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LABOR AND INDUSTRIAL RELATIONS

Some Effects of the Taft-Hartley Act

UNIVERSITY OF ILLINOIS
BULLETIN

EDITORIAL NOTE

The Institute of Labor and Industrial Relations was established in 1946 to "inquire faithfully, honestly, and impartially into labor-management problems of all types, and secure the facts which will lay the foundation for future progress in the whole field of labor relations."

The Institute seeks to serve all the people of Illinois 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.

The *Bulletin* series is designed to implement these aims by periodically presenting information and ideas on subjects of interest to persons active in the field of labor and industrial relations. While no effort is made to treat the topics exhaustively, an attempt is made to answer the main questions raised about the subjects under discussion. The presentation is non-technical for general and popular use.

Additional copies of this *Bulletin* and others listed on the last page are available for distribution.

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SOME EFFECTS OF THE TAFT-HARTLEY ACT

By DALE E. GOOD

THE LABOR-MANAGEMENT RELATIONS ACT OF 1947, or Taft-Hartley Act as it is popularly known, has been law for two years. Since its passage, provisions of the Act and their effect have been debated pro and con by industrial, labor, and other interested groups.

What has been the experience of labor and management groups under the new law? What effect has the Act had on our national economy? Has it had any significant impact on labor-management relations? Have all its provisions been used?

Answers to some of these questions have required time to develop. Although the Act was passed in June, 1947, most provisions did not become effective until August of that year, and some did not apply until August, 1948. The real meanings of many of the provisions, therefore, were not clear until ruled upon by the National Labor Relations Board. In some instances, further clarification by the courts is needed. By January, 1949, only two cases had been decided by the Supreme Court.

Previous bulletins published by the Institute of Labor and Industrial Relations have described the main provisions of the Taft-Hartley Act, and interpretations by the Board and the courts since its passage. This bulletin will consider the effect of the Act upon strikes, work-stoppages affecting the public health and welfare, union and management conduct and practices, labor-management contracts, and the National Labor Relations Board.

STRIKES

It is not possible to conclude from statistics whether the Act has had any appreciable effect upon the number or duration of strikes. A comparison of the number of strikes and the amount of lost working time indicates that the years 1947 and 1948 were remarkably alike. In 1947, idleness due to work stoppages accounted for the loss of 34,559,000 man-days. In 1948, labor-management disputes resulted in approximately 34,000,000 man-days of direct idleness.¹ During the period 1935 to 1940, yearly loss of time as a result of work stoppages was considerably lower. The greatest

strike idleness during those years was in 1937, with a loss of 28,400,000 man-days. Thus far the percentage of estimated working time lost since the passage of the Act is more than one-third greater than the average for the period 1935 to 1940. It is difficult, however, if not impossible, to determine to what extent these strikes were caused by the issues in the Taft-Hartley Act.

Strikes in 1947

In March, 1947, before passage of the Act, there was a general downward trend in time lost because of work stoppages. This trend continued through the remainder of the year until by December, industrial idleness resulting from labor-management disputes had declined to a postwar low. A substantial portion of time lost due to work stoppages during 1947, however, resulted from three major disputes: the nation-wide telephone strike in April and May, the more prolonged east coast shipyards' strike from June to December, and the bituminous coal mining stoppage in late June.

Wages were the chief cause of most work stoppages in 1947, as in 1946. Consequently, of the Act's provisions only the procedural ones, the sixty-day waiting period, and the national emergency provision applied.

Issues arising out of the Taft-Hartley Act, however, were directly involved in some disputes during 1947. The short stoppage of about 235,000 bituminous coal miners was allegedly a protest against passage of the Act. A strike in Detroit involving 7,000 auto parts employees developed following disagreement between the Murray Corporation of America and the United Auto Workers (CIO) over including in their contract a clause which would protect the union from damage suits in the event of wildcat strikes. Several smaller controversies between the International Typographical Union (AFL) and various printing concerns climaxed in an extended work stoppage beginning in November when typographers in five Chicago newspaper plants went on strike. Although wages were involved, other important issues in this latter controversy were working conditions and the closed shop.²

Strikes in 1948

The downward trend in work stoppages was reversed during 1948. Beginning in January, an upward trend in time lost because of work stoppages became evident. This trend extended throughout the first half of the year. During the first week of April more than half a million workers were on strike. The range of businesses affected was unusually wide — from the stock market to the stockyards.

Again, wages were the chief issue. But issues arising either directly or indirectly from the Taft-Hartley Act continued to be present in some disputes.

The Act's non-Communist affidavit requirement was a major issue in a three-month strike of 1,000 employees, members of the United Public Workers (CIO), in cafeterias of about forty government buildings in Washington, D.C. A major question involved was whether management was required to bargain with a union whose officers had not filed the non-Communist affidavits required by the Act.

A strike of United Mine Workers (Ind) involving the "captive coal mines" was called during July because of disagreement between the union and management over a union shop provision in the 1948 contract. Management representatives contended that this provision violated the Taft-Hartley Act. However, they offered to accept the union shop provision if employees voted for it as provided under the Act. The vote, under the direction of the NLRB, was prevented when officers of the United Mine Workers refused to sign the non-Communist affidavit. A nine-day strike was terminated when an agreement incorporating the union shop provision was reached during a court hearing on a petition filed by the general counsel of the Board for an injunction to restrain the union. Both sides agreed that the union shop provisions would be modified if court rulings required it.

