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A survey of labor legislation

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A SURVEY OF LABOR LEGISLATION

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PREFACE

During the last fifty years, labor legislation and public opinion have fluctuated widely. People showed little interest in the unions and their fight for free collective bargaining, until the thirties when the New Deal ushered in a new era. President Roosevelt and the federal government, supported by public opinion, undertook to aid substantially the unions in their organizational and collective bargaining activities. By this time the people believed that one way to help recovery was to give every aid to unions, who in turn would fight for higher wages.

From 1933 to 1946, unions grew from a weak bargaining unit to a giant-like organization capable of crippling our industries on a national basis. In 1947, Congress passed legislation to more effectively control labor organizations. Public opinion, for the most part, believed that unions were too powerful and should be controlled for the safeguarding of all concerned.

Public opinion has also changed concerning the protection of workers. In the last fifty years, we have passed

legislation restricting maximum hours and minimum wages, the employment of women and children, working conditions, and social security.

Part one is a survey of the evolution of these "Protective" features in legislation concerning women and children, maximum hours and minimum wages, and social security. Part two is a historical summary of the "Restrictive" laws concerning labor enacted during the last fifty years. The concluding chapter is a summary of some basic conclusions.

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CHAPTER I

INTRODUCTION

In the last few thousand years, the accomplishments of Man in the field of human relationship have been possibly nothing of which he can be inordinately proud. No one can deny that over the course of years he has made a perceptible improvement, though at isolated times it appears that he is doomed to ludicrous failure. Ideas have changed; goals have changed; and above all, governments have changed. At times the problems seem insoluble but through it all he keeps on trying to create something good, something lasting, so that men can live and work in the peace and dignity they should inherit.

It was a common belief held by capitalists in the 18th century that the wage earner must be kept poor lest he should lose the incentive to work. In modern times, many people agree that a degraded working class means a poorer society and a rather precarious national security; and where high standards are maintained, wealth is the greatest and security

the most lasting.

For centuries, industry was on a small scale. There was none but the crudest use of power; the only machines were hand tools; and the typical establishment of the 18th century consisted of a few workmen and their employer, all doing the same work. The gap between worker and employer was small and easily bridged. Today, with the large scale use of power, the craftmanship of the worker has been transferred to the machine, with the result that the worker has been reduced from a skilled artisan to a machine tender. The gap has been greatly widened.

Whenever the relationship between the employer and the employee becomes less intimate, the danger of exploitation increases. The large, impersonal forms of business organization today have certainly widened the gap, increased the danger of exploitation, and in some cases, threatened our whole economy. The gap is both physical and psychic. Physical in that the real boss of the factory is sometimes hundreds of miles away. Psychic in that the worker cannot discuss his problems, complaints, or ideas with his employer.

Although fewer in number, the corporation is by far the most important unit of modern industry as measured by production. As a result of this, the corporation employs about 90 per cent of all persons gainfully employed. Yet

the corporation is completely impersonal. Its owners are its stockholders, who, because of their absentee relation to the property, have little concern in its management except in so far as it declares the regular dividend. Its managers have to maintain the value of its stock upon the stock exchange to hold their jobs. In such a situation, it is easy to see how human relations may be neglected and if abuses arise why they are remedied but slowly. For the stockholders leave it to the management, and management tells the workers that it is the stockholders' fault, and the workers seek relief elsewhere.[1]

In the latter part of the 19th century, we began to realize more and more the need for legislation to aid those groups of people who were unable to care for themselves. Men organized labor unions in an effort to gain by collective bargaining better working conditions. Women and children were still left unprotected to the sometimes merciless exploitation of employers.

The employer group played an important part in early protective legislation. A few, realizing that the women and children needed protection, would reduce the hours of

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[1]Estey, J.A., The Labor Problem, McGraw-Hill Book Company, Inc., New York, 1928, p. 3.

work or instigate some other protection. Other employers would follow. The public would then demand legislation to force the recalcitrants to fall in line with the rest. Thus the employer group started more labor legislation than any other group.

There are two main ways in which Congress can pass protective legislation. One is the authority granted to it by the Constitution to protect interstate commerce from conspiracies that seek to restrain and monopolize it. By this authority, Congress has set both minimum wage and maximum hour standards for interstate commerce. The other way in which Congress can protect the worker is its authority over the government as purchaser to insist that contractors pay the prevailing wage and guarantee the working conditions as set by the Secretary of Labor on all government contracts. This was the basis of the Walsh-Healey Act.

CHAPTER 2

CHILD LABOR

After the rise of industrialism and the development of machines, only unskilled operators were necessary to keep the machines running. To most of the employers, child labor was the logical solution. Those who did not prefer to exploit the children, were exposed to almost ruinous competition. As late as 1900, over one sixth of the children from ten to fifteen years of age were gainfully employed.[1]

There are many reasons why such a condition existed. Young people wholly or partially supported at home could be hired at a much lower wage than adults. In some cases the poverty of the parents forced the children to work; in others the parents believed that the children should work regardless of the real need. The normal trends of competition eventually forced employers to hire children wherever they could be

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[1]Scott, W.D., et als., Personnel Management, McGraw-Hill Book Co., New York, 1941, p. 481.

used effectively. Many industrial districts gave every encouragement to child labor. In many cases children desired to work to escape an undesirable school life. So the needs of the parents, the children, and the employers combined to aid the spread of child labor.

There are certain inherent evils that accompany child labor. One of the worst is that children employed in factories work in an unhealthy atmosphere. The children are often subjected to monotony, bad ventilation, noise, accidents, improper lighting, and the risks of industrial diseases; all of these are dangerous to children who have not been accustomed to these conditions which even adults may find destructive. Any community that allows child labor is likely to inherit a high percentage of illiteracy, ill health, and poverty. If the community uses up its human resources before they are fit to be used, it will be deprived of the full economic productivity it might otherwise have received.

The child who enters a factory does so at the expense of education, for it is rare indeed that he has any chance of further formal training. In many cases factory work for children is of the "blind alley" type, that is, it prepares for nothing, teaches nothing, and leads nowhere. They are just jobs for young people, paying a low wage. When the child worker becomes older, he may find himself in the un-

fortunate class of unskilled labor, forever doomed to factory work.

Restrictions on child labor are the oldest examples of protective legislation. The English "Health and Morals of Apprentices Act of 1802" was the first of such movements. This Act forbade night work and limited the working day to twelve hours for apprentices in textile mills.[2] Another act in the early 1800's forbade binding out children under nine years of are to employers. Child labor conditions in England at this time were deplorable. It is true that the factory system in America developed several decades later than in England, but it was not until forty years later that Massachusetts passed a corresponding statute. It set a maximum of ten working hours a day for children under twelve years of age.

Shortly after the Civil War, there was enacted in Massachusetts further restrictions on child labor. They prohibited child labor under the age of ten in manufacturing, extending the ten-hour law to children up to fifteen, and established a system of factory inspection which gave an accurate check on actual conditions.

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[2]Fainsod, M., and Gordon, L., Government and the American Economy, W.W. Norton & Co. Inc., New York, 1941, p. 137.

By 1900, almost every state had similar laws, many of which were tied in with compulsory education. A great national issue arose to force those states which did not have child labor laws, most of which were in the South, to adopt some such legislation. The issue became so acute that in 1916 both parties had in their platform some idea of national legislation to cover the subject, which resulted in the Owen-Keating Act, passed in the same year. This Act prohibited interstate transportation of goods on which children under fourteen had worked or on which children fourteen to sixteen had worked over eight hours a day. In 1918, after a few months of successful operation, the Act was invalidated by the Supreme Court in a five to four decision.[3] Later, in 1941, the Supreme Court unanimously overruled the decision.[4]

Congress tried to pass restrictive legislation based on the taxing power, but this failed. In 1924, the Federal Child Labor Amendment was submitted to the states by Congress giving it the power "to limit, regulate, and prohibit the labor of persons under eighteen years of age." "Due to the aggressive opposition of the Southern Textile Operators, The

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[3]Hammer v. Dagenhart, 247 U.S. 251 (1918).

[4]U.S. v. Darby Lumber Co., 61 Sup. Ct. 451, (1941).

American Farm Bureau Federation, and the National Association of Manufacturers, the bill was not ratified."[5] As of June 1, 1946, a total of 28 states have ratified this admendment. Since this is not the three fourths majority needed for ratification, eight more states must approve to make it effective. Subsequent legislation may make this unnecessary.

Although most states continued to improve their child labor laws, it was not until 1933, that there was any further attempt to control child labor on a national basis. The National Industrial Recovery Act codes established by government, employers, and trade-unions offered, among other things, an opportunity to outlaw child labor. These codes, in most cases, put strict limitations on child labor particularly in manufacturing.

Although the NIRA was outlawed in 1935 in the famous Schechter Decision,[6] a fresh start was made to attempt federal regulation of labor conditions. The Walsh-Healey Act, sometimes called the Public Contracts Act, was passed in 1936. This legislation prohibited the employment of boys under sixteen and girls under eighteen years of age on all

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[5]Fainsod, M. and Gordon, L., Op. Cit., p. 139.

[6]Schechter Corp. v. U.S., 295 U.S. 495 (1935).

government contracts over $10,000.

Child labor conditions were further restricted by the passage in 1938, of the Fair Labor Standards Act. This Act bans the shipment of goods in interstate commerce that have been produced in a plant in which "oppressive child labor" has been employed. Under this Act, "oppressive child labor" is defined as existing when any employee under the age of sixteen years is employed by an employer, other than a parent or guardian, in an occupation other than manufacturing or mining; or when any employee between the ages of 16 and 18 years is employed by an employer in any occupation which the Chief of the Children's Bureau in the Department of Labor shall find and by order declare to be particularly hazardous for the employment of children between such ages or detremental to their health or well-being.[7]

A rigid control of child labor cannot be expected from the Fair Labor Standards Act, since it does not apply to agriculture and allied industries, nor to other industries which do not produce goods for interstate commerce.

It is quite likely that more than three fourths of

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[7]Spiro, Jacob, and Milton, John, Gist of the Fair Labor Standards Act, Legal Reviews, New York, 1941, p. 432.

working children are beyond the scope of the Act.[8] The answer seems to lie in the adoption and firm administration by all states of uniform laws governing child labor.

Many states require special permits for workers under 18 years of age; other states have laws requiring school attendance, when in session, for all children under 14 of 16 years of age. So it is that although the Fair Labor Standards Act has no control over intrastate goods, it has set up a standard that many states have seen fit to adopt.

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[8]Raushenbush, Carl, and Stein, Emanuel, Labor Cases and Materials, F.S. Crofts and Co., New York, 1947, p. 407.

CHAPTER 3

LEGISLATION PERTAINING TO WOMEN WORKERS

For the last few thousand years many women have worked, at times, as hard or harder than men. There are a few people who sponser the idea that women are the weaker sex and have to be protected, but this fallacy has long since been exploded as far as its general application is concerned. It is true that women are not as physically strong as men, however, they are rarely used for work requiring unusual physical powers. Women have earned a place in industry by doing delicate work requiring great dexterity, speed, or accuracy.

The philosophy underlying minimum wage and maximum hours laws for women is one of social welfare rather than individual justice or equity. The long hours are detrimental to the health of the future and the present mothers of our race as well as to growing children. So to protect the health and welfare of the nation, practically all of the states have some type of legislation limiting the number of working hours for women.

