THE CONFLICTS IN THE AMERICAN LABOR MOVEMENT DURING
THE 1929 TO 1939 DEPRESSION PERIOD

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CHAPTER I

TRADITIONAL FEATURES AND CURRENT TRENDS IN THE AMERICAN LABOR MOVEMENT

The program of any labor movement, in any time or place, must of necessity be directed toward promoting the security of the laborers themselves. The methods used vary somewhat among the different industrial countries. Thus in Germany and Great Britain labor organizations have engaged in political activity to a much greater extent than in this country. Since the rise to supremacy of the American Federation of Labor in the nineties, the American labor movement's policies have been devoted chiefly to collective bargaining with employers through union organizations. The chief weapons used by the unions to enforce their bargaining position have been the strike, the picket, and the boycott, while the employers have practiced lockouts and the black list.

Labor has attempted to improve its economic status through legislation, technical cooperation, reorganization of existing economic order, or unionization. Unionism has a twofold purpose: first, those labor organizations which accept the capitalistic order but would reform it; second, those which would change the economic order through the establishment of either some form of collectivism or anarchism.
The first type is illustrated by unions comprising the A.F. of L., while the Industrial Workers of the World is an example of the anti-capitalistic or revolutionary type.

The A.F. of L. has been the leading labor organization in the United States since 1890. It is essentially a federation of unions and not of individual members. The accompanying "chart" presents the somewhat complicated structure of the Federation and indicates the numerical strength of its parts in 1938. The Federation is composed of seven kinds of organizations, namely, local unions, national and international unions, federal trade locals, federal labor locals, city central bodies, state federations of labor, and affiliated departments. The basic unit in the Federation is the local union which is required to join the national union in its craft or trade. The local is also expected, but not required, to join the central trade union of its city and the federation of its state.

The "nationals" of the A.F. of L. are powerful sovereign bodies creating locals by charter at will, and revoking them likewise, reserving the power to suspend or otherwise discipline locals, calling strikes, and bargaining. They are the independent groups of which the A.F. of L. is but a confederation or alliance.

State federations receive their charters from the A.F. of L. and draw their membership from locals and city centrals. The state federation serves politically in influencing legislation through the lobbying process, and econom-
Figure 1. The Structure of the A.F. of L. Based on Report of the Executive Council, October, 1938.
ically in making boycotts effective and in promoting the pur-
chase of union label goods.

The executive and legislative work of the A.F. of L. is
carried on by an "executive council," consisting of a presi-
dent, fifteen vice-presidents, a treasurer, and a secretary.

The total membership of the A.F. of L. increased more
than fourteen-fold from 1898 to 1920. According to a report
from the Executive Council there were 275,000 members in 1898
and 4,079,000 in 1920. There was a decrease in numbers from
1904 to 1910 because of economic depression and employers'
anti-union activities, but huge gains registered at the be-
ginning of the Century and during the Great War. During
Post-War depression and the efforts of anti-union employers
a marked decline resulted. From 1930 to 1933 membership
slumped, mainly because of business depression. The 1932
paid-up membership was 2,532,000. Under the National Indus-
trial Recovery Act, however, membership rose considerably to
more than three millions in 1935. The average membership
(not including Committee for Industrial Organization Unions)
in 1938 was about three million. Any decrease in membership
from 1935 to present may be attributed to the organization
of the CIO.¹

The A.F. of L. has been most favorable to trade or craft
unions, and most of the unions in this country have tradition-
ally been of that type. The principal traditional arguments

¹American Federation of Labor, Report of the Executive
Council (1938), p. 5.
by proponents of the industrial union are that it creates a broader working class solidarity, and that it is a more effective instrument for forcing concessions from employers through strikes. They point out that trade unions are special-interest groups which actually interfere with any movement designated to gain some advantage for the working class as a whole.

The A.F. of L. has always had to contend with rival groups. The rival groups differ with the federation over procedure and the fundamental difference is idealogical. There have always been opposition elements within the federation which believed that they could achieve their objective by "boring from within," that is, by winning over a majority of the members so as to displace the leaders and thereby make over the federation to conform with their own ideas. Before the World War the Socialists, believing in boring from within, led a formidable opposition within the federation. The Industrial Workers of the World, standing for dual unionism, were a threatening rival from without.

Because of persistent opposition the A.F. of L. leaders have developed the philosophy known as "wage consciousness" or "voluntarism." The chief idea involved is that capitalism is so strongly intrenched that the workers ought not to attempt to replace it. It is wiser for them to accept capitalism and to organize within the system to protect and advance their interest, relying on their economic strength by func-
tioning primarily through their unions. Their attitude is that they can expect little from the government. The workers ought not to demand more positive legislation from the government; the unions are the agency upon which the workers must rely for positive gains. Therefore such legislation as they need can be obtained more readily by opposing or supporting candidates of the two large parties than by organizing a separate labor party.

On the other hand the historic mission of the socialist workers is to overthrow the capitalistic system. But since the process is bound to be slow, they accept the idea that workers should organize for immediate improvement of their conditions under capitalism, while at the same time working for its overthrow. The socialists maintain that trade-union organization and activity must be supplemented by independent activity through party lines. Since the wage workers cannot be economically secure on their earnings, security must be assured through positive social legislation such as social insurance, minimum-wage laws and regulation of hours of labor.

The I.W.W. is an organization which, like the socialists, believes that capitalism must be overthrown, but differs from them on the question of procedure. They were exponents of dual unionism with an anarcho-syndicalist philosophy. The I.W.W. not only attacked the conservatism of the A.F. of L., but also ridiculed the "reformation" of the Socialists. It objected to entering into agreements with employers, and it
was scornful of hoping to improve conditions under capitalism or to bring about improvements through political action. Its philosophy was of the revolutionary type, in which strikes through industrial unions were carried on in and out of season. The I.W.W. made little progress in winning unions or members away from the A.F. of L. However, the latter had either neglected or failed to organize the workers in such important industries as textiles, steel, iron, mining, and lumbering, in which immigrant workers predominated. Taking advantage of this open field, the I.W.W. aided the workers in these industries in conducting the most spectacular strikes of the period, although it did not build permanent organizations of any consequence. It grew in influence, however, until the World War.

During the World War dissenting groups were suppressed. The headquarters of Socialists and I.W.W. affiliates were raided and their leaders prosecuted by the government, many of them being convicted and jailed for alleged unpatriotic activities.

Like all other movements the labor movement was vitally affected by the War and the Post-War reconstruction. The A.F. of L. twice modified its policy. Immediately following the war, in the 1919 convention and in subsequent conventions up to 1933, it disregarded voluntarism and demanded that the government take over the railroads, mines, and other important industries and operate them in the public interest. It also broke away from its traditional non-partisan political policy.
by supporting LaFollette in 1924 on a third-party ticket with an extensive program for social legislation. A reaction set in about 1925 and the Federation reverted to its traditional policies. Whereas in pre-war days it had assumed a neutral attitude toward capitalism, it now became an ardent champion, considering itself the buffer between capitalism and radicalism of the socialist and communist varieties.

The Communists have been the stormy petrel of the American labor movement. Disunited in the formative stage, they became united by 1922 when they began to function openly. Since then they have again become badly divided. Space will not permit tracing the activities of the various factions. The story will be told here as it centers around the policies and tactics of the group referred to as the official Communists, that is, those directed by the Communist Party of the United States and affiliated with the Communist International. At the start, Communists advocated boring from within. Taking over the Trade Union Educational League, which had been founded by progressives and radicals, they affiliated it with the Red International of Labor Unions, the Communist International trade union center, and launched an aggressive and vituperative campaign, attacking the conservative and socialist leaders alike. They succeeded in developing a considerable following among the rank and file of many unions during the period of 1924 and 1928. In a few instances they came into control of local and regional unions. The conserva-
tive leaders retaliated by wholesale expulsions. Many of the international unions amended their constitutions to forbid their members, on pain of expulsion, from being members of the Communist party or its leading affiliates. In the meantime the Communists had lost control of the few unions which had come under their influence. The reverses of the Communist can be contributed to the counter-attack of the conservatives and socialists, and to the Communist policy of discounting the importance of practical accomplishments in that it stressed revolutionary as against systematic business-like union procedure based on collective bargaining.2

What is known as collective bargaining is as old as the present wage system. As soon as a considerable number of workers had one employer they found it necessary as a means of self-protection to attempt to deal jointly with him. They soon discovered that the employer could freely select other workers from the local or district labor market. This led to the need for concerted action on the part of workers of a particular trade or occupation or trade-union organization. The workers through their committees or unions found it necessary to negotiate as a unit in the determination with the employer of conditions of employment. Provision also had to be made for the joint administration and enforcement of the agreement arrived at.

The essence of collective bargaining is the joint determination of employers and organized workers of the condition

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of employment. This involves the making, interpreting, and enforcing of agreements which run for a specified period. Most of the employee-representation plans are primarily devised to handle individual grievances, which is only one feature of collective bargaining. Trade-union collective bargaining aims in addition to cover competitive market areas, whereas the employee-representation plans, with rare exceptions, are confined to one firm or even to a single plant.

Collective bargaining is not possible until the agency through which the workers are represented is definitely determined. Hence the first demand of organized workers is that their union be recognized as the sole agency through which their spokesmen will function. The prime requisite and first step to collective bargaining is, therefore, union recognition. The next step is the legislative process. Representatives of the employer or employers meet with representatives of the union or unions in order to determine conditions of employment.³

During most of the period from 1933 to 1939 the energies of union leaders were employed in overcoming employers' opposition and fighting jurisdictional battles rather than with consolidating the gains and settling down to business dealings. This fact not only made it difficult for unionism to secure public acceptance as a stable element in the pattern

³Ibid., pp. 25-35.
of American civilization as a whole but also made it hard to hold members during months of business recession.

During the recovery period there were significant functional developments in organized labor's political and legislative policies. The A.F. of L. unions held fast to their conservative traditional non-partisan policies, while the CIO pursued their efforts more aggressively through such agencies as the American Labor Party and Labor's Non-Partisan League. Both the A.F. of L. and the CIO came to depend more than ever upon government assistance. They strongly supported legislation for minimum wages and maximum hours.

The primary features of the New Deal recovery period were the unprecedented government encouragement to outside unionism; the increased membership gains; the recognition of unionism of certain important employers in the durable goods, mass-production industries; the bitter opposition of other employers, who used all the tactics at their command to smash unionism; the development of the CIO industrial unionism and the A.F. of L.'s struggle to defeat the movement; the problems of developing democratic, progressive, honest, responsible leadership and self-disciplined, loyal membership; and the unions' increased attention to and dependence on government action.\(^4\)

In 1933 and 1934, the A.F. of L. displayed its weakness in its campaigns for unionization along industrial lines. It lacked the experience needed and a central directing force to cope with million-dollar corporation. The Federation was soon seen in its true light—merely a confederation of strong internationals, some craft and some industrial—with no centralized power to lead in such campaigns. This inability of the Federation to cope with the situation led the heads of eight international unions affiliated with the A.F. of L. to form the CIO for the purpose of organizing the mass-production industries. These eight unions were the Amalgamated Clothing Workers of America; the United Mine Workers; the International Union of Mine, Mill, and Smelter Workers; the Oil Field, Gas Well, and Refinery Workers of America; the United Hatters, Cap and Millinery Workers' International Union; and the International Typographical Union.

There was, however, much more behind the creation of the CIO than just the Craft-Industrial dispute. The chief problem involved was organizing the unemployed. By the latter part of 1934, a number of factors were clearly contributing to the labor disputes and declines in union memberships. Among these may be mentioned the apportioning tactics of the A.F. of L., the business recession, the increased opposition of anti-union employers who had recovered profits and self-possession, and less government encouragement than before. A deep-seated controversy arose between the Federation and
the Committee, the latter contending that it alone was suited to the task of unionizing the mass of unskilled labor, the former holding that there was no need for division in leadership since the Federation possessed in its membership both craft and industrial unions. The controversy finally led to the suspension from the A.F. of L. of all the industrial unions in the CIO which had before formed a part of the Federation. Open strife followed between William Green, supported by his fellow-craft leaders, and John L. Lewis, the leader of the newly organised Committee. By 1938, not only had the Federation lost its numerical preponderance, but the Committee had shown superior powers in politics and in the ability to unionize the steel, rubber, automobile, textile, and other mass-production industries. The CIO has some of the characteristics which were common to the Knights of Labor. It includes unskilled labor in its organization; it tends toward "one big union"; it advocates the use of strikes; and it relies upon propaganda. The Committee issues a weekly paper entitled "The CIO News," and the recently formed American Labor Party has the support of the Committee. 5

By the end of 1938, the CIO had already assumed the proportions of a great national labor movement. Its more than four million members were organized into 32 national and

international unions and 600 industrial unions. The local and regional interests of the CIO affiliates are represented by about 100 industrial union councils, set up in nearly all the big industrial centers and in a number of the states.

Each national and international union of the CIO conducts its own affairs, through officers and organizers of its own payroll. But in addition to the staffs of the respective unions, the CIO has found it necessary to do much more than the A.F. of L. ever did in the line of direct organizing work and service to its unions.

This work is carried out by force of regional directors and field representatives directly on the payroll of the national CIO. In addition, the CIO has been assisting the newer unions by paying wages and expenses of some hundreds of organizers, who are selected by and work under the direction of the officers of those unions.

All major industrial sections of the United States now have CIO regional directors, each with a staff of field representatives working under him. The whole set-up of the CIO, including the staffs of the individual unions and the direct representatives of the Committee, represents an army of experienced organizers and experts in collective bargaining such as was never dreamt of by the A.F. of L. It is a set-up geared to the task of unionizing millions more unorganized American workers and of advancing the general interests of labor in many ways which were impossible before.
The objectives of American labor, as organized in the CIO, according to Chairman John L. Lewis, "are those it had in the beginning: to strive for the unionization of our unorganized millions of workers and for the acceptance of collective bargaining as a recognized American institution."

"The aims of the CIO are what is desired of the majority of American working people," according to Mr. Lewis. It is a democratic organization designed to express the will of its members and to win for labor the place which it seeks and to which it is entitled in American democracy. In three years of existence, the CIO has already achieved much of what it set out to do. Wages have been raised in every industry in which they have been organized. Shorter working hours have been instituted due to this organization. Vacations with pay have been won for more than a million industrial workers as a result of CIO efforts. Provisions for overtime pay at the rate of time and a half or double time have been written into contracts covering 1,500,000 workers. Safety and health provisions are regular features of CIO agreements."

The craft unions are facing a real threat to their domination of the labor movement. Two conditions tend to break down the traditional craft lines of structure in the A.F. of L. First, the problem of jurisdictional disputes between closely

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6 Publicity Committee of the CIO, A Brief History of the Committee for Industrial Organization (1957), p. 44.

7 Ibid.
related craft unions has always harassed the organization. Such a dispute arose between the iron workers and carpenters employed on the new Department of Labor Building and the Interstate Commerce Building in Washington in the fall of 1933. The dispute arose over the question as to whether the carpenters or the iron workers should install radiator covers. The amount of the radiator-cover contract was relatively insignificant, but for five weeks idleness was forced upon a thousand mechanics in twenty trades, because all operations were suspended while the carpenters struck. The loss in wages to workers alone amounted to upwards of $300,000. A vertical organization embracing all engaged in the building trades would prevent such disturbances, but it is still feared by some that such an advantage is obtained at the expense of solidarity, so characteristic of craft organization.

The second condition which tends to substitute industrial for craft organization is the introduction of new machine methods which has made it impossible to assign a worker to a specific craft. The laborer who merely tightens nuts on automobile engines as they pass in the assembly line is not a mechanic, a machinist, a toolmaker, or a sheet-metal worker. He may be merely an unskilled worker who in a few hours becomes quite adept in the performance of a simple and highly restricted task.

The controversy over vertical versus horizontal structure, however, is not likely to be settled soon, for it involves vested interests. The life of the brewery union is
dependent upon a vertical organization, and likewise are the lives of all the craft unions whose existence would be imperiled should the teamsters, engineers, and firemen exchange their horizontal for vertical alliances. Labor organizations tend also to be imperialistic, and jurisdictional disputes are intensified through attempts to preserve craft lines in mass-production industries.

Attempts on the part of the A.F. of L. to enforce jurisdictional awards may lead other unions within the organization to secede and join the CIO. Phillip Taft said:

If labor is ever substantially organized in this country by the workers themselves, instead of being organized into company or independent unions created by the employers, the base of organized labor must be broadened by including unskilled workers—a task which must be performed by vertical unions. 8

The American laborers have met with many perplexing problems and numerous attempts have been made to aid the workers in their conflicts. Some of these problems will be discussed in Chapter Two.

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CHAPTER II

BACKGROUND OF LABOR PRACTICES AND PROBLEMS

Before attempting to discuss the primary problem under consideration, it is thought wise to relate briefly the background of labor practices with its influencing factors upon the present labor conflicts.

According to Carroll A. Daugherty:

Labor problems, like all social problems which arise of imperfections of human institutions, are the result of historical development and change. They are a part of the evolutionary process through which all social institutions have passed.¹

Human beings, through control of natural environment, developed certain economic systems which have satisfied their needs and desires, and as man's control over natural environment increased, old systems were given away to new ones. Each new system brought with it many problems which may be the result of failure to recognize proper human welfare. Many advances in the arts and sciences have been balanced by costs and losses in the social field.

Specialization of labor began with the handicraft stage, and as the population of the cities increased there came to be a number of craftsmen engaged in making each product. This competitive process soon led to organization of crafts-

¹Daugherty, op. cit., p. 32.
men into craft-gilds in order to regulate such matters as quality and quantity of product and intra-craft relationships. The craft-gild soon took over the marketing functions which caused a decline of the merchant organizations. The essential gild idea was regulated monopoly, which was effected by limiting membership to the so-called master craftsman. All terms of employment, such as hours and wages, were subject to strict regulation. Young men had to pass through successive periods of apprenticeship before becoming a craftsman.

The labor problems of those days were unimportant and few in number because of the economic and social environment found among the gilds in the cities which allowed a large degree of want satisfaction.

The mercantile system gave away to the "laissez-faire" doctrine in the eighteenth century and capitalistic production came into existence. The laborers were exploited as dumb, helpless animals. Sweat shops were common with their low wages, long hours, and unsanitary working conditions.

The doctrine of individual rights as expressed in the Declaration of Independence and the "Wealth of Nations" asserts that the individual has certain inalienable rights—among these life, liberty, and ownership of property are most common. Any encroachments upon these rights by the state is alleged to be morally wrong and economically unsound. In the United States, the Supreme Court, in exercis-
ing its power to declare statutes unconstitutional, aids in maintaining the supremacy of the "natural rights" philosophy.

The industrial revolution greatly accelerated and intensified the tendency of centering the control of manufacturing in the hands of a few enterprisers. The corporate form of organization with absentee ownership became a feature of American enterprises. The owners were far removed from the actual conduct of the business and knew or cared little for the problems of the rank and file of workmen. Investment banks assumed the function of assisting in the promotion of enterprises by underwriting the sale of stocks and bonds. This function resulted in putting a large measure of power into their hands and soon caused interlocking directorates, trusts, holding companies, mergers, and consolidations.