Approximately 28,000 west coast dock workers and seagoing personnel in September began a three-month strike upon termination of an eighty-day anti-strike injunction issued under the national emergency provision of the Act. Two of the three principal issues in the dispute — the union hiring hall and the signing of non-Communist affidavits — involved sections of the Act.

Longshoremens on the east coast ports went on strike in November, after termination of an eighty-day injunction. Bituminous coal miners stopped work in March, returning to work when an agreement was reached about a month later. A strike in the meat packing industry began in March and ended in May.

No other industry-wide strikes began during the latter part of 1948. Settling of the disputes involving the west coast maritime workers, the longshoremens on the east coast, and the California oil refinery employees left no major strikes in existence by December. The strike of Chicago printers continued through 1948, with further litigation occurring.

NATIONAL EMERGENCY CASES

↳ An important section of the Taft-Hartley Act includes provisions for dealing with nation-wide stoppages which may affect the health and welfare of the public. This is the so-called national emergency provision. There are six steps in the emergency procedure:

1. The President, if he is of the opinion that an actual or threatened strike would imperil the national health or safety, "may appoint a board of inquiry to inquire into the issues involved."

2. Upon receiving a report from the board of inquiry, the President may direct the Attorney General to seek an injunction against the strike.

3. The court, if it finds that the actual or threatened strike falls within the specifications set up in the law, may issue an order enjoining the strike or its continuation.

4. If agreement is not reached at the end of sixty days, the board of inquiry reports the position of the parties to the President.

5. During the succeeding fifteen days the NLRB conducts a poll of employees on acceptance or rejection of the employer's last offer, and within five days thereafter certifies the results to the Attorney General.

6. The Attorney General asks the court to discharge the injunction. The President then submits with or without recommendations, as he may see fit, a record of the entire proceeding to Congress. The process is to be completed in eighty days; hence, the

popular term, "eighty-day injunction," when referring to the national emergency procedure.

Use of Emergency Procedures

Some of these procedures were used seven times by January 1, 1949. In four instances, reports of the various boards of inquiry were followed by resort to federal injunction procedures. In two cases, strikes had begun when the emergency procedures were invoked, and in two cases, strikes resulted after the procedures of the law were exhausted. In two other cases, votes on the employers' last offers were taken. In another, involving the longshoremen and the stevedores on the Pacific coast, the NLRB was unable to take a vote on the employer's last offer because union members refused to cast ballots.

The national emergency provisions of the Act were invoked for the first time in March, 1948. The President appointed boards of inquiry to investigate three disputes — atomic energy, coal mining, and meat packing.

The atomic energy dispute involved the AFL Atomic Trades Council and the Carbide and Carbon Chemical Corporation, a private concern operating under the overall supervision of the Atomic Energy Commission. Issues involved in the dispute were wage adjustments and retention of a sick-leave plan. A strike was averted when agreement was reached shortly after the eighty-day injunction ended. In this case, every step in the national emergency procedure was completed, including the report by the President to Congress. The President recommended developing special means to handle disputes in the atomic energy industry and proposed setting up a commission to study the problem.

A work stoppage developed in the bituminous coal industry in March as a result of failure between labor and management to agree on a pension plan. By the middle of the month, almost the entire industry was idle. On April 13, on order from the President, the Attorney General obtained a temporary injunction from the U. S. District Court for the District of Columbia directing the union to order the miners to return to the pits and further ordering both parties to resume collective bargaining to settle the dispute.

After further court action, the dispute was settled and agreement on the pension plan was reached.

The President appointed a board of inquiry to report on another case involving the United Mine Workers of America (Ind) and the bituminous coal mine operators in dispute over wages and employment. The parties agreed to a contract, however, before hearings were held.

A strike situation in the meat packing industry had already developed when the President took the first step under the emergency provisions of the Taft-Hartley Act and appointed a board of inquiry. In this case, however, the government took no further action. The strike, which began in March, continued for sixty-seven days before settlement was reached.

Another case, in which no injunction was issued, involved the Telephone Workers Union (CIO) and the American Telephone and Telegraph Company. A board of inquiry had begun hearings when the parties agreed on a contract.

In two cases involving the shipping industry, eighty-day injunctions were issued. The first involved members of six unions — four CIO, one AFL, and one independent — and shippers on the Atlantic, Pacific, and Gulf ports, and on the Great Lakes. A strike was in progress on the Great Lakes threatening to spread to ocean-going traffic when the President directed the Attorney General to seek an injunction. Federal courts in New York, Cleveland, San Francisco, and in other areas, promptly issued temporary injunctions, followed by eighty-day injunctions. One extended work stoppage developed out of this complicated situation. It involved the International Longshoremen's Union (CIO) and the west coast shippers.

The other case involved the Atlantic coast stevedoring employers and the International Longshoremen's Association (AFL). Wages and adjustment of overtime rates were the principal issues in dispute. Union members went on strike November 10, 1948, the termination date of the eighty-day injunction. Settlement was reached seventeen days later.

In both east and west coast disputes, work stoppages resulted only after the emergency provisions of the Act were exhausted. In elections conducted by the NLRB on the employer's last offer in

the national emergency disputes, votes by employees were "overwhelmingly for rejection. . . ."³

UNION CONDUCT AND PRACTICES

An examination of union constitutions is one method of determining some of the effects of the Taft-Hartley Act. Changes in these constitutions since passage of the Act reflect the influence of certain provisions on union conduct and practices.

Some unions have taken action to avoid responsibility for damage suits in the event of wildcat strikes. The United Auto Workers (CIO), for example, has amended its constitution to prohibit calling a strike unless authority has been granted by the international executive board or the president of the international union.