There has been an increasing demand by women in recent years for "equal pay for equal work." This sort of legislation would remove the question of wages from one of "need" to one of "rights", or in other words, substitute job rates for sex rates. A few states now have such provisions.

Among reasons given for paying women less than men are the following:

1. Custom has habituated management to the employment of women in low-paid labor.

2. The concept that the place for women is in the home usually carries with it a moral injunction that she should have a home and bear children, whether or not she wants them or can afford them.

3. Men workers usually recognize that women workers offer them stiff competition and nothing builds prejudice quicker than what is felt to be unequal competition.

4. The supply of women is nearly always in excess of the demand.

5. The employment of women results in a higher turnover of personnel. Many women work only until married ; sothere is an increased turnover of labor with the accompanying increased training expense.

6. Many girls live at home and are not entirely dependent upon earnings.

7. Women have less chance of formal trade training.

8. Many women have little desire to enter trades requiring long periods of training, so fall in the unskilled class.

9. Women lack the physical strength of men and in certain occupations cannot perform all of the operations which can be assigned to male workers.

10. Government regulations concerning women workers are so numerous that additional employment costs are encountered.

In 1840, the normal work week in Mass. textile mills was 84 hours; two years later this was reduced to 78 for women.[1] The first legislation limiting the number of working hours for women was passed in New Hampshire in 1847. Several states followed suit but these early laws were ineffective since employer and employee could "contract out" of them by mutual agreement. Effective limitation really began in the 1870's, but some states declared it unconstitutional and the effectiveness was in doubt. In 1908, Muller v. Oregon removed the uncertainty as to the constitutionality of such laws when the Supreme Court of the United States upheld an Oregon law which prohibited women from working in any kind of factory or laundry more than ten hours a day.[2]

This set a precedent which other states followed. During Wilson's administration, many states and the District of Columbia passed statutes restricting the working hours for women. It was not however, until the National Industrial

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[1]Peterson, Florence, Survey of Labor Economics, Harper & Brothers, New York, 1947, p. 419.

[2]Muller v. Oregon, 208 U.S. 412 (1908).

Recovery Act of 1933 that Congress did anything about the problem on a national basis. A maximum work week of 40 hours was established for most branches of industry under the codes of the NIRA. When this was outlawed, there was a tendency to lengthen the work week but before the trend became serious, the effect of the increased power of the unions and the Fair Labor Standards Act changed the nature of the trend to a shorter work week.

Unless the exigency of another war forces us into an all-out production period, it is safe to assume that we have become sufficiently educated not to exploit by long hours the American woman to the detriment of future generations.

CHAPTER 4

LEGISLATION PERTAINING TO HOURS OF WORK

Since 1791, when the Philadelphia carpenters went on strike for a ten hour day, workers have sought ways and means to shorten the work day. During the past century the non-agricultural worker's average work week has been reduced from about 75 to slightly over 40.[1] This reduction has been gradual and with marked variation among different occupations. In some steel mills for example, the twelve hour day persisted until 1923.[2] Long after some trades had gained the ten hour day, other trades were working twelve and thirteen hours per day. Thirty years after many of the organized journeymen craftsmen had gained a 48-hour week, many other workers were on a 60 or 65 hour or longer week. So it

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[1]Men worked 84 hours per week up to 1850 in the Massachusetts textile mills.

[2]Fainsod, M. and Gordon, L., Government and the American Economy, W.W. Norton & Co. Inc., New York, 1941, p. 139.

was that the struggle went on trade by trade, plant by plant, with a concatenation of reductions from one step to another.

Labor organizations did much to advance the cause of shorter hours, although they met stiff opposition from employers from the very first. Labor claimed that the workers did not have enough leisure to develop the attributes of good citizenship, that they did not have time for the consideration of public questions and therefore they were condemned to an inferior position in the state. The effect upon health of long hours was also stressed; statements of medical authorities were introduced to show that fatigue increased the susceptibility to disease, accidents, and nervous exhaustion. Employers countered these claims by saying that the workers did not use their leisure time profitably and that leisure time for the laboring classes endangered their morals and the public welfare. The president of the National Association of Manufacturers, less than twenty years ago, made this statement:

> "They (the working masses) have for the most part been so busy at their jobs that they have not had time to saturate themselves with false theories of economics, social reform, and of life. They have been protected in their natural growth by the absence of excessive leisure..... I do not, therefore share the view that leisure as an end is a worthy or desirable aspiration...."[3]

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[3] Edgerton, John E., "National Association of Manufacturers 34th Annual Convention Proceedings", 1929, p. 23.

Labor claimed that such long hours were tiring. Employers countered this by offering "conclusive" evidence that the then existing hours resulted in maximum efficiency. Many years after some unions had won the eight-hour day, a survey made of the shoe industry showed that under the given operating conditions, maximum efficiency was impossible under less than a 52-hour week. Similarly, in the silk industry, the survey showed that from 50 to 54 hours were needed to attain maximum efficiency. Also in the cotton industry, reduction of output accompanied each reduction of hours. These facts were from a survey financed by manufacturers.

Labor claimed that since machines had been developed, there should be a shortening of the hours of human labor. Employers said that the proposed reduction of hours would deprive them of all margin of profit, lower the wages of their employees, raise the price of their commodities and make it impossible for them to meet competition in this country or from foreign countries.

After some industries had granted reductions in hours, public opinion forced the others to fall in line. A notable example was the steel strike of 1919. Here the churches, through the Interchurch World Movement (a committee set up to study such conditions), gave impetus to the movement by saying that hours in the industry were longer than before

the war and that over half of the workers were on 12-hour shifts. The Federated American Engineering Societies surveyed the three shift operations in a number of continuous process industries and reported that there was no outstanding obstacle in the way of putting the steel industry on 8-hour shifts. They said that it would raise the costs approximately three per cent. The industry's reply to this was that such a reduction in hours was not feasible at the time; it would increase the costs of production fifteen per cent, it would require 60,000 additional workers, and the 12-hour day was not of itself an injury to the employees physically, mentally, or morally. However this was so bitterly attacked by the public that in a few months the industry reversed its decision. A few changes were made; but relatively long hours continued in the steel industry until the 1930's.[4]

So it was that unions, the workers themselves, churches, and public opinion, helped one way or another in the fight for shorter hours. In other countries such demands for the most part, were taken care of decades ago by government action. In America hours legislation other than for children, women, and special occupations, has just recently been pass-

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[4]Peterson, Florence, Survey of Labor Economics, Harper & Brothers, New York, 1947, pp. 428-29.

ed.

As early as 1868, New Hampshire passed a general 10-hour day law and in the next few years many states passed similar laws.[5] By the end of the century, many states had 8-hour laws. But these laws had almost no effect upon working hours, for two reasons. In the first place, the laws included a qualification, "unless otherwise stipulated by the contracting parties", which the courts almost always assumed that where more than the statutory hours were being worked, this had been agreed upon by the employer and his employees. In the second place, either the laws carried no provision for enforcement or, if penalties were provided, they could be invoked only if the employer "willfully" violated the law or, according to some of the laws, if it could be proved that he "compelled" his employees to exceed the legal limit. In 1868, Congress passed an 8-hour law for federal public works but it was not enforced. In 1892, another law was passed which limited work on federal public contracts to 8 hours a day except in case of "emergency", but since this was never clearly defined, the law was easily avoided.

In 1911, a rider to a Naval Appropriations bill, which

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[5]The Twentieth Century Fund, "Trends in Collective Bargaining", Academy Press, New York, 1945, p. 236.

provided for construction of various ships, prescribed an 8-hour day for all employees to be engaged on this work. This was partially enforced but employers found many loopholds. It was not until 1913, that Congress passed an amendment which provided that every contract to which the federal government is a party shall contain a provision that no laborer or mechanic in the employ of the contractor or subcontractor shall be required or permitted to work more than eight hours in any calender day, except when the President declares a state of emergency.

In 1916, the railway brotherhoods' negotiations for an 8-hour day failed. A strike call was the next move. With our entry into the World War imminent, a threatened tie-up of the nation's transportation system was vastly more serious even than in normal times. What the brotherhoods failed to get written into a collective bargaining agreement, they now sought by applying pressure upon government to write into law. At that time President Wilson, who was quite favorable toward labor, was in office. The result was the Adamson Act, the first federal law which standardized working hours throughout an industry, and the first notable success of organized labor to gain its ends through national legislation rather than through continued negotiation with employers.

Seventeen years elapsed before the federal government

again took a hand in setting labor standards. This comparatively recent trend began with the National Industrial Recovery Act of 1933 which provided that industrial codes be set up to establish limits upon maximum hours. Where no agreements were reached, the President could prescribe such standards. In 85 percent of the cases the 40-hour week was set up; of the remainder, half established higher and half laid down lower standards. Although the NIRA was declared unconstitutional three years later, and although NIRA codes were frequently defied, the Blue Eagle had nevertheless given great impetus to the 40-hour week. The NIRA benefited many sweatshop workers, particularly in the textile industry where long hours were still in effect. One of the most notable contributions of the NIRA was that it served to pave the way for permanent legislation.

After the NIRA was invalidated in 1935, there was passed the Bituminous Coal Conservation Act of 1935, which attempted to establish a "little NIRA" in the coal industry. This legislation was held unconstitutional in 1936 but many of its provisions were reenacted in a similar statute of 1937 which was approved by the courts.

There was passed in 1935, the Walsh-Healey Act or as it is sometimes called the Public Contracts Act. It requires certification that employees have not worked more than 40

hours per week on goods purchased by contract in excess of $10,000 by the federal government. This feature was supported particularly as a work-spreading measure. The Act does permit overtime if compensated at time-and-one-half rates, if approved by the Secretary of Labor. The full effects of this legislation were not felt until the nation started its defense program; for, up till that time, government purchases under the Act affected only a small proportion of producers. When industries began to produce war materials, the influence of the Act was much more widespread.

In 1937, the year before the Fair Labor Standards Act was passed and the Supreme Court upheld the Wagner Act, hours of work were a major factor in 32 percent of industrial disputes, an all time high.[6]

The most widely known federal legislation, so far as the regulation of hours is concerned, applied only to those employed in interstate commerce or in production of goods for interstate shipment. The Fair Labor Standards Act, passed in June, 1938, eventually established a 40-hour week in all industries engaged in interstate commerce. For the first year after passage it called for a 44-hour work week,

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[6] Millis and Montgomery, The Economics of Labor, McGraw-Hill, New York, 1945, vol. 3, p. 701.

for the second year it was to be 42 hours, and in Oct. 1940 it was to be 40 hours per week. When this last stage was reached one-sixth of the workers covered by the act were working more than 40 hours per week. This law does not set a limit on hours but provides that hours worked in excess of the standard must be paid for at time-and-a-half rates. Partial exemption was given to employers who guaranteed their employees an annual salary, in that the employees could work as high as 56 hours in one week without overtime pay, provided that they did not work over 2000 hours in one year or 1000 hours in 26 weeks. This Act was passed and upheld by the Supreme Court only a decade after people hesitated to even talk about legislation restricting hours of work, knowing full well that such an act would be unconstitutional.

