2. The Evolution of American Labor

MAJOR POINTS

1. Collective action by workers has been a feature of American economic life from the very formative period of this nation's history. Craft unions came to characterize the American labor movement through the 1920s.
2. Political institutions of the United States, and particularly the judiciary, seemed hostile to the interests of organized labor throughout most of its history. Individual court decisions and statutes nibbled away at the conspiracy doctrine, first established in Commonwealth v. Pullis (the Philadelphia Cordwainers Case) in 1794. Before the end of the 1920s, a political and social environment that was quite hostile to organized labor had developed. Many of labor's activities could be - and indeed were - blocked by court injunctions whenever these activities appeared to be effective.
3. The European labor agenda placed heavy emphasis on legislative outcome and social philosophy through political parties that courted the votes of the working class. The idea was that a rising tide would float all boats, and that the personal destinies of all working class folk were inextricably bound up with the fate of one another. In the United States, the emphasis came to be on tangible near-term achievements for the members of a particular union or the workers for a specific employer. The American pattern was considerably more pragmatic and considerably less ideological.
4. Colorful personalities characterized the spectrum of organized labor in the decades straddling the turn of the century. Terence Powderly and Uriah Stephens were among the earliest of national prominence, with Samuel Gompers and Adolph Strasser appearing on the scene near the end of the nineteenth century, and Eugene Debs and "Big Bill" Haywood not long after.
5. Trade unions have traditionally displayed opposition to immigrant labor and have often flirted with radical politics throughout their history. These patterns have affected labor's public image considerably, appealing to some sectors of society and alienating others at every stage of the labor movement's development. These patterns figured prominently in the Congressional override of Truman's veto (1947) of the Taft-Hartley slate of amendments to the National Labor Relations Act of 1935. The latter, "the cornerstone of American labor policy," remains the fundamental statutory statement of the place of unions in the American economy; but Taft-Hartley was sweeping in its modifications, and clearly was an attempt to rein in what the public perceived as trade unionism gone unchecked. The Landrum-Griffin Act (1959) also reflected such public wariness, as it attempted to address internal corruption and fiduciary accountability in union leadership ranks.

KEY TERMS

Craft/craft union Yellow-dog
contracts American Federation of
Labor Industrial unions Congress of
Industrial Organizations
Committee for Industrial Organization
Corporatism
Sit-down strike
Uplift unionism
Norris-LaGuardia Act
Revolutionary unionism
Wagner Act
Business unionism
National Labor Relations Board
Predatory unionism
Exclusive representation
Journeyman
Mohawk Valley formula
Conspiracy doctrine
Jurisdictional dispute
National Labor Union
Taft-Hartley Act
Knights of Labor
Right-to-work laws
Arbitration
Federal Mediation and Conciliation Service
Industrial Workers of the World
Boycotts
Drive system
Sherman Antitrust Act
Capital-labor accords
Clayton Act
Landrum-Griffin Act
American Plan
Executive Order 10988
Open shop
Federal Labor Relations Authority

CHAPTER OUTLINE

Union Philosophies and Types in the United States

Fossum cites Neufeld in restating in summary form the philosophical view of labor that had emerged by the second quarter of the nineteenth century. In more acerbic form as developed by Marx, the idea was that wealth could only be created when the *form* of a material changed. Thus the ironworker created wealth when he fashioned black iron bars into ornamental iron lattices with artistic curves and more functional as well as artistic form. In the same way, the rancher feeds and raises cattle to market weight; the shoemaker transforms leather to footwear, the tailor cloth to apparel, etc. These people, in Marx' view, were the proletariat, the workers of the world, without whom there would be no wealth created a new. The bourgeoisie who conveyed or sold goods in the same form as they received them did not create wealth, but merely transferred it from one person to another. But though they did not create wealth, their handling of products added a cost in the chain of distribution. They became an economic burden, and in Marx' view, a moral burden on the backs of the proletariat, who Marx predicted would one day rise up and shed this additional load. His views of the importance of capital in the elements of production and of the transportation and distribution infrastructure have arguably hindered economic development where his theories have fostered a lack of appreciation for such components in an efficient economic system.

The labor movement elsewhere has attached itself to political parties and has pursued long-term improvements for the working class through a political agenda. The American experience has been somewhat different, and owed much to Gompers and the continuity of his leadership of the AFL (he was president of the AFL from 1886 until his death in 1924, with the single exception of the year 1895). The typology of union philosophies and types offered in the text are as follows:

- U.S. employers have strongly opposed a corporatist agenda, under which employment relationships would be jointly governed by unions, employers, and government. This orientation has become fairly well established in Europe, though it has receded even more in the U.S. since the 1960s.
- ***Uplift unionism***-- focusing on social issues and seeking the general improvement of opportunities for the working class. The National Labor Union of the mid-nineteenth century offers an American example.
- ***Revolutionary unionism***-- presenting an alternative to the capitalist system and advocating worker-ownership of the principal organs of production and distribution. The IWW is the clearest example in the American labor movement.
- ***Business unionism***-- emphasizing short-term and near-term objectives that have tangible substance. These are sometimes

called "bread-and-butter issues," and are directly related to the workplace: wages, working conditions, job security, etc. This posture was adopted by the AFL.