Under capitalistic control, production became concentrated in factories located usually with reference to such important matters as sources of power, labor supply, and climate. A high degree of specialization prevailed, brought about chiefly by machinery. This process soon increased the output of goods and new markets were exploited.

The social effect of the machine has been the subject of much controversy. Some writers have claimed that man has treated machinery as an end rather than as a means to an end, that its disadvantages far outweigh its benefits. It is alleged by some authorities that the standardization of production destroys the worker's individuality. Against this cul-
tural loss must be placed the great benefits which machinery has conferred upon humanity: the variety, quality, and low prices of economic goods now available. The worker today because of machinery is able to satisfy more material wants than his ancestors; he has more leisure time and shorter hours of labor. The physical volume of output has risen far more rapidly than the increase in the growth of population; the workers have enjoyed an increased income from the larger product of a mechanized system. Yet it can be shown that this income, though larger, is increasingly smaller in relation to the total social income.

In 1915, W. I. King found that approximately 60 per cent of the wealth of the United States was owned by 2 per cent of the people; 35 per cent of the wealth by 33 per cent of the people; and the remaining 5 per cent of the wealth by 65 per cent of the people. Another authoritative statistical study was prepared under the auspices of the Federal Trade Commission in 1926, which emphasized still more the trend toward concentration of wealth in the hands of a few. The Commission found that 1 per cent of the people owned 59 per cent of the wealth, 12 per cent owned 31 per cent of the wealth, and 87 per cent owned 10 per cent of the wealth.

While science and invention have enormously increased the return to capital, they have likewise greatly increased

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2 The Wealth and Income of the People of the United States (1915), pp. 78-80, 96.
the per capita productivity of labor and as a consequence have increased labor's share of the product of industry. Figures supplied by Ethelbert Stewart of the United States Department of Labor show that wage-earners received more per capita in 1929 than they did eighty years earlier, but much less in relation to capital.\(^4\) Thus it may be concluded that there appears to be an optimistic belief that the income of working people has sufficiently increased to make them capitalists in both holdings and attitude.

America took over laissez-faire individualism and stamped it with her own frontier flavor. But almost from the beginning the government interfered with free trade by establishing bounties, tariffs, and other protective measures in favor of new industry. In the field of labor disputes, however, the old theory has been preserved to a great extent. Many courts still base their decisions on the constitution which was conceived in the heyday of laissez-faire.

"Enumeration of the effects of modern economic organization should mention also the attitudes of courts, legislators, and government officials toward labor problems."\(^5\) The laborers claim that in labor disputes the employers have been usually favored by these public servants. The truth of the matter can be determined only by an impartial study of court,


\(^5\)Daugherty, op. cit., p. 50.
legislative, and executive records. "In the main it seems clear that in a majority of instances there has been a tendency to uphold individualism, private property, and freedom of contract in the face of human and social welfare as labor sees it." Most judges in most courts are holders of property and as members of the higher economic groups, have been inclined to lean toward the employer's side.

A political effect, important in our democracy, has been brought about by the amassing and concentrating of wealth in the hands of a few capitalists. It has afforded employers with a means of influencing legislation by lobbying and other discriminatory measures. Corporations have employed special agents skilled in persuasion to present their cases against favorable labor proposals. On the other hand, labor has built up funds through their unions which permit such tactics in favor of labor bills. However, it seems that the ones with the greatest wealth have been more successful in securing their demands from the political angle.

It appears that the profit-making attitudes of employers operating in the competitive system of production is the major cause for the lack of democracy in employer-employee relations. Employers exploit the factors of production, one of which is human labor, so as to produce and distribute their commodities at a profit. They feel that the productive agents must be under their control as they see fit. In this respect,

6Ibid.
the factor of labor is usually helpless and receives the worst end of the exploitation. The control of human beings is socially undesirable. Workers have feelings and are members of society, and if employers treat them like machines, the employers are operating in an anti-social way.

There have been a few profit-seeking employers who have recognized their workers' unions and have dealt with them democratically and in good faith. In this respect some employers' attitudes are different, and such employers have come to believe in a more democratic, socially enlightened method of making profits. Even so, these employers may still wish that they could control the labor factor more completely than union rules allow them to do. And if they suffer from severe competition of the other union-resisting sort of employers, like the bituminous coal operators of Western Pennsylvania in 1927, they may be compelled in the end, unless workers' organizations agree to more employer control or to conditions closely resembling those which the employers would set if there were no union opposition to such control, to break off relations with the unions and replace democracy with despotism.

In so far as legislators, administrators, and judges are business men or lawyers who have been successful in business one would expect that all laws and jurisdiction would be sympathetic to the employer's point of view. Carroll Daugherty has said:
Sometimes, as during depressions when people have become acutely dissatisfied with previous government policies, the masses of voters take matters into their own hands and vote out the party in power. Sometimes also the workers achieve such effective political organizations that they can elect candidates sympathetic to labor democracy or put in some of their own members; under these circumstances, as during the 1933 to 1939 period, government is relatively responsive to labor's needs. Usually, however, the masses of voters are rather apathetic or are misled by the propaganda of the employing class, who secure the election of candidates favorable to their program. Much of the statutory laws and most of the common or court laws have favored employers and hampered the realization of the democratic ideal in labor relations.

If this analysis is sound and realistic, then the profit-motivated attitudes of anti-union employers are mainly responsible for such government denials of industrial democracy as the repression of civil liberties and the issuance of unjustifiable anti-labor injunctions in factory communities. Before 1933, there were American towns where open union organizers entered such towns at the peril of their lives; union sympathizing workers were discharged and black-listed; and all the other ruthless union-smashing tactics of employers and employer-controlled public authorities were used in complete despotism.\(^7\)

Communities like the ones mentioned above still exist but they are not as numerous as in the past. The reason for the change for the better may be said to be the shift in certain employers' attitudes toward the desirability of democratic dealings.

The changed attitudes since 1932 were due largely to the employers' attitudes toward labor in the early depression period. They did not want labor to keep them from making a profit; so wages and employment were reduced to the minimum. During the time since 1932, many of the employer-controlled

\(^7\text{Ibid., p. 862.}\)
legislators and administrators have been replaced by those more sympathetic to labor democracy and many laws have been passed which are more sympathetic to a labor democracy and against the repressive attitudes of employers. Unions have become stronger and more far-reaching and many employers have felt impelled to deal with them in their own terms rather than risk a costly and possibly losing fight.

Prior to the so-called "New Deal" legislation with regard to aiding labor disputes, efforts were made to clarify and modify the common law on labor combinations by three federal statutes—the Sherman Act of 1890, the Clayton Act of 1914, and the Norris-LaGuardia Act of 1932.

These acts were passed to clear the legal atmosphere with regard to various kinds of combinations. Viewed in the light of what happened to the Sherman and Clayton Acts in the Courts after the years of their passage, they merely codified the previously existing common law, an outcome which made organized labor definitely bitter and hostile to the courts.\(^8\)

All unions believed that the judges uphold rights in property over such other human rights as the right to work, speak, and assemble in freedom.

The Sherman Act was interpreted by the Supreme Court in the "Debs" Case to be against labor organizations and the right to strike. In this case, it was held that labor union activities constituted a conspiracy in restraint of trade within the meaning of the Sherman Act. The common-law prin-

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ciple of menace to the public welfare played a large part in settling the issue. The decision of the Danbury Hatters' Case convinced labor that all its tactics were covered by the Act and that it could not attain its objectives under the jurisdiction of the courts.

The Danbury Hatters' Case was an outgrowth of an attempt on the part of the United Hatters of America to unionize the hat shops of the entire country. For six years the union was successful in organizing a score of shops and the boycott proved to be an effective weapon in forcing the union upon employers. Loeser and Company, of Danbury, Connecticut, supported by strong anti-union employers' associations, was the first to offer stiff opposition.

In 1902 the United Hatters struck in the Danbury shop, and the national hatters' union supported the strike by declaring a boycott upon dealers throughout the country. In 1903 Loeser and Company sued the 250 individual union hatters who went on strike for damages amounting to $74,000. This amount was trebled by the Court in keeping with the provision of the Sherman Act, and when costs were added the total stood at about $232,000.

The boycott established by the United Hatters' union was held by the Court to be an unjustifiable restraint of trade, and the restraint of trade was held to be the object of the boycott. The union responsible for the boycott thereby became a conspiracy in restraint of trade; and all its acts, including those otherwise harmless, were held illegal. It was held that union members could be sued as individuals.9

Union after union expressed the opinion that labor's rights had been trampled on and every union effort to improve conditions would be condemnable if the Sherman Act were not

amended. Thus we see that the employers gained another victory and continued with their exploitation of labor.

The Clayton Act was passed in 1914 and labor believed they had attained the long hoped for relief. They soon became disappointed, however, for the Supreme Court pursued the even tenor of the common law way and interpreted the new statute in accordance with the old, well-established doctrines of conspiracy and trade restraint. Certain labor economists have expressed the opinion that the Clayton Act is dishonestly worded. A liberal court might interpret it very favorable to labor; it is the workers' misfortune that most of the important, precedent-setting decisions were made by a preponderantly conservative Supreme Court.

The provisions of the Clayton Act which were thought to help labor appear to be quite modest. A review of Congressional hearings and debates indicates that most of the framers of the bill had no intention of exempting all labor acts from the anti-trust laws, but rather wished merely to set down in authoritative legislative enactment what was already good and accepted common law. Section 6 of the Clayton Act begins by declaring that "the labor of human beings is not a commodity or article of commerce." But no court had ever held that labor was a commodity and was for that reason subject to the Sherman Act. The Clayton Act further states:

Nothing contained in the anti-trust laws shall be construed to forbid the existence and operation of labor organizations from lawfully carrying out the
legitimate objects thereof; nor shall such organiza-
tions be held illegal combinations or conspiracies
in restraint of trade, under the anti-trust laws.

This passage merely restates the common law, namely, that in
themselves labor unions are legal, they become conspiracies
only when they unlawfully try to pursue illegitimate objects
as injuries to employers, or to the public.

Other sections of the Clayton Act dealt with the methods
to be used by Federal Courts in issuing injunctions and aimed
to remedy a number of abuses complained of by labor. They
would have succeeded in being definitely helpful if they had
been obeyed, but the early Post-War injunctions, issued under
War powers or in tradition of emergency War authority, viti-
ated the restrictions laid down in the Act and furnished pre-
cedent for further disregard.

It may be said that the Clayton Act by no means gave la-
bor a sweeping immunity from the operation of the anti-trust
laws. It merely said that labor organizations were lawful
in restraint of trade and then failed to define specifically
what it meant by "lawful" acts and objects. There is much
vagueness and inadequacy throughout its context. The rulings
of the Supreme Court in the Duplex Printing case, the Ameri-
can Steel Foundries case, the Coronada Coal case, and the
Bedford Cut Stone case plainly showed that labor combinations
were still very much subject to the anti-trust laws.\(^\text{10}\) The

\(^{10}\) See Duplex Printing Company v. Deering, 254 U. S. 349, 1921; American Steel Foundries v. Tri-City Central Trade Coun-
cil, 257 U. S. 184, 1921; United Mine Workers v. Coronada Coal
and Coke Company, 259 U. S. 344, 1922; 263 U. S. 285, 1925;
Bedford Cut Stone Company v. Journeymen Stone Cutters' Asso-
ciation, 274, U. S. 37, 1927.
Duplex case arose from a strike and an inter-state boycott conducted against the Duplex Printing Company which manufactured printing presses in a Michigan plant by New York members of the machinists' union in an effort to compel the firm to recognize the union. The idea of the boycott was to prevent New York printing establishments from buying presses manufactured in Michigan and thus destroying the main market. The Supreme Court held that the Clayton Act did not contain any prohibitions against calling such a boycott a conspiracy in restraint of trade under the meaning of the Sherman Act. In this case both means and purpose were illegal, for threats had been used and the aim was to injure the Duplex business.

According to Carroll R. Daugherty:

This decision left the law just where it had been in 1914, except the Court did not state that peaceful persuasion and assembly and primary boycott were illegal merely if they caused a restraint of trade. In the case of the American Steel Foundry which arose out of alleged violent picketing against strikebreakers by union strikers judicial decision was given to "Peaceful Persuasion." 11

In this case the court declared that more than one picket at each factory gate constituted intimidation and was unlawful. Restraint of trade was not mentioned, but labor's cause was aided by the statement that the Clayton Act recognized a single employee's helplessness against large corporations and made it legal for many to combine to do what one man may lawfully do. Thus the mere fact of combining no longer con-

11 Daugherty, op. cit., p. 887.
stituted a conspiracy at common law.

The decision of the Duplex Case established four points: first, that employer's business is a property right which, under section 20 of the Clayton Act, may be protected by the injunction; second, that the limitations placed upon the issuance of the injunction by section 20 apply solely to disputes between the employer and his employees, thus providing no protection for union members not in his employ; third, that section 20 was not intended to legalize the secondary boycott; and fourth, that a labor organization becomes an illegal combination in restraint of trade if and when it departs from its lawful objects.

In its decision of the Coronada Coal case, the Supreme Court held that the acts committed by the strikers were an illegal interference with interstate commerce and punishable under the anti-trust statutes. It was also held that incorporated labor organizations may be sued and held liable for damages under the Sherman Act.

In the Bedford Company's case, the Journeymen Stone Cutters' union refused to let its members in other states work with stone quarried and cut in their plant and called a strike to enforce the rule. No boycott was attempted against the use of the firm's products by contractors in other states, neither was there any picketing of non-union rule. The Court held that the purpose of labor's action was to destroy the interstate markets of the Bedford Company and that the organi-
zation was guilty of conspiracy to restrain trade. This decision reversed any gain which labor had previously attained or hoped to attain from the Clayton Act. This decision reduced unions to the status which was handed down in the Danbury case, that is, any action could be interpreted as being an illegal restraint of interstate trade and labor's hands could be completely tied by court action, and property rights reigned supreme.

Despite the cries of organized labor,

Congress was more or less cold up to 1930, but the gloom of the depression helped to instill a more responsive attitude and early in 1932 an overwhelming vote in both houses passed the Norris-LaGuardia Act which gave promise to supply many things which the workers were demanding.\(^\text{12}\)

The union leaders were still skeptical and waited to see how the new act would be treated in the courts.

The Norris-LaGuardia Act may have marked a distinct statutory advance for labor in its efforts to free itself from the restrictions of the anti-trust laws as interpreted by the Federal Courts. The Sherman and Clayton Acts allowed the Courts to decide what labor activities were lawful, with the result that almost everything was held unlawful if any degree of restraint of trade could be proved. The Norris-LaGuardia Act was evidently intended to give labor the same right as corporations in handling restraint of trade "Reasonably," for it set up a list of specific acts which might not

\(^{12}\text{ibid., p. 869.}\)
be enjoined and which accordingly might not be considered
evidence of intent to restrain trade unreasonably. Among
the activities which Federal Courts may no longer issue in-
junctions are the strike, the violation of a yellow-dog con-
tract, picketing which does not include fraud or violence,
the secondary boycott, giving financial aid to strikers, and
all collective acts which may legally be done by an individ-
ual.

In 1937 the United States Supreme Court rendered its
decision for the first time, upholding the Norris Act by
five-to-four decision in the Wisconsin Act in the case of
Senn v. Tile Layers' Protective Union (301 U. S. 468); here
a union had picketed an employer who had refused to sign a
union agreement, and in whose shop the union had no members,
yet the Supreme Court held that there was a labor dispute
within the meaning of the Act and refused to find that the
Wisconsin Act, as previously upheld by the Wisconsin Supreme
Court, was in violation of the Fourteenth Amendment. In
1938, the Supreme Court reversed the adverse decision of the
Seventh Circuit Court of Appeals in the case of Lauf v. Shin-
nier and Company, the facts of this case being substantially
the same as in the Senn Case.\(^{13}\)

The general common-law rule as established by the Acts
mentioned above gave full liberty of self-organization for

\(^{13}\) Ibid., p. 872.
workers. Unions were entirely legal as such, and their right to exist was unquestioned. In determining the success or failure of union organizing campaigns it is often the executive branch of government whose attitude is of greatest immediate importance, and union organizers have often been jailed for attempting to organize workers.

The depression coupled with the problems of labor already discussed brought about an emergency to create federal legislation which was intended to place positive curbs on employers' anti-union tactics. The National Industrial Recovery Act was passed by the New Deal administration, and the part of the Act which referred to labor was based upon the theory that shortening of the work week would cause a reduction of unemployment, and that the minimum wage provisions of the industrial codes would prevent wages from sinking to progressively lower levels. It was believed that the accomplishments of these purposes would result in larger money incomes to wage earners, and thus would cause larger amounts of purchasing power to reach the hands of consumers, and that enhanced consumer purchasing-power would cause business recovery.

The famous Section 7 (a) of the Recovery Act gave employees the right to organize and bargain collectively through representatives of their own choosing. This gave to labor a greater latitude than had ever before been given but the government and unions ran into serious difficulty in trying
to enforce this provision.

The interpretation of the labor section of the NIRA makes it clear that the use of yellow-dog contracts by employers was positively outlawed; and the use of spies, strikebreakers, discharge or any other discrimination tactics, and company-union promotion tactics would be illegal if workers were thereby in any way interfered with or coerced in their self-organization activities. Anti-union employers refused to give up their traditional rights and a wave of strikes swept the country in July, 1933. These strikes interfered with another New Deal objective, namely, business recovery. Consequently, the President, in August, 1933, appointed a National Labor Board to settle the strikes and get the strikers back to work.

The principles which evolved out of the hearings and decisions of the National Labor Board were concerned with three main things: (1) Anti-union discrimination tactics of employers; (2) choice of representatives for collective bargaining; and (3) collective-bargaining obligations of employers. The Board ruled that employers must not discriminate or discourage union membership, must reinstate workers discharged for union activities and non-violent strikers; and must not initiate, participate in, or control the operation of company unions in such a way as to discriminate against outside unionists and their rights of self-organization. The Board ruled that workers must be free to choose their representatives of
majorities or workers should have recognition from employers, and that employers must exert every reasonable effort to reach and operate an agreement in good faith.

Industrial democracy and labor peace were not substantially attained by the Board. Its failure resulted mainly from its lack of statutory status and authority, particularly its own lack of power to enforce its ruling. The Board received little encouragement from government agencies and received much criticism and fight from powerful employers. Another factor which contributed to the failure of the Board was its lack of sufficient personnel to deal promptly and effectively with labor complaints and disputes.

In 1934, Congressmen who were sympathetic to the principles of the National Labor Board tried to pass a federal law which would have embodied the principles of the Board into statutory form and removed the National Recovery Act from participation in determination of labor relations policies. The bill was not passed but under the pressure of a new wave of strikes and threatening strikes a compromise was effected in June, 1934, between the NRA and the National Labor Board partisans which empowered the President to create, independently of the NRA, a board or a number of boards with exclusive authority to handle labor disputes arising under Section 7 (a).