Other changes reflect the influence of the checkoff and non-Communist affidavit provisions of the Act. The International Fishermen and Allied Workers Union (CIO) recently amended its constitution so that all forms of union membership payments may be included in the checkoff without violating the Taft-Hartley Act, which restricts checkoff deductions to "payment of membership dues." The amendment designates all forms of payments as "dues," which are permissible deductions under the Act. The Federation of Glass, Ceramic, and Silica Sand Workers (CIO) has likewise attempted to solve the checkoff problem by adopting a uniform system of dues payments. Under this arrangement, where a checkoff agreement is in effect, an employee who does not authorize the employer to make deductions for dues "shall become delinquent and be suspended if he has not paid all dues, fines and assessments fifteen days after each current payday."

Non-Communist Affidavits

The effect of the non-Communist affidavit provision upon internal union affairs is difficult to determine. Most unions have complied with the Act's filing requirements, despite widespread objection to the provision.

In some instances, labor's own efforts to reduce Communist influence preceded legislative action. A vigorous purge has been underway for some time within the United Auto Workers (CIO)

and the National Maritime Union (CIO), with warm encouragement from national officers of the CIO.

Unions whose officers have refused to file the non-Communist affidavit cannot invoke the processes of the NLRB. This puts the non-complying unions at a disadvantage in dealing with employers and with rival unions. The perils of non-compliance are illustrated in a case involving a strike against Board certification.⁴

Local 1250 of the Retail, Wholesale, and Department Store Employees (CIO) had a contract with Oppenheim Collins and Company of New York. The contract was about to expire, and the company refused to negotiate a new contract because officers of the local union had not signed non-Communist affidavits; whereupon the union struck.

A rival AFL union launched an organizing drive among the employees and subsequently petitioned the NLRB for a bargaining election. Attempts by local 1250 to halt the election or to get a place on the ballot failed. The Board also refused to allow the national union a place on the ballot on the ground that it was merely "fronting" for local 1250. The AFL union won the election and was duly certified by the Board. Objections to the election filed by the local CIO union and its parent organization were overruled by the Board. Throughout this period, the store was picketed by the CIO local, and picketing continued after the AFL union had been certified.

The company then filed charges with the Board alleging a violation of the Taft-Hartley Act's prohibition of a strike against Board certification. The general counsel obtained a Federal Court injunction forbidding picketing and other strike activity. The strike continued and contempt proceedings were started. Under the threat of a \$20,000 fine and an additional penalty of \$1,000 per day, the CIO union discontinued the strike. Local 1250 disaffiliated from the national union and the CIO, and is now an independent union.

Similar situations have occurred elsewhere. In some instances the international union has taken control of non-complying locals; in others, locals have seceded from internationals to which they had been affiliated. This has been a two-way process, however. Some complying locals have disaffiliated from non-complying international unions, just as some non-complying locals have had their

relationships cut off with complying internationals from which they had received charters.

NLRB Rulings

Rulings and interpretations of the non-Communist affidavit provision by the NLRB have developed along the following lines:

1. A non-complying union cannot petition for a representation election and cannot be certified by the Board as the bargaining agent.

2. In case of a representation election on the petition of another union, a non-complying union cannot get on the ballot.

3. A non-complying union cannot file objections to any representation election.

4. A non-complying union cannot file unfair labor practice charges with the Board. The Board will not handle charges filed by an individual or the international union on behalf of a non-complying union.

As a result, some non-complying unions have found it difficult to cope with unfriendly moves by rival unions and have lost membership and contracts to complying unions. Some unions have been extremely active in drawing membership from non-complying unions. The UAW (CIO) has chartered locals from the United Electrical Workers (CIO), the Mine, Mill, and Smelter Workers (CIO), and the Farm Equipment Workers (CIO). The Industrial Union of Marine and Shipbuilding Workers (CIO) has chartered locals from the Mine, Mill, and Smelter Workers and the United Public Workers (CIO).

Not all non-complying unions have suffered from such activity of rival unions. The West Coast International Longshoremens and Warehousemens Union (CIO), for example, has not been appreciably affected. Generally, however, unions under so-called leftwing leadership have been affected most. A wider split between leftwing and rightwing unions has been one result of the filing requirements of the Act.

Secondary Boycotts

The Act's ban on secondary boycott activity has far-reaching implications for unions. The Board is empowered under the Act to petition any U. S. district court for a temporary injunction to stop unfair labor practices. An employer may be enjoined from continuing an unfair labor practice, but the order usually affects only a single concern. In the case of unions, however, an injunction against secondary boycott activity affects all locals in the union's entire jurisdiction. For example, a court order against the International Typographical Union directed the union to "cease and desist from, and advise the subordinate local unions of the respondent International Typographical Union that they will cease and desist from, in any manner supporting, authorizing, sanctioning, recognizing, instigating, inducing, or encouraging subordinate local unions and members of the International Typographical Union, or any of them, to engage in, or to continue to engage in, any strikes, slow-downs, walkouts, or other disruptions of any kind to the business operations of employers in the newspaper publishing industry, which are in furtherance of, attributable to, arising out of, or caused solely or in part by acts and conduct enjoined by the Court's decree of March 27, 1948, and by the provisions of the decree of the Court hereinabove."⁵

As a result of the ban against secondary boycotts some unions have discontinued practices which were previously normal procedure. For example, a typographical union local now prints material which is sent to a city where members of another typographical union local are on strike.⁶ Before the Taft-Hartley Act, the first local probably would have refused to do the work.

