unions operate.

The greatest blow dealt to traditional organizing operations is that the union, as well as management, must respect the individual employee's right to refrain from joining a labor organization or participating in its activities.

Unions, equally with employers, can be guilty of unfair labor practices. They are prohibited from restraining or coercing individual employees or employers.

They cannot refuse to bargain with an employer.

Unions can be called upon to face an annual employer challenge of their representation status.

In many instances where it is illegal for employers to enter into a certain arrangement with a union involving a financial transaction, it is unlawful for the union even to demand such an arrangement.

A union is held responsible and is suable (by an employer, another union, or one of its members) for the acts of any one of its officials. This means anyone, down to and including shop stewards, who engages in any activity which is either unlawful or a cause of damages.

Boycotts, jurisdictional strikes, and secondary strikes are prohibited. And featherbed practices can no longer be demanded; these are so broadly defined as to include, conceivably, pay for call-in time, rest periods, and standby time.

Industrial unions will have to defer to the wishes of craftsmen if a majority of them vote for representation in a separate bargaining unit.

It is no longer possible for a union to induce an employer to recognize it voluntarily when a question

of representation exists. There must be an election.

Employees who have been discharged for cause-- including contract violation--during the course of a strike are no longer eligible to vote in an NLRB election.

In order for a union to have any standing under the law, or any rights before the NLRB, it is required to take the following steps: (1) It must report to the Secretary of Labor the total compensation paid to its three principal officers, and to any other of its officials who earn more than \$5,000 a year. (2) It must report on the manner in which such officers were elected or otherwise selected. (3) It must report its initiation fees and regular dues. (4) It must report on the qualifications and restrictions on admittance to membership, its method of electing officers and stewards, its method of calling meetings, levying assessments, imposing fines, authorizing its bargaining demands, ratifying its contract terms, authorizing audit, its participation in insurance or benefit plans, and its procedure for expelling members. (5) It must report the sources of all of its receipts, its total assets and liabilities, and the disbursements it has made during the fiscal year. (6) It must furnish its financial report annually to all its members. (7) It must have each one of its officers file an affidavit swearing that he is not a Communist.

Unions will be held responsible for the back pay of individual workers whose discharge they have illegally caused.

Unions may be enjoined for such activities as boycotting, engaging in jurisdictional disputes, illegal striking.

Unions may be enjoined from striking for a period totaling 80 days when such a strike may, in the opinion of the President of the United States, imperil the national health or safety. On such grounds "the right to strike" is severely restricted.

In suits against labor organizations, the total damage awarded is collectible against the union treasury, not against any individual.

A slowdown is defined as a strike.

It has become unlawful for a union to make any contribution or expenditure in connection with any federal election. It was the intent of Congress to make illegal even the publication in a union-financed newspaper of editorial material favoring one candidate or opposing another.

IV. INCREASED GOVERNMENTAL CONTROL

Undoubtedly many of the advocates of new labor legislation would have preferred to keep employer-employee rela-

tionships out of the reach of bureaucracy, but their conclusions were that labor-management relations could not be righted without governmental intervention. As a result of the Taft-Hartley Act, the hand of government is quite heavy when dealing with unions and not so light where management is concerned.

First, the new law creates a labor czar. He is the general counsel of NLRB, appointed by the President subject to Senate confirmation. He will act in the name-- but independently--of the NLRB; in actual fact, this general counsel will be vastly more important than the NLRB itself.

He will have final authority over all investigations, charges, and issuance of complaints which are made under the law. He can decide without appeal to any board or court what cases should and should not be put upon the NLRB docket. His final authority covers cases brought by management as well as by unions.

A decision on his part not to issue a complaint ends the possibilities of legal action by either the employer or the union involved.

All the attorneys on the board's staff who deal with complaints and petitions in the field are under his exclusive supervision. In some types of case, it is mandatory upon the

general counsel to go into court and obtain an injunction against the continuance of an unfair labor practice. In others he may use his unchallengeable discretion on whether to invoke judicial authority.

The new law takes the government deep into the collective bargaining relationship. That happens whenever, in the opinion of the President, a threatened or actual strike or lock-out will, if permitted to occur or to continue, "imperil the national health and safety."