The new Board was set-up and for a while had an easier time than the first one. This Board was headed by a small, compact group of full-time labor-relations specialists.
Much of the red tape of the first Board was eliminated with less time elapsing between complaints and decisions. The Board had no enforcement powers of its own and had to depend on the unsympathetic and slow-moving NRA for action against disobedient employers. The Supreme Court's decision in the famous Schechter Case, destroyed the NRA code system and the Act of which Section 7 (a) was a part.

The first National Labor Board fell victim to judicial decision and labor was again exploited by employers with more struggles and strikes until the passage of the National Labor Relations Act, the context of which will be discussed in the following chapters.
CHAPTER III

THE WAGNER ACT AND ITS ADMINISTRATION

The National Labor Relations Act became a law in July, 1935, after a stormy legislative history, and in August, 1935, the President of the United States appointed a new National Labor Relations Board with powers which will profoundly influence the social and economic future of the country. The act guarantees labor's right to bargain collectively, derived from the famous Section 7 (a) of the NIRA, and the NLRB as set up is similar to the ones previously established.

The Act has two main objects:

The promotion of industrial peace by outlawing one of the major causes of strikes—namely, the tactics adopted by many employers to prevent their employees from joining unions, and their refusal to deal with unions under any circumstance.

Encouragement of collective bargaining between employers and unions in the belief that a more general negotiation of collective agreements would tend to raise the level of wage rates, increase mass purchasing power and production, decrease sweatshop labor and make for fairer competition.¹

To accomplish these objectives, certain restrictions were placed upon employers and the Board given power to enforce them.

The Act is limited to controversies affecting interstate commerce and excludes railroads. The purposes of the Act under which the board will function are identical with those underlying Section 7 (a) of the Recovery Act, which was never properly enforced until it fell victim to unconstitutionality.

The attempt of the first two labor boards, August, 1933, and July, 1934, only partially succeeded. The Recovery Act provided no method of enforcing Section 7 (a) except removal of the "Blue-Eagle," which was only slight and occasional. The boards struggled because they were handicapped by lack of power and by employer resistance. Realizing this deficiency, Senator Wagner, early in 1934, introduced a bill to carry out these objects. It did not come to vote, but in 1935 the Act was voted and became a law on July 5.

At the time President Roosevelt signed the law he issued a statement relative to the purposes of the law noting particularly that the NLRB would be an independent quasi-judicial body. The President also stressed the fact that the Board "will not act as mediator or conciliator in labor disputes." "The function of mediation," he said, "remains under the act, the duty of the Secretary of Labor, and of the Conciliation Service of that Department."2 The President also pointed out that the judicial function and the mediation function "should not be confused" and that "compromise, the essence of mediation, has no place in the interpretation and

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2Ibid., p. 597.
enforcement of the Law." The purpose of the Act, the President said, "should not be misinterpreted." While it may eventually eliminate one major cause of disputes, "it will not cover all industry and labor, but is applicable only when violation or legal right of independent self-organization would burden or obstruct interstate commerce." The Law," he said, "should serve as an important step toward the achievement of just and peaceful labor relations in industry."

The law does in substance restate more or less the language of section 7 (a) of the NIRA, thus transferring into permanent legislation a section of defunct statute. Next, there are provisions for holding of employee elections by secret ballot to determine, in contested cases, by whom or by what organization they wish to be represented—a procedure worked out by the two former boards. Thus far there is nothing in the Act that was not previously contained in Section 7 (a) of the NIRA or in the decisions and practices of the old boards.

What is absolutely new in the Act, and what gives to it its dynamic force, is that it contains thorough enforcement provisions. Section 7 (a) has been reborn, but this time with teeth.

Apart from enforcement, the Act may be considered under two headings: "Unfair practices" of employers, and collective bargaining. Among these unfair practices is included

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3 Ibid.
the restraining or interfering with the right of employees to join labor organizations and to bargain collectively.
This is aimed particularly at open threats and intimidation. Another unfair practice is that of discriminating "in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization." This clause does two things. It prohibits discharging or demoting a man simply because he has joined a union and it prohibits the "yellow-dog" contract. "To dominate or interfere with the formation or administration of any labor organization or contribute financial support to it" is another unfair practice. This permits the conferring with the employer on company time subject to certain regulations. It simply prohibits an employer from organizing, dominating, controlling, interfering with, or financially aiding a company union. A union must be the creature of the employees and not the employer. If the employer does aid in organization, he can be ordered to cease his objectionable practices.4

The practical importance of the "Company Union Clause" can be appreciated when it is realized how phenomenal the recent growth of company unions have been. Prior to the War, they were rare; during the War large numbers were formed and continued in Post-War years; but the greatest increase came after the enactment of the NRA in 1933. It has been reliably

4Ibid.
estimated that over 60 per cent of the company unions were formed then, covering almost twice as many workers as before. There are now in existence over 1,500 company unions covering about 3,000,000 workers. Many of the largest company unions are in the great mass-production industries—steel, textiles, automobiles, rubber, etc.

In disputed cases, the Act imposers the Board to determine by secret ballot or otherwise, by whom they wish to be represented and forbids an employer to "refuse to bargain collectively" with the representative. In other words, the employer is under a duty to bargain with them.

There are certain features inherent in a national labor union which may seriously affect their status as the exclusive representatives of employees. To a certain extent, it may be justly argued that the selection of a national labor union not only involves the designation of a bargaining agent but also the declaration of bargaining power. The officers of the national labor unions are, for the most part, selected by employees of many different employers, frequently in different localities and working under entirely different conditions. The policies of the union are generally determined by its officers and committees without direct reference to the employee constituents, so that a particular employee, in a particular plant, working for a particular employer, may find his own desires and those of his fellow employees

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5Taylor, op. cit., p. 129.
submerged in the will of an entirely dissimilar group.

Collective bargaining is predicted upon a recognition of the union as a legitimate and legal institution with which employers may bargain. "Recognition" constitutes an admission on the part of an employer that his employees have the right to be bound by a contract negotiated by a labor organization to which they belong, rather than by agreements made with each employee as an individual. Labor considered that the victory was won when Section 7 (a) was written into the NIRA in 1933. The value of such legislation to labor must depend upon the meaning which the courts might attach to the term "collective bargaining." This term was clarified by the Supreme Court in the case of the Jones and Laughlin Steel Corporation.6

The term, "collective bargaining," as commonly defined might embrace bargaining entered into by any form of labor organization, whether it be created by labor, or, like a company union, by an employer. This broad interpretation of the term is acceptable to most of the employing class, but it is not acceptable to organized labor. True collective bargaining, to the labor leader, does not exist when the employer merely bargains with his immediate employees, whom he may have organized into a so-called company union.7

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The national labor union is sanctioned as an adequate representative of employees. Section 9 (a) of the Wagner Act provides that:

Representatives designated or selected for the purpose of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such a unit for the purposes of collective bargaining in respect to rates of pay, hours of employment and other conditions of employment: Provided that any individual employee or group of employees shall have the right at any time to present grievances to their employer.

This adopts the so-called majority rule which was read into Public Resolution Number 44 and into section 7 (a) of the Recovery Act by the predecessor NLRB. In one respect, it may go beyond the decisions of the earlier Board, which imposed no limitations upon the individual's right to bargain with his employer. Under Section 9 (a) of the new Act, the single employee's right is limited to "grievances," while collective bargaining in respect to wages, hours of employment, and other conditions of employment, are confined to the representatives chosen by the majority. Although the language is not clear, it is the apparent intent of the Act to give binding effect to collective bargains negotiated by such representatives, even where such bargains would be clearly contrary to the desires of individual employees or minority groups. The latter are permitted to present grievances, that is, to make individual complaints to their employer, but they cannot oppose the will of the dominant group.
The rights of workers are affirmed in general terms thus:

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

It starts with the conception of a bargaining "unit" to be determined by the circumstances by the Board. According to Lloyd Garrison:

A unit is simply a particular group of employees whose occupations and activities are so familiar that it is logical, practical, or customary to specify the terms of employment of all of them in a single collective bargaining agreement with the employer.⁸

An example of a "unit" might be a plant with homogeneous operations performed by semi-skilled workers, and no sharply defined crafts, departments, or specialized groups. For such a unit it is not practical to have anything but a single agreement regulating the hours and wages of all for a specified period; you cannot give one group one rate of pay and another group a different rate where both are doing the same kind of work.

The promoting of industrial peace and economic and social welfare is the central assumption of the Act. The fixing of collective bargaining units will call for the highest degree of practical knowledge, common sense, courage, and statesmanship.

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⁸Garrison, op. cit., p. 598. ⁹Ibid.
In accordance with Section 3 (a) of the National Labor Relations Act a board is created, known as the "National Labor Relations Board," which is composed of three members appointed by the President, by and with the advice and consent of the Senate. Section 3 (a) of the Act states:

One of the original members shall be appointed for a term of one year, one for a term of three years, and one for a term of five years, but their successors shall be appointed for terms of five years each, except that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed.

One member is designated as chairman of the Board. A member may be removed by the President, upon notice and hearing, for negligence of duty or malfeasance in office, but for no other cause.

Section 3 (b) of the Act states:

A vacancy in the Board shall not impair the right of the remaining members to exercise all the powers of the Board, and two members of the Board shall, at all times, constitute a quorum.

The Board has created five divisions in its Washington office known as "Legal, Administrative, Trial Examiner, Economic, and Publications."

The work of the legal division falls into two main sections, litigation and review. The litigation section, headed by the Associate General Council, is responsible for the conduct of hearings before the Board and advises the regional attorneys in their conduct of hearings before the agents of the Board in the field. It represents the Board in all judicial proceedings. It collaborates with the Department of Justice in the presentation of arguments before the Supreme
The Review Section of the Legal Division assists in the analysis of the records of hearings in the regions and before the Board in Washington. It submits to the Board opinions and problems of interpretations of the Act and the Board's rules and regulations. In collaboration with other divisions it prepares and submits to the Board, orders, forms, rules, and regulations, and engages in research incidental to the formulation of legal opinions.\textsuperscript{11}

The Administrative Division, under the general supervision of the Secretary of the Board, is responsible for the operation of the administrative, clerical, and fiscal activities of the Board, both in Washington and in the regional offices. The Secretary and administrative staff directs and supervises all case developments in the field to the point where hearings are held, and specializes in the procedures under the Act.\textsuperscript{12}

The Trial Examiners' Division holds hearings on behalf of the Board. Members of this division are assigned to preside over hearings on formal complaints and petitions for certification of representatives, to make rulings on motions and prepare reports to the Board and all parties of the case in question.\textsuperscript{13}

The Economic Division prepares the economic material necessary for use as evidence in the Board's cases, covering

\textsuperscript{10} NLRB, Rules and Regulations, Series 1, Amended (1936), p. 4.
\textsuperscript{11} Ibid.
\textsuperscript{12} Ibid.
\textsuperscript{13} Ibid., p. 5.
both the business of the particular employer involved in a case before the Board, and, at times, the industry of which this business is a part. It also makes general studies of the economic aspects of labor relations for use of the Board in its formulation of policy and prepares the economic material needed for inclusion in briefs for the Courts in cases where the Board is a litigant.14

The Publications Division makes available to the public information regarding the activities of the Board, through releases and answers to oral and written inquiries.

There are 21 regional offices located throughout the United States. Each office is headed by a regional director under the supervision of the Secretary's office in Washington. He is also in charge of the labor relations work, investigating charges of commission of unfair labor practices and petitions for certification of representatives, attempting to secure compliance with the law without formal procedure, issuing complaints, or refusing to issue complaints, after advising with the regional attorney, and conducting elections as agents of the Board.

The field examiners aid the regional director in his investigations and efforts to secure compliance, in holding elections as agents of the Board, and in other non-administrative duties.

14 Ibid.
The regional attorney is the legal officer in the regional office and acts as counsel to the regional director and as counsel for the Board in the conduct of hearings. The regional attorney is assisted in his duties by other attorneys connected with the regional office. He is subject to the supervision of the General Counsel in Washington and of the regional director in administrative problems.\textsuperscript{15}

Specifically, how will the Board’s orders be enforced? The Board handles complaints directly or through one of its 21 regional directors. The testimony from both sides is heard. If arbitration cannot be established, the Board is authorized to file a record of the proceedings with a Circuit Court of Appeals which will decide whether to sustain the Board’s order. The court order is directly enforceable.

Any charge made must be sworn to before a notary public or an agent of the Board. It is then the duty of the regional director to investigate; if there is sufficient ground for the charges, he issues a complaint summoning both parties to an open hearing before a trial examiner appointed by the Board in Washington. On the basis of the facts as disclosed at the hearing, the trial examiner may dismiss the case, if the employer is not guilty as charged, or if there is not definite enough evidence of his guilt. On the other hand, if the charges are sustained, the examiner advises the employer to comply with the law, making it clear what steps he

\textsuperscript{15} MLRB, Second Annual Report (1937), pp. 7-9.
must take to do so. If the employer should take the exam-
iner's advice, the case is closed, since labor has been heard
and its specified grievances remedied.

Should the employer fail to comply, however, the case
enters a new phase. The record of the hearings and the exam-
iner's report are sent to Washington for review by the Board
itself, which is a non-partisan, semi-judicial body of three
members. The Board considers the facts and issues a decision,
which again may be either a dismissal of the case or an order
to the accused employer to obey the law. If compliance is
still not forthcoming, the Board itself has no power of en-
forcement. The only penalty which the Board can mete out is
a fine of not more than $5,000 or imprisonment for not more
than one year, or both, to "any person who shall willfully
resist, prevent, impede, or interfere with any member of the
Board or any of its agents or agencies in the performance of
duties pursuant to" the Wagner Act. This provision was made
to protect the Board in the actual conduct of its work, but
does not apply to the enforcement of its decisions and or-
ders. But that does not mean that the employer can hold
out, and that labor has no ultimate recourse. The Board can
ask for a review of the case by the Circuit Court of Appeals,
which can, of course, reverse, modify, or uphold the Board's
decisions. After that both parties have access to the United

16 NLRB, Rules and Regulations, Series 1 (1936), p. 27.
States Supreme Court as a final resort.

Briefly then, the steps in handling disputes by the NLRB may be listed as follows:

1. Worker or union files a charge against employer.
2. Regional office investigates and, if action seems justified, serves a complaint upon the employer.
3. Employer is given 5 days or longer if necessary to file answer.
4. Extended hearings may follow.
5. Board renders decision.
6. Either side may appeal to National Labor Relations Board, which may gather further evidence.
7. Its decision may then be taken into the Circuit Court of Appeals.
8. From there, it may be taken to the Supreme Court.

In a survey report of the Board's activity for the first four months, ending December 31, 1935, it was found that 477 complaints involving 121,499 workers were filed, and of these 175, involving 36,635 workers, were closed—some by withdrawal and some when compliance with the law was achieved by "informal means." Seventeen strikes involving 10,400 workers were averted. Some of the large employers with resources to fight the Board in the Courts had to prove that the Labor Relations Act would stand up. More information regarding the achievements of the Board will appear in a later chapter.
The Wagner Act was upheld in the Supreme Court on April 12, 1937, and during that year five states enacted labor relations acts modeled after the so-called Wagner-Connery National Labor Relations Act. The five states are Utah, Massachusetts, New York, Pennsylvania, and Wisconsin.

All of the state acts regulate the labor relations of employees engaged in work of strictly intrastate nature. All provide for a board or commission to administer the law and guarantee to employees the right of self-organization and collective bargaining. Certain acts of employers are forbidden as unfair labor practices. The Massachusetts law assures the employers that strikes by seizure will not be permitted. In New York and Wisconsin, it is unfair labor practice "to spy upon or keep under surveillance any activities of employees of their representatives in the exercise of the rights" guaranteed by those acts, and the distinction of black-lists also is forbidden.\(^{17}\)

All the acts authorize the labor relations board to determine the representatives of the employees by taking secret ballot of the employees or by utilizing some other method to determine the representation.

In most states the act does not provide machinery for the settlement of strikes. Usually separate agencies are provided to arbitrate labor disputes. The Wisconsin Labor Rela-

tions Board is authorized to arbitrate disputes and may appoint arbitrators or boards. The Act also provides the appointment of two committees to investigate unethical practices of employers of labor organizations. Violation of collective bargaining agreements may be referred to these committees for appropriate action. The method of publicity is resorted to for the enforcement of collective bargaining agreements. Another feature of the Wisconsin Act includes the registration of unions with the board and the prevention of so-called "union racketeering."

The New York Law enlarges the number of practices deemed unfair. The Pennsylvania Act defines a labor organization but excludes from this category any organization which denies membership to a person on account of race, creed, or color.

With the general organization and purpose of the National Labor Relations Act and its administrative Board before us, it is deemed wise to consider some of the unfair practices of employers in their dealings with labor and its organizations, a discussion of which is included in the following chapter.

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18 Ibid.  
19 Ibid., p. 761.
CHAPTER IV

UNFAIR LABOR PRACTICES

Mention has been made of the unfair labor practices on the part of the employer, but only generalizations have been stated heretofore. The definition of labor's rights is contained in Section 8 of the Labor Relations Act, with five sub-divisions. The first of these says that the employer may not "interfere with, restrain, or coerce employees in the exercise of the rights guaranteed"—that is, the rights to organize and bargain collectively, already quoted. Some of the specific actions which have been declared illegal under this provision are advice by foremen not to join the union; malicious remarks about unions on the part of officials having the right to hire and fire; the use of spies to report the Union's membership and activities; influence exerted by the employer on any third parties, such as the citizens at large or the local police; the persuasion of workers not to join unions; asking employees into the company offices to ask them whether they approve or belong to a union; using anti-union propaganda to influence the workers. These things may be summed up as any acts that make the worker fear loss of his job as a consequence of joining the union.¹

¹Taylor, op. cit., p. 109.
The prohibitions against interference, restraint or coercion are not new to the Wagner Act. Similar language appeared in Section 7 (a) of the NRA and in the Railway Labor Act of 1926. Under the Railway Act, a similar provision received final construction by the Supreme Court in the case of Texas and New Orleans Railway Company v. Brotherhood of Railway and Steamship Clerks, 281 U. S. 548 (1930). The Railway Labor Act had used the language "interference, influence, restraint or coercion." The terms "interference" and "coercion" implied illegal activities on the part of the employer constituting legal duress. "Influence," on the other hand, was a much broader term and could be construed to prohibit the most peaceful act of persuasion. Nevertheless, the Supreme Court, guided by the context, placed the following construction upon the word:

The meaning of the word "influence" in this clause may be gathered from the context. The use of the word is not to be taken as interdicting the normal relations and innocent communications which are a part of all friendly intercourse, albeit between employer and employee. "Influence" in this context plainly means pressure, the use of authority or power of either party to induce, action by the other in derogation of what the statute calls "self organization." The phrase covers the abuse of relations or opportunity so as to corrupt or override the will.2

No one can quarrel with the propriety of interdicting acts of violence, fraud or duress on the part of an employer, nor can we criticize a principle prohibiting an employer from

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using his authority to bring undue pressure upon his employees. On the other hand, the belief is widespread that friendly communication and intercourse should not be restricted. If it is proper for an employee to use every peaceful argument at his disposal to convince his employer of the desirability of labor unions as representatives of employees, then similar friendly arguments by the employer should not be denied, so long as there is no undue use of authority.