- ***Predatory unionism***-- enhancing the union as a politically influential organization and a vehicle for status and power of the leadership at the expense of the workers the organization purports to represent. All unions must necessarily place some priority on the continuing viability of the organization, and from time to time all must advocate institutional interests that may not be entirely consistent with the priorities and direct interests of the rank and file.

Early Unions and the Conspiracy Doctrine

Fossum states that "the first successful collective action to win a wage increase was implemented by New York journeyman printers" in 1778. Workers, who were not wage-earners, technically speaking, had joined together on several occasions well before that date.

Philadelphia Cordwainers

The term "cordwainer" means "leather worker," and came to mean especially boot- and shoemakers. However, those who worked with saddles and harness, leather bookbinding, and other leather goods were also included. We can trace the term to the name of the Spanish city of Cordova, which was a center for fine leather. Indeed, "Spanish leather," like "Swiss chocolate" or "French pastry" or "Russian caviar" or "Irish linen" or "German engineering," still calls up images of quality and workmanship today. Indeed, many new arrivals tended to gravitate toward the trades in the New World that permitted them to work with familiar materials and which offered the fellowship of workers of like background. Men's shoes today of a deep maroon color are still called "cordovan," which has the same derivation.

The Philadelphia Cordwainers Case (Commonwealth v. Pullis) was the first American labor dispute that entered a courtroom for resolution. The attorneys for both sides were prominent men; one of the prosecutors would appear as the vice-presidential running mate of DeWitt Clinton on the last Federalist Party national ticket six years later, and the principal attorney for the journeymen shoemakers became Jefferson's attorney general within a year of the verdict.

Some of the master shoemakers who brought the complaint employed as many as twenty-four journeymen in a cottage industry and others of whom were owners of large footwear warehouses who shipped their goods to the South, to Europe, and throughout the West Indies. John R. Commons insisted that the distinction between master and journeyman at this stage was a distinction in industrial class, not social or political class.[3] But the evidence shows that those who were on the masters' side of the case lived in wealthier areas of Philadelphia among the

professional and mercantile elite of Philadelphia. The defendants, on the other hand, lived in poorer parts of town that were farther from the city's central business district for the most part. There are fairly strong indications that this case, while it may have grown out of industry patterns, nonetheless pitted the haves against the have-nots.

The verdict that the court handed down acknowledged that an individual workman could withhold his labor in an effort to pressure his employer for higher wages. That was permissible because the court viewed the various workers associated with the operations of any given master craftsman as being one-to-one agreements between two equal partners in an economic exchange, a buyer and a seller of labor. But the combination of many workmen, all of whom might simultaneously pressure the master shopkeeper for higher wages, suggested something akin to a coercive action by a mob, something approaching extortion. The industrial pattern was not viewed as an agreement between an owner and a work force, but rather several discrete albeit.

Simultaneous agreements between a master and each workman in turn. Implicitly, no journeyman had a legitimate interest in the arrangements that might have been reached with any other worker. The coercive nature of collective action bespoke a secretly hatched plan for mutual advantage, and that was held to be criminally conspiratorial in nature.

Note: Exhibit 2.1 [Charge to the Jury in the Philadelphia Cordwainers Case]

Commonwealth v. Hunt

Pullis had determined that collective action by labor against the property interests of a master shopkeeper was criminal in nature, and therefore to be prosecuted in defense of the community generally. Hunt refused to apply criminal sanctions. This did not mean striking workers could not be sued at equity for damages they caused the business which endured such a strike; but labor strikes were not illegal per se.

Note: Exhibit 2.2 [Interpretation of the conspiracy doctrine under Commonwealth v. Hunt]

Pre-Civil War Unions

Commons and Sumner (1910) termed the years 1820-1840 as "the Awakening Period of the American Labor Movement." In 1836, twenty tailors were convicted of conspiring against their employers in New York City. The verdict spawned mass protests, and working men deserted the Tammany Hall Democratic machine in droves. Only Ely Moore, who was the president of the Trades' Union and whom the Tammany forces had nominated for Congress, survived the housecleaning that followed. The Whigs campaigned in the 1840 election on the promise to protect labor rather than privilege and capital. The Democratic bosses read the signs and jettisoned the

merchants and bankers with whom they had been cozy and began to espouse the agenda of the working man. In Commons' words, this all came about "in the interests of plutocracy. Thus did the labor movement of the [eighteen-] thirties furnish the nineteenth century both its philosophy of labor's priority and its secret of maneuvering labor to the advantage of capital."

The Birth of National Unions

The National Labor Union

Under the leadership of William Sylvis, the National Labor union developed a political and reformist agenda. The organization advocated the eight-hour workday as standard, the establishment of consumer and producer cooperatives, reform of currency and banking laws, limitations on immigration, and the establishment of a federal department of labor. Membership was open to interested and sympathetic individuals, not just skilled tradesmen. Suffragists were quite prominent at the organization's national meetings, and energetically sought the NLU's endorsement of its quest to gain the right to vote for women.

Sylvis' death in 1869 and the organization's subsequent alliance with the Greenback party in 1872 resulted in the ultimate demise of the organization.

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Knights of Labor

Fossum emphasizes the Knights of Labor's idealistic commitment to rational persuasion and compromise through arbitration for unresolved grievances. The rank and file was far more impatient than Terence Powderly and Uriah Stephens. The Knights' official opposition to striking as a tactic to raise the costs of employer intransigence did not work. The blurring of craft distinctions in an effort to establish a monolithic labor organization did not work in practice, either. The failure of these policies was a lesson not lost on Samuel Gompers and the AFL.