These national emergency disputes are dealt with in a process of eleven steps:

(1) Machinery is set in motion by a presidential appointment of a board of inquiry.

(2) This board inquires into the issues involved in the dispute. It has the power to subpoena witnesses and documents.

(3) It makes a written report to the President within such time as he prescribes.

(4) The President then files this report with the new conciliation service which the law establishes as independent of the Department of Labor. He also makes its contents public.

(5) The President then directs the Attorney-General to go to court and get an injunction to stop or prevent the interruption of production. The limitations

upon the court to issue such injunctions, which are provided in the Norris-LaGuardia Act, are set aside.

(6) After the injunction is issued, the President reconvenes his fact-finding board. The board then has 60 days in which to make a second report to the President.

(7) The board's second report is submitted to the President and he makes it public.

(8) Within the following 15 days, the NLRB will take a secret ballot of the employees involved. The question: whether they wish to accept the final offer made by the employer.

(9) The results of this election are certified within five days to the Attorney-General.

(10) The Attorney-General then goes to court to discharge the injunction.

(11) When the injunction is discharged, the President must submit a full report of the proceedings to Congress. He may at the same time make whatever recommendations he sees fit.

(12) For the 80 days the injunction runs, a national emergency strike is stopped by court order.

Significantly, the final act of this procedure-- the President's report and recommendations to Congress--

confers no new power or authority upon the President. The point of it all is to provide a period in which the disputants can be cooled off and public opinion "heated up" so that some settlement will be made in the meantime.

A national emergency strike after eighty days is not illegal.

V. NEW RIGHTS FOR THE INDIVIDUAL EMPLOYEE

One of the outstanding arguments in favor of the new labor legislation was that it provided a "new deal" or a "Bill of Rights" for the individual employee. As a result, a new factor has been shuffled into the labor-management equation--the individual employee--who is given a legal standing which he never before enjoyed.

Either individually, or as part of an anti-union group or a faction within the union opposed to the union's administration, that individual employee is now armed with certain rights. If these rights are exercised in certain ways, they can be extremely disruptive to the union-management relationship. No one knows how those rights will be exercised.

Take, for example, an individual employee who is opposed to the union. He votes against the union shop in an election in which a majority favor it, and is re-

quired to work, therefore, under a contract which provides that union membership must be a condition of employment. He may then alleg that the iniation fee or dues which he has to pay are excessive or discriminatory. Before that contract can be put into effect, it is necessary for the NLRB to determine whether or not the union fees are a proper charge.

Protected by the act, the individual employee may at any time circulate a petition in the shop either requesting that a union shop be granted or, if one exists, requesting its abolition.

Most importantly, however, the law confers upon the individual employee the right to refrain from union membership and union activity. He may on his own behalf, at any time, charge that a union or an employer is interfering with that right. This complaint becomes a case which goes before the board and is subject to court review.

Handled in different ways the new statute can contribute to stability, breed conflict and confusion, or become a dead letter. Which will it be? With great stakes in the balance, industry and the nation will await the answer which will come only through experience.

CHAPTER VII

A YEAR UNDER THE LABOR-MANAGEMENT RELATIONS ACT

Section 401 of the LMRA provided for the setting up of a joint Congressional committee to be known as the Joint Committee on Labor-Management Relations to observe the functioning of the bill, conduct further hearings on it, and report their recommendations by March 15, 1948. A final report was to be made on January 2, 1949.

It was a surprise to no one that the Congressional watchdog committee set up under the act to observe the operation of that law surveyed the first six months and found them altogether good. Headed by Senator Joseph H. Ball, who made passage of the act his most fervent crusade, the Joint Congressional Committee on Labor-Management Relations reported that what trade unionists sacrilegiously call the "slave-labor act" is promoting the adjustment of labor problems equitably and in more friendly and cooperative relationships.