When employment improved, as the defense and war effort gained impetus, the urge to enforce work-spreading legislation abated, and the statutory limits on hours became definitely objectionable in fields where serious labor shortages appeared. The result was that in the National Defense Act of 1940, there was included a provision suspending the 8-hour day limitation on any work covered by the Army, Navy, or Coast Guard contracts. So hours could be lengthened, but extra compensation for overtime, in excess of 40 hours, must be provided.

CHAPTER 5

GOVERNMENT REGULATION OF WAGES

"How much is the pay?" This is the major concern of every man who takes a job. Wages and rates of pay were uppermost in the minds of men when they formed the early unions; they hoped to bargain more effectively by concerted effort. Unfortunately, workers have had to fight for most of their wage gains. The controversy over wages has caused more strikes than any other single factor. So it is that even today, the first question a prospective employee will ask is, "How much is the pay?"

In America, general wage regulation has been as foreign to the traditions of our economic order as general price regulation. Minimum wage legislation was first enacted in New Zealand in 1894, spread to the Australian states in 1902, to Great Britian in 1909, France in 1915, and other industrialized European countries after World War I, but was of little consequence in America until 1933, when the New Deal got un-

derway.[1]

Minimum wage legislation in many cases followed the same path, first to the children, next to the women, to the sweatshop workers, and then to the unskilled. These are the groups which are relatively unimportant to organized labor. Until recently, labor leaders have had little incentive to organize these groups, so there has been little or no agitation for government protection. The employers recognized the fact that the supply of these classes of labor was nearly always in excess of the demand and that in the absence of any organization, it was virtually impossible for the workers themselves to raise the wages paid by collective bargaining.

America's slowness to adopt minimum wage regulation was not due to the absence of deplorable working conditions and low wages. Wages paid here in certain occupations to unorganized and unprotected workers, particularly women and children, have been proved to be inadequate to maintain a decent and healthful standard of living, no matter how barely defined. In Europe, the wage regulation was apparently a success; in America, the sweatshop working conditions were being re-

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[1]Peterson, Florence, Survey of Labor Economics, Harper & Brothers, New York, 1947, p. 388.

vealed. So public opinion, whipped by these two facts, started a labor movement for laws to force employers to pay a living wage. These laws were confined to women and children because there was doubt at the time whether it would be constitutional, also because of the oft-expressed fear of the labor unions that a minimum wage for men would tend to become a maximum wage and hinder collective bargaining.

When governments step in to regulate wages in private industry, they are prompted by one or more of the following reasons: (1) To protect a particular group, either workers or employers, who happened at the time to be in an extremely weak bargaining position because of either scarcity or abundance in the labor market. In protecting employers, the legislation would set a maximum rate for wages as was done in 1620 by both the Plymouth Colony and the Massachusetts Bay Colony.[2] In protecting employees, the legislation would set minimum rates of pay, such as set by the Fair Labor Standards Act. (2) To protect the health of particular workers by enabling them to secure subsistence living. This was done in the early attempts at regulation. (3) To protect the general economy by either increasing or stabilizing purchas-

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[2]Skilled tradesmen were brought over from England but instead of plying their trade, many of them became farmers. This resulted in excessive rates of pay for certain trades.

ing power, according to the need at the time. The best examples of this type are the NIRA and the regulations imposed during the last war to curb inflation.

Legislation setting a minimum wage was introduced in this courtry during the period of reform preceding the First World War. The unions did very little. The pressure for legislation was exerted for the most part by public spirited social workers who were aroused to the evil of underpaid women workers. Massachusetts passed the first minimum wage law in the United States in 1912. Sixteen states passed similar laws by 1923, at which time the U.S. Supreme Court held the law of the District of Columbia unconstitutional,[3] on the ground that it improperly interferred with the freedom of contract, and especially criticized the stated basis for determining the minimum wage, which was described in the Act as the cost of living and the amount necessary to protect health and morals.[4]

This decision of the U.S. Supreme Court caused the program for national regulation to be shelved temporarily. After the stock crash in 1929, which was the begining of the

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[3]Adkins v. Children's Hospital, 261 U.S. 525.

[4]Yoder, Dale, Personnel Management and Industrial Relations, Prentice Hall, Inc., New York, 1947, p. 406.

depression of the 1930's, wages grew progressively worse. The federal government as an employer of labor had always paid the "going" wage for similar work paid by private employers in the community in which the work was done. Up to this time it purchased goods and services on a competitive bid basis regardless of the wages or working conditions of those employed by the manufacturer or contractor. The question was raised, "Should not the government set the standard in wage payments?" In 1931, Congress passed the Bacon-Davis Act which provided that every government contract over $5000 was to contain a provision requiring the payment of prevailing community wage rates for similar work as determined by the Secretary of Labor. In 1935, the law was amended to apply to contracts in excess of $2000.

In 1936, The Walsh-Healy Act, sometimes called the Public Contracts Act, was passed giving the Federal Government the right to regulate conditions of employment when it is the purchaser of goods produced. The Act stipulates that any agency of the United States contracting to furnish materials, supplies, or equipment above $10,000 should conform to the following:

> (1) All persons employed by the contractor will be paid not less than the prevailing wage of such work in the community, as determined by the Secretary of Labor.

(2) No employee shall work over eight hours in any one day or forty hours in one week unless paid overtime.

(3) Males under 16 or females under 18 must not be employed.

(4) Convict labor must not be used.

The Act covers all workers, except office and custodial workers who are employed in or connected with the manufacture, fabrication, assembling, handling, supervision, or shipment of materials, supplies, articles, or equipment under the contract.[5]

As far as the principle of prevailing wages is concerned, the Walsh-Healey and the Bacon-Davis Acts are similar. The Walsh-Healey Act further provides for hours and overtime rates, working conditions, and child labor restrictions. To contrast the two laws: A worker is covered by the Bacon-Davis Act only if he is actually employed at the site of construction; a worker is covered by the Walsh-Healey Act if he is employed by the contractor, if he is employed by a manufacturer supplying materials directly to the government under a contract awarded to a dealer, or if he is employed by one manufacturer who is doing work required under a contract awarded to another manufacturer which in the normal

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[5]Peterson, Florence, Op. Cit., p. 406.

course of business the contracting manufacturer would have done in his own plant.

The National Industrial Recovery Act, passed in June, 1933, was by far the most extensive program put forth by the federal government for the regulation of wages in private industry. The Act, part of the overall legislative program designed to reduce unemployment and hasten recovery, sought to increase wage rates and provide more jobs, which in turn would increase the purchasing power for industrial and agricultural products. The primary goal of the NIRA was the assurance of a reasonable profit to industry and a living wage for labor. To do this, codes of fair competition were established for each industry; these codes set forth a minimum wage rate for the industry concerned. Less than 10 per cent of the codes included minimum rates for labor above the unskilled class, and more than half of these covered various branches of the clothing industry.

Some of the codes provided for different rates according to sex, geographical location, and size of the locality. The codes of the North differed from those of the South, causing hardships in the bodering states. The minimum rates established under the codes for unskilled men ranged from 30 to 40 cents an hour. All places of business, which conform-

ed to the rules of the NIRA, prominently displayed the picture of a blue eagle. It is true that the NIRA lacked adequate enforcement provisions, but the sheer force of public opinion alone had a tremendous effect on those industries which failed to live up to the specifications of the codes.

Although the NIRA was declared unconstitutional by the U.S. Supreme Court in May, 1935,[6] it paved the way for further federal control by legislation. The Bituminous Coal Act of 1937 was enacted to give the "fair trade practice" idea to a single industry. The Walsh-Healey Act of 1936 had the minimum wage and maximum hours concept of the NIRA.

Another Act which has its roots in the old NIRA, is the Fair Labor Standards Act, or as it is frequently called, the wage and hour law, passed in June, 1938. This Act established a minimum wage and a maximum work week for employees engaged in interstate commerce or the production of goods for interstate commerce. Minimum wage rates of 25 cents per hour were provided for the year beginning Oct. 24, 1939. The 30 cent rate prevailed until 1945, after which a minimum of 40 cents was established. The law provides, however, for the creation of industry committees which are to investigate conditions in each major industry and reccommend minimum

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[6]Schechter v. United States, 295 U.S. 495 (1935).

wages that may be above those specified by the law. Approximately 300,000 employees received wage increases when the law went into effect in 1938, and some 690,000 were similarly affected in 1939. When this measure was enacted, it covered between 12 and 13 million workers, more than two-thirds of whom were engaged in manufacturing.[7]

The next national control of wages was during World War II, when the President created the National War Labor Board to counteract a trend of rising prices and rising wages. For all practical purposes this Board functioned on the theory of compulsory arbitration. In the case of non-compliance with the Board's decision, the government could seize a plant and force its employer to accept the terms of the award. The President failed to develop a method to enforce the Board's decision on labor.

When strikes increased during the early part of the war, Congress passed the War Labor Disputes Act in 1943. The Act called for a 30-day cooling off period and the taking of a strike vote supervised by the government before a strike could be called. It prohibited the incitement or the encouragement to strike on government-operated plants or mines.

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[7]Fainsod, M. and Gordon, L., Government and the American Economy, W.W. Norton & Co., New York, 1941, p. 186.

Employers could recover damages from unions for losses suffered through strikes called in violation of this Act. In reality, the Act merely legalized strikes by providing a legal procedure before the walkout.[8]

The WLB had no control over wage raises granted voluntarily by employers. This soon gave rise to an inflation trend, since many employers would pay premium wages to get workers. On Oct. 2, 1942, Congress passed the Stabilization Act, which gave the President the right to stabilize prices, wages and salaries that affected the cost of living. This stabilization was to be based on the levels which existed on September 15, 1942. This measure was the first to prohibit the voluntary wage increases. The President issued such an order which stated that no increases or decreases in wage rates should thereafter be made without the approval of the National War Labor Board. The Board was to allow only such increases as were "necessary to correct maladjustments or inequalities or to aid in the effective prosecution of the war."[9]

These acts performed a valuable service in the general

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[8] Metz, H.W., Jacobstein, M., A National Labor Policy, The Brookings Institute, Washington, D.C., 1947, p. 18.

[9] Executive Order #9250.

stabilization program, in so far as they kept wages within bounds. Prices would have gotten furthur out of control without the control of wages. Shortly after V-J Day, the War Labor Board was abolished and the wage Stabilization Board was created to take its place. This Board was grossly inefficient and ineffective. All wage controls were completely lifted on November 9, 1946.

CHAPTER 6

SOCIAL SECURITY

For many decades it has been recognized that while society has benefited from industrialism, it has been inclined to disregard the security of workers and their families. At common law, an employer discarded an injured employee as an economic liability, not being required to assume any financial responsibility for the consequences of industrial accidents. To some extent, however, it has at last been decided to have society accept responsibility for such casualties, instead of leaving the injured workers and their families to bear these losses unaided.

In 1935, the federal government passed the Social Security Act which inaugurated a system of workmen's compensation acts, designed to place the burden of these unavoidable hazards on industry as an overhead operating cost. This falls indirectly on the public in the shape of "hidden taxes" reflected in slightly increased prices of commodities. This insurance idea of socializing risks which individual

workers and their families were not in a financial position to administer has been greatly extended under modern social security laws to include unemployment compensation and pensions against improvidence in old age.