Unions have been ordered by courts and the NLRB to stop secondary boycott activity in various cases throughout the country. A majority of the temporary injunctions issued against unions for unfair labor practices thus far has been concerned with various types of secondary boycotts.

MANAGEMENT CONDUCT AND PRACTICES

Effect of the Act upon management is less easily discernible than upon organized labor. Management has made some use of the

Act, although a go-slow approach has been urged by various employer associations and management spokesmen. One spokesman explains management's attitude this way:

Management has grounds sufficient under the [Taft-Hartley Act] to swamp our courts with requests for injunctions, suits for violation of contract and damages, and prosecution for unfair labor practices, to appear as a tidal wave compared to labor's portal-to-portal suits.

Why, then, do our friends, who are faced with featherbedding and other unfair labor practices specifically forbidden by the law, not go to court? Because they do not know their rights under the law? Hardly. The reason they are not filing briefs is due not to ignorance or the desire to play fair so much as it is prompted by the realization that, in the great majority of cases, the outcome of a court suit will have little effect upon management-labor relations in their own particular plant.⁷

Union-Management Balance

Management generally regards the Taft-Hartley Act as functioning to balance the union-management relationship. A director of industrial relations of a large firm states that the Act has affected management in the exercise of its functions in at least eight areas:

1. Psychologically. . . . The Taft-Hartley law injected a new element of balance into relationships with the NLRB which has resulted in a more impartial attitude on the part of the Board officials. . . . The psychological effect of the Taft-Hartley Act has been most apparent in collective bargaining. . . . As a result, a very large proportion of agreements were consummated successfully this past year without strife.

2. Employee communications. . . . The [freedom of speech] provision has had a salutary effect. Many companies are using this new freedom to send statements to their employees discussing union issues.

3. Control over supervisors. [The Act's provisions] gave employers a free hand to deal with such management employees on an individual merit basis. It has made the furnishing of information to such supervisors and their training and development of members of the management team immeasurably easier.

4. Control over labor supply. Management has also been given back some measure of control over the labor supply. It is now forbidden to discriminate in hiring employees or to discharge workers for any reason except non-payment of dues.

5. Control over production. Union use of several practices affecting production has been limited by the Taft-Hartley law, such as featherbedding, secondary boycotts, jurisdictional disputes, sympathy strikes, and certain other types of work stoppages.

6. Control over suppliers and customers. . . . If picketing to enforce such action [secondary boycotts] can be successfully enjoined, an employer will be free to select his suppliers and customers.

7. Collective bargaining. The Taft-Hartley Act has helped resuscitate the practice of genuine collective bargaining. The collective coercion of certain union officials who entered collective bargaining sessions with a sphinx-like "make me an offer" attitude and then left without stating their demand is no longer possible.

8. Collective dealing with non-complying unions. Many employers have continued to negotiate new agreements with the non-complying unions with which they have had previous relations where they believe such unions still represent their employees. . . . ⁸

Freedom of Speech

The greatest change in management behavior has probably come about in the area involving freedom of speech. Under the Wagner Act the Board held consistently that the employer should not be allowed to play a part in representation elections. As a result of the Taft-Hartley Act, the Board has abandoned this position and employers have been permitted to express their views on the matter of unionism.⁹

However, there are limitations to the extent employers may go in expressing their views on unionism. An interesting example of this occurred during a recent strike at an Ohio firm. The strike began after contract negotiations failed. It was marked by occasional outbursts of violence. The union involved was a local of the non-complying United Electrical Workers (CIO). A petition for a decertification election was filed, and an election held while the strike was still in progress. The union lost the election and promptly filed an objection to the conduct of the voting. A hearing officer was appointed by the Board. He recommended that the election be set aside. His report stated, in part:

"It is admitted that the company considered itself a part to the election and, as such, privileged to influence employees to vote against the union to the same extent and in the same manner that the union was privileged to influence employees to vote for the union. Hence, the company defends transporting voters to the polls because, it says, the unions did so. It offered to assist certain employees financially because strikers were being aided by union strike

funds. It set up a virtual campaign headquarters across from the place of election and kept a check of employees as they voted, using the same means which it might be presumed that the union used. It emulated the kind of precinct activity characteristic of political elections in general, including campaign headquarters, campaign literature, checkers at the polls, a telephone roundup of dilatory voters, and transportation to the polls.”

The Board upheld the recommendation of the hearing officer. It said that the company voided the election by offering financial aid to strikers while advising them how to vote. The Board ordered a new election when “circumstances permit a free choice among the employees concerned.”

In its decision the Board stated that company foremen had visited workers prior to the election and offered them loans with the understanding that they would vote against the union. According to the Board’s report approximately ninety-five loans were negotiated through a bank of which the company’s president was a director. The Board concluded that “offering financial assistance simultaneously with the solicitation of employees to vote against the union would reasonably have led the employees to conclude that they were being offered an economic benefit conditioned upon their voting in a manner desired by the employer. . . .”¹⁰

Some people believe that company discussion of union issues has slowed down organizing drives by labor. The Secretary of Labor has stated that “in the last two years it has become almost impossible for unions to make progress.”¹¹ This statement, he said, was based on what union officials had told him regarding difficulties encountered in trying to organize unions, especially in the South.