Differing sharply, the minority report of the Committee maintained that "the Committee's finding that the provisions of the Taft-Hartley Act has brought about a reduction in strikes is not supported by evidence." The number of strikes decreased because of the usual seasonal

decline toward the end of the year, an annual occurrence since 1927, except in 1940, according to the minority; because many employers and unions "hastened to get agreements signed before the act became effective in order to avoid upsetting satisfactory contractual arrangements"; because many employers and unions are "sitting tight" in the early stages of the Act's operation, and because "tremendous profits made by business generally have served to discourage any action by the employers which might precipitate a strike."⁵³

According to the minority, the findings of the majority included no reference to "the problems created by the prohibition against the closed shop in such industries as the maritime industry"; did not refer to the widespread existence of "bootleg" contracts, the difficult administrative problem "created by the tremendous number of union-shop elections which the Labor Board is now being called upon to conduct,"⁵⁴ and the tremendous cost of holding union-shop elections.

"Unhappily for the majority of the Committee,"

⁵³ "Congressional Committee Reports on Taft-Hartley Act," Monthly Labor Review, 66:529, May, 1948.

⁵⁴ Ibid., p. 529.

according to a report from the Nation magazine, "its verdict came in a week in which a soft coal strike threatened to close down the country's steel plants; a week in which 100,000 men walked out on the 'big five' meat packers with devastating effect on the country's already curtailed meat budget; a week in which New York's huge publishing industry prepared for a walkout by the printers of the International Typographical Union, already on strike in the Chicago and Philadelphia areas; and, most embarrassingly a week in which a highly controversial provision of the Taft Hartley Act itself was being declared unconstitutional in a Federal court."⁵⁵

"With no satisfaction," The Nation goes on to state, "we predict that this is only the beginning of trouble under the Taft-Hartley Act. The provision forbidding the closed shop, which was at the bottom of the typographers' dispute, is bound to figure increasingly as more major contracts containing closed shop provisions expire. Many of these are in industries which attained a high degree of stability under closed-shop arrangements and which, like the publishing business, faced disruption

⁵⁵ Freda Kirchwey, "Taft-Hartley Birthday," The Nation, 166:340, March 27, 1948.

because of the ban. An even more severe test of the act will come when the all but inevitable business slump occurs, whether it is a slowdown, a recession or depression. Of 815 complaints of unfair labor practices filed with the NLRB since the act was passed, 315 have come from employers. When the going gets harder, there is every reason to suppose that the ratio will change, with management eager to take every advantage of unions that the law allows."⁵⁶

"The severest blow to the act, however, has been delivered by neither labor nor management, but by Judge Ben Moore of the Federal District Court. Dismissing the Justice Department's test indictment of Philip Murray and the CIO, Judge Moore ruled that Section 304, prohibiting political expenditures by unions, is "invalid" because of abridgment of rights guaranteed by the First Amendment."⁵⁷

After a year's operation of the LMRA the courts have issued about a dozen injunctions. Among them two were against John L. Lewis, one against both union and employer in an atomic energy laboratory, one against

⁵⁶ Kirchwey, Ibid., p. 340.

⁵⁷ Ibid., p. 340.

the International Typographical Union, one against General Motors.

Most of the injunctions were for the purpose of blocking "secondary boycotts"--that is, of preventing a union from fighting a company by forcing other companies to stop dealing with it.

Mr. Truman has used the "national emergency" weapon five times, appointing inquiry boards and in some instances getting 80-day injunctions when strikes occurred or were threatened in these industries: atomic, coal, meat, telephone, maritime.

About 85,000 labor leaders have filed non-communist oaths, required under the act if a union wishes to avail itself of NLRB services. All the officers of 159 national unions and 9,035 local unions have filed affidavits. The main holdouts are Lewis's United Mine Workers' and the CIO Steel Workers. Lewis failed to carry the AFL along with him in a fight to defeat the affidavit requirement, and he quit the AFL.

The NLRB has conducted about 11,000 plant elections under the law. About 9,000 of these were elections in which workers voted on whether they wanted the "union shop." They voted "no" in only 158 cases.

The Taft-Hartley Act made unions subject to "unfair

labor practice" charges for the first time. But unions are still filing more charges against employers than employers are filing against unions. After about nine months, the period August 22, 1947, to May 1, 1948, in 2,704 cases, 2,116 involve charges against employers.

