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INSTITUTE OF LABOR AND  
INDUSTRIAL RELATIONS



B U L L E T I N

# Federal Labor Legislation 1947

UNIVERSITY OF ILLINOIS BULLETIN



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## EDITORIAL NOTE

In accord with the purposes of the University as a State-supported educational institution, the Institute of Labor and Industrial Relations aims at general education as well as at the special training indicated in its title. It seeks to serve all the people of the State by promoting general understanding of our social and economic problems, as well as by providing specific services to groups directly concerned with labor and industrial relations.

This *Bulletin* series is designed to present periodically information and ideas on topics of current interest in labor and industrial relations. The presentation is non-technical and is designed for general, popular use. No effort is made to treat the topics exhaustively. At present 10 issues a year are scheduled with additional special issues from time to time.

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Agricultural Workers Under National Labor Relations Laws	

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# FEDERAL LABOR LEGISLATION, 1947

By MARTHA CARLTON

A number of laws limiting the activities of labor unions were passed during the first half of 1947 by the United States Congress and by the legislatures of several states.<sup>1</sup> These laws followed a pattern laid down during 1946, and were, in a measure, a reflection of the problems, conflicts, and confusions of reconversion from a wartime economy. Strikes in 1946 which had caused inconvenience and loss to many people who were not directly concerned were also a factor. These laws also represented in some cases a reaction against the "pro-labor" legislation of the New Deal. It is the purpose of this discussion to review the legislative record of the Congress in this area, considering both legislation adopted and bills which failed to pass.

Action of the first session of the Eightieth Congress<sup>2</sup> on labor bills must be measured in the light of the economic and social problems which that Congress faced. On the labor front, a number of large scale strikes in basic industries during the preceding months had threatened, or appeared to threaten, to disturb the economic activity of the country. Wage increases had been won by many unions; prices were rising; the shortage of housing continued to be acute.

## President Truman's Proposals

The broad issues relating to labor on which legislation was requested by President Truman in his message to Congress on the State of the Union were: (1) early enactment of legislation to prevent certain "unjustifiable" practices in labor-management relations, such as jurisdictional strikes; (2) the appointment of a Committee with members from both Houses and from management, labor and the public, to study the entire field of labor-management relations and to make recommendations on specific problems; (3) the extension of facilities of the Department of Labor to assist

<sup>1</sup> Unlike the federal legislature and those of many states, the Illinois General Assembly passed no major laws dealing with labor relations or working conditions during the 1947 session.

<sup>2</sup> January 3, 1947 through July 26, 1947.

the processes of collective bargaining; (+) broad social legislation including extension of the social security laws, better housing, a fair minimum wage, and a comprehensive national health program. In brief, the President stated that labor-management relations presented a major problem on which legislation was necessary, but hasty legislation aimed only at control of strikes and collective bargaining procedure would not provide an adequate solution. Study of the entire problem, with action in related fields, was needed to get at the basic causes of industrial unrest.

Legislation introduced in Congress in 1947 reflected both the broad scope of the President's message and its emphasis on labor relations, although the actions proposed frequently differed widely from the President's suggestions. A flood of bills was offered to regulate various aspects of labor union activity. A great volume and variety of legislation was also proposed relating to employment practices, wages, housing, health insurance, and social security. However, legislation in these fields actually passed by the Congress consisted primarily of two bills amending the existing Fair Labor Standards Act (Wage Hour Law) and the National Labor Relations Act (Wagner Act). The amendment to the Fair Labor Standards Act was designated "emergency" legislation for the specific purpose of meeting the situation created by the Supreme Court decision on "portal-to-portal" pay. The changes in the NLRA, supplemented by additional labor-management laws, were varied and complex. Each of the bills passed represents the effort of Congress to solve major problems confronting it. But many of the problems on which no legislative action was taken were also of major importance.

## **LABOR MANAGEMENT RELATIONS ACT, 1947**

The Taft-Hartley bill, which became the Labor Management Relations Act, 1947, made the first important changes in national laws affecting union activity and collective bargaining since the passage of the National Labor Relations Act in 1935, except for emergency wartime measures which are no longer in effect.<sup>3</sup>

<sup>3</sup> Under the terms of Executive Order No. 9809, the National Wage Stabilization Board went out of existence February 21, 1947; War Labor Disputes Act expired June 30, 1947.