Being a secret society with rites and ceremonies of its own, the Knights of Labor was opposed by the Roman Catholic Church, which the Church feared might well prove to be inconsistent with Church teachings. Inasmuch as the Church was a strong influence in many ethnic neighborhoods and among those newly arrived to American shores, this was not a small concern. Negotiations between Terence Powderly and James Cardinal Gibbons resolved the concerns and Catholic workers were allowed to join.

The Knights of Labor also ran into conflict with railroad magnate Jay Gould, who tried to break the union. By striking the Wabash Railroad and refusing to handle the rolling stock of the line when it was pulled by engines on other lines, the Knights of Labor forced an accommodation. But the idealism of Powderly and the leadership, who depended upon logic, patience, and rational efforts that resorted to fair-minded arbitration when need be, was at odds with the sentiments and time horizons of the rank and file.

Note: Exhibit 2.3 [The Ascetic Terence Powderly on Labor Picnics]

American Federation of Labor

The AFL is an umbrella organization of craft unions. A craft union is a labor organization whose members may work for many different employers; but they share a community of interest centered on common materials, common techniques, and common tools of the trade.

The pragmatism of the AFL was also reflected in the structure of the organization. International unions remain autonomous, and the locals

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within that skilled trade group are subordinate to their national or international union. This keeps union leaders focused on the unique problems of that particular craft; and at the same time, it preserves national control over locals' activities. As Fossum explains, this led to taking wages out of competition for the occupations represented by the national union (**"***monopoly power"*).

Labor Unrest

The Close of the Nineteenth Century

Several financial panics and consequent depressions fueled the unrest. Some tensions arose out of the solidarity of ethnic groups (such as the Molly Maguires among Irish coal miners). In other cases, such as the Haymarket Square Riot in Chicago or the armed battle at the Homestead Steel Works outside of Pittsburgh or the Pullman Strike in the railroad car manufacturing industry, violence was specific to a company or industry following unilateral wage cuts or other management action.

IWW and the Western Federation of Miners

The IWW or "the Wobblies" as they were generally known, were a colorful group whose radical orientation kept them out of the mainstream of the American labor movement. They had considerable strength in certain pockets, however, particularly in mining towns and in timber areas. In such remote working environments, workers often were housed in company buildings, and that gave employers another kind of leverage to resist worker demands: if they were to lose their jobs, they would also be forced to leave their homes. In 1905, Eugene Debs and other leading socialists banded together to form the IWW.

Fossum notes that Haywood was tried for the booby-trap bombing murder of Frank Steunenberg, formerly the governor of Idaho during a hot period of mine wars that had taken place in the northern panhandle of the state. Steunenberg had asked President McKinley for federal troops to quell the unrest. The strike was broken, and most of the strikers were replaced by strikebreakers in a move that economically ruined many of them. With their case advocated by the famed defense lawyer, Clarence Darrow, all were acquitted.

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The IWW managed a successful textile worker strike in Lawrence, Massachusetts, in 1912, but lost another the next year in New Jersey.

At the outset of World War I, the IWW lost a textile strike in New Jersey and in addition, announced that it would not support either side, inasmuch as only capitalists would benefit. The American public found this unacceptable, and the IWW began to sink permanently out of sight.

NOTE: (Many students believe that unions are far too strong in this country, but feel they are weak and have been too tightly controlled in Poland and other Eastern European and Latin American nations. It is worth pointing out that many of these countries experience such general strikes with fair frequency, while the number of times they have occurred in the U.S. can be counted on the fingers of one hand.)

Note: Exhibit 2.4 [Preamble to the IWW Constitution]

Boycott Cases

The boycott cases (the Danbury Hatters, Bucks Stove and Duplex Printing) discussed by Fossum followed close upon the heels of two other labor-related events that riveted public interest. In 1906, Upton Sinclair published The Jungle, an exposé of the meatpacking industry. Sinclair had hired himself out as a worker for a period of time to gather the experiences necessary to write his book, and lived among the largely immigrant population that had few other employment alternatives upon arrival in this country. The company in the novel boasted that it could "find a use for every part of the pig except the squeal." Bribed inspectors who allowed cows with tuberculosis or those who had recently calved to pass by, the vermin that were present throughout the slaughterhouses and which lived on the offal there, the overpowering heat and stench and the driving work pace that combined to cause accidents that maimed workers, and the exploitive treatment of workers in company housing and stores on the premises all were vividly portrayed in Sinclair's book. The book became a bestseller and led to a public outcry. The Pure Food and Drug Act was passed and signed into law as a result, a measure which created the Food and Drug Administration. It also led to a political coalition of labor and consumer

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interests that has remained strong within the Democratic Party down through the present day.

The second event was the Triangle Shirt Waist Company fire in New York City. A fire broke out on an upper floor of a high-rise factory in Manhattan. The supervisors, all men, directed the women to keep working while they attempted to put out the fire. Fire extinguishers had not been recharged, and emergency exits were blocked with inventory. The male supervisors escaped via the elevator, which required an operator in those days. The women, many of them recent immigrants, for the needle trades historically offered employment to such women when other livelihoods were closed to them,, were left behind when the blaze went out of control, too far above the street to be reached by the pumper trucks from the fire department. Some were consumed in the fire or died of smoke inhalation; others leapt to their deaths against the hard pavement below. In all, 146 employees died, over 100 of who were young women. Some few whose falls were broken by pedestrians or nets or awnings were hideously disfigured and maimed for life by burns and injuries associated with their falls. In an era when women depended a great deal on their physical comeliness to be married and find economic support of a husband, many of these women were permanently consigned to the lonely and bitter life of a disabled and disfigured woman who had no chance at marriage or family life.