Under sub-section (2), employers are forbidden to "dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it." This is of course aimed against the company union, which is an organization inspired and often supported by the employer, having the right to discuss grievances but not to negotiate a contract. Through it the workers can complain that the washrooms are dirty or that the building is too cold, but not that the hours are too long or the wages too low.

Participation by the employee is purely voluntary and concurred membership in any organization is expressly permitted, not discouraged. Participation by the employer is generally limited to an agreement, either express or implied, on his part, to cooperate with the representatives selected and to meet with them for the purpose of adjusting disputes and negotiating the demands of his employees. Many employers feel that such a plan contributes to the content of their employees by eliminating the misunderstandings which might
otherwise arise, and have, therefore, as a rule, felt it their duty to cooperate with employees and, in many instances, to pay the expenses of operating the representation plan. Over two million employees in the United States have given sanction to a plan of this character and have indicated their belief in its efficacy as a means of collective bargaining.\footnote{Joel Seidman, "Wagner Labor Disputes Bill," \textit{Nation}, June 26 (1935), p. 745.}

The company union was a favorite dodge of employers to avoid both Section 7 (a) of the NRA and the Wagner Act itself. When violations of sub-section two are charged, the Board seeks to determine whether the employer took active part in forming the union in question, whether the company suggested the form of its constitution, if a few picked employees were urged to organize it, whether management has been both willing and eager to sign agreements with the organization, whether membership is automatic when a worker is hired, if the union is praised by company officials, given credit for settling grievances, allowed a publication under the company's auspices. The presence of any one of these things creates a strong presumption that the law has been violated.\footnote{Lloyd K. Garrison, "New Techniques in Labor Settlement," \textit{Survey Graphic}, April (1935), pp. 158-164.}

From the union's side, such matters as payment or non-payment of dues, holding of regular membership meetings, written agreements with the company, contracts with other unions,
and the right to demand arbitration of matters in dispute are investigated. If the answers to these questions indicate freedom from domination by the company, there has been no violation of sub-section two. The "company" union, illegal as defined above, must not be confused with the union that is confined to one plant, which is legal provided there is no domination or interference by the employer. It is conceivable that the Board might declare a union originally inspired by the management or the legal bargaining unit, if it had subsequently made good its independence. The acid test of a union's validity as a labor organization is whether employees have a free voice in the presentation of their demands to the management.

The third sub-section defining unfair labor practices says that an employer may not "by discrimination in regard to hire or tenure of employment or any term or condition of employment, encourage or discourage membership in any labor organization." This is, in substance, the provision which has been held invalid by the Supreme Court of the United States in Adair v. United States, 208 U. S. 161 (1908), involving federal legislation, and in Coppage v. Kansas, 236 U. S. 1 (1914), as to state legislation. It is also somewhat similar to a provision of the NRA, requiring the Codes to provide that "no employee and no one seeking employment to join any company union or to refrain from joining, organ-

5Ibid.
izing, or assisting a labor organization of his own choos-
ing.6

The third sub-section is intended particularly to prevent discriminatory firing of union men, since that is the form the abuse often takes. In enforcing this provision the Board is really asked to determine the employer's motive in taking certain actions; that is, was he not motivated by the desire to discourage union organization? Of course, there is no method for determining this absolutely, since the motives of another person are not susceptible of objective proof. At the same time, a reasonable presumption of pro-union or anti-union sentiment can be made in answering certain specific questions such as these: How long had the discharged union worker been employed? What was his previous record on the job? What was his comparative skill at his own work, and how long was his experience? What did his foreman think of him? How did the management treat other employees of equal or less efficiency? If it can be shown that the worker had a good record, had been continuously employed, was an efficient worker, that others less satisfactory had been retained, and particularly "if the occasion for his discharge was a trivial one," it it probable that his discharge was for union activity rather than more justifiable complaint.7

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For example, in the Jones & Laughlin Steel Corporation case a number of employees were dismissed, all of whom had both resisted the company union and had been active in the organization of a bona-fide union. All of them were also employees of long standing, ranging from five to twenty-six years, but the company said that all had been discharged for inefficiency. At the hearings the nature of these charges of inefficiency was disclosed. One man, a tractor driver, employed for eight years, and said to be one of the best men in the plant, was discharged for failing to close a door. A coal washer employed for fourteen years was fired on the ground that a sample of his work was poorly done. The evidence showed that no samples of his work had been taken. A man who had worked for ten years as a machinist’s helper was suddenly asked to operate a drill press, for which he was not trained, and was then fired because he spoiled the work. A crane operator of fifteen years’ experience was discharged for leaving his keys on the bench; another crane operator, who failed to “try his limit stops” in a way he considered dangerous and useless, immediately afterwards heard his foreman telephoning someone, saying, “He didn’t try his limit stops. Is that enough?” It was shown that other employees who had made similar errors were retained, and that all those discharged had been warned repeatedly about union activity. In these instances, the Board found that Jones & Laughlin had been guilty of discrimination and ordered the reinstatement
of the employees dismissed. The Act does not interfere with the employer’s right to fire employees for just cause, such as bad work, carelessness, disobedience, drinking on duty and the like. It does not define exhaustively either just or unjust dismissal; it merely specifies certain things within its jurisdiction which do constitute unfair discharge.

Sub-section three is further qualified by the statement that nothing in the Act is to be interpreted as making a closed-shop agreement illegal, if the employer signs one. The provision is put in this negative form, rather than the positive one of declaring the closed-shop agreement legal, because there are different state laws on the matter, and it was thought better to avoid giving a possible loophole for invalidating the law. In point of fact, the exclusive bargaining right is more important to the union than is the closed shop. No employer will give his unorganized employees more than he has granted the majority through their union representatives; if possible, he will give them less, which is a strong incentive to them to join the union. A closed shop may result without definite agreement to that effect. The chief advantage of the closed shop over the exclusive bargaining to the union is that it prevents "hitch-hiking"; that is, getting the benefits of union contracts without paying dues, or taking the risk.

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Sub-section four protects the worker who wishes to make complaint to the NLRB. It declares that it is an unfair labor practice for an employer to "discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act." This, of course, provides another restriction upon the employer's authority over his personnel. However, the motive which lies behind it may be administered in a careless way. Under the reign of the preceding Labor Board, it sometimes happened that employees who had given testimony returned to their work, secure in the belief that they were thenceforth immune from discharges irrespective of their conduct and qualifications. If the Regional Boards supported them, malcontents would take advantage of their participation in hearings before the labor boards to defy their employers.\(^9\)

The fifth and last sub-section says that an employer may not "refuse to bargain collectively with the representatives of his employees," as provided for in the Act. The Board says that the way is open for collective bargaining when the representatives of both sides confer with serious intent to adjust differences and reach an acceptable agreement. Here again the question of intent is involved. The employer is not obligated to grant, modify or reject the workers' demands. Suppose no satisfactory conclusion can be made between employer and employee. How can it be decided whether

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the employer never intended to come to any agreement, and was just going through the motions of complying with the law, or whether an honest impasse has been reached? If it can be shown that there was no real effort on the part of management to discuss differences and find a common ground, the Board declares that the law has been violated. But the NLRB cannot interfere when a deadlock has been reached between negotiators acting in good faith. Recourse may then be had, perhaps, to arbitration or conciliation, but the Board has no concern in the matter. 10

No discussion of unfair labor practices would be complete without considering some of the spying and espionage practices of employers. When the true facts of such relationships are known, it appears that the NLRB has not been too severe in its dealing with guilty employers. The following pages outline some of the findings of the investigating committee.

A year after the passage of the Wagner Act it had been brought to the attention of a number of Senators that there had been many violations both of the specific provisions of the Act and, in the same connection, of the larger rights of free speech and assembly. The Senate passed a resolution for the investigation of these charges, empowering the Committee on Education and Labor to be its agent. The investigation

10 Ibid.
was actually carried out by a subcommittee, which came to be known as the Committee on Civil Rights, consisting of Senator LaFollette and Senator Thomas of Utah. Its hearings were confined to the three major matters of industrial spying, strike-breaking, and the furnishing of munitions to private industry; it is chiefly the first of these that shall be dealt with in this connection. By industrial spying is meant the practice of hiring persons to work in a factory, and at the same time to act as spies on the other workers, especially those who are union members.

In the subcommittee's report on espionage it was found that the injunctions, the evasions, the barrage of hostile propaganda, the outright and brazen flouting of the NLRB's authority and decisions, are symptomatic of the long fight which employers have waged against recognition of labor's democratic rights. It is the willful opposition of American industry against the rights of labor to organize, even though this right has been granted by law.

The Committee sought to expose the skeleton of labor espionage, strikebreaking, and munitioning, and to find out how they operated in a number of typical instances.

In an effort to get information from all angles, the Committee questioned all parties concerned in the practice of labor spying: workers and their organizations, as the victims; employers, as the customers of the detective agencies; and the agencies themselves (also the strikebreaking firms and munि-
tions companies), as sellers of the goods and services under criticism. The detective agencies were taken as the point of departure, examining them in detail with supplementary evidence from the labor unions and employers affected. The technique was to put a group of witnesses, representing all parties, on the stand before the Committee at one time, giving full opportunity to each to present his case and to refute opposing testimony, rather than the usual way of questioning one witness at a time. This resulted in much better correlation of testimony, which varied considerably in reliability and credibility. Certain of the spies and strikebreakers, apparently either friendly or penitent, gave testimony concerning their own activities, their betrayals of confidence and their deeds of violence, which assumes significance because of the fact that it was so clearly against their own interests. The subcommittee has, however, been careful not to accept such testimony at its face value, unless it could be verified from other sources. On the whole, the most important facts have been established through the grudging testimony of reluctant and sometimes hostile witnesses, both among the officials of the detective agencies and among the employers. Their very evasiveness and frequent hostility make their admissions evidence of unquestioned accuracy. 11

Five large private detective agencies were selected by the Committee for particular investigation—Pinkerton's, Railway Audit, Corporations Auxiliary Company, William J. Burns, and National Corporation Service. The records of both the agencies and their clients were subpoenaed for examination, and testimony was taken from the officials of agencies and their clients, from individual spies employed, and from workers spied upon. The agencies were extremely reluctant to give up their documents, and during the hearings were consistently obstructive; this policy made necessary the very detailed examination of certain of their customers, such as General Motors and Chrysler. Besides these, the espionage services of two Metal Trades Associations were examined in some detail, and the other (the Akron Employers' Association), incidentally.\(^\text{12}\)

It is to be emphasized that the Committee found that hiring of industrial spies is a universal practice, deliberately followed by employers of great wealth, power, and public esteem. It can hardly be regarded as one of those accidental excesses of capitalism, of which we hear so much, that must admittedly be abolished to insure a healthy economic system; it is considered policy, followed over a period of at least sixty years, in an effort to prevent the workers from taking for themselves the right always unquestionably

\(^{12}\) Ibid.
accorded the employers, the right to organize. The firms listed by the LaFollette Committee as guilty of industrial espionage reads like a Who's Who of American business; boycotters who avoided them all would find themselves cold, hungry, naked, and on foot.\textsuperscript{13}

Various excuses were given before the committee by employers and detective agencies for the use of spies. Among them were the familiar hunt for radicals, the preventions of theft and sabotage, improving the efficiency of workers and methods, and "human engineering," by which was meant the improvement of relations between workers and employers. After careful questioning of witnesses, it was felt that none of these reasons would hold water even tolerably well. In every case, the matters about which the spies reported were union meetings and other activities of union members; the other reasons assigned were merely a blind.\textsuperscript{14}

The agencies investigated were determined from the beginning of the inquiry to nullify its usefulness, if possible. Documents subpoenaed for the committee's use were destroyed; records were falsified in some cases; witnesses evaded, lied, suffered from recurrent amnesia, and refused point blank to answer. Efforts were made to tamper with some witnesses who might tell damaging stories on the stand. The report already quoted says:

\textsuperscript{13} Ibid. \textsuperscript{14} Ibid.
Labor spying must be furtive if it is to exist at all. It cannot be publicly defended; it cannot be excused. The only recourse of those engaged in it, when called before the Committee, was to hide its existence, confuse its meaning, and besmear its effects.\textsuperscript{15}

There are two kinds of industrial spies, professional ones and honest workers who are "hooked" into it by the detective agency. Let us assume that we are describing the activities of a professional. He is given a job by the company whose workers he is to spy on, and he works, is paid, and in every possible way behaves as do the other men in the plant, to prevent suspicion as to his real occupation. In his leisure time he cultivates friendly relations with his fellow workmen, goes to the movies with them, plays pool with them, gets to know their families. Part of his job is to become a union member, and then if possible be elected to a union office. This latter step is easier than one might suppose, for many of the spies are intelligent men, and it is hard to find men who are willing to accept responsibility in the union, particularly in the earlier stages of organization. The ideal office for a spy is that of recording secretary, for in that capacity he has a list of union members with correct names and addresses, a record of payment or nonpayment of dues, and any other pertinent information. His duties do not stop with passing on that information to his employers; however, he is also required to take active part in the union's affairs,

\textsuperscript{15}Ibid.
hindering its progress in various subtle but effective ways.

Espionage is a widespread practice in industry. A complete census of spies is impossible, for more than 700 agencies furnished no information to the committee, and some of those investigated in detail are known to have given incomplete lists of operatives. There is also no information on the number included in company spy systems. Even so, the committee's census of known working spies, 1933 to 1936, is 3,671.16 During the same period, Pinkerton's had 309 industrial clients; Burns' Agency, 440; Corporation Auxiliary Company, 499; National Corporation Service, 196; Railway Audit and Inspection Company, 185.17 The LaFollette Committee's report gives a list of corporations which, from 1933 to 1936, spent a total of $9,440,132 for espionage, strikebreaking, and munitions together; looking over the list, such items as $275,634 spent by the Chrysler Corporation for espionage especially strikes one's eye.18 The known roster of unions penetrated by spies and the offices achieved by some of them is also incomplete. It is known that 504 Pinkerton spies were members of 93 unions between 1934 and 1937, including practically every important international union, many smaller ones, local unions, company unions, A.F. of L., CIO, independent, craft, and industrial unions. At least 100 of these

16 Ibid., p. 21. 17 Ibid., p. 22.
18 Ibid., pp. 23, 81, 82.
had become officers, ranging in importance from national vice-
 presidents to local chairman, and these figures represent the
 admissions of only one agency. Like situations were found in
 other agencies.19

The ramifications of espionage uncovered by the committee
read something like the Arabian Nights. For example, every
individual plant manager in the General Motors Corporation
hired spies. The personal directors of the Fisher Body and
Chevrolet divisions felt that they could not rely on the re-
ports received from their plant managers, and made their own
arrangements for espionage. Then the labor relations divi-
sion of the whole corporation, responsible to the president,
had a separate spy contract, secret from plant managers and
other divisions. Finally, General Motors engaged Pinkerton
spies to spy on the agents of the Corporations Auxiliary Com-
pany, whom it had itself employed! The reason for this ex-
traordinary procedure was that trade secrets had been leaking
to the company's competitors, and suspicion fell on the pro-
fessional spies brought in to inform the regular employees.
Both General Motors and Chrysler carried the refinements
still further; they hired spies to work in plants other than
their own. These included plants selling them supplies and
equipment, firms who might sometimes in the future sell them
supplies, and firms who sold supplies to competitors.

19 Ibid., p. 40.
These things illustrate the fact that the workers are not the only ones demoralized by these under-cover activities. The employers using them also suffer, whether they realize it or not. Fear, loss of judgment, distrust of practically everyone, undermined morale cannot fail to result in the loss of that efficiency in production and smooth employer-employee relations claimed by the detective agencies as their real purposes. In this respect, the Committee said:

Spies beget spies—lies beget lies—distrust begets distrust—until faith in all is gone. Even faith itself is lost. Industry cannot survive this endless dependence upon unreliable knowledge which begets fear of all things and of all men.20

The LaFollette committee also investigated strikebreaking, the use of munitions by employers, and conditions in Harlan County, Kentucky. In this instance, the Committee found wide-spread existence of the company town, with all its attendant evils of company guards and deputies, company stores, scrip money, company houses, company doctors, and even company jails—all under the control of the coal operators. Coal mining is the principal industry in Harlan County; it gives employment to some 12,000 coal miners. Of the 60,000 people in the county, 45,000 live in company towns.21

Absentee interests control the major part of the coal industry in Harlan County. In 1935 more than 75 per cent of the coal produced in this county was produced under absentee

20 Ibid., p. 48. 21 Ibid., Part 9, pp. 3229–3433.
control. The working conditions, wages, hours of employment, and opportunity to make a livelihood are based on policies formulated by these distant owners.

The coal operators in Harlan County formulated a common labor policy through their association. In 1936, twenty-six of the forty-four coal companies operating in this district were members of the association. The revenue of the association is obtained through a tax which is levied upon every ton of coal produced by each member. The LaFollette Committee found that the dominant influence in the Harlan County Coal Operators’ Association were the companies operated by absentee interests. In 1935, seventeen of the twenty-six active members of the association were under absentee control.22

The report stated that Harlan County has been traditionally a nonunion field. Labor unions have been able to gain strength in this county only when the right to organize has been protected by agencies of the federal government.

In 1937 the subcommittee found that this implacable hostility to the right of labor to organize and bargain collectively still persisted in Harlan County. On this point the report said:

The attitude of the coal operators toward organization of the miners in Harlan County in the spring of 1937 was one of unqualified opposition. This stands out in the testimony of Paul Basphem, vice-president and general manager of the Harlan Wallins Coal Corporation, which operates four mines in Harlan County.

22 Ibid.
producing over a million tons of coal a year, and employing over 1,200 men. On May 4, 1937, Mr. Bassham testified before this committee:

Senator LaFollette: "Was it not a fact that it was the policy of your company to discharge men who you knew became members of the union?"

Mr. Bassham: "Yes; it has been in the past."

Senator LaFollette: "How far past?"

Mr. Bassham: "Up to possibly three or four weeks ago. Every miner employed by the Harlan Wallins Coal Corporation was forced to sign a yellow dog contract, binding him not to join any mine labor organization."

The report described similar conditions in the company town of Louellen, operated by the Cornett-Lewis Coal Company, where the road leading into the town was barred by a gate which was locked and the key kept in the company's office.

The miners were denied the right to have check-weighmen. They were made to work as much as twelve hours a day. They were paid in scrip which could not be spent anywhere except in company-owned stores. The prices in these stores were exorbitant. In some cases it was found that a profit of 170 per cent on sales resulted.

The report describes how on January 25, 1937, two cars belonging to union organizers, parked outside their hotel in Harlan town, were dynamited and destroyed. Tear-gas bombs were discharged in the hotel, endangering the lives of all guests. A few days later, an attempt was made to shoot down a minister of the gospel, who was also a union sympathizer.