(President Truman had asked for legislation to prevent jurisdictional strikes, the use of secondary boycotts to enforce them, and the use of economic force by either employers or employees in deciding how collective bargaining agreements should be interpreted. He proposed several tasks for the study committee which he asked. The group would: recommend means of preventing nation-wide strikes in vital industries affecting the public interest, without endangering democratic freedoms; recommend the best procedures for carrying out collective bargaining, including the responsibility of both sides to negotiate freely and fairly, and to refrain from strikes or lockouts as a last resort; study the underlying causes of labor-management disputes.)

The bills relating directly to labor-management relations introduced in both houses of Congress, on the whole, imposed more restrictions on labor unions than the President requested in his State of the Union message. Several included immediate action on the problems which he had recommended for study by the proposed Committee. A number of bills were similar to the Case strike-control bill, vetoed by President Truman in 1946. Others provided for compulsory arbitration, establishment of labor courts for the settlement of disputes, prohibition of industry-wide bargaining and of closed shop agreements, and amendment of the anti-trust laws to make them specifically applicable to labor unions.

### Congressional Hearings

(In both houses the committees that received the bills gave them immediate consideration and scheduled early hearings. A subcommittee of the Senate Committee on Labor and Public Welfare started hearing testimony in January on the organization and responsibility of unions; labor courts and compulsory arbitration; mediation and conciliation machinery; the closed shop; industry-wide bargaining; amendments to the National Labor Relations Act. After six weeks of hearings, the committee reported a bill which was passed by the Senate in May.)

A subcommittee of the House Committee on Labor and Education in the meantime conducted its own hearings. The committee reported a bill, passed by the House in April, which covered the same major topics as the Senate bill but differed on specific pro-

visions. In general, the House bill included more severe restrictions on union activity and heavier penalties against unions than did the Senate bill. For example, the House bill banned collective bargaining on an industry-wide basis, made unions liable under the anti-trust laws, and permitted employers to sue unions for triple damages. A conference committee of members of both houses agreed upon a bill which made substantial changes in the Senate bill while eliminating or modifying the more drastic provisions of the House bill.

Early in June the conference bill was passed by both Houses, and sent to the President for approval. It was vetoed by the President, on these grounds: (1) it would increase government intervention in labor-management activities; (2) although it was designed to "equalize" rights under the Wagner Act, it would penalize unions more severely than employers in certain similar situations; (3) it was in many respects unworkable; and (4) it would hamper, rather than further, collective bargaining. The President's veto was overridden by a vote of 331-83 in the House, 68-25 in the Senate. On June 23, the bill became law.)

(The bill represents one of the most controversial pieces of labor legislation passed in many years. Testimony presented at the hearings, debate on the floor of Congress, and public discussion revealed widely opposing views on the need for, and the effectiveness of, the bill's provisions. During the hearings, Secretary of Labor Lewis Schwellenbach argued that many of the proposed provisions would hamper rather than further collective bargaining. He urged adoption of the President's suggestions: that immediate legislation be limited to the few points indicated; that action on other aspects of labor-management relations be delayed until a thorough and expert study of the basic problems had been completed. The National Labor Relations Board presented a detailed comment on each of the proposed actions. The Board indicated its opinion that many of the provisions would be harmful to collective bargaining. It pointed out that some provisions were not needed to achieve their apparent objectives and would create problems of interpretation and application which would seriously hamper unions in carrying out legitimate collective bargaining functions and could also work to the disadvantage of employers.)

## Viewpoint of Labor

Representatives of labor unions were unanimous in their opposition to the bill, although agreeing in individual cases to certain of the proposed provisions — for example, the ban on secondary boycotts, and the requirement that unions file financial statements, if this requirement were properly safeguarded. The general position of labor, however, as stated at the hearings and in voluminous discussions both before and after the passage of the bill, was that the law was designed to destroy unions and to cripple organized labor. The causes of the difficulties which the bill was supposed to correct, it was stated, lay in basic economic dislocations which would remain unchanged. Opposition was expressed particularly to the ban on the closed shop, and to the restrictions on other union security measures; to the broad powers of the Board to use injunctions to restrain various kinds of union activity; and to the possibility that union liability for damage suits might mean that unions were liable for damages in "wildcat" situations in which the union had not authorized the unlawful activities.)