While not so strictly a workplace event as the two foregoing episodes, the published photography of Jacob Riis revealed the undeniable truth about living conditions in urban industrial environments like New York City at a time when the bulk of the population still lived on farms or in small rural communities. Riis' work challenged public compassion for what were clearly inadequate income levels by prevailing standards.

While the general public remained less than enthusiastic in their support of trade unionism, many were nonetheless moved to sympathy for those whose plight was becoming suddenly more real and understandable to them. The fiasco at Haymarket Square and the trial that followed, the working conditions in the meatpacking industry, the threatened seizure of private homes to satisfy the judgment in the Danbury Hatters Case, and then the working conditions that allowed men who were supervisors to escape a burning building but not the women who labored there under sweatshop conditions had a cumulative effect; the public began to feel that working conditions warranted for many people an organized advocacy for change. And it was increasingly obvious that unions could play a role in that advocacy.

Early Legislation

The Clayton Act (1914)

1. The Supreme Court Decision in *Duplex Printing v. Deering* (cited by Fossum in the text) held that union actions might still be found to restrain trade. This vitiated whatever meaningful protections the Clayton Act had seemed to hold for labor.

Trade Union Success and Apathy

World War I

As indicated earlier, the attitude of the IWW during World War I gave Americans pause concerning the risks of too strong or too radical a labor movement.

Labor's right to organize and to bargain collectively was largely recognized, if not enthusiastically embraced in all quarters.

The American Plan

Systematic discouragement of organized labor developed under the so-called "American Plan" strategy during the 1920s:

- Association of trade unionism in the public's mind with foreign subversives.
- Advocacy of the open shop arrangement, ostensibly to preserve individual employee freedom of choice but in fact to make unions have a more difficult time building membership and war chests.

Widespread use of the so-called "***yellow-dog***" ***contracts***, under which employment was conditioned upon signing a contract pledging not to associate with unions.

When organization was inevitable, employers citing the importance of local control encouraged the establishment of an independent company sponsored union, which would not be under the influence of a national or international union but which would almost always be influenced if not dominated by the employer.

Note: Exhibit 2.5 [Charles M. Schwab, Chairman of the Board of Bethlehem Steel, in a speech to a Chamber of Commerce audience, 1918]

The End of an Era

During the 1920s, the United States shifted from an agricultural society to an industrial one. The change was social, technological, geographical, economic, and political.

The dramatic nature of the change was punctuated by the passing of Samuel Gompers, whose presence had shaped the labor scene for half a century.

The AFL employed a "stand-pat" approach to industrial worker organization, hinting at the aloofness with which skilled craftsmen viewed themselves within the labor movement.

Note: Exhibit 2.6 [Lewis and Hutcheson at the 1935 AFL convention]

Industrial Unions

Organization of industrial unions prior to 1930 had been largely unsuccessful.

- A continuing supply of immigrant labor competed with unskilled labor. ○ The AFL was relatively disinterested in organizing unskilled labor or bringing such workers under their umbrella. ○ The tendency of industrially oriented unions to adopt goals that were perceived as too radical and revolutionary by much of society. ○ The impact of the Depression and the legislative initiatives in labor-management relations in response to it changed the environment.
- Rapid industrialization made unskilled labor a clearly growing segment of the union movement, and they provided fertile ground for organizing efforts.

The Industrial Union Leadership

John L. Lewis of the United Mine Workers, together with others who disagreed with the posture of the AFL, formed the Committee for Industrial Organization on their own.

Note: Exhibit 2.7 [Telegram from Sit-Down Strikers to Governor Murphy]

Walter Reuther

The case of Walter Reuther illustrates the resistance of skilled tradesmen toward association with unskilled and semi-skilled labor. Reuther, who organized the United Auto Workers at Ford among other places, was a tool-and-die worker, one of the most skilled of all manufacturing trades. He recognized that within the auto industry, the number of unskilled and semi-skilled workers pointed the future direction of employment within the industry. To be effective, organized labor would have to speak for the constituency that made up the workforce, not just the skilled trades who were in the minority. When he set out to extend the organizing effort to unskilled assembly line workers and others who lacked a skilled trade within the auto industry, he was regarded as a traitor by his fellow tool-and-die workers.

Organizing the Industrial Work Force

Dramatic membership enrollments among steelworkers resulted from Philip Murray's efforts.

Homer Martin employed the "sit-down strike" at General Motors, where workers declined to leave the plant but just stayed beyond their shifts and got in the way. They would not be ousted except through force, and force would mean a bloody and politically unacceptable scenario. The Michigan governor declined to mobilize the militia, and GM gave in. The same tactic was employed in other industrial union organizing campaigns, and the CIO membership passed that of the AFL by 1937.