Numerous bills were introduced in state legislatures for the purpose of providing public unemployment insurance in the years preceding the enactment of the federal Social Security Act. Most state legislatures apparently agreed that the necessary costs of such insurance would prove an unreasonable burden on employers who were forced to compete with those whose states had no such legislation, causing industries to leave or refuse to locate in certain taxed states.

The solution proposed for the problem of old age in the recommendations of the Committee on Economic Society, and embodied in the Social Security Act includes both insurance and assistance. As the long-term solution, the Act creates a program of federal old-age insurance for those workers who are actually employed. As a short-term solution for current problems, the Act sets up a program of federal grants to states to help them give financial assistance to needy persons already 65 years of age. Each type of program compliments the other; neither can be judged by itself alone.

Nevertheless the system is not a unified, integrated attack on old age problems. Because of a peculiar structure of the U. S. Government, and because assistance in the form of pensions was already a state fuention in 1935, a rather sharp differentiation between the two was made. The program conceives of old age insurance as the first line of defence and of old age assistance as the second line of defence.[1]

Insurance benefits are to be allowed as a matter of right, based on past contributions; assistance is to be granted only on proof of need, after passing the so-called "means test". Insurance is administered by the federal government. But the federal government has no means of distributing the funds collected for unemployment benefits; the only way of providing such benefits is by means of state systems of unemployment insurance. In those states providing a system of unemployment insurance financed by a payroll tax on employers and meeting standards specified by the Act, employers may deduct payments into the state funds from the federal payroll tax. In other words, the only way in which a state can secure the benefits to be derived from the funds collectible under the federal tax is by enactment

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[1]Parker, J.S., Social Security Reserves, American Council on Public Affairs, Washington, D.C., 1942, p. 8.

of a state unemployment insurance system meeting the requirements established by the Social Security Act. When such provision is made, 90 per cent of the federal tax may be saved to the state directly, and, in addition, the federal government will provide funds for administration of the state unemployment compensation program.

The effectiveness of the Act in encouraging state unemployment insurance legislation may be gathered from the fact that by August, 1937, all the states, the District of Columbia, Puerto Rico, and Hawaii had enacted laws and secured approval of their programs from the Social Security Board. The coverage thus afforded extends to some 21,000,000 employees.[2]

Taxes began with the calender year of 1937, at the rate of 1% each for employees and employers, on incomes and payrolls respectively. To ease the burden of this new tax, the schedule was graduated by three-year periods, and was planned to reach the maximum contribution of 3% each for employees and employers in 1949, twelve years after the first payment. The increase was fixed at ½ of 1% at the close of each 3 year period. The permanent contribution rate was ultimate-

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[2] Yoder, Dale, Personnel Management and Industrial Relations, Prentice-Hall, Inc., New York, p. 607.

ly to be a total of 6% of payrolls in the covered industries.

Benefits were payable under the original Act to persons reaching 65 years of age and retiring from regular employment. The maximum monthly annuity payable was $85, the minimum was $10. The benefit formula adopted called for a payment of ½ of 1% of the first $3000 of total wage earned; 1/12 of 1% of the wages above $3000 and below $45,000; and 1/24 of 1% of the wages above $45,000. This formula weighted the actual benefits heavily in favor of low-paid workers, and those with only a few years of service to their credit.[3]

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[3]Parker, J.S., Social Security Reserves, American Council on Public Affairs, Washington, D.C., 1942, p. 11.

PART II RESTRICTIVE LEGISLATION

CHAPTER 1

INTRODUCTION

The belief that every person had a natural right to dispose of his property and labor as he pleased, free from the dictates of others, had been championed by management for years. This meant that employers had the right to buy their labor in the cheapest markets and that each individual was entitled to sell his labor on whatever terms he saw fit. But in the latter part of the nineteenth century big business began to grow; people began to fear the gigantic commercial enterprises with whom it was getting increasingly hard to bargain individually. So it was that labor unions began to spring up and grow, for workers realized that they must band together to bargain collectively. The attitude of the nation began to change from outright disapproval to dubious acceptance.

Even the courts became more tolerant. Here in America, the courts followed the English notion that unions were criminal and tried to discard them during the first half of the nineteenth century. The unions had little freedom; their leaders were constantly subjected to civil action for damages. In the latter part of the century, the courts began to accept unionism as an established social institution and practically stopped regarding its bargaining activities as restraints of trade.

The period between 1890 and 1932 was characterized by the growth of the modern labor union and also the last struggles of the management groups to suppress union activities through litigation in our courts. They tried to abolish the labor injunction but failed until 1933 when the Norris-LaGuardia anti-injunction bill was passed.

During the next few years, legislation, undreamed of a decade or two earlier, was passed. The NIRA, with its work spreading policies; the NLRA, which aided employees in securing independent organizations, free from employer interference, for collective bargaining; the FLSA, which established a minimum wage and a maximum hour week; are good examples. The NLRA and the FLSA were both upheld by the Supreme Court in the teeth of long established constitutional

doctrine to the contrary. Social Security legislation was adopted by Congress to insure workers against unemployment and old age. The CIO sprang into being with a program for the unionization of millions of workers previously considered not practicably organizable.

Big business, mass production, and the assembly line have brought to the fore some of our most able leaders in the field of labor and spurred the expansion of labor unions. Clashes between unions and management and between unions themselves make controlling legislation both desirable and necessary.

With World War II came emergency legislation for promoting labor relations and collective bargaining. We then witnessed the most astounding feats of production ever staged, made possible by the extraordinary co-operation of management and labor during these years and by their determination to see the job through to the end. The War Labor Board conducted a program of collective bargaining in such a way that the wheels of industry kept at an exceptionally high level of production with relatively little inflation ensuing. Then came peace, followed by a new and bitter struggle between management and labor, fanned by the stored up grievances of the war.

Restrictions, imposed during the war to control labor troubles, have been taken off. Too much water has gone under the bridge for us to go back to the prewar days and pick up where we left off. The break that the war has made in the normal development of our laws, has afforded an occasion for us to recapitulate our achievements in the labor legislation of the past and to ponder mistakes with an eye to profiting from them in the future.

The need for an integrated national labor policy, efficiently administered and enforced, has been emphasized by the disorder of existing labor laws and the resulting disaffection in American public opinion. Misinformed viewpoints or, more generally, hostile attitudes toward some act of labor unions, have sometimes led to the enactment of hasty labor legislation. A wise consideration of the past will give us a better understanding of the future, for we realize that the ensuing years will bring new things, new problems, and new laws in this field.

CHAPTER II

THE SHERMAN ANTI-TRUST ACT

The gist of the Sherman Act appears in its first two sections: Section 1. "Every contract, combination in the form of trust or otherwise, or conspiracy, in the restraint of trade or commerce among the several states, or with foreigh nations, is hereby declared to be illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor...." Section 2. "Every person who shall monopolize, or attempt to monopolize, or combine with any other person or persons, to monopolize any part of the trade or commerce among the several states, or with foreign nations, shall be deemed guilty of a misdemeanor...."

The federal courts are given jurisdiction to enforce this act, and the attorney general is empowered to initiate criminal prosecutions or to secure injunctive relief against violations. All persons injured by violations of others are

allowed to maintain civil suits for treble damages against those who violated the terms of the act.

In the latter part of the nineteenth century, business men began to merge, forming hugh corporations and holding companies. The public actually became afraid that big business would soon have too much control over the manufacturing and marketing of consumer goods of all kinds. In response to popular demand, the Sherman Anti-trust Act was passed in 1890 to curb the expansion of big business into monopolies. The people thought that competition was the answer to all of the questions of safety.

Although the Sherman Act is simply stated, it has given rise to one of the most heated controversies of modern times. Did Congress intend to include the activities of organized labor in the scope of the Sherman Act? Unfortunately the phrase, "...in restraint of trade or commerce...", is not too clear and gives much latitude to the descretion of the courts. If the purpose of the Act were to bring back the old principles of classical economics, that is, a spirit of free enterprise between management and labor, then it might conceivably be used against the activities of unions as restraints of trade. Yet many people reasoned that Congress merely wanted to put a curb on the expansion of big business

into monopolies. Even today, years after the Supreme Court settled the issue, the question still is debated.

For the first eighteen years of the Act, the Supreme Court considered only business conbinations as possible offenders under its terms. Then in 1908, it decided that Congress did intend to have the Act apply to organize labor. This was in the famous decision of the celebrated Danbury Hatters case. the first case to involve the Sherman Act and labor.[1]

A national union organization was trying to unionize all of the hat workers in the 80 or so large hat plants in the country. Most of the manufacturers had allowed the unions to organize their plants. The few that remained ununionized offered the others and the union serious embarassment, through competition based on lower labor standards and lower wages. Loewe, a manufacturer from Danbury, Conn., had successfully resisted the local union's attempts to unionize his plant. The national union then imposed a nation-wide secondary boycott on Loewe's hats, requiring their members to refuse to buy his hats or deal with merchants who sold them. Immediately, most of Loewe's out-of-state trade ceased

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[1]Loewe v. Lawlor, 208 U.S. 274 (1908).

which resulted in large losses to his company. He brought suit against the membership of the union for triple damages and secured a judgement of over a half-million dollars.

Loewe showed that the effect of the union's boycott was to directly interfere with two kinds of interstate trade, the influx of orders into the state and the shipment of new hats out of the state. Mr Justice Holmes, who delivered the majority opinion, said that although the union may not have intended to influence prices, the circulation of such a ban was not legal under the Sherman Act. This decision was a clear showing that the federal courts had jurisdiction over the suit and that the application of the Sherman Act was proper since Congress was enpowered to enact such a measure under the commerce clause of the federal constitution.

Three years later, the Supreme Court held that a nation-wide boycott conducted through the American Federation of Labor against the Buck Stove and Range Company was in violation of the Sherman Act, and forbade the officers of the A.F.L. to speak or write anything in furtherance of the boycott.[2]

These two decisions meant that even peaceful pursua-

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[2]Gompers v. Buck Stove & Range Co., 221 U.S. 418 (1911).

sion and peaceful assembly were illegal if they resulted in curtailment of trade and damage to the business standing. Organized labor took these decisions to mean that any union activity might be interpreted as illegal restraint of interstate trade and undertook a vigorous campaign to have the Sherman Act modified to the exclusion of labor unions. Sam Gompers, who led the fight, and other labor leaders thought that the Clayton Act, passed in 1914, was Congress' answer to their petitions.

In actual practice, the Clayton Act did not exempt labor from the provisions of the Sherman Act and the most important provisions of the Act were construed by the Courts as having made no change in the law as previously interpreted. This was revealed in a number of Supreme Court decisions in the 1920's.[3]

In 1922, wide publicity was given to the Coronado case.[4] The United Mine Workers of America were being pressed by unionized operators to go out and organize competing non-union mines. District 21 of the UMWA struck and closed a Coronado

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[3]Peterson, Florence, Survey of Labor Economics, Harper & Brothers, New York, 1947, p. 592.

[4]United Mine Workers of America v. Coronado Coal Co., 259 U.S. 344, (1922).