Conclusions of a recent study of the practical effects of the Act on labor relations in Southern California support this view. The study states that employers have used the free speech provision and the right to request certification elections to check considerably the effectiveness of union organizing drives. The authors conclude that “there is considerable evidence to suggest that organizing campaigns among non-union firms and industries were pretty well stopped by the law.”¹²

The possible limitations on the continued development of labor organizations as a result of various provisions of the Act lead an authority on labor law to conclude, "The Taft-Hartley amendments represent an abandonment of the policy of encouraging the spread of union organization and collective bargaining."¹³

UNION-MANAGEMENT CONTRACTS

The impact of the new law is evident in provisions in contracts negotiated after the enactment of the Act. Contract clauses designed to meet specific situations arising out of the Act have been improvised in the course of collective bargaining. The Bureau of National Affairs conducted a survey of contracts during the first year of the Taft-Hartley Act and found the following bargaining subjects most affected by the law: (1) union security, (2) check-off, (3) no-strike pledges, (4) termination and modification provisions, (5) grievance machinery, and (6) welfare plans.¹⁴

Forty-five per cent of the contracts analyzed provide for some form of union security, 25 per cent provide for the union shop, 15 per cent provide for maintenance of membership, and 5 per cent provide for a closed shop.

Union Security

The Taft-Hartley Act prohibits a closed shop provision in future collective bargaining contracts and permits union shop provisions only after an election has indicated that a majority of the employees desire such a provision. Thus, negotiators have been faced with the problem of dealing with closed and union shop contracts when they come up for renegotiation. Some strong unions, with varying degrees of success, have attempted to preserve closed shop conditions by insisting upon preferential hiring of employees hired under previous closed shop contracts. There have been two well-known cases of this kind—the contracts negotiated by the UMW (Ind) providing for union shop conditions without recourse to the NLRB, and the modified hiring hall arrangement negotiated by the longshoremens and maritime workers. The NLRB ruled in May, 1949, that the union shop agreement between the UMW and the steel industry's "captive" mines was illegal. The decision did

not affect the union's contracts with the rest of the coal industry. No decision by the NLRB on the hiring hall arrangement had been given at the time of writing.

Contrary to popular opinion, the closed shop still exists legally in the United States under the Taft-Hartley Act. Closed shop contracts agreed to before June 23, 1947, the enactment date of the Act, continue in effect until expiration of the contract. The Amalgamated Clothing Workers (CIO) entered into a five-year closed shop contract prior to the passage of the Act. Other unions signed closed shop agreements which terminated during the first half of 1949. But some closed shop contracts probably are in effect in violation of the Taft-Hartley Act. There is no way of knowing how many closed shop agreements have been entered into extralegally. The study of labor-management relations in Southern California states that the Act's ban on the closed shop has had "the effect of driving relationships between unions and employers underground." One authority on the closed shop, while agreeing that the Taft-Hartley Act will undoubtedly abolish closed shop provisions from future collective bargaining contracts, questions whether the Act will be able to "remove centuries of closed shop customs and traditions."¹⁵

The Act does not state that the signing of a closed shop contract is illegal, but it makes hiring or firing according to such contracts an unfair labor practice.

Many observers believe the Act, while tending to abolish the closed shop, has aided the growth of the union shop. Many employers have agreed to a union shop after election results indicated that an overwhelming majority of employees favored such an agreement. By December 1, 1948, about 26,000 union shop elections had been conducted by the Board. The vote in approximately 97 per cent of these elections was in favor of authorization, usually by an overwhelming majority.

Many contracts incorporate the wording of the Act to insure conformity with it, the survey showed. Some contracts provide for the possibility of changes in the Act. In the latter case, such contracts usually provide for the reinstatement of prior union security provisions or for renegotiation of such provisions. A contract

negotiated by the American Cyanamid Company and District 50, UMW (Ind) incorporates the following union security provision:

"All employees who, on the date hereinafter specified, are members of the union in good standing in accordance with its constitution and by-laws, and all employees who become members after that date, shall, as a condition of employment, maintain their membership in the union in good standing for the duration of this contract insofar as the payment of their membership dues may be concerned. . . ."

"The above provisions of this section shall become effective only upon the happening of one of the following events, namely:

"(1) The declaration by the Supreme Court of the United States of the unconstitutionality of the Labor-Management Relations Act, 1947, or specifically, of Section 8 (3) thereof;

"(2) The repeal of said Act or said Section thereof by the Congress of the United States. . . ."

Checkoff Agreements

Checkoff provisions, included in a greater number of contracts than union security provisions, have been affected by two limitations imposed by the Act. The law provides that the duration of checkoff provisions "shall not be irrevocable for a period of more than one year, or beyond the termination date of the applicable collective agreement, whichever occurs sooner," and that only membership dues are allowable deductions.

As a result, the B.N.A. survey concluded, most checkoff agreements are designed to be effective for one year only. Automatic renewal provisions, however, which provide for an escape period between contract renewals, are found in a few agreements. Many contracts incorporating checkoff provisions include initiation fees and assessments as part of membership dues. Most contracts include only periodic dues and initiation fees. A few include fines when legally permissible.

Violation of Agreements

The Taft-Hartley Act makes it easier for employers to sue unions for contract violations. The above mentioned survey indicated, however, unions are attempting to establish a pattern whereby

they will not be responsible for unauthorized acts by their individual members.

Attempts by labor to eliminate no-strike pledges from contracts have not been too successful. More than four-fifths of the contracts analyzed contain some form of a no-strike clause. However, in most cases employers have agreed not to sue for money damages when strikes are not authorized by the union, if the union takes action to disavow the strike.