Legislation

The Railway Labor Act (1926) Norris-LaGuardia Act (1932)

Hoover Administration Response

There is a tendency sometimes to think of the Norris-LaGuardia Act as part of Roosevelt's "New Deal." However, the stock market crash which was the triggering event of the Depression of the 1930s occurred in October, just seven months into Hoover's Administration. Roosevelt was not elected until 1932 and did not take office until March of 1933. (Inauguration Day was not moved back to January until later.) There was bipartisan support for the Norris-LaGuardia bill, and it was signed into law by Herbert Hoover. The law severely limited the use of injunctions in labor disputes, and blocked enforcement of "yellow-dog" contracts by federal courts.

Fossum portrays the Norris-LaGuardia Act as a "neutral policy," because the act did not create any basis to demand employer recognition of a union. One might take the view that removing the legitimacy of the so-called **yellow-dog contract,** together with the limitations this act placed on securing injunctions to block labor strikes, made substantive improvements in accommodating labor's agenda, thus making the statute something other than strictly neutral in its effect upon labor-management relations.

National Industrial Recovery Act (1933)

This legislation was not primarily aimed at labor, but rather sought to promote cooperative industrial practices for the common good. The requirement of employers to permit collective bargaining was not detailed and offered nowhere near the encouragement that the National Labor Relations (or Wagner) Act of 1935 would provide. Fossum's observation

that labor was perhaps fortunate that this legislation did not survive Supreme Court review but did stay around long enough to sow the seeds of a more comprehensive bill shortly thereafter is a keen one and worth emphasis.

Wagner Act (National Labor Relations Act) (1935)

Passed in the same year as the Social Security Act, this statute is generally referred to simply as "the Act"--with a capital "A." It remains the cornerstone of American labor policy. A brief *verbatim* quotation from the opening Section of the Act is appropriate:

- **"**It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection."

- Upon passage of the Act, it was possible for a union organizer to approach a worker and say with fair accuracy, "Here. Read this. President Roosevelt wants you to join a union." And they did so. What had been found to be criminal conduct in 1806 was now the conduct preferred and encouraged by a declaration of national policy upon passage of the Act, it was possible for a union organizer to approach a worker and say with fair accuracy.

The Act created a five-member Board, each member of which serves a staggered five-year term. In this way, a change in the political party that occupies the White House does not produce a change in domestic labor policy, as developed through adjudicatory case law decisions by the Board.

The National Labor Relations Board is not an arm of the Department of Labor or any other executive branch agency, as we shall discuss in conjunction with a future chapter. Rather it is a freestanding governmental agency that reports to Congress; and which has as its narrow mission the administration of the National Labor Relations Act to the virtual exclusion of all other responsibilities.

§7 guarantee certain rights for workers.

§8(a) [originally §8] defines unfair labor practices by employers; and §8(b), added by the Taft-Hartley slate of amendments in 1947, defines unfair labor practices which may be committed by unions.
Fossum emphasizes that the Wagner Act also established the concept of exclusive representation in the relationship between a union and the employer of its members.

Federal, state, and local government employees are not covered by the Wagner Act. In addition, those covered by the Railway Labor Act, domestic employees, family workers, and workers employed in primary agriculture likewise do not fall under the Act.

Employer Intransigence

Besides the American Plan, employer resistance to unionization also included the Mohawk Valley formula:

o Associate labor leaders with agitators and subversives, especially foreign influence and most especially communism. o Organize "back-to-work" drives, and emphasize freedom of choice in public relations issuances. o Precipitate picket line violence, and use this as a pretext to call in the police to break up the strike. o Enlist local interests against union activities wherever possible.

Constitutionality of the Wagner Act

Fossum notes that there was considerable speculation that the Wagner Act would not survive Supreme Court review, a review that was a certainty on an expedited basis. There were only slight differences between the statutory language that had led the high court to decide against the constitutionality of the National Industrial Recovery Act in May of 1935 and that contained in § 7 of the Wagner Act, which was signed into law by the President a scant two months later. FDR himself was reluctant to endorse Senator Wagner's bill and stake the credibility of his administration on what seemed to be a precarious chance. Open White House support came only after the bill had been passed by the Senate and sent to the House, where support was more clearly evident. Just nine days after the first board meeting, some 58 prominent attorneys - including a former U.S. Attorney General, two Solicitors General, several presidents of bar associations at various levels, a number of well-known corporate lawyers, and others - issued a "report" in which they opined that the

National Labor Relations Act was clearly unconstitutional. None of the lawyers had clients for whom cases were then pending under the Act. The effect was that many practicing attorneys advised clients that they need not be too careful about complying with the provisions of the Act, since it would assuredly be set aside imminently. This led to more confrontations, and labor-management relations were stormy; Fossum points out that almost half the labor strikes between 1935 and 1937 were over recognition rather than economic matters.

Members of the Labor Board staff worked zealously to settle disputes in weak cases or persuade unions to abandon them in order to ensure that only the strongest possible cases would be the vehicle for the inevitable Supreme Court review.

The apparent hostility of the Supreme Court to Roosevelt's New Deal led to the controversial "court-packing plan" by FDR; since the constitution did not specify how many justices were to comprise the court, FDR could dilute the opposition that he could not remove by simply expanding the number of seats and filling them with liberals more sympathetic to his agenda.

In *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1 (1937), the Supreme Court held that manufacturing, even if conducted locally, was a process involving interstate commerce, and was therefore subject to the constitutional assignment to Congress of the responsibility to do whatever was necessary and proper to regulate that interstate commerce.