Coal Co. mine; in doing so they burned tipples and coal cars, dynamited the mine, and behaved outrageously in general, to the great loss of the company. The mine owners might have brought suit for damages in the state courts, as the strikers had behaved in a highly illegal fashion. However they preferred to sue for triple damages under the Sherman Act against District 21 of the UMWA and against the national union itself, assigning as the violation of the Act the stoppage of those shipments of coal which would have been made to other states had the mine not been prevented by the strike from continuing operations.

The court was asked to construe an interference with the movement of goods in interstate commerce as a "restraint of trade of commerce" within the meaning of the Act. Now the court was on the spot. If it recognized the company's theory to be valid, then it was established once and for all the federal government's power and willingness to cancel out most of the important gains organized labor had made during the preceding century. By 1922, most of the signigicant units of industry in this country were producing for national markets, so if the court held this stoppage of commerce to be a violation of the Sherman Act, then in the name of that Act it would be declaring almost all strikes and other union self-

help bargaining devices unlawful. If a strike of any kind, for any purpose, were held to be in restraint of trade, simply because it shut down a unit of industry and thus kept its products from entering interstate markets, then in the name of that Act the unions established throughout American industry were finished as far as effective bargaining activities were concerned.

Chief Justice Taft realized that the Supreme Court could not do a thing of this sort. In his opinion he said that the union had shown only an indirect restraint of trade, not the kind direct restraint which would constitute a violation of the Act. He reasoned that the mining of coal was of purely local concern and was not interstate commerce, showing that the union's interference was confined to production and did not touch on marketing or distribution. He implied that the court did not even have jurisdiction to pass on the merits of the case regardless of what it might believe Congress had meant to prevent by the Act. He said that this case differed from the Danbury Hatters Case in that the action against Loewe was a direct attack on interstate commerce, whereas the mining of coal was not interstate commerce. This decision made it clear that the Sherman Act could not be used to stop strikes, even when they inter-

ferred with or "indirectly" restrained interstate commerce.

In recent cases the Supreme Court has ruled that labor unions are subject to the Sherman Act but has drastically restricted the application of the Act so far as union activities are concerned. In the courts decision in the Apex case,[3] it recognized that all combinations of workers necessarily restrain competition since they curtain competition among employees and tend to eliminate wage differences. But they are not thereby unlawful. Neither are strikes which obstruct the shipment of goods across state lines in violation of the Sherman Act, even though they result in violence and destruction of property. This is punishable under the state and local criminal laws but not under the Sherman Act. The court ruled further that the only type of interference with interstate commerce which is unlawful under the Sherman Act is the suppression of competition by monopolizing a supply of goods, controlling its price, or discriminating between purchasers, or in other words, interference with trade in a commercial sense where there is an actual or intended or direct effect upon prices and price competition.[4]

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[3]Apex Hosiery Co. v. Leader, 310 U.S. 469 (1940).

[4]Peterson, Florence, Op. Cit. p. 139.

Also in the Hutcheson Case,[5] the Supreme Court held that activities which are not enjoinable under the Clayton Act and the Norris-LaGuardia Act are not subject to the Sherman Act. The court held in the recent Brewery fight, that peaceful picketing and boycotting cannot be enjoined or prosecuted, even though the immediate issue is a jurisdictional dispute in which the employer is not directly involved, the court stated: "....Whether trade union conduct constitutes a violation of the Sherman Act is to be ditermined only by reading the Sherman Act and Section 20 of the Clayton Act, and the Norris-LaGuardia Act as a harmonizing text of outlawry of labor conduct....So long as a union acts in its self interest and does not combine with non-labor groups, the licit and the illicit (under Section 20 of the Clayton Act) are not to be distinguished by any judgement regarding the wisdom or unwisdom, the rightness or wrongness, the selfishness or unselfishness of the end of which the particular union activities are the means."[6]

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[5] United States v. Hutcheson, 311 U.S.—, (1941).

[6] International Brotherhood of Teamsters v. International Union of United Workers, 312 U.S. 219 (1941).

CHAPTER 3

THE CLAYTON ACT

About 1880, a railroad ran into financial difficulties and went into receivership. The court appointed a receiver whose duty it was to manage the property in a prudent and profitable way in order to protect the interests of the investors. The railroad employees threatened to strike for a wage increase. The receiver complained to the court, for whom he was acting, that the proposed strike endangered the property entrusted to him. He asked for an injunction against the strikers pending the necessary litigation. The court promptly issued the order against the strikers, who ignored it. When this happened, the court immediately jailed the leaders and as many more of the strikers as were necessary to break the strike, and held them for contempt. The strike was ended in a matter of hours instead of weeks and months required in actions of law. This proved to be a control of labor disputes that really worked. The courts rapidly took it over, and by 1890, made it a well-establish-

ed American institution.

During the five years after the Danbury Hatters' Decision, the federal courts were exercising sweeping controls over unions under the Sherman Antitrust Act and seemed to be using the injunction too freely against organized labor. Heavy pressure was brought by the leaders of labor to curtail the powers of courts over union activities. In 1914, this was culminated in the Clayton Act, passed by Congress to increase the effectiveness of antitrust policy and to liberate labor from some of the restrictions of the injunction and antitrust legislation.

Although Congress had no idea of wholly exempting labor union activities from the ambit of antitrust laws, it did serve up some grandiose words which helped to ameliorate the unions. The most important sections of the act are Sections 6 and 20. Section 6, which states the position of organized labor under the Sherman Act, reads as follows:

> That the labor of a human is not a commodity or article of commerce. Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade under the antitrust laws.

This provision may appear on a casual reading to relieve the unions of the restrictions of the Sherman Act. Actually it changed nothing for them and it might as well not have been passed. Despite what the labor leaders optimistically tried to read into the Act, the Supreme Court said that Section 6 stated nothing that was not already conceded to be true. Such words as "lawfully" and "legitimate" effectively emasculated the Act of any real meaning. In the Duplex case,[1] the Supreme Court readily admitted that the labor of a human being was not an article of commerce, and implied, "So what!" The court recognized that unions were not an offense under the Sherman Act any more than were countless manufacturing concerns, as long as they operated lawfully under the Act and carried out their legitimate objects. But the machinists union's efforts to get printing companies not to buy Duplex presses was illegal because threats had been used and the aim was to injure the company.

Section 20, restricted in application through its narrow definitions of both parties and the substance of disputes, surrounded labor injunctions with the following restrictions:

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[1] Duplex Printing Press Co. v. Deering, 254 U.S. 349 (1921).

That no restraining order or injunction shall be granted by any court of the United States, or a judge or the judges thereof, in any case between an employer and employees, ...or between persons employed and persons seeking employment, involving, or growing out of a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property, or to a property right, of the party making the application....

This Section, which was to regulate the granting of injunctions, was poorly worded; even a cursory study will prove this. Congress tells the federal courts that they shall not issue restraining orders and injunctions "in any case between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment...." From a layman's point of view, what is "any case between an employer and employees"? It does not say "his" employees. Does it mean an employer and people who are employed, regardless of where they are employed or by whom? Are people on strike or picketing to be considered as employees? Why did Congress include the phrase "between employers and employees" after it had mentioned the preceding phrase? And what is the significance of the phrase "between persons employed and persons seeking employment"? It is easily seen that this section of the Clayton Act is not so clear, in fact it has been cited as the most ambiguous act ever written.[2]

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[2]Gregory, Charles O., Labor and the Law, W.W. Norton & Co. Inc., New York, 1946, p. 230.

There is little doubt in many minds that Congress deliberately made this section ambiguous, with the surface appearance of going quite far, but nevertheless using restrictive words like "employee" in close juxtaposition with the word "employer" and craftily inserting words like "lawful" and "peaceful", so that labor would think that they had acchieved something substantial. Evidence supporting this belief was found in some of the Congressional committee reports on this section.[3]

The Act declares that no injunction shall prohibit the union in their "legitimate objects" and that peaceful picketing whether done "singly or in concert" is legal. Yet in the Truax case, the court held that mass picketing was unlawful because it constituted intimidation and violated the constitutional guarantees of liberty and property.[4]

Other sections concerning labor limited the duration of temporary restraining orders, forbade preliminary injunctions without notice to the opposite party, gave private parties the right to seek injunctions, required the posting of adequate bonds by applicants for injunctions, outlawed

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[3]Ibid., p. 221.

[4]Truax v. Corrigan, 257 U.S. 312 (1921).

"blanket" injunctions and provided for a trial by jury for persons accused of violating injunctions by acts indictable as criminal offenses.

Union leaders were quick to claim a sweeping victory. A. F. of L. president, Sam Gompers, hailed this law as the "Magna Carta" of labor. Yet the court decisions have negated the supposed significance and have done no more than to affirm what the law had veen for a long time, that labor unions are not in themselves unlawful.[5] The Act merely set forth the best practice to be followed. In consequence the antitrust laws retained their effectiveness as obstacles to unionization. The United Mine Workers attempted to protect union standards against competition from Southern non-union mines by having them organized but in the Second Coronado Coal Case, the Supreme Court stated:

"The mere reduction in the supply of an article to be shipped in interstate commerce by the illetal or tortious prevention of its manufacture or production is ordinarily an indirect and remote obstruction to that commerce. But 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 commerce, or the price of it in interstate markets, their action is a direct violation of the Antitrust Act."[6]

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[5]Stephens v. Ohio State Telephone Co., 240 Fed. 759.

[6]Coronado Coal Co. v. United Mine Workers of America, 268 U.S. 295 (1925).

Two years later, this decision was reinforced by a seven to two decision of the Supreme Court enjoining the Journeymen Stone Cutters' Association from refusing to handle stone out by the leading non-union Indiana limestone companies.[7] The conclusion reached here was that the Clayton Act was not intended to legalize the secondary boycott, although labor fought vainly to prove otherwise.

Case after case the courts reiterated their interpretation of the Clayton Act as a mere restatement of pre-existing law. Labor leaders increased the pressure for further and more effective attacks on the labor injunction. In 1928, both parties included anti-injunction planks in their platforms, but the Republicans were less wholehearted in their condemnation. So it was that no gains were made until the imminence of another presidential campaign paved the way for Senator Norris and Representative LaGuardia of New York to effect passage of an anti-injunction bill in 1932.

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[7]Bedford Cut Stone Co. v. Journeyman Stone Cutters' Association, 274 U.S. 37; 47 Sup. Ct. 522 (1927).

CHAPTER 4

THE NORRIS-LA GUARDIA ACT

(FEDERAL ANTI-INJUNCTION LAW)

From about 1890 to 1932, the injunction wrecked havoc with the union's self-help program. It was used altogether too frequently and in some cases, unequitably. Issues in litigation arising out of trade disputes are related for the most part on fact. But in the equity courts, issues of fact are tried by a single judge, sitting without a jury. Charges of violating an injunction were often heard on affidavits only, without the opportunity of confronting or cross-examining witnesses. Men found guilty of contempt were committed in the judge's discretion, without either a statutory limit upon the length of the imprisonment, or the opportunity of effective review on appeal, or the right to release on bail pending possible revisory proceedings. The effect of the proceeding upon the individual was substantially the same as if he had been successfully prosecuted for a crime; but he was denied, in the course of the equity proceedings,

those rights which by the Constitution are commonly guaranteed to persons charged with a crime.