The favorite charge against unions has been that of secondary boycotts. The favorite charge against employers has been that of firing workers for union activities.

Some of these "unfair" cases have been ruled upon by NLRB trial examiners, but none by the five-man board itself.

The Board, however, has been extremely busy with cases involving the coice of collective bargaining representatives. The backlog of NLRB cases pending at various levels climbed to an all-time record of 14,467 on May 1, 1948.

Much talk at this time centers on the question of whether the Taft-Hartley Act is responsible for the downward trend in the number of strikes since its passage. One thing is certain--strike losses have been small since the law went into effect. How much the Act has had to do with this favorable development is debatable. The trend in man-days lost through strikes has been downward ever since February, 1946. Long before the Taft-Hartley Act.

they were less than the normal pre-war strike losses. The downward trend has continued since passage of the Act.

Dr. Edwin Witte, Economics Professor, at the University of Wisconsin, made some very interesting and enlightening comments in the American Economic Review on this and other questions concerning the application of the bill during the past year.

According to Dr. Witte, "Relatively few union contracts have expired since August 22 and none of the major agreements. Mr. Ching, the Director of the National Mediation and Conciliation Service, on Saturday 'went out on a limb,' as he expressed it, and predicted that 1948 would be a year of but few strikes. I hope he will be proven correct, but not until next spring and summer will there be any test of the value of the new legislation as a strike preventative. And even if at that time we should have few strikes, we still will not know whether this is a result of the Taft-Hartley Act or of full employment."⁵⁸

Commenting further, Dr. Witte states that "With regard to the effect of the Taft-Hartley Act upon the unions, even statistics are lacking. The two great labor

⁵⁸ Edwin E. Witte, "An Appraisal of the Taft-Hartley Act," American Economic Review, 38:370, May, 1948.

federations at their annual conventions in October reported further gains in membership, and the American Federation of Labor gave detailed figures in support of this claim. On the other hand, there is little doubt that union organization has been decidedly slowed up. Such increase in union membership as has occurred has resulted from increased employment in unionized plants rather than from the organization of new plants. The southern organization drives of both the AFL and CIO have slowed down to inching gains. Far fewer representation elections have been held in the months since enactment of the Taft-Hartley Act than previously. While in a majority of these elections the unions have won, the margins have been narrower and recently the CIO has lost more elections than it has won. On balance, the available evidence points strongly to an adverse effect upon union growth from the new legislation."⁵⁹

Further evidence to show that not enough time has elapsed for the Act to affect fully the labor-management situation is pointed out by Dr. Witte in that, "The great majority of all employers, however, have made no use of the new law to date. Employers whose relations with their unions have been reasonably

⁵⁹ Witte, op. cit., p. 371.

satisfactory have sought only to preserve these good relations."⁶⁰

"Immediately after passage of the Act, responsible leaders within the ranks of management, among them Mr. Bunting, then President of the National Association of Manufacturers, uttered the warning: 'Go slow, in trying to take advantage of the new law."⁶¹

In extreme cases, the new contracts have devoted many times as much space to trying to get around the new law as to the conditions of employment.

A favorite method of retaining the closed shop relationship has been through "bootleg contracts." The method has been for the union to give notice of a desire to change only provisions other than those relating to union security on the expiration of a contract. The resulting contracts are cast in the form of amendments to the previous contracts, without mentioning union security, but with a mutual understanding that the old terms will continue. While there is doubt about the legality of such an arrangement, many employers have gone along with the unions in thus continuing the closed shop.

⁶⁰ Ibid., p. 374.

⁶¹ Ibid., p. 373.

On the subject of the desirability of the closed shop in the newspaper business, the Chicago Tribune, in an editorial published after their strike had begun, stated that it regarded the prohibition of the closed shop in the Taft-Hartley Act to be a mistake.⁶²

All in all, the conclusion seems to be warranted that unions have thus far fairly well succeeded in holding the closed shop where it previously existed; but it is to be repeated, the real test will come when the many closed shop contracts which were extended before August 22, 1947, expire in August, 1948.