- The Great Depression of the 1930s sent a very critical message to American workers regarding the equity and the legitimacy of the free enterprise system. A good many became enamored of Marxist philosophy, and a socialist ideology had a pedigree in the labor movement that could be traced back at least as far as Eugene Debs in the late 1800s.

Labor Power

Pre-World War II

Fossum details the strained relationship between the AFL and the CIO, noting the celebrated fistfight between United Mine Workers President John L. Lewis and the considerably more conservative Carpenters Union President "Big Bill" Hutcheson at the 1935 AFL convention.
The left-wing elements of the labor movement that did not support Roosevelt's support for the Allies in the wake of Germany's non-

aggression pact with Russia in 1939 and the heavy-handed way in which Lewis attempted to call in the political IOU's for his earlier support of Roosevelt lent credence to the complaints that the Wagner Act was one-sided, that it placed restraints only on employers without curbing abuses of power at the hands of organized labor.

Chicago police killed ten during an organizing parade at Republic Steel in 1937. The famous "Battle of the Overpass" between Walter Reuther and Richard Frankensteen of the United Auto Workers on the one hand and hired thugs under the leadership of Harry Bennett of Ford Motor Company took place in the same year. A pedestrian overpass had been erected at public expense to facilitate workers changing shifts and getting to the parking lot across the street from the Ford River Rouge plant. The Ford "security staff" severely beat Reuther and Frankensteen, and caused others to require hospitalization for more than a month in some instances. The press had been alerted to the prospect of a showdown, and some had cameras broken and photographic plates destroyed as well as being beaten up themselves. However, the story was published and accompanied by enough pictures to stun the general public, many of whom had regarded Henry Ford as a firm but kindly disposed elderly man who understood the working man and shared his interests at heart.

The national mobilization on the eve of World War II had a profound effect on aggregate demand for labor. Between July 1940 and December 1941, 2.5 million workers were retrained for positions in war plants. Between April 1940 and December 1941, unemployment dropped precipitously from 8.8 million to 3.8 million.
Over 4,300 strikes erupted in 1941, involving approximately one worker in twelve at some time or another during the year. Massive increases in union membership rolls had taken place in the wake of the adoption of the Wagner Act, with some already sizable unions increasing membership five-fold. Fossum notes that had Pearl Harbor not occurred, Congressional action would likely have not had to wait much longer.

Note: Exhibit 2.8 [The Rhetoric of John L. Lewis]

World War II

The National War Labor Board was an attempt to keep factories running in the face of unresolved grievances and other sources of labor dissatisfaction during wartime.

The cost of consumer goods soared during the war as production was shifted to military production needs.
This together with the realization that the war effort provided organized labor with a certain bargaining.
Leverage combined to drive up expectations and demands for dramatic wage increases. Despite the no-strike pledges, Fossum reports that 4,750 strikes idled workers for some 38 million employee-days in 1945 alone.

The stridency of John L. Lewis of the United Mine Workers in particular drew repeated criticism, and seemed to personify the need to curb abuses by organized labor in the minds of many.

Note: Exhibit 2.9 [Comments by President Roosevelt on coal strikes during 1943]

Reconversion

The end of the war ushered in a period of pent-up consumer demands and the resumption of family life. Ration cards ended soon thereafter, but so did much of the demand for labor that had been used to supply the war effort. Product demand was high, consumers were impatient, unemployment rose significantly, and labor strove to secure wage increases to offset the rises in consumer prices during the war. Conversion from the manufacture of tanks and munitions to autos and home appliances could not go forward as quickly as the public wanted. Women and minorities who had moved into nontraditional jobs to fill the demand for labor during the war had by now accumulated some seniority as well as having convinced some skeptics that they could work industrial jobs. They were not about to step aside gracefully to accommodate a returning soldier they did not even know. The labor unions, which had traditionally sided with seniority, could not forsake a dues-paying member in good standing to help the returning veteran come back to a shop that may not even have been unionized when he left. Organized labor was between the proverbial rock and a hard place, and fell out of favor. A more conservative Congress was elected.

Changing the Balance

Taft-Hartley Act

The Taft-Hartley Act was passed over President Truman’s veto, much to the surprise and chagrin of organized labor. There were at least six reasons why this occurred.
There was a reaction against the willingness to strike and to demand wages when other Americans were under hostile fire.

The public image of organized labor was one of gruff, unpolished men, and did not readily appeal to most Americans.
The left-wing politics of some elements of the labor movement disturbed many Americans. The Soviet Union may have been an ally of necessity during the war, but Stalin's brutal regime was a threat on the horizon, and "the Red Scare" of the early 1950s and the Alger Hiss affair made some people want to distance themselves from those who seemed to be too cozy with the left wing of the political spectrum.
While there were many Democrats in Congress, many were not particularly friendly to organized labor. The South in particular had returned many well-seasoned politicians to Washington for years, and the Congressional seniority system had placed some of these conservative Democrats in key chairmanships. When a key public works bill or a farm bill or some other piece of legislation that was of particular interest to a Congressman or senator was due to be taken up in committee, chances are its fate was in the hands of a Southern Democratic chairman who was not fond of organized labor. The votes of many junior legislators on Taft-Hartley were strongly influenced by those who held their pet bills in other areas hostage to their votes on this measure. Moreover, President Truman could not exert party discipline on this issue. His own hold on the office was tenuous, as his next campaign against Dewey would show. And he needed the support of the Democrats opposed to this bill on too many other pieces of pending legislation against which he had only a slim majority.