From the viewpoint of labor's weapons against unfair practices of the employer, the sit-down strike has met with

23 Ibid. 24 Ibid.
denunciation on almost every hand, including Congressional blasts and the ire of the conservative columnists. There is no question at all that at present the sit-down strike is illegal, a form of trespass on property rights recognized by law.

In cases coming before the courts, judges have upheld the contention of employers and have in certain instances granted orders restraining union activity and demanding eviction of the strikers. Those orders have demanded that the strikers cease and desist from further occupation of company property, from picketing near the premises and from intervening with non-striking employees. The courts decisions in the General Motors, Chrysler, Pansteel, Douglas Aircraft, and Apex Hosiery cases have contended that the occupancy of the employer's premises against his will was clearly illegal.25

In the Pansteel case, the United States Supreme Court reversed an NLRB order to rehire the strikers. This action ruled the sit-down strike illegal. In delivering the opinion of the Court, Chief Justice Hughes said:

The employees had the right to strike, but they had no license to commit acts of violence or to seize their employer's plant. To justify such conduct because of an unfair labor practice would be to put a premium on resort to force instead of legal remedies and to subvert the principles of law and order which lie at the foundations of society. As the Company's

25 Daugherty, op. cit., p. 912.
unfair labor practice afforded no excuse for seizure and holding of its buildings, it had normal redress to discharge the wrongdoers.26

Those who support the sit-down strike, however, say that by the use of this method the strikers are protecting a different sort of property will be modified to conform with that notion. If so, the trespass will become secondary instead of a primary matter. The unions which have used the sit-down maintain that it has been only against employers who have violated the Wagner Act, and that such employers, therefore, do not come into court "with clean hands" in applying for an injunction to eject the strikers.27

The effectiveness of the sit-down strike is quite another matter; part of the outcry against it was caused by its obvious usefulness. It puts the responsibility for violence squarely on the employers or police or both; this in the long run tends to alienate public opinion. Besides that, the employer is more hesitant to use violence when the men are inside, since it cannot but result in damage to machinery which he is anxious to put into operation as soon as possible.

Other relatively recent tactics of workers which may be mentioned briefly are mass picketing, and the "slow-down" strike. The first is self-explanatory, and is used to prevent the kind of violence frequently offered a small number

of pickets. The slow-down strike has been used in automobile plants in protest against excessive speed of assembly line; by prearrangement, in one instance, the men left every seventh hood untouched. The confusion which resulted at the end of the line forced the superintendent to reduce the speed of the belt to its former rate.

The NLRB has attempted to carry out the law to check such practices as cited in this chapter. Any action taken by the Board, however, is of little significance unless it is upheld by the courts. The constitutionality of the National Labor Relations Act as interpreted by the United States Supreme Court is discussed in the next chapter.
CHAPTER V

UNITED STATES SUPREME COURT UPHOLDS THE NLRB

For a year and a half certain employers and anti-new dealers had the satisfaction of hampering seriously the word of the NLRB. But on April 12, 1937, the Supreme Court issued decisions in three cases involving the Wagner Act, the first test cases to reach the highest tribunal under this controversial statute.

The first decision rendered by the Court was in the case of the NLRB v. Jones & Laughlin Steel Corporation. Mr. Chief Justice Hughes delivered the opinion of the Court.

The NLRB found that the Jones & Laughlin Company had violated the Wagner Act by engaging in unfair labor practices affecting commerce. The proceeding was instituted by the workers union, an affiliate of the CIO. The unfair practices charged were that the Corporation was discriminating against members of the union with regard to hire and tenure of employment, and was coercing and intimidating its employees in order to interfere with their self-organization. The discriminating coercive action alleged was the discharge of certain employees.

The Board ordered the Corporation to cease and desist from such discrimination and coercion, to offer reinstatement to ten of the employees named, to make good their losses in
pay, and to post for thirty days notices that the Corporation would not discharge or discriminate against members, or those desiring to become members, of the labor union. The Corporation failed to comply and the Board petitioned the Circuit Court of Appeals to enforce the order. The court denied the petition, holding that the order lay beyond the range of federal power.

The case was appealed to the Supreme Court and in contesting the ruling of the Board, the corporation argued that the Wagner Act is in reality a regulation of labor relations and not of interstate commerce; that the Act can have no application to the respondent’s relations with its production employees because they are not subject to regulation by the federal government; and that the provisions of the Act violate Section 2 of Article III and the Fifth and Seventh Amendments of the Constitution of the United States.

As to the nature and scope of the business of the Jones & Laughlin Steel Corporation, the Board found that the Corporation is organized under the laws of Pennsylvania and has its principal office in Pittsburgh. It is engaged in the business of manufacturing iron and steel in plants situated in Pittsburgh and Aliquippa, Pennsylvania. It manufactures and distributes a widely diversified line of steel and pig iron, being the fourth largest producer of steel in the United States. It is a completely integrated enterprise, owning and operating ore, coal and limestone properties, lake and river
transportation facilities, and terminal railroads located at its manufacturing plants. It operates four ore steamships on the Great Lakes, used in the transportation of ore to its factories. It owns mines in Michigan, Minnesota, and West Virginia. Much of its product is shipped to its warehouses in Chicago, Detroit, Cincinnati, and Memphis. In Long Island City, New York, and in New Orleans, Louisiana, it operates structural steel fabricating shops in connection with the warehousing of semi-finished material sent from its works. It has sales offices in twenty cities in the United States and a wholly-owned subsidiary which is devoted exclusively to distributing its product in Canada. Approximately 75 per cent of its product is shipped out of Pennsylvania.

In delivering the opinion of the Court, Chief Justice Hughes said, "We think it clear that the National Labor Relations Act may be construed so as to operate within the sphere of constitutional authority."\(^1\)

The jurisdiction conferred upon the Board, and invoked in this instance, is found in Section 10 (a) of the Wagner Act, which provides that "the Board is empowered to prevent any person from engaging in any unfair labor practice affecting commerce."

The critical words of this provision, prescribing the limits of the Board's authority in dealing with the labor

\(^1\) NLRB v. Jones & Laughlin Steel Corporation, 301 U. S. 1.
practices, are "affecting commerce." The Act specifically defines the "commerce" as "trade, traffic, commerce, transportation, or communication among the several states, or between the District of Columbia or any territory of the United States and any state or other Territory."\textsuperscript{2}

In this regard, Chief Justice Hughes relates in his opinion in the case of NLRA v. Jones & Laughlin, "There can be no question that commerce thus contemplated by the Act is interstate and foreign commerce in the Constitutional sense."

The Act also defines the term "affecting commerce" as in "commerce, or burdening or obstructing commerce or the flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce."\textsuperscript{3} This definition is one of exclusion as well as inclusion.

The question of unfair labor practices found by the Board in this case are those defined in Section 8, subdivisions one and three of the Wagner Act which provide:

It shall be an unfair labor practice for an employer to interfere with, restrain or coerce employees in the exercise of the rights guaranteed in Section 7.

By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization.

Thus the Court says:

\textsuperscript{2}National Labor Relations Act, Article 6, Section 2.

\textsuperscript{3}Ibid., Article 7, Section 2.
In its present application the statute goes no further than to safeguard the right of employees to self-organization and to select representatives of their own choosing for collective bargaining or other mutual protection without restraint or coercion by the employer. That is a fundamental right. Employees have as clear a right to organize and select their representatives for lawful purposes as the respondent has to organize its business and select its own officers and agents. Discrimination and coercion to prevent the free exercise of the right of employees to self-organization and representation is a proper subject for condemnation by competent legislative authority.4

The principal question to be determined by the Supreme Court was whether the defendant was engaged in interstate commerce. It was pointed out by the Court that the congressional authority to protect interstate commerce from burdens and obstructions is not limited to transactions which can be deemed to be an essential part of a "flow" of interstate or foreign commerce. The fundamental principle is that the power to regulate commerce is the power to enact "all appropriate legislation" for "its protection and advancement," to adopt measures "to promote its growth and insure its safety, to foster, protect, control and restrain." That power is plenary and may be exerted to protect interstate commerce "no matter what the source of the dangers which threaten." As the Court said in Chicago Board of Trade v. Olsen,

Whatever amounts to more or less constant practice, and threatens to obstruct or unduly to burden the freedom of interstate commerce is within the regulatory power of Congress under the commerce clause and

4HLR v. Jones & Laughlin Steel Corporation, 301 U. S. 1.
is primarily for Congress to consider and decide the fact of the danger and meet it.⁵

The Court also pointed out:

If Congress deems certain recurring practices, though not really a part of interstate commerce, likely to obstruct, restrain or burden commerce, it has the power to subject them to national supervision and restraint.⁶

In another instance the Court ruled that while the mere reduction in the supply of an article to be shipped or tortuous prevention of its manufacture or production is ordinarily an indirect and remote obstruction to that commerce, nevertheless, when the "intent of those unlawfully preventing the manufacture or production is shown to be to restrain or control the supply entering and moving in interstate markets their action is a direct violation of the antitrust Act."⁷

Giving full weight to the Jones & Laughlin Company's contention with respect to a break in the complete continuity of the "stream of commerce" by reason of its manufacturing operations, the fact remains that the stoppage of those operations by industrial strife would have a most serious effect upon interstate commerce. The Court further states:

It is obvious that it would be immediate and might be catastrophic. We are asked to shut our eyes to the plainest facts of our National life and to deal with the question of direct and indirect effects in an intellectual vacuum.⁸

In conclusion Chief Justice Hughes said:

It is not necessary again to detail the facts as to the respondent's enterprise. Instead of being beyond the pale, we think that it presents in a most striking way the close and intimate relation which a manufacturing industry may have to interstate commerce and we have no doubt that Congress had constitutional authority to safeguard the right of respondent's employees to self-organization and collective bargaining. The judgment of the Circuit Court of Appeals is reversed and the cause is remanded for further proceedings in conformity with this opinion.9

In the case of NLRB v. Pruchauff Trailer Company, the United States Supreme Court rendered its decision with Mr. Chief Justice Hughes delivering the opinion of the Court.

In October, 1935, charges against the Pruchauff Trailer Company were filed with the NLRB. The Board issued complaints in two cases alleging that the company was engaged in unfair labor practices as described in Section 8, divisions one and three of the Wagner Act. The practices were said to consist in the discharge of, and threats to discharge, employees because of their affiliation with, and activity in, the labor organization known as the United Automobile Workers Federal Union.

The company filed motion to dismiss the complaints of the Board upon the ground that the Board was without jurisdiction and that the Act as applied to the respondent violated Article I, Section 1, and the First, Fifth, Seventh, and Tenth Amendments of the Constitution of the United States. Hearing

9Ibid.
upon the merits proceeded, and in December, 1935, the Board made its findings and entered its order.

The order required the respondent to cease and desist from discharging, or threatening to discharge, any of its employees because of their joining the Union; from employing detectives for the purpose of espionage; and from interfering in any other manner with or coercing its employees for the purpose of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the National Labor Relations Act. The Company was directed to offer reinstatement to the employees who had been discharged, to make good their losses in pay, and to post for thirty days notice that it had complied with the order in ceasing the interferences set forth.

The Circuit Court of Appeals dismissed the petition of the Board to enforce its order and set the order aside.

The case was appealed to the Supreme Court and in rendering its decision, Chief Justice Hughes said:

We have examined the respondent's contentions and we are of the opinion that the findings of the Board, with respect to the nature of the respondent's business and the circumstances of the discharges complained of, are supported by the evidence. 10

It was further stated:

The questions relating to the construction and validity of the Act have been fully discussed in our

opinion in the case of the NLRB v. Jones and Laughlin Corporation, decided this day. We hold that the principles there stated are applicable here. The decree of the Circuit Court of Appeals is reversed and the cause is remanded for further proceedings in conformity with this opinion.\(^{11}\)

On the same day, April 12, 1937, the Supreme Court rendered its opinion in favor of the Wagner Act in the case of the NLRB v. Friedman-Harry Marks Clothing Company, Inc. The conclusions of the Court were the same as those stated in the foregoing cases.\(^{12}\)

Dissenting opinion on the above cases was delivered by Mr. Justice McReynolds, in which he states:

Mr. Justice Van Devanter, Mr. Justice Sutherland, Mr. Justice Butler, and I are unable to agree with the decisions just announced.

We conclude that these causes were rightly decided by the Circuit Courts of Appeals and that their judgments should be affirmed. The opinions there given without dissent are terse, well considered, and sound. They disclose the meaning ascribed by experienced judges to what this Court has often declared and set out.

The Court, we think, departs from well-established principles followed in the Schechter v. United States, 295 U. S. 495 (May, 1935) and Carter v. Carter Coal Company, 298 U. S. 238 (May, 1936).\(^{13}\)

Mr. Justice McReynolds further states:

The Act is now applied to all manufacturing concerns upon common grounds which may gravely affect a multitude of employers who engage in a great variety of private enterprises. It puts into the hands of a Board power to control over purely local industry beyond anything heretofore deemed permissible.\(^{14}\)

The United States Supreme Court on February 28, 1938, decided two cases, NLRB v. Pennsylvania Greyhound Lines, Inc.,

\(^{11}\text{Ibid.}\)
\(^{12}\text{Ibid., pp. 35-38.}\)
\(^{13}\text{Ibid., pp. 40-53.}\)
\(^{14}\text{Ibid.}\)
and NLRB v. Pacific Greyhound Lines, Inc., concerning interferences with the formation and administration of a company union. Mr. Justice Stone delivered the unanimous opinion in these two cases upholding an order of the NLRB to compel the withdrawal of recognition from labor organizations as previously found by the Board to be dominated by the Company.

The principal question for determination by the Supreme Court was whether the NLRB could require the employer to withdraw all recognition of the organization as employee representatives. It was pointed out by the Court that both Companies operated motor bus service between the Atlantic Seaboard, Chicago, and St. Louis and that they were both employers of employees. The employees' association had filed charges with the NLRB alleging that the Companies had engaged in unfair labor practices in violation of the Act. After proper procedure, the Board ordered that such practices cease and that the companies withdraw recognition with the employees' association. Formal publication of withdrawal notice was made and the Board's decision ordered to be enforced. The lower court was of the opinion that the Board was powerless to order the employers to withhold recognition from the association without notice to it and without an election by employees for the purpose of choosing a labor organization to represent them.

Mr. Justice Stone, in rendering his opinion, pointed out that the Companies did not assail the findings of fact by the Board, but the questions are ones of law, as to whether
under the circumstances the Board acted within its authority. It was shown by Mr. Justice Stone that the law's primary purpose was to protect interstate commerce by securing to employees the right to organize and bargain collectively through representatives of their own choosing.

The Court considered it unnecessary to repeat in full detail the facts disclosed by its findings; it nevertheless briefly alluded to some and said that Section 10 (e), 29 U.S.C.A., section 160 (e), declares that the National Labor Board's findings of fact, "if supported by evidence, shall be conclusive." Whether the continued recognition of the employees' association by respondents would in itself be a continuing obstacle to the exercise of the employee's right of self-organization and to bargain collectively through representatives of their own choosing is an inference of fact to be drawn by the Board from the evidence reviewed in its subsidiary findings.15

The Court showed that even before the adoption of the Wagner Act, the Companies had tried to prevent the work of organizations among the employees. It was further shown that "the attempt was met by persuasions and warnings of respondent's employees, by its officers, not to join the new union, and by threats of discharge if they should join."16

The Court quoted the Board as pointing out that an order to cease an unfair labor practice "would not set free the employee's impulse to seek the organization which would most effectively represent him" and that continued recognition of the association would provide the Company "with a device by which its power may now be made effective without further action on its part." Even though he would not have freely chosen "the association" as an initial proposition, the employee, once having chosen, may by force of habit be held to his choice. "The employee must be released from these compulsions." The Court also said, "An inference of fact which the Board could draw if there was any evidence to support it would be a continuing obstacle to exercise the right of self-organization."17

Neither Mr. Justice Cardozo nor Mr. Justice Reed took part in the consideration or decision of the case.

On March 28, 1938, the Supreme Court of the United States held that the NLRB had jurisdiction in a case involving unfair labor relations at the Oakland, California, plant of a fruit-packing corporation, although the Company's interstate business amounted to only 37 per cent of its production. (Santa Cruz Fruit Packing Company v. NLRB, 58 Supreme Court 656).

The NLRB on April 2, 1936, found that the Santa Cruz Fruit Packing Company had been engaging in unfair labor practices. The Board ordered the Company to stop such practices

17Ibid.
and to reinstate with back pay certain employees who had been discharged. The order was affirmed by the Circuit Court of Appeals.

The NLRB found that the Company employed from 1,200 to 1,500 persons during peak seasons, and that approximately 37 per cent of their finished product was shipped in inter-state or foreign commerce. The methods of transportation used included water, rail, and truck. All goods were handled by the employees.

A labor organization affiliated with the American Federation of Labor attempted to organize the workmen in this plant in 1935 but failed because of company interference, and a strike resulted.

The NLRB held that a company's interference with employees in forming labor organizations resulted in strikes and general industrial unrest and had had the effect of impeding the movement of the Company's products. The Board also held that the discharge of employees and refusal to reinstate them was an unlawful discrimination under the National Labor Relations Act and that this company had caused labor disputes that burdened and obstructed commerce. The Company contended that the manufacturing and processing of fruits was a local activity and that the Board was without jurisdiction.

In considering the case, the Supreme Court stated, "The company undoubtedly was directly and largely engaged in inter-state and foreign commerce." Mr. Chief Justice Hughes, who
delivered the opinion of the Court, called attention to the fact that the power of Congress extends not only to the making of rules governing the sale of products in interstate commerce but also to the protection of same from burdens, obstructions, and interruptions, whatever may be their source. He said that "the close and intimate efforts which bring the subject within reach of Federal power may be due to activities in relation to productive industry, although that industry when separately viewed is local." It was upon this well-established principle, according to the Chief Justice, that the Constitutional validity of the National Labor Relations Act was sustained.18

The contention of the Fruit-Packing Company was that the principle did not apply, in that they received all their fruits in California and that the corporation was in that state. In answer to this contention the Court pointed out that it was not a case where raw materials of production were brought into the state of manufacture and the manufactured product was handled by the manufacturer in other states. In view of the interstate commerce actually carried on by the petitioner, the conclusion sought to be drawn from this decision was without merit. The existence of a continuous flow of interstate commerce through the state may indeed readily show the intimate relations of particular transactions to that

18 Ibid., p. 1195.
commerce. 19

It was the opinion of the Court that such injurious actions burdening and obstructing interstate trade in manufactured articles might spring from labor disputes irrespective of the origin of the materials used in the manufacturing process.

In answering the question of the extent of Federal power over such activities as outlined in this case, Mr. Chief Justice Hughes said, "It must appear that there is a close and substantial relationship to interstate commerce in order to justify the Federal intervention for its protection." The question that must be faced under the act is whether the unfair labor practices involved have such a close and substantial relation to the freedom of interstate commerce from injurious restraint that these practices may constitutionally be made the subject of Federal cognizance through provisions looking to the peaceable adjustments of labor disputes.