On the closed shop issue, Dr. Witte notes that "closed shop contracts have not been of advantage solely to unions" this being suggested by the fact "that practically all the witnesses in the Congressional hearings who have never had the closed shop."⁶³

The results to date seemingly do not justify the appraisals of the partisans on either side. The Taft-Hartley Act is not "a slave labor act" nor "an act freeing the slaves"--the slogans of the opposing camps. There is little in the operation of the Taft-Hartley Act which can

62 Witte, op. cit., p. 376.

63 Ibid., p. 378.

be cited in support of the claim of Lee Pressman, General Counsel of the CIO, that virtually all effective protection to union workers or to unorganized workers against unfair practices by employers has been eliminated. Equally unsupported is the statement of Mr. Denham, the General Counsel of the NLRB, which says that the new law is a comprehensive piece of legislative machinery that seems to have accomplished the impossible by providing a medium for the coordination of interests in our economic structure that heretofore have seemed so divergent as to be wholly incapable of coordination.

After one year, the Taft-Hartley Act is still a subject streaked with clouds of emotion. Generally the clashing opinions heard in 1947 have not changed. Labor leaders still demand complete repeal.⁶⁴ In this they have been backed by the 1949 Democratic Party platform. Most industrialists want either to leave the law alone or strengthen its curbs on labor leaders. The law will undoubtedly remain as it is, at least until the Eighty-First Congress convenes in 1949.

⁶⁴ Witte, op. cit., p. 372.

BIBLIOGRAPHY

A. BOOKS

- Commons, John R., and John B. Andrews, Principles of Labor Legislation. New York: Harper and Brothers, 1936. 616 pp.
- Daugherty, Carroll R., Labor Problems in American Industry. Boston: Houghton Mifflin Company, 1933. 959 pp.
- Phelps, Orme W., The Legislative Background of the Fair Labor Standards Act, Chicago: The University of Chicago Press, 1939. 71 pp.
- Stolberg, Benjamin, The Story of the CIO. New York: The Viking Press, 1938. 294 pp.

B. PERIODICAL ARTICLES

- Green, William, "AFL Leads the Fight," American Federationist, 54:3, June, 1947.
- Green, William, "Executive Council Launches All-Out War On Slave Bills," American Federationist, 54:30, May, 1947.
- Kirchwey, Freda, "Taft-Hartley Birthday," The Nation, 166:340, March 27, 1948.
- Meany, George, "NAM's Bill Found Aimed At Labor's Heart," American Federationist, 54:7, May, 1947.
- Meany, George, "The Mandate of Big Business," American Federationist, 54:5, May, 1947.
- Metz, Harold, "Should An Independent Federal Mediation and Conciliation Board Be Established?" Congressional Digest, 26:94, March, 1947.
- Schwollenbach, Louis B., "Should An Independent Federal Mediation and Conciliation Board Be Established?" Congressional Digest, 26:95, March, 1947.

Smith, Ralph, "Case Labor Disputes Bill," Business Week, p. 112, March 2, 1946.

Witte, Edwin E., "An Appraisal of the Taft-Hartley Act," American Economic Review, 38:368-382, May, 1948.

_____, "Congressional Committee Reports on Taft-Hartley Act," Monthly Labor Review, 66:528-30, May, 1948.

_____, "Labor Laws and Decisions," Monthly Labor Review, 64:853, May, 1947.

_____, "Recent Decisions of Interest to Labor," Monthly Labor Review, 64:855, May, 1947.

C. GOVERNMENTAL PUBLICATIONS

Congressional Record, Eightieth Congress, First Session, Vol. 93, Pts. 3, 5, and 6. Washington D. C.: United States Government Printing Office, 1947.

Hearings Before the House of Representatives Committee on Education and Labor, "Amending the Wagner Act," Vols. 1-5, Washington D. C.: United States Government Printing Office, 1947.

Hearings Before the Senate Committee on Labor and Public Welfare, Pts. 1-4, Washington D. C.: United States Government Printing Office, 1947.