A single judge often usurped the function not only of the jury but of the police department; also in prescribing the conditions under which strikes were permissible and how they might be carried out, he usurped the powers of the legislature; he often abridged the constitutional rights of individuals to free speech, to a free press and to peaceful assembly.[1] Temporary injunctions often granted without hearing labor's side of the case frequently had the effect of paralyzing the efforts of the organizers attempting to unionize a plant or conduct a successful strike. Restraining orders were especially effective in restricting the use of picketing.

The total membership of unions had declined to less than 3,500,000 in 1929, and was reduced another half million during the ensuing depression.[2] In the midst of these reversals, Congress opened the way for substantial protection and actual encouragement of union organization with

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[1]Truax v. Corrigan, 257 U.S. 312 (1921). Justice Brandeis set forth these principles in the dissenting opinion.

[2]Peterson, Florence, American Labor Unions, Harper & Brothers, New York, 1945, p. 22.

its passage of the Norris-LaGuardia Act in 1932. Section 2 of the Act states the public policy toward the workers' right to self-organization and collective bargaining:

"Whereas under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own chosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining, or other mutual aid or protection...."

Congress states here its conception of the situation, that labor is the underdog and is unable through self-help alone to achieve concerted action successfully and to wrest from the employers proper wages or fair labor conditions. Under this declared policy, the federal courts have explicitly exempted labor unions from the operation of anti-trust laws.

In Section 4 of the Norris-LaGuardia Act, Congress says: "No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute...." Thereafter the Act set forth many activities

against which temporary or permanent restraining orders could not be issued. Congress did not, as it had done in 1914, make the conduct listed lawful for all purposes, but made it only non-enjoinable. Many think that this was deliberate, since the real evil to be laid by the act was the abuse of judicial equity power relating to injunctions.

There were other specific provisions of the Act. It made unenforceable in the federal courts what was commonly referred to by labor as the "yellow dog contract". This was a contract by which an applicant for a job was required to withdraw his membership in an outside union and to agree not to join such union during the term of the employment contract. The use of such contracts was violently opposed by labor as being an infringement of a constitutional right, but the courts generally upheld the contracts until they were outlawed by the Act.

The Norris-LaGuardia Act specifies that no union officer shall be held responsible for acts committed during a labor dispute unless there is clear proof he authorized such act. Section 8 says that no injunctive relief shall be granted to any complainant who has failed to comply with any obligation imposed by law or who has failed to make every reasonable effort to settle the dispute. The Act

provides for trial by jury of any person charged with contempt of court in a case arising under the act except contempts committed in and near the presence of the court.

The net effect of the Act was to establish the coercive techniques of labor unions on a par with those of business associations at common law. It created a laissez-faire condition for organized labor's economic self-help activities, on both collective bargaining and organizational angles, by requiring the courts in their injunctive-issuing capacity to keep hands off such activities under prescribed circumstances. It is not what the Act does for labor but what it permits labor to do for itself without judicial interference. The unions were free to promote their own economic interests without fear of the injunction as long as they kept within the restrictions of the Act.

As far as the federal courts were concerned, this Act gave a green light to labor organizations in nation-wide campaigns for the closed shop in individual units where a union was already established and for unionizing all units throughout an entire industry, the so-called "universal closed shop". In 1933, union membership totaled about 3,000,000. Due to this Act and subsequent legislation, union membership multiplied in the next fifteen years to

reach an estimated total of 15,000,000.

Carefully drafted as it was, the new statute still needed sympathetic judicial interpretation if its purposes were to be fulfilled. In a few early decisions, the courts tried to limit its scope through an unwarranted narrow definition of the term "labor dispute" but on the whole the courts have recognized the purpose of Congress and have undergone a complete change of attitude and practice.[3] The Supreme Court upheld the constitutionality of the Act in a 3-2 decision of a Milwaukee meat market dispute.[4] Also in other cases, the court has affirmed a broad interpretation of the scope of the act.[5]

This was not done until after the Supreme Court had taken cognizance of the change in public opinion which had occurred under the New Deal. Also these decisions may have been influenced a bit by President Roosevelt's threat to increase the personnel of the court or as it was commonly

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[3]Fainsod, M. and Gordon, L., Government and the American Economy, W.W. Norton & Co., New York, 1941, p. 162.

[4]Lauf v. E.G. Shinner & Co., 303 U.S. 323 (1938).

[5]New Negro Alliance v. Sanitary Grocery Co., 303 U.S. 552 (1938).
Fur Workers Union, Local # 72 v. Fur Workers Union # 21238, U.S. Court of Appeals for the District of Columbia (1939). 105 Fed.(2d) 1.

called, "Pack the court policy". Despite the reason, there was a decided change in the attitude of the court in 1936 and 1937.[6]

The Norris-LaGuardia Act has, for the most part, satisfied the major portion of labor grievances against the injunction. It was the initial act by Congress in a series of such acts designed to give labor a New Deal.

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[6]In 1936, the Supreme Court declared unconstitutional the labor provision of the National Coal Conservation Act, and the New York State minimum wage law. In 1937, the court declared constitutional the N.L.R.A., the Social Security Act and the Washington State minimum wage law for women, which was similar to the New York law.

CHAPTER 5

THE NATIONAL INDUSTRIAL RECOVERY ACT

The economy shattering depression which began in 1929 gave the American public a realization of the need for new and modern laws applicable to industrial relations. The fight to sell merchandise in a highly competitive and declining market led to a rapid reduction in prices, followed by a cutting of wages. In 1931, this general breakdown of wage rates, together with an increasing amount of industrial homework and sweatshop evils, stimulated efforts to remedy the situation. Organized labor appealed to Congress to enact a law restricting work to thirty hours a week. Their idea was basically a simple one,—to spread the available work without a reduction in pay. This was the first time in the history of the American Federation of Labor that it had called on the federal government for legislation concerning wages and hours.

Congress failed to enact such a law but the real need for a "floor" under wages stimulated renewed efforts in this

direction. / The Roosevelt Administration was developing an entirely new program for general recovery. The National Industrial Recovery Act, passed in June, 1933, contained the basic provisions of this program. The NIRA was only one phase in the New Deal program which affected banking, the money standard, stock markets, aid to distressed businesses, agriculture, public works, social security, etc. The Act was described by President Roosevelt, when he signed it, as "the most important and far-reaching legislation ever enacted by the American Congress."

The NIRA was an emergency measure. Unemployment reached staggering figures. In the face of overwhelming deflationary forces, organized labor was power less. In the near-panic condition of the Spring of 1933, considerable pressure was being brought on the government to alleviate the situation. Congress passed this Act as a short-term measure, since it was limited to two years duration. Congress said that its constitutional justification rested in the state of emergency. The haste and confusion of emergency, and the need for immediate action contributed greatly to the administrative mistakes which limited the real good accomplished by the Act.

With the NIRA, Congress appropriated huge sums for pu-

blic works. This, with a raise in wages and work spreading policies, was supposed to increase purchasing power thereby increasing consumer's demand among the masses of population. With competition relaxed by trade associations and price fixing, the pressure applied by organized labor would force a greater part of the national income onto the hands of workingmen. Once this process began operating, it would be continuous. The huge sums for public works and large subsidies for agriculture were to take up the immediate slack in our economy and start the ball rolling or, as it was called then, "prime the pump."

The NIRA was rendered palatable to industry by permitting firms to organize trade associations with powers which, under normal conditions, would be prosecuted by the Justice Department as violations of the Anti-trust Act. The labor unions were won over by the inclusion into the Act of Section 7 (a), which established a federal labor policy for interstate business. Because of its importance to this Act and to future labor legislation, Section 7 (a) is quoted here in full:

> Every code of fair competition, agreement, and license, approved, prescribed, or issued under this title shall contain the following conditions: (1) That employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of

labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; (2) that no employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing; and (3) that employers shall comply with the maximum hours of labor, minimum rates of pay, and other conditions of employment, approved or prescribed by the President.[1]

The Act provides that each industry establish codes of fair competition which were to include minimum working standards, prohibition of child labor, maximum hours,[2] increased wages, and Section 7 (a). The codes were written, for the most part, by trade associations but labor was given an advisory position and the extent of its influence varied with the industry. Each trade association had the responsibility of writing the code which set the prices, rates of production, minimum wages, etc., of its industry; when written, the code became the law of the entire industry. It was essentially an experiment in industrial self government subjected to a small amount of governmental supervision.

The President had to approve each code. He examined

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[1] 48 Stat. 198.

[2] The maximum was usually 40 hours, though in some cases it was below 40, e.g., the men's clothing and bituminous coal industries.

each one to see that it followed the true policy of the Act, was not designed to promote monopolies or to suppress small business. He had the right to modify code provisions in order to protect consumers, competitors, employees, or public interest. All codes, licensing requirements, and agreements were to be exempted from the antitrust laws for the two year duration of the Act. Each code was to prescribe wages, hours, and working conditions as approved by the President. Codes were to be fixed by collective bargaining wherever possible, but otherwise prescribed by the president at his own discretion; he had the power to cancel or modify the codes at any time. If an industry failed to submit a code, the president had the power to impose one after due notice and a hearing. There was no court procedure set-up to force the compliance to the terms of the code but those industries which did adhere to the fair competition codes were allowed to display the sign of a "Blue Eagle". Wherever the public saw this sign, it knew the industry was conforming to the NIRA policies. Thus public opinion was the chief whip to keep the industries in line.

These minimum requirements of the codes,[3] were not what

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[3]The point at which wages, hours, and conditions became "sweating labor" was undefined, but it was understood that each code was to contain a minimum degree of protection or a "floor", a point below which they could not fall.

labor had hoped for, however it reasoned that with Section 7 (a) guaranteeing the right to organize, it could secure organization and by collective bargaining attain further gains.

After the passage of the NIRA, union activity grew tremendously. The urge to organize was fostered by the workers themselves rather than by union leaders. Workers, realizing the advantages in collective bargaining and the true meaning of the guarantee in Section 7 (a) hastened to "join up". Many employers diverted this interest in unionism inspired by law by creating company dominated unions, whose membership was limited to persons employed by the one employer.

Rather than creating industrial peace as was the intent of the law, the first year of the NIRA produced a startling effect,—the number of strikes in 1933 were double those of 1932. For the first time in ten years, there were more than 200 new strikes each month, and for the first time since 1922 there were more than a million workers involved in strikes throughout the year.[4] The majority of the strikes were for union recognition and for increased wages.

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[4]Peterson, Florence, American Labor Unions, Harper & Brothers Co., New York, 1945, p.216.

Various labor boards were created by the executive order of the President for the purpose of trying to solve the labor troubles. The Automobile Labor Board, the National Steel Labor Board, and the Textile Labor Board were three of the best known of these boards. Later the President created a temporary National Labor Board of seven members with Senator Wagner as the chairman. Congress then passed Joint Resolution 44 for the purpose of making the provisions of Section 7 (a) work more smoothly. On July 9, 1934, this Act organized a three-man board which continued its work until May 27, 1935, when the NIRA was declared unconstitutional.[5] This board appointed regional boards and developed principles and policies. It was abetted by a four-, and later a seven-man, National Industrial Recovery Board, with two members identified with labor, two with business, one with consumers, and two without special interests.