Organized labor did not "count noses" very well, and did not take the bill's chances for passage very seriously until it was too late.

The floor management of the bill by both sponsors, but especially by Senator Taft, displayed a mastery of parliamentary maneuver and timing.

Taft-Hartley amended the National Labor Relations Act in eight particularly important ways:

- It defined unfair labor practices by unions, including claims of unfair representation of bargaining unit members themselves. ○ It explicitly protected the right of workers *not* to participate in unions, and gave individual states the option to pass right-to-work laws.
- It created a process through which bargaining units which were dissatisfied with their bargaining representative could decertify that union in favor of another or in favor of nonunion status.
- It provided for court injunctions if strikes threatened production in ways that were contrary to the national interest, as determined by the President. In such cases, Taft-Hartley provided for an 80-day "cooling- off" period, during which strikes were prohibited where the national interest was

affected, with NLRB elections on final contract proposals conducted during this period.
- It created the ***Federal Mediation and Conciliation Service*** to offer assistance in settling labor disputes.
- It limited legal exposure of individual members with respect to suits against the union, but it did authorize the union as an organization to sue and be sued in federal court.
- It expanded the number of seats on the Board from three to five, and created the position of General Counsel to the Board, to be filled by Presidential appointment subject to Senate confirmation.
- It prohibited strikes by federal employees.

Right-to-work laws are frequently misunderstood, and it would behoove the instructor in most instances to explain such provision of the Taft-Hartley Act in careful detail. First, no law compels union membership even in the absence of a right-to-work law, at least not directly. If a state has not adopted a right-to-work law and kept it in force, a particular labor contract **MAY BUT NOT MUST** require union membership upon completion of a satisfactory probationary period, as a condition of continued employment. In states without right-to-work laws, the compulsion to join a union in order to continue on the job is based upon contractual, not statutory**,** obligation. A new employee may not refuse to work on projects for one of the firm's customers who he does not like, at least not without being insubordinate. Likewise, he/she has no inherent right to refuse to honor the employer's agreements with a labor organization that defines how the two entities will deal with one another. If membership in the union is contractually required upon completion of a probationary period, that feature of a labor agreement can be enforced.

"However, there is no requirement that unions and employers negotiate such language into their contracts, and many times they do not, even where state law permits the parties to do so**."**
The presence or absence of such contractual obligations generally is a product of the strength the union has behind it at the bargaining table. If it is an industry with high turnover, if the enthusiasm for union representation is only lukewarm and such that it will not likely honor a strike called by the bargaining representative, and/or if there are sufficiently many others who possess the requisite abilities to do the job and who would be willing to cross the picket lines for the wage level the employer is offering, the union will not likely be able to negotiate such language into the contract. Under such circumstances, there will be no requirement to join the union for any employee.

If a state legislature passes and its governor signs into law a right-to-work law, that simply means that contract language which ostensibly requires union

membership (or agency fees) once a satisfactory probationary period has been completed is not enforceable. Many kinds of contracts are not enforceable in some states: binding sales to minors, gambling debts, and other examples are commonly known. In a right-to-work state, there is simply another kind of contract clause that cannot be enforced - the type of clause which requires a worker to join or pay fees to a labor organization as a condition of continuing employment. The prohibition of such language, where it exists, lies in state statute. The inclusion of such language, where it is enforceable, resides in the private contract between the union and the employer.

The New Production Paradigm

Whereas the 15 years prior to Taft-Hartley had ceded to employers the organizational role of intensely directing employees with the ultimate power of hiring, firing, and pay decisions through the so-called drive system**,** Taft-Hartley ushered in a new accommodation between management and labor.

In the new paradigm, higher-ability employees were hired, and wage and benefit programs were funded through increases in productivity per worker. In Fossum's view, this situation was largely in place until the 1980s.

Retrenchment and Merger

The Lessons of Taft-Hartley for Labor

Organized labor would, in future, have to be prepared to exert more influence in legislative activity and to take a more visible public stance on issues affecting the interests of labor.

The relative strengths of labor and management had fundamentally changed, and labor could no longer afford to squander its energies on internecine quarrels as that which raged between the AFL and the CIO.

Fossum notes that with the passing of both William Green and Philip Murray in 1952, and with the arrival of leaders like George Meany of the AFL and Walter Reuther of the CIO, conciliation was more feasible than it had been in many years. While John L. Lewis was still a very visible leader of the United Mine Workers, the unaffiliated UMW was not in a position to scuttle these developments.

Merger

Higher wages, bigger profits, and improved living standards for workers together with a period of relative acquiescence of business to unionization also contributed to the reduction in barriers between the CIO and the AFL.

George Meany and Walter Reuther were able to close ranks in the labor movement with easier facility than would have been possible for their respective predecessors.

Rapprochement began incrementally with the no-raid agreement of 1954, with unification of the two wings of organized labor uniting under George Meany in 1955.

As a proportion of the civilian labor force, union workers peaked at approximately a third in 1956. The proportion fell to 30% by 1964.

While the size of the civilian labor force is growing, union membership has fallen in absolute numbers, too.