Appendix

LABOR LEGISLATION RECOMMENDATIONS
OF THE
NATIONAL ASSOCIATION OF MANUFACTURERS

FOR THE GOOD OF ALL

A new year is here. Surely, in this year of opportunity we can find a way--a fair way--to end the industrial unrest and conflict that hurts everyone. Selfish action, conceived in anger, will never help. Only devotion to the public good by all concerned will bring back peace and prosperity. In this spirit, the NAM offers the following program for industrial harmony for the good of all:

To develop sound and friendly relations with employees, to minimize the number and extent of industrial disputes, and to assure more and better goods at lower prices to more people, American employers should see that their policies encourage:

(a) High wages based on high productivity, with incentives to encourage superior performance and output;

(b) Working conditions that safeguard the health, dignity and self-respect of the individual employee;

(c) Employment that is stabilized to as great a degree as possible, through intelligent direction of all factors that are under management's control;

(d) A spirit of cooperation between employees and the management, through explanation to the employees, the policies, problems, and prospects of the company.

The right of employees to join or not to join a union should be protected by law. In exercising the right to organize in unions or the right not to organize, employees should be protected by law against coercion from any source.

When the collective bargaining relationship has been established, both employers and employees, quite aside from their legal obligations and rights, should work sincerely to make such bargaining effective. Collective bargaining should be free from the abuses which now destroy its benefits. It is believed that the abuses of collective bargaining will gradually disappear if both management and labor will adhere to the following principles:

1. The union as well as the employer should be obligated by law to bargain collectively in good faith, provided that a majority of the employees in the appropriate unit wish to be represented by the union.

2. The union as well as the employer should be obligated, by law, to adhere to the terms of collective bargaining agreements. Collective bargaining agreements should provide that disputes arising over the meaning or interpretation of a provision should be settled by peaceful procedures.

3. Monopolistic practices in restraint of trade are inherently contrary to the public interest, and should be prohibited to labor unions as well as to employers. It is just as contrary to the public interest for a union or unions representing the employees of two or more employers to take joint action on wages or engage in other monopolistic practices as it is for two or more employers to take joint price action or engage in other monopolistic practices.

4. If a legitimate difference of opinion over wages, hours, or working conditions cannot be reconciled through collective bargaining or mediation, employees should be free to strike where such strike is not in violation of an existing agreement. However, the protection of law should be given to strikers only when the majority of employees in the bargaining unit, by secret ballot under impartial supervision, have voted for a strike in preference to the acceptance of the latest offer by the employer. Both employees and employers should be protected in their right to express their respective positions.

5. No strike should have the protection of law if it involves issues which do not relate to wages, hours or working conditions, or demands which the employer is powerless to grant. Such issues and demands are involved in jurisdictional strikes, sympathy strikes, strikes against

the government, strikes to enforce employers to ignore or violate the law, strikes to force recognition of an uncertified union, strikes to enforce featherbedding or other work-restrictive demands, or secondary boycotts.

6. No individual should be deprived of his right to work at an available job, nor should anybody be permitted to harm or injure an employee, or his family, or his property, at home, at work or elsewhere. Mass picketing and any other form of coercion or intimidation should be prohibited.

7. Employers should not be required to bargain collectively with foremen or other representatives of management.

8. No employee or prospective employee should be required to join or to refrain from joining a union, or to maintain or withdraw from his membership in a union, as a condition of employment. Both compulsory union membership and interference with voluntary union membership should be prohibited by law.

9. Biased laws and biased administration of laws have made a contribution to current difficulties and should be replaced with impartial administration of improved laws primarily designed to advance the interests of the whole public while safeguarding the rights of all employees. The preservation of free collective bargaining demands that government

intervention in labor disputes be reduced to an absolute minimum. The full extent of government participation in labor disputes should be to make available competent and impartial conciliators.

Compulsory arbitration, in particular, is inconsistent with the principles set forth above. Any existing statute that is in violation of such principles should be brought into accord with them through appropriate action by the Congress.

We sincerely believe this program is a fair and practical plan for industrial peace.

N A M

For A Better Tomorrow For Everybody

*Adopted December 3, 1946, by the Board of Directors of the
NAM.