Employers and representatives of employers' associations presented almost as unified a point of view in support of the bill. They held that labor unions had become so strong that they no longer needed the "one-sided" protection of the National Labor Relations Act. Instead, control of unions similar to that imposed on employers by the NLRA was needed, to protect employers, the public interest, and employees who were not union members. Representatives of some industries, however, were opposed to the proposed prohibition on industry-wide bargaining (which was eliminated from the final bill); to the prohibition of the closed shop; and to the establishment of a separate federal mediation agency to take over the functions of the United States Conciliation Service.

This discussion does not attempt to do more than indicate briefly the chief provisions of the bill. It is not possible, at present, to evaluate them with any certainty since the effects of many of the provisions will depend upon NLRB rulings and court decisions. Only after the administrative and judicial agencies have interpreted and applied the terms of the law to the various situations which it covers can the scope and effect of the law be adequately estimated.



A major part of the new law is concerned with amendments to the NLRA. That act was designed to protect employees' rights to organize and bargain collectively by preventing certain "unfair labor practices" of employers and by providing machinery for unions to gain recognition as collective bargaining agents without resorting to strikes. From its inception the law was criticized by employers for giving rights to employees which it did not give to employers, and for imposing penalties and restrictions on employers which did not apply to unions. The National Labor Relations Board set up under the act was also attacked for many of its policies and procedures.

### Provisions of the Law

The Labor Management Relations Act meets these arguments in large part by amending the NLRA to incorporate a number of the specific provisions asked for by employers since the early days of that act. Unfair labor practices applying to unions are added and several important modifications are made in the organization, authority and procedures of the National Labor Relations Board. Other sections of the new law supplement the amendments to the NLRA and set up procedures for regulating strikes and lockouts in industries affecting public health and safety. The major provisions of the law are outlined below.

**Unfair Labor Practices.** Unfair labor practices<sup>4</sup> for employers are amended to make hiring and firing because of union membership under a closed shop agreement an unfair labor practice. The union shop, under which employees are required to join the union within a specified time, is permitted, however, subject to certain qualifications. A majority of the employees eligible to vote must

<sup>4</sup> Unfair labor practices in the NLRA applied only to employers and included:

(1) Interfering with, restraining, or coercing employees in the exercise of their rights to organize and bargain collectively; (2) Dominating or interfering with the formation or administration of any labor organization or contributing financial support to it; (3) Encouraging or discouraging membership in any labor organization by discriminating in regard to hire or tenure of employment or any term or condition of employment. Closed shop agreements requiring that only union members be hired were, however, permitted if the union in question represented a majority of the employees in the bargaining unit; (4) Discharging or otherwise discriminating against an employee because he has filed charges or given testimony under the act; (5) Refusing to bargain collectively.

have voted for a union shop agreement in an N.L.R.B.-conducted election, and the employer may not discriminate against an employee because he is not a union member, (1) if the employer believes that membership in the union was not available to the employee on the same terms generally applicable to other employees, or (2) if the employer believes the employee was denied membership for reasons other than failure to tender dues and fees uniformly required as a condition of membership. Moreover, the provision permitting union shop agreements does not supersede state laws which prohibit requirement of union membership as a condition of employment.

Unfair practices applying to unions have been added. These are similar to unfair practices for employers and in addition include: the "exaction" of payment from an employer for services which are not performed; the requirement of initiation fees under union shop contracts which are excessive or discriminatory in the opinion of the National Labor Relations Board; and engaging in strikes and boycotts for specified purposes, which include jurisdictional strikes. Unions and employers are required to give 60 days' notice if they intend to end or change an existing contract. An employee who strikes during this period loses his status as an employee under the law.

**Board Procedures.** In enforcing the law, the Board shall not take action on charges of unfair labor practices, if the charges are not brought within 6 months. Charges against unions for "unfair" strikes or boycotts are to be given priority. The Board may get a temporary restraining order against continuation of an unfair labor practice from the courts as soon as it issues a complaint, before it has held hearings and issued an order. If the practice is an "unfair" strike or boycott, an injunction is to be requested from the court if the officer of the Board who investigated the charge believes the Board should issue a complaint.