These boards had the unpleasant task of formulating all administrative policies to conform to the nature of the Act. Also they had to settle disputes between industries not fully cartelized which could not agree on the provisions of a code. There were interminable amounts of paper work, red tape, administrative duties that hopelessly entangled the board, with

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[5]Scott, W.H. et al., Op. Cit., p.406.

the result that during the crucial early days of code making, the code authorities were left almost wholly to their own devices.

In all, there were 579 codes, with 187 supplements, and 849 amendments approved under the Act before the Supreme Court declared it illegal. Added to these codes were 79 general administrative orders and 16,172 individual orders amending, interpreting and modifying the codes and affecting their administration.[6] It is small wonder that there was administrative difficulties.

When the Seventy-fourth Congress assembled early in 1935, it had to decide whether to let the NIRA die a natural death or to revive it for two more years. President Roosevelt advocated a two year extension; he said, "...the fundamental purposes and principles of the Act are sound. To abandon them is unthinkable....It would spell the return of industrial and labor chaos." Several bills were introduced to modify, extend, or kill the NIRA but these were cut short on May 25, 1935, by a sweeping decision of the Supreme Court in the Schechter Case.[7] In a unaminous decision, it declared

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[6] Andrews, John A., Administrative Labor Legislation, Harper & Brothers Co., New York, 1936, p. 150.

[7] Schechter v. United States, 295 U.S. 495 (1935).

the NIRA unconstitutional on three separate points: (1) It involved an unconstitutional delegation by Congress of its legislative power, in that it failed to establish definite standards to govern industries in drawing up their codes and the President in approving them; (2) it deprived persons of their liberty and property without due process of law, thus violating the Fifth Amendment to the constitution, and (3) it regulated transactions which lay beyond Congress' power over interstate commerce.[8]

Chief Justice Hughes, writing the unanimous opinion, stated that the statue could not be justifiedas an emergency measure, —"Extraordinary conditions do not create or enlarge constitutional power....the recuperative efforts of the federal government must be made in a manner consistent with the authority granted by the Constitution. We are of the opinion that the attempt through the provisions of the code to fix the hours and wages of employees of defendants in their intrastate business was not a valid exercise of federal power..."

There were several defects quite apparent at the time the Act was invalidated. First, the code provisions were

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[8]Raushenbush, Carl and Stein, Emanuel, Labor Cases and Materials, F.S. Crofts & Co., New York, 1947, p. 448.

defective in failing to confer rights upon aggrieved private parties. The courts had held that private persons aggrieved through violation of code provisions were remediless because the act failed to contain provisions for enforcement by any but public agencies. Second, the labor relations policy had no proper place in business code procedure; it should be fitted instead into an independent setting. Third, the practice of permitting appeal from preliminary orders and determinations delayed final determinations unduly, e.g., the holding of elections could be held up by litigation.[9]

The NIRA did achieve a marked reduction in child labor, a diminution of sweatshop labor conditions, encouragement to independent labor organization, and some elimination of clearly undesirable commercial practices. However these results could have been achieved with far less effort and far less elaborate administrative machinery. Yet it must be remembered that this was a temporary measure, born of near-panic conditions, raised on administrative redtape, and died of unconstitutionality.

Although the Blue Eagle was dead, in dying it gave

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[9] Teller, Ludwig, A Labor Policy for America, Baker, Voorhis & Co., New York, 1945, p. 35.

birth to an act which embodied most of the gains made by organized labor. The National Labor Relations Act was enacted only six weeks after the Schechter decision. This law not only contained a modification of Section 7 (a) of the NIRA but also new features designed to strengthen the labor provision of that law.

CHAPTER 6

THE NATIONAL LABOR RELATIONS ACT

The NIRA caused an important change to take place in the attitude of the union leaders. For a half century they had relied on their own self-help but after such a demonstration, they were convinced that federal intervention could be beneficial to organized labor. When the NIRA was declared unconstitutional, organized labor immediately sought the enactment of a law which not only embodied Section 7 (a) but which also contained new features designed to strengthen the labor provision of that law. This was achieved in the enactment on July 5, 1935, of the National Labor Relations Act, commonly referred to as the Wagner Act.

The National Labor Relations Act, viewed in the perspective of U.S. history, is merely the culmination of a long series of laws designed to improve the status of labor. From the 1868 New Hampshire statute to limit the hours of work to ten a day, up through the "brick and tear gas" stages of labor relations of the Clayton Act, the Norris-LaGuardia Act,

to Section 7 (a) of the NIRA, the antecedents of the Wagner Act represent a continuing attempt on the part of the government to rectify by political means the imbalance and inequity in the economic system. When the NIRA was found to be unconstitutional, public opinion was strong to insure the rights of collective bargaining to the workers. So it was that only six weeks after the end of the NIRA, the NLRA was passed.

The NLRA pledged the government to help employees to secure independent organization. The Norris-LaGuardia Act had only removed the judicial restrictions on unions self-help program. Until the NLRA, the government regarded union organizational campaigns as economic struggles between unions and employers, with practically no holds barred, except for the rules of the anti-trust laws. Under the NLRA, Congress virtually ordered employers to stop resisting the spread of unionism, telling them that the rights of free organization must be preserved. This was an epoch-making step, especially since the NLRA placed no restrictions on the freedom of unions to exercise economic pressure against their own members, if they saw fit to do so. Some employers thought it was quite bad under the Norris-LaGuardia Act; at least they were left free to fight it out with the unions, exchanging blow for blow in the economic struggle and often winning. Now

however, they had no defence against what many of them still regard as a menace to our national economy.

Congress found this strife over organizational activities of unions caused so much harm to the national economy that the best way to secure relief was to let employees organize as they saw fit, especially since the fruits of organization, collective bargaining by strong unions, was socially desirable for the common good. For this reason Congress incorporated the important Section 7 (a) of the NIRA with but little change. Section 7 of the NLRA declared:[1]

> 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.

This provision tended to summarize quite clearly what Congress had been driving at in its statement of public policy. Next in Section 8, comes the backbone of the Act, in so far as it is designed to prevent employers from interfering with the desire of employees to organize. This Section says that it shall be an unfair labor practice for an employer:

(1) to interfere with, restrain, or coerce employees

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[1]The first six sections of the Act sets forth the policy and definitions.

in the exercise of the rights guaranteed in Section 7.
(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it.

This provision was to prevent the formation of company unions, and to insure absolute indepence of employee representation in real collective bargaining. Subdivision 3 of this Section makes it an unfair labor practice for an employer "by discrimination in regard to hire or tenue of employment or any term or condition of employment to encourage or discourage membership in any labor organization." This subsection was designed to prevent employers from refusing to retain in employment if already hired, any applicant for a job or presently employed worker because of his existing membership in any union or his desire to join one, or because of his refusal to join any particular union approved by the employer. It was also aimed squarely at the antiunion or "yellow dog" contract. But it did contain one exception to this, very necessary for union approval of the measure as a whole, permitting an employer, who had entered into a closed shop agreement with a union duly representing his employees, to require membership in such unions of any applicants for jobs, or of already hired employees, who refused to join the union when the agreement was made. Employers who entered into the so-called "union shop" contract

with a union had more latitude than before.[2]

Subdivision (4) makes it an unfair labor practice for an employer, "To discharge or otherwise discriminate against an employee because he had filed charges or given testimony under this Act." This insured immunity from discriminatory treatment to employees who invoked the provisions of the Act against employers or who assisted fellow employees of a union in doing the same thing. It was broad enough not only to prevent the discharge of an employee for such conduct but also to prevent the imposition on him of petty revenge such as demotions, layoffs, assignments to undesirable work and denial of promotion.

The last subdivision, (5), of Section 8, makes it an unfair labor practice for an employer "to refuse to bargain collectively with the representatives of his employees, duly selected with regard to other divisions of the Act." The language here seems clear but this important measure has given rise to much controversy. It was not meant to compel an employer to enter into an agreement with a union but intended to compel an employer merely to meet and negotiate with the representatives of his employees. Congress apparent-

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[2] A "union shop" contract is one which permits the hiring of non-union men but compels the employer to fire them after a stated time unless they join the union.

ly believed that when the parties get that far, they usually come out with an understanding and resume relations on a more or less rational basis.[3]

The NLRA was provided with very elaborate machinery for its administrative and enforcement activities. This consisted of the National Labor Relations Board which was composed of three men at first but was later raised to five men. This board had all of the assistants such an agency might need, including counsel, field examiners, investigators, hearing counsel officers, review officers, attorneys, and regional offices with similar types of assistants in them. This led to sharp attacks from the anti-bureaucrats but actually such administrative boards were not much different in their operation from agencies like the Interstate Commerce Commission and the Federal Trade Commission.

The legislation is supposed to establish standards of a general nature in a statute creating and empowering an administrative board, leaving discretion to the board in applying these standards to actual cases arising under the Act. The board executes the legislature's general will in a multitude of particular instances, far too numerous for the courts

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[3]The rest of the Act is taken up by explanations and administrative procedure.

to handle directly.

The one big job of the board is to see that employers refrain from the unfair labor practices described in the Act. The intervention machinery is usually put in motion by one or more employees in a plant, who claim to be the victims of unfair labor practices, or by a union either seeking or already having bargaining rights in a plant and complaining of the offences on its own behalf or for individual or collective employees in the plant.

The first thing the board does in complaint cases arising under Section 8 of the Act, is to determine whether or not the employer charged with violation is concerned with interstate commerce.[4] If the agents think that it is not sufficiently concerned to sustain the board's jurisdiction before a court, then no complaint issues. However when the board believes it has jurisdiction, and its preliminary investigation indicates a violation of this Section by the employer, the board presses charges against him in complaint

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[4]TheAct covers only interstate commerce since Congress can enact only measures pursuant to the powers accorded it by the Constitution. When it passed the NLRA, it acted under the commerce clause of the Constitution in an attempt to regulate commerce and free it from the troublesome effects of organizational strikes. The Supreme Court concluded that employers come under the Act only when they are "substantially" concerned with interstate commerce leaving the definition somewhat hanging.

proceedings. The trial examiners have a hearing and record all of the facts ascertainable for the board's edification. The employer has a chance to confront witnesses testifying against him and to offer evidence of his own. At these hearings, the strict rules of evidence prevailing in ordinary law courts do not apply, although the Supreme Court requires the board to rest its findings and orders on substantial evidence. Yet the court allows the board considerable leeway in drawing inferences from heresy, self-serving testimony and gather circumstantial evidence, the test being whether or not there is any evidence which could reasonably be construed to support the board's conclusion.

A staff of review agents goes carefully over the trial examiners' reports and presents the edited records, with proposed rulings to the board for final action. If the employer requests it, the board allows arguments before itself. To aid in this decision, the present practice is to supply the employer with a copy of the proposed rulings before the board's final order is entered.

The board cannot enforce the orders. If the employers refuse to obey them, the federal Circuit Court of Appeals has to do the actual enforcing. At first the board claimed complete discretionary authority to effectuate the policies

of the Act, subject to no judicial check as long as it granted only those remedies contemplated by Congress. But the Supreme Court held otherwise in the famous Fansteel Case,[5] when it refused to enforce the board's order to reinstate certain striking employees.