The following clause from a collective bargaining agreement between the American Lava Corporation and the International Association of Machinists (Ind) illustrates the manner in which negotiators have met the problem:

In the event that any violation of the previous paragraph [no strike provision] occurs which is not authorized by the union, the company agrees there shall be no liability in damages on the part of the International or Local Union, nor any officer or agent, provided that in the event of such unauthorized action, the union first meets the following conditions:

1. The union shall declare publicly that such action is unauthorized.
2. The union shall promptly order its members to return to work notwithstanding the existence of any unauthorized picket line of this union.
3. The union shall not question the unqualified right of the company to discipline or discharge employees engaging in, participating in, or encouraging any unauthorized strike on the part of this union or any other union. It is understood that such action on the part of the company shall be final and binding upon the union and its members and shall in no case be construed a violation by the company of any provisions of this agreement.
4. In the case of an unauthorized slowdown, stoppage of work, or strike, if condoned by the union, the company, at its option, may cancel this contract, providing the union cannot show just cause for not doing so.

Most contracts containing termination provisions negotiated after passage of the Taft-Hartley Act follow the wording of the Act. The sixty-day waiting period provision of the Act has been inserted in a majority of contracts. They include the stipulation that the contract remains in effect for the sixty days.

A problem arises, however, when the contract provides for interim discussion on certain points. Does the provision of the Act which states that the contract is to remain in effect without a strike or lockout for sixty days after notice is given or the expiration

date of the contract, whichever is sooner, prevent a strike during the life of the agreement? Some union negotiators have met the problem by stating in the contract that the agreement shall terminate in the event of a deadlock on reopening issues, or by stating explicitly that a strike shall be permissible in the event a reopened issue is deadlocked.

Bargaining on Other Issues

It appears that other subjects of bargaining have not been significantly affected by the Act. Grievance procedure has been changed only to the extent that a number of contracts provide for individual employees to take up grievances directly with management without union participation.¹⁶

Welfare plans have not been affected on any large scale, partly because few plans existed which were in violation of the law, and partly because some limitations imposed by the Act do not apply to plans established prior to 1946. The restrictions of the Act on welfare funds include persons eligible for benefit payments, type of benefits allowed, and basis on which payments are to be made. The Act also states that the agreement must include a procedure to be followed in case of deadlock between the employer and employee representative.

Two plans — the bituminous coal plan and the recording and transcription plan of the Federation of Musicians (AFL) — were subjects of extended discussion as a result of the Taft-Hartley Act provisions. The bituminous coal plan was the subject of litigation during 1948. Employers charged that payment to union members who had not been employed by operators covered by the agreement violated the Act. A Federal District Court, however, declined to issue an injunction and held that the plan was legal.

Controversy over the musicians' recording and transcription plan, which resulted in a ban on recordings during most of 1948, involved the question of whether royalty payments to the musicians' fund violated the provision of the Act dealing with payment for work not performed. A major consideration was joint union-employer administration of the fund. Agreement was reached during December, 1948, on a plan which set up an impartial trustee to administer the fund. The agreement, approved by the Department

of Justice, is not substantially different in other respects from the old agreement.

Other provisions of the Act have caused new contract developments. In determining whether any person is an agent for a union, thus holding the union responsible for his acts, the law states "the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling." Some unions have tried to counter this provision by inserting a clause in the contract stating that evidence of authorization is necessary before any person can be held responsible for the acts of another.

Plant guards and supervisors have been excluded from most contracts on the basis of the wording of the Act. Picketing has become increasingly a subject for negotiation. Most picketing clauses have been drawn up with the practical aspects of the local situation in mind. Some contracts, repeating the provisions of the Act, state that employees may refuse to enter the premises of another employer who is being struck by a certified union.

Some contract clauses negotiated after passage of the Act may not be legally enforceable. Such clauses include those attempting to establish some form of union security without recourse to the NLRB, and those attempting to limit union liability for nonauthorized acts by union officials. These clauses as yet have not become subjects for judicial interpretation.

THE ACT AND THE BOARD

The National Labor Relations Board has been considerably affected by the Act. Its duties have been enlarged, and many of its policies changed and revised. In addition to handling representation elections and unfair labor practice charges against employers, the Board must now hold union shop elections, elections on the employer's last offer under the national emergency provisions, and handle unfair labor practice charges against unions.

The majority of the petitions acted upon by the Board thus far have been the result of provisions of the new law. Requests for union shop elections alone constitute 70 per cent of the total number of petitions filed with the Board up to January 1, 1949. The tables indicate the types of cases filed with the Board during the period following the enactment of the law.

Table 1. Election Petitions with the NLRB*
(Period covering August 22, 1947 to January 1, 1949)

FILED BY	REPRESENTATION	UNION SHOP
AFL affiliates.....	5,277.....	26,039
CIO affiliates.....	1,907.....	4,463
Unaffiliated unions.....	1,875.....	4,921
Individuals.....	35.....	1
Employers.....	697.....	
Decertification.....	651.....	
Other†.....	60.....	402
<i>Totals</i>	10,502.....	35,826

* Unofficial figures compiled from NLRB releases.

† Included joint petitions and petitions not classified due to lack of data.

The Board, in its annual report for the fiscal year ended June 30, 1948,¹⁷ reported it received an all time high of 36,735 cases in the first year under the Taft-Hartley Act. The previous high during the 1947 fiscal year was 14,909 cases. During the 1948 fiscal year almost 90 per cent of the cases closed were disposed of in the twelve regional offices.

Table 2. Elections Won and Lost By Unions*
(For period covering October 1, 1947 to January 1, 1949)

BARGAINING ELECTIONS		UNION SHOP ELECTIONS		DECERTIFICATION ELECTIONS	
Won	Lost†	Won	Lost	Won	Lost
3,847	1,641	31,102	788	60	108

* Unofficial figures compiled from NLRB releases.