The procedures of the Board in holding elections to determine bargaining representatives are also modified. Employers may request an election whenever an individual or a union demands recognition as the exclusive bargaining agent. (Previously an employer could ask for elections only when two competing unions were claiming the right to bargain for his employees.) Board authority

to define bargaining units is restricted by prohibiting: (1) inclusion of plant guards in the same unit with production workers; (2) inclusion of professional employees in the same unit with non-professional employees unless the majority of the professional workers vote for it; or (3) inclusion of craftsmen in a unit with other workers on the basis of a prior Board determination unless a majority in the craft vote against separate representation. The jurisdiction of the Board is also limited by the exclusion of supervisors from the definition of employees covered by the act. Supervisors are not prohibited from organizing but employers are not required to bargain with them.

In addition, the Board may take no action on complaints or requests for elections by a union if the union, and the national or international union to which it belongs, has not met certain conditions. These include: filing with the Secretary of Labor statements on union organization, officers and financial status; furnishing all members with a financial report; and filing with the Board affidavits for each officer that he is not a member of the Communist Party. These statements must be filed annually.

**Board Organization and Authority.** The organization and duties of the Board are also changed. The Board's membership is enlarged from three to five. To separate its judicial and prosecuting functions, the General Counsel, appointed by the President instead of the Board, has charge of all attorneys and regional personnel and has final authority to decide if complaints shall be issued and to prosecute complaints before the Board.<sup>5</sup>

**Damages and Criminal Liability.** In addition to the changes in the NLRA, another section of the Labor Management Relations Act limits union activity through criminal penalties and liability for damages. Payments by employers to unions are unlawful, for employers and for unions, except as compensation for goods or for services of an employee, as awards in settlement of grievances or disputes, or as deductions for dues if the employer has the written consent of the employee for the year in question. Payments to trust funds are also allowed if certain requirements are met. Willful violation of this section is subject to heavy penalties. Strikes which

<sup>5</sup> President Truman appointed Abe Murdock and C. Copeland Gray to the NLRB, and Robert Denham as General Counsel. These appointments were approved by the Senate in December.



are unfair labor practices for unions are unlawful. Any person — not only the employer — who is injured through such a strike may sue for damages. It is unlawful for a union to contribute to or spend any money for political purposes for a Presidential or Congressional election or primary. Violation of this prohibition carries a fine against the union, and a fine or imprisonment, or both, against any union officer consenting to the violation.

**Federal Mediation Service.** Another section of the Labor Management Relations Act establishes an independent Federal Mediation and Conciliation Service, to replace the Conciliation Service in the Department of Labor.<sup>6</sup> The service is to help in settling disputes which threaten substantial interruption of commerce. It is to intervene in disputes about the application or interpretation of contracts only as a last resort. When state or other conciliation services are available, the Federal Service is to avoid attempting to mediate disputes which would have little effect on commerce. Parties to a dispute shall “participate fully and promptly” in meetings arranged for by the Service to help settle the dispute. However, they are not required to accept the procedures suggested by the Service for settling the dispute.

**National Emergency Disputes.** Special provisions apply to strikes or lockouts which the President of the United States feels will imperil national health or safety. The President may appoint a board of inquiry to report on such a dispute without making recommendations. The report is to be made public by the President. After receiving the report, the President may direct the Attorney General to ask for a court injunction against engaging in or continuing the strike or lockout. The Conciliation Service is to help the disputing parties to make every effort to settle the dispute. If the dispute is not settled within 60 days, the board of inquiry shall report again to the President, including a statement of each party's position and the terms of the employer's last offer of settlement. The President is also to make this report public. Within the next 15 days the National Labor Relations Board shall take a secret ballot of the employees of each employer involved on whether they want to accept his final offer of settlement. The Board must report

<sup>6</sup> The appointment of Cyrus S. Ching as Director of the Service was approved by the Senate in December.

the results of the ballot to the Attorney General within five days. At this time the injunction must be withdrawn.