Corruption

The Senate Select Committee on Improper Activities in the Labor Management Field first held hearings in 1957 under Senator John McClellan of Arkansas. John F. Kennedy and Barry Goldwater also served on the committee, and Robert F. Kennedy was the committee's chief counsel. The shocking conditions the committee uncovered culminated in a demand for reform. The Teamsters in particular were shown to be particularly corrupt. A Committee Interim Report (1959) found acts of violence in reprisal and for the purpose of intimidation, improper financial manipulations, a callous repression of union members' democratic rights and racketeer control within the Teamsters under James R. Hoffa.

The Teamsters in particular have had a checkered history, and a series of Teamster leaders have continued to run into major legal problems. Dave Beck went to prison shortly after World War II for income tax evasion, as did his successor Jimmy Hoffa years later for jury tampering. Hoffa's successor was Frank Fitzsimmons, who at the time of his death was facing a civil suit over alleged mismanagement of Teamster pension funds. Fitzsimmons' son, who was also a Teamster executive, was convicted of taking bribes. Roy Williams, who served as president of the Teamsters after Fitzsimmons died, was himself convicted on bribery charges. He was

followed by Jackie Presser. Presser, whose father "Big Bill" Presser was also a Teamster officer and who was convicted for obstruction of justice shortly after the McClellan hearings followed in his father's footsteps. Jackie was also convicted, but died while his case was under appeal. Allen Dorfman, an attorney for the Teamsters, was gunned down in a gangland-style hit in a Chicago parking lot when he was scheduled to be questioned by authorities regarding various Teamster Union operations. In 1989, justice department lawyers succeeded in the use of the Racketeer Influenced and Corrupt Organization (RICO) Act to gain court-ordered oversight in Teamster elections and financial operations. This order was in effect through 1996 union elections. In 1996, incumbent Ron Cary, who would lead the Teamsters through a successful strike of United Parcel Service in 1997, was reelected. However, the apparent victory did not survive a court challenge, and was removed and barred for life from ever seeking office in the Teamsters again. James R. Hoffa, Jr. prevailed in a re-run election in late 1998.

The AFL-CIO insisted upon changes in internal operations on some unions which had been shown to cast all organized labor in a bad public light. The Teamsters, the Bakers, and the Laundry Workers would not accept what they regarded as outside interference in their internal affairs, and were expelled from the AFL-CIO in 1957.

Landrum-Griffin Act

This legislation attempted to make labor organizations more democratic and responsive to the interests of the rank-and-file. Fiduciary responsibility for union pension funds, including the bonding of union officers, audits for the use of union funds, restrictions on loans which the union might make, and the prohibition of recently convicted felons from holding union office were principal features of the statute. There was also a provision which set forth conditions under which an international union could place a local in trusteeship and assume control of its affairs, a practice that had been used abusively in the past. Finally, disclosure of outside consultants was required, though this has been a provision which has remained largely unenforced.

Public Sector Union Growth

Federal Executive Orders

Executive Order 10988 enabled a majority union to bargain with a governmental agency over terms and conditions of employment but not wages. Such unions could not represent workers who advocated strikes or the right to strike. A grievance procedure was established, but final determination rested with the federal employer.

This posture was modified by Executive Order 11491 (1970), which provided for a secret ballot to determine recognition, as well as a procedure through which an appropriate bargaining unit might be determined, compliance with Landrum-Griffin requirements, and also provided for arbitration as a final settlement procedure for grievances. Unfair labor practices were also delineated, an Impasse Panel was authorized to issue binding decisions when collective bargaining failed to produce a contract, and there was some relaxation of the no-strike posture.

Executive order 11491 required the Federal Labor Relations Council to review and comment on the status of labor relations in the federal sector.

Executive Order 11616 (1971) allowed professional employees in an agency the option to affiliate with a bargaining unit, and offered a choice of grievance resolution procedures. There were other features, too.

Civil Service Reform Act (1976)

In addition to codifying the above-referenced Executive Orders, the Civil Service Reform Act established the Federal Labor Relations Authority, the federal sector equivalent of the NLRB.

Labor in Crisis and Transition

Rising Employer Militancy

Hyperinflation

Reagan Administration

- A substantial income tax cut made after-tax consequences of employer expenses significantly more. Thus, there was a new-found

aggressiveness in holding down business expenditures. o Under Volcker, short-term interest rates rose above 15% in an effort to curb inflation. One byproduct was to drive unemployment rates up to 10%

- Inefficient plants, especially in durable goods industries like autos and steel, were closed, leading to large cuts in the number of production workers, professionals, and managers.

Striker Replacements

Employers have been able to replace economic strikers since the *McKay Radio* decision, in 1938, which Fossum cites in the text. Employers seldom utilized this tactic, however, until the 1981 Professional Air Traffic Controllers Organization (PATCO). Reagan ordered the air traffic controllers back to work in 48 hours, and terminated those who did not return as directed. Military flight traffic control personnel covered the shortfall until a large number of newly-trained civilian workers could be brought on line. With this example to follow, many private sector employers became emboldened enough to resort to replacement workers during a strike, when they had not been inclined to do so before.

New Union Leadership

Lane Kirkland of the United Auto Workers retired as president of the AFL-CIO in 1994, and was succeeded by John Sweeney of the Service Employees International Union. For the first five years of Sweeney's stewardship, union membership declines continued. However, in part because of the bull market that characterized much of the 1990s, unemployment subsided and reached new lows. Strike replacement tactics became less feasible for employers, and unions were more successful in negotiation rounds.

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