† This figure represents the number of elections in which no union was chosen as bargaining agent. In some elections more than one union lost to the "no union" choice; in other elections one union lost to another.

Unions won fewer bargaining elections during the first year of the Taft-Hartley Act than in any year under the Wagner Act. The thirteenth annual report of the Board indicates that during the fiscal year 1948 unions won 72.5 per cent of the bargaining elections in which they took part. During the twelve years of operation under the Wagner Act, unions won 81.4 per cent of the bargaining elections conducted by the Board. As Table 2 indicates, approximately 97 per cent of the elections were in favor of the union shop.¹⁸

Table 3. Unfair Practices Charges Filed with the NLRB*
(From August 22, 1947 to January 1, 1949)

FILED BY	AGAINST UNIONS	AGAINST EMPLOYERS
AFL affiliates.....	23.....	1,578
CIO affiliates.....	5.....	687
Unaffiliated unions.....	38.....	385
Individuals.....	502.....	1,855
Employers.....	683.....	
Others†.....	12.....	46
<i>Totals</i>	1,263.....	4,551

* Unofficial figures compiled from NLRB releases.

† Unclassified due to lack of data.

Although almost four times as many charges of unfair labor practices were filed against employers as against unions, the actual number of cases handled by the Board in each category is more equal. From September, 1947, to November 1, 1948, the Board acted on 157 cases against employers and 127 cases against unions. One reason for this may be that many charges against unions have involved Section 8 (b) (4) of the Act, the secondary boycott section, which is given priority over all other cases. According to the study of the practical effects of the Act on labor relations in Southern California, mentioned previously, "The additional responsibilities placed upon the Board definitely slowed up its actions on cases filed by unions against employers. . . ." The study concluded that unions were often precluded from getting the protection of the Act.

Use of the Injunction

The injunction, another controversial provision of the Act, had been used by the Board a number of times by January 1, 1949. The general counsel petitioned courts for injunctions forty-one times in dealing with unfair labor practices. Of these petitions, thirty-nine were directed against unions, and two against employers. Twenty-five injunctions were issued against unions and one against an employer. Five petitions were denied by the courts, three were withdrawn, and action in the remaining seven cases was in various stages of development at the end of 1948.

Of the forty-one petitions, thirty-five were mandatory in which the general counsel had no choice but to petition a court for an injunction to stop an alleged unfair labor practice. These cases involved secondary boycotts, certain kinds of sympathy strikes, and Board certification of bargaining agents.

Courts granted three injunctions from the six petitions filed by the general counsel under the voluntary provisions of the Act. Twice the United Mine Workers were involved. In the first case the court ordered the union to bargain with the southern coal producers. The second petition was withdrawn after a compromise agreement involving union shop conditions was reached by the union and the steel companies owning coal mines.

In another case an injunction was obtained against the International Typographical Union. Another injunction petition against a west coast meat cutters' union was withdrawn.

Employers were charged with unfair labor practices in two cases in which the general counsel used his discretionary power to seek an injunction. In both cases refusal to bargain was charged.

In the first case an injunction was obtained against the General Motors Corporation ordering it to bargain with the UAW (CIO) on a group insurance plan. In the second case the court refused to issue an injunction against the Boeing Airplane Company in Seattle charging refusal to bargain with the striking International Association of Machinists (Ind).

In its twelve-year history under the Wagner Act, the Board only twice used its authority to seek a court injunction.¹⁹

Proceedings at Regional Level

Board procedures have been used at the regional level to settle two cases involving featherbedding and work jurisdiction. The featherbedding case involved a construction company and a local of the Plasterers and Cement Finishers' International Association (AFL). The company charged that the union had caused it to retain more men than were needed to complete some overtime work. Acting on charges filed by the company, a regional director of the Board issued a formal complaint against the union. Representatives of the union, company, and the Board then met and entered into an agreement providing for settlement and for issuance and en-

forcement of the Board's order. The union paid the company an amount equal to the wages of the additional men retained at the insistence of the union, and the Board issued an order which, in effect, approved the agreement.

The work jurisdiction dispute involved two AFL unions, the Carpenter's Union and the Bridge and Structural Workers Union. The dispute resulted in a strike at a plant being constructed. The company affected by the strike filed charges with the Board alleging violation of Section 8 (b) (4) (D) forbidding strikes to force "any employer to assign particular work to employees in a particular labor organization." Acting on the charges, the regional director gave the parties ten days to settle the dispute without Board intervention. Settlement was not reached at the end of the ten-day period, and a hearing was ordered by the Board. During the hearing, the two unions requested a temporary adjournment. Shortly afterward, they reached a settlement and the hearing was adjourned. If an agreement had not been reached by the unions, the trial examiner would have completed the hearing and submitted a report to the Board. The Board would then have issued a work-award certification.

Board intervention in jurisdictional disputes has apparently stimulated some unions and employers to devise means of settlement. Shortly after the Board announced that it would enforce the Taft-Hartley Act in the construction industry, the Building and Construction Trades Department of the AFL reached an agreement with a national contractors' association on an arrangement to settle jurisdictional quarrels. The agreement provides for the settlement of jurisdictional disputes through the decisions of a joint board with an impartial chairman. It was announced that the purpose of the agreement was to make unnecessary determination by the Board in such disputes within the industry.