The Court, therefore, concluded that the direct relation of the labor practices and the resulting dispute in this case to interstate commerce, and the injurious effect upon that commerce were fully established.

The only case to date in which the Board's orders have been reversed by the United States Supreme Court is in the Consolidated Edison Company v. NLRB.

The facts in this case arose over a struggle between labor organizations. The United Electrical Radio and Machine Workers, a CIO affiliate, filed charges with the Labor Board that the Company was discouraging membership in the CIO, was favoring the A.F. of L., and had discharged six men for their activity in the CIO union.

It developed at a hearing before the Board that when the Wagner Act was declared Constitutional, the Company found it necessary either to dispense with its Employee Representation Plan or make it legal. Thus, the Company informed its employees of the necessity for a change in labor policies and suggested its preference for A.F. of L. affiliation. Therefore, the A.F. of L. immediately took over the offices of the Employee Representative Plan and the CIO members made complaint to the Board.

Upon investigation, the Board found that the contract between the A.F. of L. and the Company was "the fruit of the unfair practices" and "a device to consummate and perpetuate the Company's illegal conduct." The Board, therefore, ordered the Company to cease and desist from discouraging membership in the CIO union, to reinstate the six men it had discharged because of union activity, and to cease giving effect to the contract.

The Company refused to comply with the Board's request and the Circuit Court of Appeals upheld the Board's order in full, but the Company appealed the case to the Supreme Court.
It was found that the Company is a public utility and sells practically all of its electrical powers within the state of New York, but among its customers are railroads, trans-Atlantic piers, and telephone and telegraph companies engaged in interstate commerce.

The Company argued that the Board had conducted its hearings in an unfair way, because it had refused to permit certain evidence to be introduced, there was no Trial Examiner's intermediate report, and no oral argument before the Board.

The Supreme Court, however, upheld the Board and ruled that if the Company wanted to introduce additional evidence it could have asked for the right. The Court also pointed out that an intermediate report need not be prepared and that oral hearings were not necessary unless the Company asked for them. This ruling sets finally at rest the procedure of the Board with respect to intermediate reports and oral arguments.

The Court upheld the Board's order directing the Company to cease its general interference with the rights of its employees under Section 7 of the Act, and to reinstate the six workers who had been discharged for their CIO activity. The Court said that so long as there was substantial evidence to support the Board's findings, no court could upset them.

The Act states that the findings of the Board as to facts shall be conclusive if supported by evidence. The Supreme Court has introduced the qualification that the evidence must be substantial. The result is that the Court has granted the
Board a considerable margin in which its findings cannot be upset, while reserving to itself an undefined control over the findings of the Board in any particular case.

The Court reversed the Board's order directing the company to cease giving effect to its contracts with the A.F. of L. union.

The Court held that if the Board intended to find that the contracts were "the fruit of the unfair labor practices" of the employers and "a device to consummate and perpetuate the company's illegal practices" in violating the National Labor Relations Act, then the Board should have specified such charges in its complaint. The Court ruled that the Labor Board failed to follow the proper procedure which would authorize it to set aside the contracts.

That this is the point of the decision is demonstrated by the dissenting opinion of Justices Reed and Black. These two Justices claimed that the Board's order with respect to the contract should have been upheld. They stated that the contracts were clearly in issue, and that there was more than sufficient evidence to show the contract was only the final and culminating incident in a whole series of unfair labor practices committed by the company.

In all analyses, it was found that the NLRB renders decisions on cases only after the facts have been laid before it, and after study. No snap judgments of academic reasoning will be applied to disputes not studied.
Employers can come in and ask help if they wish, but they are not likely to get action unless the employees also are asking certification. The Act plainly states that the rights of employees to organize and to bargain collectively will be protected. With these principles established by the Supreme Court, the NLRB can feel assured that it has aided labor materially in its achievements, a summary of which follows in the succeeding chapter.
CHAPTER VI

ACHIEVEMENTS OF THE NLRB

Unions were reluctant to petition the NLRB until after the Supreme Court had declared the Wagner Act constitutional, and many of the cases that did come before the Board met with maddening delays in the courts. Even so, the accomplishments during the first thirty-three months of operation are impressive. By July 1, 1938, a total of 15,561 cases had been handled by the Board since its organization in the fall of 1935. This figure includes action on charges of unfair labor practices and petitions for elections received by the Board and its 22 Regional offices. The 15,561 cases involved 3,776,959 workers. Of the number of cases handled, 11,765, or over 75 per cent, were closed by agreement of both parties, involving 1,297,091 workers. Sixteen per cent, involving 247,146 workers, were dismissed by the Board and Regional workers. Twenty-five per cent, involving 635,176 workers, were withdrawn.¹

Five per cent of the cases, involving 197,169 workers, were closed in some other way, including compliance with the Board's decisions and Trial Examiners' Intermediate Reports; certifications after elections; refusal by Board to certify; Intermediate Reports finding no violations; transfer to other

agencies, such as the Conciliation Service of the Department of Labor; and by the issuance of cease and desist orders.

Of the total cases closed, 1,724 were strike cases, involving 294,191 workers; and of these, 1,293 cases were settled, and 192,088 workers were reinstated after strikes and lock-outs. The Board's action averted 593 threatened strikes, involving 156,047 workers. There were 1,365 elections held in which 468,671 valid votes were cast.

The NLRB's analysis of the causes of complaints shows that 4,371 of the total number of cases which came before the Board and its Regional Offices in the first 33 months of operation concerned Section 8, article 3 of the Act, which makes it an unfair labor practice to discriminate against workers because of their union affiliation or activities. In 3,488 cases the main cause of complaint was based on Section 8, article 3 of the Act. The Board had received up to July 1, 1938, a total of 4,972 petitions asking either certification of representatives or the holding of elections under Board supervision to determine the bargaining agencies of the employees. A total of 1,700,153 employees joined in these petitions.2

In 14.5 per cent of the elections, all types of labor organizations appearing on the ballot were defeated. In 74.8 per cent employees chose established trade unions of national or international affiliation. Company unions or unions re-

2Ibid., p. 2.
stricted to a certain locality won 10.7 per cent of the elections. The term "company union" is here used to refer to organizations of workers confined to a particular company or plant; that is, organizations which have no outside affiliation.³

The 74.8 per cent of the total elections that were won by established trade unions were divided as follows: unions affiliated with the A.F. of L. won 26.3 per cent; affiliates of the CIO, 47.1 per cent. Workers in 1.4 per cent of the elections chose to be represented by such standard independent of non-affiliated unions as the Sailors Union of the Pacific.⁴

In terms of total number of valid votes cast in elections held by the Board during its first twenty-seven months functioning; 81.1 per cent of the votes were for some trade or independent union, 13.6 per cent for company unions or local independents, and 5.3 per cent for no organization. This represents a substantial increase in workers' votes for trade unions over previous experience.⁵

Although trade unions fared much better in elections held throughout the twenty-seven months¹ period (October, 1935–December, 1937) than previously, they were less successful in 1937 than in 1936. Elections won by trade unions de-

⁴Ibid.
⁵Ibid.
olined from 73.5 per cent in 1936 to 74.7 per cent in 1937, while the elections won by company unions or local independents increased from 5.8 per cent to 10.9 per cent. The number of elections in which all types of labor organizations appearing on the ballot were defeated remained nearly stable: 15.7 per cent in 1936 and 14.5 per cent in 1937. Such elections represent a much smaller proportion of the workers involved. The 14.5 per cent of all elections in which no labor organization won involved only 5.3 per cent of the total valid votes cast.

The contrast between employee participation in the elections held in 1936 and 1937 is very marked. In 1936 valid votes were cast by 64.1 per cent of the eligible employees, while in 1937 valid votes were cast by 95.6 per cent of the employees. This increase reflects employees' growing interest in collective bargaining procedures.\(^6\)

The margin between total votes cast and valid votes cast in no year exceeded 3 per cent. This indicates the small proportion of total votes cast which were disqualified as challenged, blank, or void.

The role of different types of labor organizations in elections is indicated from an analysis of the proportion of votes cast for the various types of organizations according to the composition of the ballots.

\(^6\)Ibid.
On the average, elections were won with a 68.3 per cent majority of the total number of employees casting valid votes. Since these employees represented 93.1 per cent of those eligible to vote, it appears that collective bargaining representatives chosen by NLRB elections are backed as a rule by a substantial majority of the employees in any given plant.

The majorities were largest, on the average, where unions affiliated with the A.F. of L. won the elections. In the 254 elections won by the A.F. of L. affiliates, 78 per cent of the valid votes were cast for the successful union. Company unions or local independents won their 103 victories by the smallest majorities—an average of 61.5 per cent of the valid votes cast. Unions affiliated with the CIO won 455 elections by an average majority of 66.7 per cent. Standard independents won fourteen elections with 66.3 per cent of the valid votes cast.\(^7\)

Further analysis of the valid votes cast and compositions of ballots shows the relative size of majorities in various situations. The largest majorities, 86.1 per cent of the average were polled by the A.F. of L. unions in the forty-three elections in which they defeated company unions or local independents (except in four cases in which A.F. of L. unions, appearing on the ballot with standard independents, won by an average majority of 89.3 per cent). The A.F. of L. unions won by the smallest average majority (60.6 per cent) in the

\(^7\text{Ibid.}, p. 2.\)
forty-eight elections in which they were opposed by the CIO unions.

The opposite tendencies were shown by unions affiliated with the CIO. They won their largest average majority (82.7 per cent) in the 160 elections in which they defeated A.F. of L. unions, and their smallest (except for two three-way struggles) in the sixty-four elections in which they defeated company unions or local independents.

Company unions or local independent unions, with the lowest average majorities of any type of labor organization, won by markedly larger majorities, on the average 71.5 per cent, in the fifteen elections in which such a union was the sole organization appearing on the ballot.\(^8\)

Although unions affiliated with the A.F. of L. gained their total victories by the largest average majorities, the percentage of elections won relative to those participated in was greatest for the affiliates of the CIO. These unions won 81.7 per cent of the 557 elections in which they appeared on the ballot; the A.F. of L. won 58.1 per cent of its 453 elections; and the standard independents, 56 per cent of twenty-five elections. The lowest percentage of successes was polled by company unions or local independents, which won 48.6 per cent of the 212 elections in which they appeared on the ballot.\(^9\)

The percentages of the total votes cast in elections in which affiliates of both the CIO and the A.F. of L. appeared

\(^8\)Ibid. \(^9\)Ibid.
on the ballot were approximately the same as the percentage of elections won. The A.F. of L. unions won 56.1 per cent of their elections, with 58.6 per cent of the valid votes cast. Elections won by CIO unions were 81.7 per cent of their appearances, with 83.6 per cent of the valid votes cast in these elections. Company unions or local independents, on the other hand, won 48.6 per cent of their elections but polled only 38 per cent of the total votes cast. Standard independent unions won 56 per cent of their elections with only 31.1 per cent of the total votes cast in those elections. The latter percentages, however, are of limited significance, since they are based on such a small number of elections.\(^{10}\)

Affiliates of the CIO were most often involved in elections conducted by the Board. They appeared on the ballot in 557 cases, or 67.4 per cent of the elections won by some form of labor organization. The A.F. of L. appeared in 458 elections won, or 54.8 per cent, and company unions or local independents in 212 elections, or 25.7 per cent. The role played by standard independents was a minor one, as they appeared in only twenty-five elections, or 3 per cent of the total.\(^{11}\)

Affiliates of the CIO and company unions or local independents tended to appear in larger establishments than did the A.F. of L. or standard independents. Division of the number of elections in which each type appeared on the ballot by the total valid votes cast in elections involving company unions or local independents was 696 and the CIO 527. In com-

\(^{10}\text{bid.}^{11}\text{bid.}\)
trast, in the large majority of cases won by company unions or local independents, the employees not only decided whether they wished to be represented by any labor organizations, but also chose between two types of organizations, namely, company unions or trade unions. However, company unions won their largest majorities in the elections in which no trade union appeared on the ballot.

The elections in which two or more labor organizations appeared on the ballot fell into two major categories. The first group, in which rivalry between unions affiliated with the A.F. of L. and affiliates of the CIO were involved, comprised 208 elections, or 25.3 per cent of the total won by some form of labor organization. Of these elections forty-eight, or 23.1 per cent, were won by A.F. of L. and 160, or 76.9 per cent, were won by the CIO unions. In the second category, elections in which trade unions opposed company unions or local independents numbered 194, or 23.5 per cent of the total elections by some form of labor organization.12

Analysis of the elections by industries reveals that almost one-quarter of the elections were held in two industries—shoes and shipping. The large number of elections in the shoe industry was largely due to the settlement of a threatened strike involving some 60 shoe plants in New York in July, 1937, and other disputes in the same industry in New England also

12 Ibid., p. 5.
settled through Board elections.

**TABLE 1**

Number of NLRB Elections Held in Various Industries

<table>
<thead>
<tr>
<th>Industry</th>
<th>Number of Elections</th>
</tr>
</thead>
<tbody>
<tr>
<td>Shoe</td>
<td>107</td>
</tr>
<tr>
<td>Shipping</td>
<td>93</td>
</tr>
<tr>
<td>Textiles</td>
<td>95</td>
</tr>
<tr>
<td>Iron and Steel</td>
<td>85</td>
</tr>
<tr>
<td>Food</td>
<td>73</td>
</tr>
<tr>
<td>Forest Products</td>
<td>62</td>
</tr>
<tr>
<td>Machinery</td>
<td>56</td>
</tr>
<tr>
<td>Electrical</td>
<td>49</td>
</tr>
<tr>
<td>Publishing</td>
<td>34</td>
</tr>
<tr>
<td>Transport</td>
<td>32</td>
</tr>
<tr>
<td>Autos, wagons, trailers, etc.</td>
<td>28</td>
</tr>
<tr>
<td>Paper</td>
<td>27</td>
</tr>
<tr>
<td>Nonferrous metals</td>
<td>27</td>
</tr>
<tr>
<td>Clothing</td>
<td>26</td>
</tr>
<tr>
<td>Oil, gas, coke, and coal</td>
<td>19</td>
</tr>
<tr>
<td>Rubber</td>
<td>19</td>
</tr>
<tr>
<td>Stone, glass, clay, and brick</td>
<td>15</td>
</tr>
<tr>
<td>Cleaning, dyeing, and laundry</td>
<td>13</td>
</tr>
<tr>
<td>Chemicals</td>
<td>13</td>
</tr>
<tr>
<td>Hotels and restaurants</td>
<td>11</td>
</tr>
<tr>
<td>Miscellaneous</td>
<td>80</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>986</strong></td>
</tr>
</tbody>
</table>

Immediately after the National Labor Relations Act was held constitutional there was a flood of consent elections, and a continued infrequency of ordered elections. The period from April, 1937, to present was one of expanding trade-union organization, and consent elections furnished a convenient means of settling questions of representation promptly. Controversy concerning company recognition of a union was thus concluded by informal settlement, which was in general facilitated by the new prestige of the Board.

*Mary Barlett and Emily Marks, NLRB Staff, "Summary of all NLRB Elections from October, 1935," NLRB Bulletin, July 21 (1938), p. 3.*
The proportion of ordered election increased gradually after June, 1937, until in the last three months of 1937 there were about half as many ordered as consent elections. Two factors led to this increase. In the first place, cases before the Board which had been held up by injunctions were reopened after the act was found constitutional, and after hearings, the Board began to order elections. Secondly, cases in which GIO-A.F. of L. rivalry was a factor often had to be settled by ordered elections, when the parties could not agree upon the terms.

The freedom of employees to self-organization is a freedom recognized by law. It had to be fought for, and not until the United States Supreme Court spoke in April, 1937, did some concede to the principle, and even now some employers seek to evade it.

The Court said:

Employees have as clear a right to organize and select their representatives for lawful purposes as the respondent has to organize its business and select its own officers and agents. Discrimination and coercion to prevent the free exercise of the right of employees to self-organization and representation is the proper subject for condemnation by competent legislative authority.14

The Court said further, "Union is essential to give laborers opportunity to deal on an equality with their employers."15

14 Dr. E. A. Elliott, Director of Regional Office, NLRB, Fort Worth, Texas, Letter, August (1938).

15 Ibid.
The right of workers to organize for collective bargain-
ing or other purposes is clearly set forth in Section 7 of
the National Labor Relations Act as follows:

Employees shall have the right to self-organiza-
tion, to form, join or assist labor organizations, to
bargain collectively through representatives of their
own choosing, and to engage in concerted activities,
for the purpose of collective bargaining or other mu-
tual aid or protection.

The Act further holds that interference by the employer
with the exercise of this right on the part of the worker or
workers is an unfair practice. To protect workers in the ex-
ercise of this right is the function of the Board. Collec-
tive bargaining is essential to the well-being of employees.
It is essential to the self-respect of our industrial system.
But collective bargaining cannot exist in the face of em-
ployer coercion on the individual employees in their choice
of bargaining agents; it cannot exist if those practices for-
bidden by the Act are used by the employer.

It is the duty of the Board to administer the Act and
enforce the statute without fear or favoritism. It is the
duty of the employer to comply with the Act frankly, openly,
and without reserve.

Dr. Elliot said:

We feel that an adjustment of a matter before
us should go beyond mere compliance with the Act. It
should result in better understandings between
the parties, more consideration one for the other,
and lasting peace. This cannot always be accom-
plished, but it is a worthwhile goal. In other
words, we are not only administering an Act, but
we are educating a new way of life in employer-em-
The Board does not pre-judge the causes before it. It seeks only facts. If the facts show the employer is complying with the law, it is acknowledged. If they show non-compliance, compliance is required. Each party is given a full and fair opportunity to present his facts and his point-of-view.

Dr. Elliott points out:

In 83 cases closed in the Fort Worth Regional Office, 55 were adjusted by mutual agreement satisfactory to both parties. Thirty-five were dismissed or withdrawn because of lack of merit or because jurisdiction under interstate commerce was lacking. Two cases were transferred and eleven went to a formal hearing. The Board has ruled on five of these, three of which rulings were favorable to the employees and two were favorable to the companies. This record is not one of partiality but rather one of carefully weighing of fact and judicial-mindedness in decision.

If the benevolence and intelligent self-interest of employers of labor are insufficient to save capitalism from these periodic shocks of economic depression (produced by low purchasing power on the part of the masses of our population) and bring well-being to our working masses, then the organization of workers should be freely permitted in order that they may have a chance to save it from these disasters.

Any new law is subject to adverse criticism, and the Wagner Act is no exception. Some of the complaints of this Act and its Administering Board will be outlined in Chapter VII.

18 Ibid. 17 Ibid.
CHAPTER VII

CRITICISMS OF THE WAGNER ACT AND THE NLRB

Criticisms of the NLRB have been frequent and often bitter. The Board is composed of human beings and human beings err; but the record of this board is good, for the courts have upheld its decisions in 85.8 per cent of the cases presented to it. The decisions of the Board have been upheld in all cases acted upon by the United States Supreme Court, except the Consolidated Edison Case. The Board, in the press of its work and because of great expansion in personnel, has made some errors in the selection of individuals employed, and these errors have been unfortunate.