**Study Committee.** A joint Congressional committee is established to study the whole field of labor-management relations and to report to the Congress not later than March 15, 1948, with a final report by January 2, 1949, on the results of its study. The report is to include recommendations for legislation or other action. The committee was appointed shortly after the passage of the act. Its chairman, Senator Joseph Ball of Minnesota, announced the following program, to be carried out, where appropriate, through investigations by the Committee staff and by public hearings:

1. A study of labor relations over a period of 20 years in 10 to 25 firms, including some having contracts with CIO, AFL, and independent unions, and some with no unions.

2. The effect of industry-wide bargaining on the national economy.

3. A study of welfare funds and their relation to the social security program.

4. A study, with the NLRB, of the new act.

5. A study, with the Bureau of Labor Statistics and the Department of Commerce, of union constitutions, organization and government, and of employer associations and the part they play in labor relations.

## PORTAL-TO-PORTAL ACT

Amendments to the Fair Labor Standards Act to deal with the question of "portal-to-portal" pay were also given early consideration by the 80th Congress. A large number of bills were introduced to deal with the situation which arose from the decision of the Supreme Court in *Anderson v. Mt. Clemens Pottery*. This suit was brought under the Fair Labor Standards Act which requires that covered workers be paid at least 40 cents an hour, and time and a half for hours over 40 a week. If employees are not paid in accordance with these provisions, they are entitled to their back pay and an equal amount in damages.

In deciding the *Mt. Clemens* case, the Court ruled that the time spent by employees in going from the time clock to the buildings in

which they worked, and in performing certain preliminary and cleaning-up operations, was time worked within the meaning of the act. Unless such time is not "substantial" in amount, the Court held, it must be paid for at the applicable minimum wage. More important, such time must be included in computing weekly hours worked for the purpose of determining whether any overtime hours (hours beyond 40 a week) had been worked. Since such time occurred at the beginning and end of each shift and had never been paid for by the employer, the decision created a very considerable potential liability.<sup>7</sup> A number of suits were filed in the fall of 1946, many of them by unions representing large numbers of employees, claiming back pay and an equal amount in damages under the act. The suits, based on the *Mt. Clemens* decision, sought to recover for time spent in similar travel, preparatory, and cleaning-up activities which had not been paid for, and for which payment was not specified under the terms of employment or by union contracts. Estimates of the extent of employer liabilities under these suits reached more than 5 billion dollars. The Wage and Hour Administrator pointed out, however, that until the decision was applied to other circumstances, by the courts, no accurate estimate was possible of the amount of uncompensated time for which employers would be found liable.

## Congressional Proposals

In order to clarify the situation a number of bills were introduced in Congress to invalidate the pending suits through amendments to the Fair Labor Standards Act. Most of the bills went further, by limiting subsequent suits, by applying a time limit for all suits brought under the act, by reducing employer liability for back wages and damages generally, and by similarly amending the Walsh-Healey and Bacon-Davis Acts. (The former law establishes minimum wages and overtime pay for employees engaged in work on government contracts, and the Bacon-Davis Act requires contractors engaged in construction work for the federal government

<sup>7</sup> In the *Mt. Clemens* decision, the case was referred back to the district court to apply the Supreme Court ruling to the facts of the case. The district court found the time involved was too "insubstantial" to require inclusion in the work week.

to pay at least the prevailing minimum wage to laborers and mechanics.)

Hearings on the bills before the subcommittees of the House and Senate Judiciary Committees early in the session emphasized the potential cost to industry (and to the government, under cost-plus contracts and in tax rebates) if the pending claims were allowed. In addition, testimony was heard on the general problem of retroactive liabilities. These were created for employers whenever a court or the Wage Hour Administrator ruled that an existing method of payment or method of computing working time did not meet the requirements of the Fair Labor Standards Act, or when it was ruled that the act applied to a particular activity which the employer had believed was not covered. Since the final decision rests with the courts, their decisions could make liable for back pay and damages employers who had been following contrary rulings of the Administrator or of lower courts. No federal statute of limitations applied to claims brought under the law. Employer liability could, therefore, go back as far as 1938, when the law was passed, if no state limitation applied.