SUMMARY

Although the Taft-Hartley Act has been in existence only a comparatively short time, its influence upon industrial relations has been reflected in various ways. Some unions have been compelled to give up certain activities — the secondary boycott and various moves to support closed shop demands — that were considered normal procedure before the Taft-Hartley Act became law. Inter-union rivalry has been intensified in some cases. Union membership appears not to have declined, but some evidence indicates that as a result of employers' activities union organizing has not proceeded at the same pace as under the Wagner Act.

Definite conclusions cannot be reached on the Act's effect upon strikes. In some strikes issues have been involved arising out of the Act's provisions. The national emergency provisions of the Act have not eliminated strikes in industries affecting the national health and safety; however, such strikes have been delayed.

Changes in contract provisions have been made to bring agreements into conformity with the Act. In some cases, agreements have been reached between employers and unions which appear to circumvent provisions of the law.

Cases arising out of provisions of the new law have been a major concern of the National Labor Relations Board. Due to the nature of the charges, the Board has acted upon a greater percentage of charges against unions than against employers. Almost all the injunctions sought by the Board have been against unions. The role of government in labor relations has been considerably enlarged, and labor disputes have increasingly become a major concern of the courts.

Conclusions as to the effects of the Act should be regarded as tentative, inasmuch as the Act has been in operation only a short time. As one authority points out, "The law has operated only in a period of high employment — hence the experience under it has limited significance."²⁰

Notes

1. U. S. Bureau of Labor Statistics, *Review of Labor-Management Disputes in 1948* (Washington, D. C.: The Bureau, 1949).
2. For a discussion of the coal walkout see the U. S. Department of Labor *Monthly Labor Review* for July, 1947. The strike at the Murray Corp., and the newspaper strike in Chicago are discussed in the August, 1947, and November, 1948, issues, respectively.
3. First Annual Report of the Federal Mediation Service, 23 LLR 172.
4. *In the matter of Oppenheim Collins and Co., Inc. and Retail Clerks International Association (AFL)*, 79 NLRB 59. See also *Douds, etc. v. Local 1250, Retail Wholesale Department Store Union of America, CIO*, Civil No. 47-308, U. S. District Court, Southern District of New York, September 14, 1948, and October 8, 1948; *Douds, etc. v. Local 1250, Retail Wholesale Department Store Union of America, CIO*, No. 86, November 8, 1948, U. S. Court of Appeals, Second Circuit (New York).
5. *In the case of Evans, etc. v. International Typographical Union et al.*, No. 1587, October 14, 1948, U. S. District Court, Southern District of Indiana.
6. Louis Stark, "Labor Law Is Likely to Be Strengthened," *New York Times*, October 31, 1948, p. 6E.
7. Shurtleff and Meyer, *Labor Trends and Policies*, (Toledo Research Bureau, 1948) Vol. 1, No. 2, as quoted in *The Taft-Hartley Act After One Year*, (Washington: Bureau of National Affairs, Inc., 1948), pp. 2-3.
8. "The Effects of the Taft-Hartley Act on the Functions of Management," an address delivered at the Northern Ohio Personnel and Executive Conference, October 20, 1948, by E. H. VanDelden, Director of Industrial Relations, Libby-Owens-Ford Glass Company.
9. The following is a partial list of cases decided by the Board since passage of the Act which involved such activity on the part of employers: 75 NLRB No. 4, 75 NLRB No. 14, 75 NLRB No. 15, 75 NLRB No. 41, 75 NLRB No. 45, 75 NLRB No. 55, 75 NLRB No. 11, 75 NLRB No. 138, 76 NLRB No. 82, 76 NLRB No. 106, 76 NLRB No. 149, 76 NLRB No. 156, 76 NLRB No. 164, 76 NLRB No. 183, 77 NLRB No. 14, 77 NLRB No. 85, 77 NLRB No. 96, 77 NLRB No. 174, 77 NLRB No. 186, 78 NLRB No. 60. These decisions represent only a small percentage of such cases filed with the Board.
10. *Christian Science Monitor*, Boston, April 23, 1948, p. 3.
11. "Tobin Plans for Labor Peace," *New York Times*, November 28, 1948, Section 6, p. 10.
12. A summary of the study, made under the direction of Frank C. Pierson of the Institute of Industrial Relations, University of California, was presented at the annual meeting of the Pacific Coast Economic Association on December 31, 1948. See 23 LRR 203.
13. Quoted language is that of Archibald Cox, Professor of Law, Harvard School. See John T. Dunlop, *Saving American Capitalism* (Harris Seymour, ed.) (New York: Alfred A. Knopf, Inc., 1948), p. 300.

14. This survey was based on an analysis of some 1,300 contracts. See *Basic Patterns in Collective Bargaining Contracts*. (Washington: The Bureau of National Affairs, Inc., 1948).
15. Jerome L. Toner, "The Closed Shop and the Taft-Hartley Act," *Journal of Political Economy*, Volume LXI, No. 3, June, 1948, p. 258.
16. The Act provides "that any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted without intervention of the bargaining representative" if the contract is not violated and the bargaining representative is allowed to be present.
17. *Thirteenth Annual Report of the National Labor Relations Board, for the Fiscal Year Ended June 30, 1948*, (Washington: United States Printing Office, 1949).
18. The information in this paragraph from the various annual reports of the NLRB, beginning with the first report for the fiscal year ending in June, 1936.
19. "Injunctions Asked 31 Times by NLRB," *New York Times*, September 26, 1948, p. 44.
20. Sumner H. Slichter, "The Taft-Hartley Act," *The Quarterly Journal of Economics*, February, 1949, p. 12.



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