Let us examine briefly some of the complaints and see what they amount to, admitting at the outset that the law is rather loosely drawn and excludes too many groups of workers. The most common complaint is that the law is heavily weighted in labor's favor, and that in common fairness the employer should be given exactly the same privileges as the employee in the eyes of the law. That is a plausible position, but it is based on a wholly false premise. It takes the attitude that the Wagner Act is the sum of American law dealing with labor, which is of course ridiculous. Since the beginning of the Republic the weight of city, state, and federal law has
been accumulating to the benefit of the propertied classes, to which all employers belong. If employees break any of those laws to the damage of the employer, he has legal avenues of remedy innumerable. Suppose a striking worker on picket duty throws a brick through the factory window. The police will need no more than a word from the employer to haul the picket to jail, charge him with disorderly conduct and set the bail so high that he cannot possibly raise it. Does anyone seriously suppose that this kind of thing would work the other way? Would the police do the same thing to the employer, if the workers said he had laid in a supply of munitions and was planning violence? The Wagner Act never pretended to grant equal rights to workers and employers; its position was that, since employers had many legal protections (such as set forth in the Federal Constitution, the Sherman Anti-Trust Act, and the Clayton Act) and the workers had few, it gave such protection to labor in one specific instance, carefully defined.

Of course, employers do not want equality in the sense of being liable to violent treatment in the same way that labor is. Do they want it in the opposite sense of making labor subject only to the treatment employers get under the Wagner Act? Chairman Madden of the NLRB drew a vivid picture of what this would mean, in a speech before the A.F. of L.: This would mean that if Picket, a union man on strike, violated the law, the employer would file charges in our Regional Office, perhaps some hundreds of miles away. Our office would write a letter or
telephone politely to Picket and ask him for his side of the story. An investigator would go out as soon as convenient and attempt to ascertain the true facts. If the investigation indicated that the employer's charge against Picket was apparently well-founded and if Picket indicated that he was unwilling to bring himself in compliance with the law, a formal complaint would be issued against him, giving him not less than five days' notice that a hearing would be held before a Trial Examiner to be sent from Washington.

The hearing would proceed, and in due time the Trial Examiner would make an immediate report. If he thought Picket had violated the law he would recommend that Picket "cease and desist" from further violations, and post a notice that he would sin no more. If Picket followed this recommendation, that would be the end of the proceeding. If, however, Picket was recalcitrant the entire record of the hearing would be forwarded to the Board in Washington, which, after studying it, might make an order similar to the Trial Examiner's recommendation. This order would be served upon Picket with a request that he inform the Board within a specified time what steps he had taken to comply with the Board's order. If Picket expressly or by silence gave the Board to understand that he didn't intend to comply with the Board's order at all, then the Board would file a petition in the United States Circuit Court of Appeals, and have the record printed and file briefs and make oral arguments when the Picket case had its turn on the docket. The three judges of the Court would deliberate, and if they concluded that the Board's order was supported by evidence and well founded in law, they would enter a decree that Picket should comply with the Board's order. Then, after all these months, Picket would for the first time face the alternative of obeying the law or going to jail.\footnote{Address before the 57th annual convention of the A.F. of L., October 5, 1937, at Denver, Colorado, Mimeographed form, p. 5.}

Enough has been said to show that the real desire of the critics is not equal rights for employers and workers, but the emasculation of the first effective legal right of workers as a group. The plea for fairness is a hypocritical mask for anti-union feeling. Perhaps some of the opponents of the
Wagner Act and the NLRB have not really thought the matter through, and if the facts were pointed out to them their opinions would change. But unfortunately it is much more probable that their state of mind is like that of a banker who was encountered at a performance of Fins and Needles, the musical contribution of the International Ladies' Garment Workers Union to the gaiety of nations. A friend asked him how he liked the show, and he replied, "It's very good, but of course there is nothing new about it. Everybody knows that nowadays labor has the upper hand."

The Labor Relations Board did not bow in on General Motors' "sit-down" strike because it could not adequately determine an appropriate bargaining unit. The Board was blamed and criticized for not accomplishing its objective or diminishing the causes of labor disputes. Senator Connery said, "Majority rule should prevail and workers by a majority vote should select their representative to bargain collectively."2

Representative John Lesinski (Democrat from Michigan) says, "The Wagner Law is ample to take care of strike situations if the Supreme Court will only pass favorably upon it."3

Employers maintain that it is partial to labor and that under the Act creating it, an employer has no rights. The conflict between the A.F. of L. and the CIO has caused some of the rulings of the Board to be severely criticized by both

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3Ibid.
organizations.

The NLRB conducted three elections, and the regional boards conducted 100 elections to determine employee representation in the first six months period after it became a law. In all of these 103 cases the consent of the employer was obtained prior to the holding of the election. Usually an election involved only one unit but several units might be involved.

The results of the elections show that 45,397 employees were eligible to vote and that 36,433 cast a vote. Of the number of votes cast 59 per cent were for unions, 34.0 per cent were for company unions or employee representation plans and 6.1 per cent of the voters designated no plan. In comparison with the results of the elections conducted by the NLRB just prior to the six months period, these figures show a decline in the percentage of votes for trade unions. In the NLRB elections, trade unions won 69.6 per cent, company unions 28.5 per cent, and no representation 2.1 per cent.\footnote{Labor Activities, 1935-36, "Monthly Labor Review, March (1937), p. 610.}

Jurisdictional disputes were almost negligible in these elections. No election held by the NLRB arose from jurisdictional disputes between trade unions as to representation, and only six elections held by district boards were disputed.

A study of the results of the election was made to determine whether the employer had recognized the elected rep-
representative and whether he had bargained with the representative, also whether a written agreement had resulted in a harmonious solution of the representation problem.

The facts show that of the 523 units, 462 units recognized the representatives; 462 units recognized bargaining; 454 units had written agreements; and 451 units recognized the elected representative. In 267 units the employer recognized the elected representative; in 261 units bargaining had taken place; in 206 cases written agreements were in effect; and in 245 cases harmonious solutions of the representation problem had resulted.

It was found that elections under governmental supervision to determine employee representations are an effective means of preserving to employees the right of selecting representatives of their own choosing for purposes of collective bargaining. Harmonious relations resulted in 93.9 percent of the cases in which employers recognized the elected union representatives. The chief cause for failure of elections to produce harmonious relations appears to be the unwillingness of employers to accept the results of elections and recognize the elected representatives.\(^5\) It is evident that in these election cases the employers' opposition to collective bargaining was a greater cause of disturbed employment relations than difficulties arising from the process of collective bargaining itself.

\(^5\)Ibid.
In dealing with charges of unfair labor practices in complaint cases, the Board has adopted certain principles of interpretation of facts under Section 8 of the Act, which deals with rights of employees. It has been treated as falling under the classes dealing with interference, restraint, coercion, and various forms of labor espionage. The classes dealing with domination of a contribution to labor organizations the Board has interpreted to cover any conduct upon the part of an employer which is intended to bring into being, even directly, a so-called workers' organization which in fact is to serve the employer's interests.

In enforcing the clauses dealing with discrimination for union activity and actions under the NLRA, the greatest difficulty seems to be meeting the employer's contention that the reason for the alleged discrimination was inefficiency. Length of service, previous efficiency ratings, and efficiency of men not dismissed for inefficiency were principles upon which the evidence in such cases were considered.

"Under the bargaining clause, the Board has included all practices in which 'collective bargaining' did not consist in bona-fide negotiations on wages, hours, and basic working conditions." The Board did not consider that this part of the Act had been fulfilled when company officials discuss minor grievances without offering constructive solutions.

In representation cases in determining the appropriate unit of employees, the Board has decided that no rigid rule is applicable but that each case has to be considered individually. The guiding factors used by the Board in determining the unit are the history of labor relations in the industry or plant, and of the community. The interest manifested among employee organizations from a functional standpoint, and the existing forms of self-organization in the industry are measures determining the proper unit.

The Board has consistently applied the majority rule in certifying organizations. The employer cannot bargain separately with two or more organizations of the same unit nor bargain with a trade union committee.

Some of the bitterest criticisms of the decisions of the Board have come from labor itself. This criticism is a result of the division which now afflicts labor itself (for which neither the Board nor the Wagner Act is responsible) and from the fact that the Board is unable to suspend the operation of the statute because of that division. The CIO-A.F. of L. conflict is one of our modern tragedies. The schism is somewhat wedge-shaped. It is broad and vicious at the top among the leadership on both sides, but shapes down to a point almost indistinguishable in the rank and file of labor.

The CIO says:

The National Labor Relations Law should be left alone. No amendments or changes are needed. Every
time Congress tinkers with the law it will be weakened and made less effective. The attacks on the Labor Relations Law is based on gross misrepresentation and false premise.\(^7\)

The Wagner Act is not a business law. It is a labor law, intended by Congress as affording a fair method for protecting the right of workers to organize and bargain collectively with their employers.

The CIO contends that the Labor Board has been eminently fair in its decisions, favoring no one above anyone else. The annual report of the NLRB proves the statement. In the report the Board sets out these figures:

It disposed of 74.3 per cent of A.F. of L. cases and 67.1 per cent of CIO cases. Settlements preceding formal action were secured in 52.5 per cent of A.F. of L. cases and 52.7 per cent of the CIO cases. Five and nine-tenths per cent of A.F. of L. cases and 5 per cent of CIO cases were disposed of after issuance of Board orders.\(^8\)

In complaint cases, settlements before formal action were secured in 1,190 A.F. of L. cases or 52 per cent, and 1,395 or 52 per cent of CIO cases. Forty-one and five-tenths per cent of A.F. of L. cases and 43.3 per cent of CIO cases were dismissed or withdrawn.\(^9\)

In representation cases, the Board settled 603 A.F. of L. cases or 53.5 per cent and 892 CIO cases or 53.9 per cent.

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\(^8\) NLRB, Annual Report, June 30 (1938), p. 25.

\(^9\) Ibid.
Twenty-four and nine-tenths per cent of A.F. of L. and 28 per cent of CIO petitions were dismissed and withdrawn.\textsuperscript{10}

The Board adopted A.F. of L. contention as to the appropriate unit in 21 cases and the CIO contention in 16 cases. The figures show that the Board seems to have been fair in its dealings with labor groups. Apparently little favoritism was shown in the handling of complaints.

The A.F. of L. is of the opinion that the principles set forth in the National Labor Relations Act have suffered much because of maladministration which has spread opposition to the Act itself.

In this regard William Green says:

The Board’s administration shows a complete lack of due process of law which the American people consider essential to, and an integral part of, administration by public officials. The members of the Board have usurped judicial functions, have shown bias and prejudice in their rulings and decisions, have shown a lack of fair play in their treatment of parties and persons, and have discriminated between them according to their own peculiar brand of political and economic philosophy which apparently they substituted for the provisions of the Act.\textsuperscript{11}

According to William Green, the Board has misinterpreted the intent of Congress and has read into the Act alleged grants of power which Congress did not grant to it. By so doing the Board strikes at every basis of collective bargaining technique which the A.F. of L. developed through experience.\textsuperscript{12}

\textsuperscript{10}\textit{Ibid.}


\textsuperscript{12}\textit{Ibid.}
The A.F. of L. contends that the NLRB has misinterpreted Congress in its application of the collective bargaining unit. Through the action of the Board, craft unions have been destroyed, although Congress did not intend for this to be done in carrying out the policies of the Act. Wages, hours, and conditions of employment in each individual enterprise can and should be established by those having vital interest therein. Congress did not intend that employers and employees of any enterprise be subjected involuntarily to wages, hours, and the conditions of employment determined by competitors or non-workers in industry; but the Board, through the usurpation of power not granted to it, has undertaken to produce that result.13

Mr. Green of the A.F. of L. specifically states that his organization will urge the enactments of such amendments to the Wagner Act as will provide checks and balances to insure the application of fair play in accordance with due process of law.14

Any discussion of the American labor movement would not be complete without some consideration of the hours of work and the wage compensation of the laborers. A summary of some of the most important points of minimum wages and maximum hours are considered in the following chapter.

13 Ibid. 14 Ibid.
CHAPTER VIII

MINIMUM WAGES AND MAXIMUM HOURS

No labor problem is more fundamental than the question of wages, for a man's whole way of life and that of his children after him is largely dependent on the amount he earns.

During recent years many minimum-wage laws have been enacted by state legislation. Standards of pay have thereby been set up to protect the health and welfare of workers, to equalize the power of employer and employee in making wage bargains, and to maintain a plane of living below which it is unsafe for a social group to allow any of its members to fall. In the absence of such legislation, social injustices and maladjustments occur, for labor organizations and collective bargaining do not reach many of those likely to be exploited. Those desperately poor workers seldom revolt; they vegetate or die. The keenness of cut-throat competition among many unorganized, unskilled workers results in a depression of the wage scale toward a level set by the weakest individual bargainer. The state, therefore, must take the initiative in defining a fair wage and requiring its payment.

The demand for a minimum wage arises from the motive of self-protection. Society attempts thereby to safeguard itself from the evils of epidemic and crime, and from a cumulative
burden of caring for social weaklings. Many difficulties arise, however, in the practical application of the minimum-wage and maximum-hour principles. If the standards of living were taken as the basis for fixing wages, every social class and even every family, would call for a different minimum; for standards of living are subjective and consequently variable.

Organized labor has been fearful that minimum-wage legislation would finally amount to a fixing of a mere subsistence or existence wage. It has been feared that a minimum wage legally enacted would tend to become a standard, a customary, or even a maximum wage. The purpose of minimum-wage legislation, however, is to set a barrier below which wages may not fall, in order to develop competition on a high level of efficiency rather than competition on a low level of wages. Through minimum-wage legislation it is hoped that productive efficiency may be improved by forcing employers to maintain certain wage standards.

The history of minimum-wage legislation in the United States has been one of rise and fall and rise again. The first wide-spread demand for minimum-wage legislation in America dates back to 1910, when the National Consumers' League drafted a bill which was passed first in Massachusetts in 1912, and was quickly followed in eight other states in 1913, and six more in the decade that followed. By 1923 a total of seventeen acts had been passed by states and territories of the United States.
From 1910 to 1923, the constitutionality of minimum-wage laws was regarded as well established. The ruling decision was Stettler v. O'Hara by the Oregon Supreme Court in 1914.\textsuperscript{1} The Oregon law was sustained on the ground that it was "a regulation tending to guard the public morals and the public health," and therefore within the police power of the legislature. The case was appealed to the United States Supreme Court in 1916, and despite the fact that the newly appointed Justice Brandeis was disqualified because of his previous activities as counsel, the Court divided four-to-four, and the statute remained valid.\textsuperscript{2} Other state minimum-wage laws were upheld by state courts, influenced by the Oregon decision.

Despite the support given minimum-wage legislation by state supreme courts, the United States Supreme Court in 1923 held the District of Columbia statute invalid in the case Adkins v. Children's Hospital.\textsuperscript{3} This nullifying decision came as a distinct shock to minimum-wage adherents, for the supreme courts in five states had already upheld their laws. Justice Sutherland declared that the Nineteenth Amendment to the Federal Constitution had provided a status of bargaining power for women similar to that of men, and that to limit their freedom of contract by setting wages without regard to the value of services rendered was a violation of the "due

\textsuperscript{1}89 Oregon 519.
\textsuperscript{2}Stettler v. O'Hara, 243 U. S. 629 (1917).
\textsuperscript{3}261 U. S. 525 (1923).
process" clause in the Fifth Amendment.

From 1923 to 1933 was a decade of retrogression instead of progress insofar as minimum-wage legislation was concerned. During this period, the Supreme Court, in cases arising over Arizona and Arkansas laws, made it clear that all mandatory state minimum-wage laws were unconstitutional violations of the Fourteenth Amendment. This action led several states to repeal their laws.

The fall in wages from 1929 to 1933 created renewed demands for minimum-wage legislation, with the result that such laws were enacted in the states of Connecticut, Illinois, New Hampshire, New Jersey, New York, Ohio, and Utah. New York's law was declared unconstitutional in 1936, the decision being based upon the Adkins Case. The case was appealed to the United States Supreme Court and the decision was upheld.

While the United States Supreme Court was preparing to render its decision in the New York Case, the Washington State Supreme Court upheld the minimum-wage law passed in 1913. This case was declared constitutional by the United States Supreme Court in 1937, thus overruling its previous opinions. The

4Sardell v. Murphy, 46 Sup. Ct. 22 (1925); Donham v. West Nelson Manufacturing Company (1927).
8Parrish v. West Coast Hotel Company, 55 Pac. (2nd) 1083 (1936).
Washington Law was justified by the legislature on the ground that it was necessary to protect women and minors "from conditions of labor which have a pernicious effect on their health or morals." It was declared that inadequate wages and unsanitary conditions of labor do exert a pernicious effect, and that under the police power of the state the evil could be legally corrected. By October, 1937, twenty-two states, the District of Columbia, and Puerto Rico had minimum-wage laws patterned after the Washington Law.

These laws are broad in their coverage of industries and most of them apply to women and minors. The Oklahoma law applies to men as well as women and minors, while the laws of Arkansas, Nevada, and South Dakota cover only females.

All but a few laws provide for determination of minimum-wage rates by wage boards established to study the various industries and make recommendations to state agencies authorized to fix minimum wages and issue orders. In Nevada and South Dakota, however, the wage to be paid is specified in the law; though this is true in Arkansas also, in that state the commission has the power to revise and adjust the wage. Wage rates must be adequate to supply the cost of living in Arkansas, California, Colorado, Minnesota, North Dakota, Oklahoma, Oregon, Utah, Washington, Wisconsin, and the District of Columbia.

Encouraged greatly by the rapid change in the attitude of the Supreme Court toward New Deal legislation, as evi-
danced by its support of not only the Washington minimum-wage law but the Wagner Act and the Social Security Act, President Roosevelt sent a special message to Congress May 24, 1937, in which he urged the passage of a Federal minimum-wage law in conjunction with other labor legislation. These recommendations from the President were immediately incorporated into the Fair Labor Standards Bill presented to Congress in May, 1937. The Bill proposed to create a labor standards board with broad administrative powers to set wage rates and minimum work weeks with respect to suggested standards of 40 cents per hour and 35 to 40 hours per week. Industrial home work and the labor of children less than 16 years old were to be banned. All interstate shipments of goods produced under conditions of non-compliance with the Bill's standards as interpreted by the Board were to be prohibited.

The Bill passed the Senate in July, 1937, but did not become a law until June, 1938, after having undergone major changes. As passed, the measure commonly known as the Federal Wage and Hour Law provides for Federal regulation of wages thus: during the first year every employer is required to pay his employees "engaged in commerce or in the production of goods for commerce," unless expressly exempted, not less than 25 cents an hour; during the next six years not less than 30 cents an hour; and after the expiration of seven years not less than 40 cents an hour, except where the administrator of the Act prescribes a lower rate, which shall in no instance
be below 30 cents an hour. Wage rates above those mentioned may be fixed by an industry committee representing employees, employers, and the public, acting in accordance with regulations prescribed by the administrator; for example, reasonable wage classifications within any industry may be made, provided that the highest minimum wage fixed does not exceed 40 cents an hour. Therefore, at any time after industry committees begin to function, there is a possible range in minimum-wage rates of from 25 to 40 cents.  