The proposed legislation was criticized by organized labor on many counts. It was objected that unorganized workers and workers with little economic strength would be put at a disadvantage with respect to their rights under the three basic wage and hour laws by the provisions limiting time required to be paid for to time that was customarily paid for. A similar effect, union representatives pointed out, would result from the provisions permitting compromise of claims by employers and individual employees, since an employee would ordinarily be at a disadvantage in bargaining with his employer. The time limit on suits was also criticized, as were the provisions limiting employees' rights to damages under the Fair Labor Standards Act. These two limitations on employees' rights, it was held, would materially decrease voluntary compliance by employers, since damages awarded in successful employee suits were the chief penalty on employers who failed to obey the law.

### **Wage-Hour Administrator's Proposals**

The solutions proposed by L. Metcalfe Walling, then Administrator of the Wage and Hour Division, included amendments

which would: (1) permit binding compromise settlements of the pending portal-to-portal claims; (2) apply a 3-year statute of limitations to eliminate similar problems in the future; (3) delegate authority to the Administrator to issue regulations to protect employers from retroactive liability if they complied with the regulations. Under these regulations the Administrator could define "working time," and other terms basic to the application of the act. These proposals were supported in general by labor unions.

The final bill agreed to by both houses and signed by President Truman deals with these and other problems, in addition to the particular problem of the pending "portal pay" suits. Employer liability is eliminated for claims based on activities engaged in before passage of the law. This applies to the Fair Labor Standards Act, the Walsh-Healey Act, and the Bacon-Davis Act. Liability for such claims still exists, however, if they are based on plant practice or custom, or on the terms of a contract in effect at the time the activity was performed. President Truman said when he signed the bill that he interpreted this provision to apply only to "portal-to-portal" claims. The Senate Judiciary Committee, however, which had been responsible for the bill in the Senate, rejected this interpretation in an official statement on the President's message. The Committee held that Congressional intent was to invalidate claims based on any activity which was not compensable under plant practice or the terms of a contract.

The law also provides for compromise settlement of claims based on activities which occurred before the new law was passed. The provision applies where the amount due is in dispute, and the settlement must meet certain requirements. In addition, employees may waive their rights to liquidated damages under the Fair Labor Standards Act, so far as claims arising from activities engaged in before the enactment of the new law are concerned. The Supreme Court had held in 1945 that an employee's rights to minimum wages, overtime pay, and damages were rights which could not be compromised or waived. If an employee later sued for the full amount of his claim, therefore, any compromise settlement which he had signed was invalid. The new law provides that such settlements of claims based on activities occurring before the new law was passed are a complete bar to any further action on the claims.



## Future Claims Limited

Claims based on future activities are limited by defining "compensable" time to exclude time spent in getting to and from the place where the employee performs his principal activity, and in performing activities which are "preliminary and post-liminary" to the principal activity, unless such time is to be paid for under the terms of a contract or by plant practice or custom. An employer is not liable under the Fair Labor Standards, Walsh-Healey or Bacon-Davis Acts for failure to pay minimum wages and overtime for time which is not "compensable."

Unions or other representatives of employees are forbidden to bring suits for back wages and damages under the Fair Labor Standards Act on behalf of the employees affected, as formerly permitted under that act. The right of a group of employees to file a suit collectively is not withdrawn, but the written consent of each employee who is a party to the suit must be filed with the court. A two-year statute of limitations applies to future claims brought under the three laws. Previously there was no limitation, unless a state statute applied.

Employer liability under the three laws is further reduced by a provision that no liability, either for back wages or for damages, shall exist where an employer proves that he acted in good faith in line with an administrative ruling or an administrative practice or enforcement policy. For violations occurring before the date of the Portal-to-Portal Act, the relief provided under this section is very broad. The ruling, practice or policy which the employer followed may be written or unwritten and may have been issued by any agency of the U. S., regardless of whether the agency was concerned with the administration of the law involved.

For violations occurring after the passage of the new law, however, the "good faith" defense applies only to written rulings issued by the persons authorized to administer the laws — the Wage Hour Administrator for the Fair Labor Standards Act and the Secretary of Labor for the Walsh-Healey and Bacon-Davis Acts — and to their administrative practices and enforcement policies.