However the board has rather extensive powers in issuing orders against employers who have violated Section 8 of the NLRA. Its most obvious recourse is the "cease and desist" order, requiring the employer to abandon practices in violation of Section 8 of the Act. Section 10 (c), which sets forth the complete powers of the board, reads as follows: "....then the board shall state its findings of fact and shall issue and cause to be served on such person (the employer) an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with back pay, as will effectuate the policies of this Act."

Any group of five men on such a board is inevitably bound to do questionable things. This is especially true when governed by such an act as the NLRA, which is so broad in its general policy directives and so meager in its spe-

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[5] Fansteel Metallurgical Corp. v. N.L.R.B. 306 U.S. 240 (1939).

cific directives. If the board interprets the Act too broadly and presses charges too strictly, it must be recalled that they are trying to do what Congress has ordered them to do, as they see it. They are trying to make practical sense of general instructions ordering them to guarantee to employees autonomous organization, representatives of their own choosing, and good faith collective bargaining. They are under constant fire and pressure from both groups.

The NLRA was for the exclusive benefit of labor. The Act imposes no restrictions or obligations on labor. There is no such thing as an unfair practice by labor within the meaning of the Act. No restriction is imposed on the right of labor to strike, picket, or boycott. It imposes no responsibility on unions with respect to violations of contracts which have been entered into as a result of the intervention of the NLRB. The Act sets up no restrictions whatsoever on the internal organization of unions. Although the Act is to encourage and promote collective bargaining the obligation to bargain collectively is not imposed on labor.

To get some conception of the reason for the imposition of these restrictions and obligations on the employer, one must recall the period when the employer had the upper hand and labor was the underdog. For years employers had used

the law to their own advantage, often in an unfair manner. Their own practices led the labor leaders to influence Congress to write into the law protection against the specific practices used by employers against unions. This may account for the pendulum of labor relations which swings so far in favor of management, yet, obeying the laws of nature and pushed by public opinion, swings back in favor of the unions.

Many of the good points of the NIRA were incorporated in the NLRA, and many of the bad features were corrected. Whereas the NIRA lacked adequate enforcement provisions, the NLRA corrected this weakness. The NLRA can issue cease and desist orders against employers charged with violation of its orders and subject them to contempt proceedings. Although the labor provisions of the NIRA were sometimes voluminous, they were not specific in difining actions which were forbidden. The Wagner Act spells out in considerable detail and gives wide discretionary powers to the board in interpreting the unfair labor practices on the part of an employer.

The NIRA applied only to those industries which voluntarily adopted codes of fair competition or industries which were licensed by the President. Until the NIRA the labor sections were loosely administered; many industries had their own labor boards. Until the Act was changed in 1934, there

was no co-ordination among the many industry boards. The Wagner Act has one central agency, the NLRB, which has exclusive jurisdiction in the administration of the Act and covers all industries substantially engaged in interstate commerce.

The expressed policy of the NLRA is based on two propositions; first, that the uninterrupted operation of interstate commerce would be furthered by strengthening the bargaining power of labor; and second, that our national economic welfare would be advanced and enhanced by the increased ability of labor to secure a larger share of the national income. The Act accomplished both of these objectives; it has successfully promoted unionization and greatly encouraged collective bargaining.

Immediately after V-J Day, union leaders began to consolidate their wartime gains; they began to consider job security and the possibility of rising unemployment. The unprecedented wave of strikes in 1946, and the resulting disruption of production convinced a large part of the population that the seed the New Deal had planted with its Section 7 (a) of the NIRA, and cultivated with the NLRA, had grown into a tree of oversized proportions. Congress, representing an uninformed and divided public, sought to

cut off and prune this tree to give it a well balanced contour pleasing to all, by enacting in 1947, the Labor Management Relations Act, "the most detailed, the most complex, and the most comprehensive national labor legislation in the history of the United States."[6]

The Act, probably better known as the Taft-Hartley Act, was passed over the president's veto on June 23, 1947. It is essential an amendment to the NLRA, i.e., it keeps the general form and framework of the original NLRA, but the resultant law is a complete revision of the NLRA.

The stated policy of the Act observes that industrial peace can best be promoted if employers, employees, and labor unions respect each others' legitimate rights and if they recognize that the public interest is paramount. The Act defines the respective rights of the various parties and sets up procedures for preventing, postponing, or settling strikes which may endanger the public interest. It will take some time for all concerned to realize the possibilities of the Act. Employers have a reduction of liabilities; they can recover damages from unions. Unions have no closed shop possibilities and other gains have been deleted. The govern-

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[6]"The New Labor Law - Labor Management Relations Act, 1947", Commerce Clearing House, Inc., Washington, 1947, p. 1.

ment will have the biggest enforcement job evertried, for it will have to prosecute not only employer unfair labor practices but for the first time union unfair labor practices.

Neither management nor unions will know completely their rights until the law is tested in court. Organized labor, with its 15 million members exerting heavy pressures, may hope to repeal the law, in part or in toto. Unions have made it quite plain that they will fight the new law at every turn. This presages a tumultous existence during the first few years of the law.

SUMMARY

World War II had a tremendous impact on ideas concerning labor-management relations. A change that would have taken many years in peacetime, was brought about in less than four years by the necessity of wartime production. Much of this forced change has been held over for peacetime use. Concerning our labor policy of today, there is much discussion and no little dissention.

Confronting our society are many basic concepts or goals which have a direct bearing on the development of our national labor policy. Much of our industrial strife is not over the desirability of these goals but over the means of attaining them. Some of these concepts or goals, as set forth by Mr. Metz and Mr. Jacobstein in their book, A National Labor Policy, are:[1]

1. A progressively wider distribution of income.

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[1] Metz, H. and Jacobstein, M., A National Labor Policy, The Brookings Institute, Washington, D.C., 1947, pp. 50-54.

A wider distribution of income is essential for the continued economic growth of society as a whole, because the ultimate end, increased buying power, is entirely dependent on the expansion of production and the corresponding expansion of markets.

2. Reduced effort in production. As technological improvements are made, society should take the benefits in a greater volume of goods and a greater time for leisure.

3. Reward based on effort. This strictly against union principles but nevertheless, it is basically sound. Where each worker is paid for the work that he really does, greater efficiency will result. Nor should wages be based primarily on the worker's need but his ability.

4. Full development of individual capacities. The application of the intelligence of each individual means advancement both for the worker and for the entire economy. Through the full development of the individuals capacities, society as a whole progresses and the individual's happiness and material well being are promoted.

5. Right of association. Each individual should be guaranteed the right to form associations to accomplish common objectives, provided such associations do not interfere with the equal rights of others.

6. Avoidance of violence. There are two reasons why violence should be eliminated: (a) Justice, not brute force, should be the ruling force in adjusting differences. (b) When people use violence to enforce their desires, the safety of innocent third parties may be endangered.

7. Free speech. Free expression and discussion is the only way in which error can be exposed, truth developed, and progress furthered.

These beliefs and aims are fundamental principles which should ever be considered in labor-management relations. To

attain these, concessions will have to be made on all sides, the government, unions, and management.

From 1933 to 1940, the government sought to enable employees to secure a larger income from shorter hours of work. Since 1940, the primary objective of the governmental labor policy has been the peaceful settlement of labor disputes. In attaining both of these objectives, the government has tried to increase the bargaining power of the unions by protecting their rights to free organization. It is true that the government set a minimum wage and maximum hour level but this was mostly to aid the unskilled workers, women and children. But in aiding labor as a whole, the government believed its objectives could be best attained by strengthening labor's position and letting labor fight its own battles if collective bargaining failed.

B y much legislation and a multitude of administrative activities and decisions, the government has taken the lead in shaping the course of industrial relations. It has actually encouraged workers to organize since a strong union membership adds to the bargaining power of employees. To abet this policy, the NLRB has ruled that anything the employer does to discourage or influence workers in organizing is illegal. Under this ruling a minority union may

strike for recognition although another union has been recognized. If the employer bargains with the minority union, he is breaking the law; he has no recourse.

In the opinion of the writer, the following should be carefully considered:

(1) Where strikes are conducted according to the law and no contracts are breached, they are a legal form of concerted action. But when their object is to force employers to break the law, they should be outlawed.

(2) Sympathy strikes (where one group, though it has no grievance with its own employer, strikes to aid another group) increase the pressure of the original strikers at the expense of injuring an innocent third party. Since this kind of action affects the public as well as innocent third parties, it should be declared unlawful.

(3) Jurisdictional strikes (where one of two unions is striking in protest of the distribution of work) offer a dilemma in which the employer in many cases is stymied. It is an argument strictly between the unions and the employer can do little to aid his position. This sort of strike should be declared illegal. Unions should be forced to settle their differences without damaging the employer. An inter-union committee could be formed to decide on such matters.

(4) Boycotts only spread the warfare to other groups of workers who have nothing to gain for themselves and are likely to lose many days wages. The resultant disruption of production may injure the entire nation. Since this action injures third parties, it should be forbidden.

(5) Picketing, as an expression of opinion, is legal under the First Amendment of the Constitution. Where the objectives sought and the means used are legal, picketing should be permitted; where innocent third parties are injured, picketing should be declared unlawful. Under present Federal law, a man's business may be picketed by persons who do not work for him, even though there may be no dispute between himself and his employees. This action cannot be enjoined even though the employer suffers great loss.

(6) Unions have always feared unemployment resulting from overproduction. As a result, unions have tried to halt technological changes, insisted on make-work practices, and limited the output of workers. In reality, there always has been a great need for goods and services; if they were available at low prices, the demand would increase accordingly. If unions would stop such practices and reduce the cost per unit, more would be sold thereby creating a demand

for additional workers. Since this is halting the progress of the nation by keeping down the standard of living, such increase-the-work methods should be forbidden.

(7) Collective bargaining should not be conducted on an industry-wide basis. When a collective agreement applies to two or more employers a breach of it by one of them provokes the workers to take concerted action against all of them. In such an integrated economy as ours, a national stoppage of production of one product may tie up the production of many other products causing a grave repercussion on society. Thus it gives a monopolistic position to labor organizations.

(8) The government shouls continue to guarantee the workers' right to organize, since this eliminates the necessity of fighting to gain recognition. It should set up improved mediation, conciliation, and arbitration boards, and other facilities in an all-out effort to settle all disputes peacefully. It might be advantageous to abolish the present Board machinery and create a new set-up incorporating improved methods. It is certain that if the government curtails the union's activities, it must offer increased aid in the settlement of labor disputes.

(9) It should be the duty of labor leaders, congressmen,

and others to publish the true facts, causes, and reasons of every law, case, settlement, and agreement so that each and every worker can know the reason behind the ensuing action. Today, ignorance on one side or the other is a big factor in the breeding of discontent.

(10) Education and training are absolutely essential if there is to be any great progress in any field. The government should promote an active training program in the field of labor legislation; a program to teach men all sides of the problems without bias and to thoroughly investigate all possible solutions. Many leaders in labor and management have come up through the ranks of their particular industry and in some cases have failed to keep an open mind concerning all sides to the problems.

The government should do everything in its power to stop this vacilation of power from one side to the other. The pendulum of labor relations is always swinging. At times it travels quite slowly, then loosed by public opinion, it may swing too quickly and too far. At times it is subjected to such tremendous forces, that its swinging is erratic, following no set course.

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VITA

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