No geographical differentials as such are provided for in the Act, but differentials within an industry are set up by the administrator with the advice of industry committees. Factors to be considered by the committees are local economic conditions, comparative transport costs, and the size of units in an industry.

The Act applies to employees engaged in commerce or in the production of goods for commerce; but it exempts agricultural workers; horticultural processors in the area of production; certain fishery workers; executive, administrative, professional, local retailing employees, or apprentices; workers on weekly or semi-weekly newspapers of less than 3,000 circulation; seamen; street-car workers; air-transport workers, subject to the provisions of Title II of the Railway Labor Act; employees whose hours are regulated by the Ho-

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tor Carrier Act of 1935; and any employee subject to the provisions of Part I of the Interstate Commerce Act.\textsuperscript{10}

The Act is administered by a Wage and Hour Division in the Department of Labor, and is headed by an administrator who is empowered to appoint industrial committees for each industry engaged in commerce, and to pass on their findings and recommendations for wage and hour standards. If the recommendations of any committee are contrary to the judgment of the administrator, he may veto them and create a new committee. Elmer F. Andrews, former New York State Industrial Commissioner, was appointed in July, 1938, as the first administrator of the Federal Wage and Hours Law.

The administrator's economic and statistical information must be comprehensive enough to make it possible for him to determine the minimum-wage level which shall apply in specific industries under varying costs, and to determine to which workers in any establishment the wage applies. An employer, for instance, will have to meet these wage standards for certain of his employees but not for others.

Trade associations and employer groups must be prepared to present their case to the industry committees which, like the NRA code boards, have authority to fix minimum-wage levels for various industries. In this way employers may exercise their influence in the establishment of fair wage orders. Cost of living, of transportation, and of production must be

\textsuperscript{10}\textit{Ibid.}
carefully considered, along with other competitive conditions. Employers will be required to keep records of hours, wages, and other working conditions, and make such reports as the Administrator prescribes. Government investigators may exercise the right to inspect industrial establishments, may have access to all company records, and may question employers or employees at any time.

Those who violate the Federal Wage and Hour Law are subject to a fine of not more than $10,000 for the first offense; and six months' imprisonment, or the fine, or both, for a second offense. The administrator's orders, however, may be viewed by the appropriate Circuit Court of Appeals. Cases of conflict are certain to arise from differences of opinion as to what constitutes interstate commerce.

Despite the great advantages to be found in the Federal law, the need for state minimum-wage laws still remains. The majority of women workers, and many men, are employed in occupations not covered by the Federal minimum-wage provisions—occupations in laundries, stores, cleaning establishments, canneries, restaurants, hotels, beauty parlors, offices in industries not interstate in character, farms, and households. Where a state has already established higher standards than those of the Federal Act, the State Standard takes precedence, as provided in Section 18 of the Act. States whose laws re-

quire that the minimum wage shall equal cost of living may find it necessary to establish rates for workers in inter-state occupations on a different level from those of the Federal law or above those of some states and below those of certain other states. The measure was passed in the hope that it would provide more uniform and satisfactory working conditions throughout the country. The accomplishment of that purpose depends in large measure upon the wisdom with which it is administered. The task of administration is great because the numerous exceptions and limitations in the Act will necessitate the issuance of many rules, regulations, and orders.

At any rate we may rest assured that the years to come will provide certain statistical data from which we may ascertain more scientifically than is possible at the present time the advantages and disadvantages of minimum-wage laws; for the turn in events in many countries is away from the competitive market about which economists have reasoned, now that society bids farewell to the pure laissez-faire practices of yesterday and tries its hand at a partially controlled economy.\(^{12}\)

The problem of hours of labor has its social and moral, as well as economic, aspects. On the social side, the problem involves the enjoyment of rest, and leisure time for the maintenance of health and participation in the activities of domestic and community life. Immoral habits result from exhausting toil, while a shorter work-day results in diminished

alcoholism and reduction of other excesses. The economics of the problem is reflected in the lessened volume of production per hour resulting from fatigue. The problem of the working period embraces not only the length of the work-day, but overtime, night work, the lack of rest periods, and continuous-shift period.

American labor made its first demands for a reduced working day in the late twenties of the Nineteenth Century. The New York mechanics resolved that "ten hours well and faithfully employed was as much as an employer ought to ask or an employee give." The demand for shorter hours was made chiefly in connection with public employment. Philadelphia was the first city of note to provide a ten-hour day for its employees. In 1840 President Van Buren was instrumental in securing a ten-hour day for certain government employees, and in 1868 this limit was reduced to eight hours. In the forties Massachusetts and Connecticut enacted laws limiting the work-day for children under twelve years of age to ten hours in manufacturing establishments.13

After the Civil War labor began to demand the eight-hour day. The National Labor Union, formed in 1865, endorsed the eight-hour day movement; the movement was revived in the eighties by the Knights of Labor; and from its inception in 1886, the A.F. of L. has fought for shorter work-day and work-

week. Some states passed eight-hour laws, Illinois leading in 1867. These laws, however, were not enforceable, and the workers continued to toil eleven or twelve hours a day in the sixties.

During the early eighties, the A.F. of L. desired to achieve the shorter working period through collective bargaining rather than through legislation. It was thought that union membership and control could be maintained only through such effective service on the part of unions. During the World War boom the eight-hour day movement gained momentum. Beginning with the spring of 1915, a series of strikes put the war-supply industries on an eight-hour basis. Before the United States entered the War, the railroad workers had secured a basic eight-hour day through the passage of the Adamson Act in 1916, and later the anthracite coal miners had obtained a straight eight-hour day. The Adamson Act did not actually limit the hours of workers to an eight-hour day, but merely made eight-hours the basis for wage payment, with provision for overtime payments. The Act was upheld by the Supreme Court as an hour law rather than a wage law, in the case of Wilson v. New.14

The eight-hour day movement was positively checked by the depression of 1921. Much progress had been made, however, for 50 per cent of the wage-earners of the country were by 1921 working in establishments where the prevailing hours were

14 243 U. S. 332 (1917).
forty-eight or less per week. Slightly less than 8 per cent enjoyed so short a work-week in 1909.\textsuperscript{15}

From 1921 to 1933 the length of the working period remained about the same, but in 1933 conditions were suddenly changed by the general adoptions of the national codes set up under the NIRA, which specified forty-hour week. The legal establishment of shorter hours of labor for the entire country was an emergency measure to combat unemployment by spreading labor forces and restricting production. The law brought the eight-hour day and the five-day week to American industry. When the system of codes was abandoned in 1935 because of the Supreme Court's invalidation of the Act, many employers returned to the longer working period.

In the absence of legislative protection, the standards set up under the codes began to break down after 1935, and there was continued agitation for new legislation which would re-establish these standards. That legislation materialized in 1938 with the passage of the Federal Wage and Hour Act.

This Act provides that no employer may employ any of his workers who are engaged in commerce or in the production of goods for commerce for a work-week longer than forty-four hours during the first year, for more than forty-two hours during the second year, and for more than forty hours after the expiration of the second year, unless the employee re-

\textsuperscript{15}John R. Commons and John B. Andrews, \textit{Principles of Labor Legislation} (1936), p. 84.
receives compensation in excess of the hours above specified at a rate not less than one and one-half times the regular rate for which he has contracted. Other exemptions are named in the Act, including a provision whereby workers in seasonal industries which do not operate more than fourteen weeks a year may be employed for fifty-six hours a week before being paid on an overtime basis. The measure banned from shipment in interstate commerce any goods produced with "oppressive child labor."

Hours of labor were lessened through modification of several state laws during 1936-37. South Carolina, for example, enacted a law—effective only after the passage of similar laws in Georgia and North Carolina—restricting the hours of all employees in textile mills to eight a day and forty a week, distributed over not more than five working days.16

The most general type of state law limiting the hours of employment applies only to women and children.17 As a result of legislation enacted in 1937, two comprehensive state laws regulating the hours of labor of men in private employment came into effect for the first time.18 Pennsylvania limited the employment of men to 44 hours a week, an eight-hour day,

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17 Division of Labor Standards, U. S. Department of Labor, Chart Showing State and Federal Hours Limitations (1936).

and a five-and-one-half day week. The law does not apply to agricultural labor, domestic servants in private homes, or persons over twenty-one years of age earning $25 a week or more in executive or professional positions. North Carolina, by an Act passed in 1937, limited the hours of labor of men to ten a day and fifty-five a week, though many occupations are exempted. Although legislation regulating the hours of labor of men in private employments has been adopted in forty states, all of these laws relate only to specific employments, except North Carolina and Pennsylvania where "all employments" are covered other than certain named exceptions.¹⁹

In its 1934 annual convention, the A.F. of L. formally demanded that hours of labor throughout the country and in all types of industry be limited to thirty per week and that at the same time wages be maintained at the former level. The Federation began its work through legislative channels and sponsored the Black-Connery Thirty-Hour Bill, which passed the Senate by a vote of 53 to 30 on April 6, 1933. Before it could come to a vote in the House, the NRA was passed, and supporters of the shorter week measure found no necessity in pressing it further.²⁰

The provisions of the Thirty-Hour Bill which passed the Senate early in 1933 are of some significance. The Bill forbade the shipment or transportation in interstate or foreign

¹⁹Ibid., pp. 2-5.

commerce of any article or commodity "produced or manufactured in any mine, quarry, mill, cannery, workshop, factory, or manufacturing establishment situated in the United States, in which any person was employed or permitted to work more than five days in any week or more than six hours in any day." 21

Apparently neither the state legislatures, the Congress, nor the United States Supreme Court is ready to support the A.F. of L. in its drive for a thirty-hour week. The movement may be premature. But one cannot dismiss the matter and consider it a dead issue, for the progress made by labor within the last half century in shortening the working period is too apparent. Little by little labor's struggle for shorter hours has resulted in lessening the length of the work-week from eighty-four or seventy-two hours to sixty, fifty-four, forty-eight, forty-four, and finally, in most industries by legislative edict, to forty in a five-day week. It would be presumptuous for one to say that the next decade or so may not see the general adoption of a thirty-hour week in American industry.

The right of the state to regulate the hours of its own employees is unquestioned by the Courts. The United States Supreme Court has held also that a government has the right to fix the hours of employees of private contractors doing work for the government concerned. 22 The constitutionality

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of laws regulating the length of the day in transportation seems certain. The purpose of such laws is primarily to protect the lives of passengers and the property of shippers—a purpose which apparently justifies Congress in its use of the commerce power.

The right to limit the working hours of men in mines and tunnels has been practically undisputed since the United States Supreme Court upheld the Utah eight-hour law for miners as a valid exercise of the state police power. Sixteen states and Alaska now have recognized the hazards of mining by passing eight-hour laws for men so employed. Arizona covers all mining, quarrying, and smelting with an eight-hour day law. Under the code system of 1933 to 1935 the bituminous coal industry first adopted an eight-hour day and later a seven-hour day. The Bituminous Coal Conservation Act of 1935 provided a new code arrived at through agreement between the workers and the employers. This Act was declared unconstitutional in 1936.

Relatively few state laws exist restricting the length of the work-day for men in factories and shops. About a dozen states have laws regulating the hours of adult males in certain occupations within factories or workshops. South Caro-

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lina, for example, enacted a law in 1936 limiting the hours of all employees in cotton, rayon, silk, and woolen mills.\textsuperscript{26} As early as 1912 Mississippi adopted a ten-hour law for all classes of workers in general manufacturing establishments, and in 1924 the Act was amended to provide a fifty-five hour weekly limit. The United States Supreme Court has validated such laws under the state police power. The precedent for favorable decisions lies in the case Bunting v. Oregon in 1917.\textsuperscript{27}

More leisure time may make a real contribution to social welfare. The shorter work-day has made the American working man far better off than he was a half century ago. Notable improvements can yet be made in the lessening of night labor, overtime labor, and long days and weeks in certain industries and localities. Any student of economic history, or one familiar with contemporary trends in the industrial world, will grant that the movement toward a still shorter working period has by no means spent itself. There is, however, a great deal of doubt even among progressive economists whether under existing conditions a cutting of the work-week below forty-four or forty hours will not yield diminishing returns to labor itself.\textsuperscript{28} There is little question that those in the

\textsuperscript{26} John R. Commons and John B. Andrews, op. cit., p. 131.

\textsuperscript{27} 245 U. S. 246 (1917).

rear of the procession should be brought forward.

It has long been argued by those supporting the shorter day and week in industry that production would not be lessened by so doing; that with shorter hours and the consequent diminution of fatigue, more efficient work would be done and the output per worker would not suffer. Some industrial experience supports this argument within limits. In 1911, for example, the United States Tariff Commission found that a reduction of the work-day from twelve to eight hours in the paper industry had not increased labor cost nor prices per ton of output, but had slightly lessened labor cost. Other investigations show in general no increased labor cost—no lessened production—when hours are changed from ten to eight, but production usually drops off when hours are changed from twelve to eight. Industries differ widely in the effect of shortening the working period upon productivity per hour. If men are working with automatic machinery, the speed of which is relatively constant, the output per day is fixed within very narrow limits. The fatigue of the worker has little effect upon the amount of the product, though it may affect its quality.29

Arguments presented by labor and other advocates of a shorter working period not only contend that daily output does not fall off but they hold that the shorter work-day less-

29 John R. Commons and John B. Andrews, op. cit., p. 145.
ens absenteeism and accidents, thus decreasing labor costs. Shortening the work-day is advocated as a partial remedy for unemployment. This is based upon the claim that leisure provides time to buy goods, additional sales demand increased production, and as a consequence more men are employed. All of this is predicted upon the assumption that hourly wages are not changed when the work period is shortened.

Most employers find little merit in these arguments. They seldom voluntarily decrease the working period, although in rare instances it is done because they are convinced that the higher efficiency resulting therefrom will lower unit costs. In a few instances, employers have been known to change from eight-hour shifts to six-hour shifts to relieve unemployment. This was the avowed reason for such a change made by the Kellogg Company of Battle Creek, Michigan, in 1931. After six months of operation it was thought be the president of the company to be sufficiently satisfactory to justify its continuance. Costs had actually been lessened because of decreased fatigue, increased speed of operation, and the elimination of the half-hour meal period of the old eight-hour shift.30

Opponents to the shorter working period insist that unless wages are reduced proportionately with hours, the result is certain to be an increase in production costs, higher

prices for the consumer, fewer sales, and loss of employment. It is pointed out that not only do labor costs rise but capital costs also, because of idle machinery. In a period of depression profits are less likely to be adequate to meet the increased cost. In consequence, industry seeks to recoup itself by an advance in selling prices. The NRA Codes are cited as evidence of the necessity of increasing prices when wage rates are increased, even when private industry is no longer left to its own policy of price fixing.  

Unless prices are prevented from increasing by the same government agency which limits the working period and fixes minimum wages—a difficult task under our present profit system—mass purchasing power will not be materially increased. If, under present circumstances, the army of unemployed is to be greatly reduced, it must come through an adequate public works program, an improved system of taxation and tariff regulation, and a powerful labor organization constantly striving for higher real wages.  


CHAPTER IX

CONCLUSIONS

It may be said that the fight between labor and capital over the rights of labor is still in full sway. It looks encouraging to the employees that the National Labor Relations Act has been upheld by the Supreme Court in all cases presented before it except the Consolidated Edison Case. The opposition of the court in the Edison Case was not against the provisions of the Wagner Act, but against a dispute between the labor organizations themselves.

In the past, employers' interests have predominated in the courts, and it remains to be seen whether the rights of labor as set out in the Wagner Act will rule supreme, or whether those rights will be nullified by the power of the special interests.

Labor has made much progress in the past decade. Our legislators have been rather liberal toward labor's cause, and up to the present time the courts have upheld the statutes. The rights of labor are being materially advanced through the operation of the NLRB. Labor organizations are stronger than ever before and are less dominated by employers. Collective bargaining has been more firmly established and will continue to be of more far-reaching significance.
One of the greatest tragedies of modern time is the conflict between the labor organizations. The fight between the CIO and the A.F. of L. creates a grave situation. If these organizations could work for a common cause and cooperate for labor's interest, there would be unlimited power for its growth and accomplishments.

All conceivable kinds of harsh propaganda have been and are still being released from employer interests. A big fight is being made to curb the efforts of the NLRB to uphold the Labor Relations Act. At present time, investigations are being made by Congress to determine the necessity for amendments of the Wagner Act which would tend to reduce the power of the NLRB. Such amendments would affect directly or indirectly labor's position in its fight for collective bargaining and freedom of organization.

Some revisions have been added to the Wagner Act which give it more power of control. The Board now has the right to order an employer to disestablish a company union, if the union is found to be employer-dominated. Definitions of employee "coercion" and "unfair labor practices" have been broadened to cover employer distribution of anti-union speeches and pamphlets, or any material distributed which will in any way tend to hamper the organization of unions. It may be further concluded that the LaFollette Report has probably uncovered some of the worst practices which could be expected and doubtless has had some influence upon the
action of the Supreme Court in upholding the Wagner Act.

The final outcome of the validity of this Act will be determined largely by the decisions of the Supreme Court on other phases of the Act which may come before it. That this is a matter much in the public mind is indicated by the appearance of magazine articles with such titles as "A Farmer-Labor Party in 1940." It is obvious that recent legislation has made a great change in labor's attitude toward government. Before the trend to social change by law became apparent, the prevailing feeling was that law and courts were instruments of the propertyed, employing classes. Now, through the Wagner Act, the Social Security Act, and the Labor Standards Act, labor is beginning to realize that law can be an ally. The workers appeal to the NLRB, and beyond it to the courts. The CIO has abandoned the old A.F. of L. policy against direct political action, which relied chiefly on lobbying for or against those measures touching the interest of labor; the CIO nominates its own candidates, or gives open support to those it approves, expecting that those persons, if elected, will remember their debt. That policy was behind Lewis's reminder to the president during the automobile strike, though it might have been more tactfully expressed. The new reliance on government was shown in another way in the United Mine Workers' Organization appeal, "The President wants YOU to join."
It is too early to predict the consequences, certainly too soon to predict the formation of a permanent Farmer-Labor Party, or anything similar, headed by John L. Lewis. It is well to remember, however, that the CIO is a movement for "mass" organization, and that as a natural result it holds the possibility of mass political action, in a degree commensurate with its success. It is probably the fact which, consciously or unconsciously, is behind much of the opposition to the CIO; it is unlikely, for example, that Mayor Hague of Jersey City would have become quite so enraged against the CIO unless there had been at least an implied threat to his domination of city and state. Political developments before 1940 will be of particular significance; it is probably safe to prophesy that the connection between labor and government will be increasingly close.
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