The new law further relieves employer liability under the Fair Labor Standards Act by permitting the courts to reduce the amount of damages due for violations of the minimum wage or overtime

provisions in any case in which the employer satisfies the court that he acted in good faith and had reasonable grounds for believing he was not in violation. Employers are also relieved of any retroactive liability for minimum wage or overtime violations resulting from changes in the Administrator's definition of the "area of production."

### Differing Interpretations

President Truman referred to the "good faith" provisions in his message accompanying his approval of the bill. He stated that, as a safeguard against abuse of this defense, an employer who used it would have to show that he was relying on and conforming with an affirmative action of an administrative agency. The Senate Judiciary Committee objected to this interpretation by the President as it had objected to his interpretation of the section invalidating existing claims. The Committee stated that "affirmative" action was not necessary; that the administrative practice or policy relied upon could consist of the absence of action. For example, such absence of action might be a failure to enforce the act with respect to the employer's activities so that he believed he was not violating the act. This interpretation broadens considerably the potential effect of these provisions in eliminating employer liability, particularly for violations occurring prior to the passage of the Portal-to-Portal Act.

The Wage and Hour Administrator and the Secretary of Labor, however, have acted to limit to some extent the scope of employer immunity with respect to future violations. All orders limiting or staying enforcement of the Fair Labor Standards Act or the Walsh-Healey Act for any reason were cancelled. A "basic policy of universally strict enforcement" now prevails. In addition, several of the Interpretative Bulletins issued by the Wage Hour Administrator on various provisions of the Fair Labor Standards Act have been withdrawn or revised in view of the legal significance which such publications may now have. Interpretations of the Secretary of Labor on the Walsh-Healey Act, and other opinions and statements of policy of the Wage Hour Administrator, are now issued with a "caution" to employers that they may not represent the Secretary's, or the Administrator's, current position.

Some of the questions raised by the language of the Portal-to-Portal Act have already been indicated. These will need interpretation before the effect of the act can be fully measured. Standards must be set to determine when an employer acted in "good faith" and had "reasonable grounds" for believing he was not in violation. Standards will have to be set for determining when a "custom" or "practice" exists, and what the "principal activity or activities" of an employee includes. A decision is also needed on the constitutionality of the act. It has been attacked on the grounds (1) that the provisions retroactively wiping out existing claims violate the Fifth Amendment of the Constitution by depriving employees of property (claims for wages) without "due process of law," and (2) that the language of the "good faith" provisions is so vague as to constitute an invalid delegation of legislative authority to judicial and executive branches. The final decision on the interpretation and application of the act, as well as on its constitutionality, rests with the courts. These questions cannot be resolved by administrative action but will necessarily be settled by the long and costly process of legal action.

## **ISSUES ON WHICH NO LAWS WERE PASSED**

Bills to raise the minimum wage and to expand the coverage of the Fair Labor Standards Act failed to reach the floor of either house. The 79th Congress had considered such legislation. A bill which was primarily a minimum wage bill had passed the Senate in that Congress but was never considered by the House. President Truman recommended passage of such legislation in his initial message to the 80th Congress, his economic report on January 6, and again in his message approving the Portal-to-Portal Act. Bills were introduced early in the session to raise the minimum wage and also to make extensive changes in the basic coverage provisions of the Fair Labor Standards Act. A proposal to include an increase in the minimum wage in the Portal-to-Portal bill was rejected by the Senate on the ground that minimum wage bills would be considered later.

Hearings begun late in June before a subcommittee of the House Committee on Education and Labor were limited to con-



sideration of minimum wage bills. It was stated that the subcommittee would report a bill calling for a higher minimum wage before the Congress adjourned. However, testimony in opposition to the proposed increase in the minimum from 40 to 60 cents included arguments for changing other provisions of the act as well as arguments against the whole principle of minimum wage legislation. As a result, the hearings were adjourned until fall, when complete revision of the act was considered.

## Guaranteed Wage Plans

The question of guaranteed wages was another of the many issues relating to labor in the legislative background during 1947. The Advisory Board of the Office of War Mobilization and Reconversion submitted to the President a lengthy final report on its Guaranteed Wage Study. Unanimous conclusion of the Board was that guaranteed wage plans should not be the subject of legislative action, but should be developed through collective bargaining. The Board pointed out, however, that certain existing legislation affects the establishment of guaranteed wage plans. It recommended review and evaluation of these laws in order to coordinate the approach of federal laws toward these plans. The Social Security Act includes a provision, intended to encourage guaranteed annual wage plans, which permits states to reduce unemployment contribution rates of employers who give wage guarantees. The report submitted by the Board pointed out that this provision has been used very little and has not stimulated adoption of guaranteed wage plans. Similarly, the Fair Labor Standards Act contains a partial exemption from its overtime provisions for employees who are covered by a collective bargaining agreement which includes an annual employment guarantee and meets certain other requirements. The report stated that this provision also fails to achieve its purpose, because its terms and the regulations growing out of it are not sufficiently flexible. The report recommended changes in the two provisions referred to above and amendment of present tax laws to permit contributions to a guaranteed wage trust, under proper safeguards, to be counted as a cost of doing business.

On the basis of the report, President Truman requested the Council of Economic Advisors to study the economics of guaran-

teed wages and the effects of existing laws on the adoption and operation of wage plans.

Shortly after the Board report was issued, a bill was introduced in the Senate which provided: (1) that all guaranteed wage plans be filed with the Secretaries of Labor and Commerce and be available to labor and management; (2) directed the Secretaries to continue study of guaranteed wage plans and to cooperate with the states in drafting legislation concerning wage guarantees. No action was taken on this bill.

### **Social Security Extension**

The 80th Congress also took no action on several bills to extend the present old age and unemployment insurance systems. Bills were introduced to extend old age insurance to groups of workers now excluded; to increase the amount of benefits payable; to make similar changes broadening and liberalizing the unemployment compensation system; to create a national system to replace the present state unemployment compensation systems; to establish a national health insurance program. A Senate Committee held hearings on the health insurance proposal, but postponed further hearings until January, 1948.

Bills were also introduced to deal in various ways with the urgent problem of providing adequate housing on a large scale, but the Congress adjourned without enacting any major legislation on housing.

Similarly, proposed legislation to prohibit discrimination in employment by employers or unions on the basis of race, religion, color, national origin or ancestry, did not progress beyond the stage of committee hearings. A subcommittee of the Senate Committee on Labor and Public Welfare held hearings in June on a bill to prohibit discrimination and returned the bill to the full committee. The subcommittee approved its general purpose but recommended further study of its provisions.

### **Full Employment**

No legislation was proposed or enacted by the 80th Congress under the Employment Act of 1946, which established a joint

congressional committee to study the annual economic report which the President is required to submit. The Committee is to report to the Congress by February 1 of each year, with recommendations on the main proposals made by the President. This report is to guide Congressional committees considering legislation in these fields. The report submitted by President Truman on January 8 contained a comprehensive program for carrying out the objectives of the Employment Act — “maximum employment, production, and purchasing power.” The Joint Congressional Committee reported on January 31 that it had not had time to study and make recommendations on the President’s proposals, or to appoint a staff to assist it. The Committee stated, however, that the “short-range” recommendations of the President already were being considered by appropriate committees. These recommendations were: extension of rent control; broader coverage under the Fair Labor Standards Act; an increase in the minimum wage; broader coverage and a revision of benefits under the Social Security Act; a comprehensive housing program; no reduction in taxes; and labor-management legislation along the lines recommended in the report on the State of the Union. The “long-range” problems did not require immediate action, the Joint Committee reported. The “long-range” program outlined by the President asked for legislation to protect workers’ health, education, security, and personal and political freedom; to encourage free enterprise through increased appropriations for enforcing anti-trust laws; and to enlarge opportunities for small business.

The Committee made no report during the first session of the Congress on the President’s report, either on its “long-range” or “short-range” proposals. In May and June a subcommittee held hearings on current price developments, which were renewed in the fall.

In November, the subcommittee studying prices in the eastern states made a report to the full Joint Committee on the Economic Report, in view of the special session of Congress to be convened on November 17. No specific proposals for Congressional action were included in the report, but a number of possible actions to check inflation and to relieve the hardship of certain consumer groups were recommended to the full committee for its consideration.















