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THE LABOR-MANAGEMENT RELATIONS ACT OF 1947

28 April 1948

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CAPTAIN WORTHINGTON: From our manpower studies and our studies of economic mobilization, we are all aware of the importance of labor-management relations. The National Labor-Management Relations Act of 1947, generally known as the Taft-Hartley Bill, is the basic law that governs at the present time. There is no one better able to tell us about that law than the officer of our Government who is charged with administering that law, the General Counsel for the National Labor Relations Board, Mr. Robert L. Denham. Mr. Denham.

MR. DENHAM: Gentlemen, I have some prepared and fixed comments here, but I hope that I can get through in time so that you will feel at liberty to throw any questions at me you may think of, and I shall do the best I can to give you what we think is the answer.

The General Counsel is charged with the administration of this law, and he has the first guess as to what it means. He also has the responsibility for making its first application. So you may ask me whatever you desire, and I will give you my best answer as to where we fit in the picture and how I think the law should be applied.

The Labor Management Relations Act of 1947, which, for the sake of brevity I shall refer to as the Taft-Hartley Act, suffers more from not being clearly understood, than from anything that is inherent in it. This act is regulatory legislation and makes no attempt to serve as a manual for the over-all conduct of industrial relations. Its primary purpose is to provide the machinery for making satisfactory industrial relations possible, however, through insuring to appropriate groups of employees, a method whereby they can select, oust, or reject, through their own free choice, representatives to speak for them in negotiating with their employer on matters concerning wages, hours, and conditions of employment. At the same time, it sets up machinery designed to prevent employers from imposing on the exercise of these privileges by their employees, and also to prevent labor organizations from employing improper techniques on either the employees themselves, the employers, or the public, in order to obtain, through intimidatory practices, the status of bargaining representative to which, under other circumstances, they could not succeed.

The Taft-Hartley Act is indeed a complicated piece of machinery when read by persons who do not have a fair concept of industrial relations as a whole, together with a fair background picture of the fabric of the law and the policies and practices that grew out of the

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administered by a board and staff which, in the main, as enthusiastically subscribed to its provisions and what they conceived to be its purposes and principles, as the present General Counsel and his staff subscribe to the Taft-Hartley Act and what it seems to stand for.

The Wagner Act admittedly was for the protection of labor. The unfortunate thing was that, in its administration, it afforded too much protection. In the first instance, sit-down strikes, mass picketing, violence, and property destruction were often excused--generally as having been provoked by the employer because he would not do what the unions wanted, or as a form of protected concerted activity. To be sure, such practices usually could be traced back to ruthless, lawless, opportunists, who had invaded the field of labor under the protection of the act and its beneficent administration, and who were not true labor leaders. The Courts soon began to put a stop to such practices, and, as decision after decision came down defining the rules of the game, the board itself gradually formulated a clearer set of rules that began to fit into the scheme of things most of us lived by.

However, the Wagner Act permitted fouls to be called against only one side, and under such conditions, the immune side soon turned privilege into license. Bullies developed as labor grew up, and the public began to demand that the bully practices be stopped. It recognized that labor had grown to maturity and that it must assume full responsibility for its conduct and be required to comport itself in our social and economic structure, in conformity with the same general rules that govern the rest of society. That demand produced the Taft-Hartley Act, as a corrective medium.

You gentlemen in our Armed Services are concerned with the preservation of a highly productive peace economy, but you are also prepared to apply that economy to the defense of the Nation, and the principles it stands for, when and if the necessity should arise. Therein should lie your interest in this law. Experience has shown us that even though our economy operates on the principle of free enterprise, it can be, and must be, channelled into production for the protection of the welfare of the Nation in any emergency. I take it, that will be your job, and that, as in the past, should such an emergency arise, you and other officers of our Armed Services, will, early in the game, find yourselves closely identified with the coordination, integration, and promotion of that productivity. My small contribution, if any, to you, is to define in broad strokes what bearing the Taft-Hartley Act can have on what you will have to do. I could be technical and legal about it, but you can go to your own legal staff for that. I prefer to stay on the practical side; the side that is designed to get results.

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who usually is the direct contact with the employer. The constitution of the international union is always the fundamental law, but the locals frequently have their own by-laws and constitutions not inconsistent with it. They have the right to discipline their members and to expel them, and they usually reserve the right to regulate the terms upon which members will be admitted. With some 65,000 or more locals of international unions making up the American Federation of Labor and the Congress of Industrial Organizations, together with several unaffiliated organizations, there are available to employee groups almost everywhere, organizations who make it their business to serve as representatives for what we call collective bargaining with the employers. Usually there are rival organizations, each desirous of representing the same group of employees. These organizations are active and aggressive, and may not always be too ethical in the manner in which they conduct their campaigns among employees for designation as their bargaining representative. Often the rivalry runs high and clashes result. The Taft-Hartley Act attempts to minimize the effect of these clashes on employers and individual employees as well.

The law provides that when a person, or organization, has been designated by employees to serve as their representative, such an organization may file with the National Labor Relations Board, at any one of its regional or subregional offices, a petition for designation as bargaining representative, and a showing that it does actually have substantial backing by the employees. From that point forward the board's representatives in the field check as to whether the employer is engaged in a business which affects commerce; as to the appropriateness of the group or unit of employees involved, for purposes of collective bargaining; and as to whether there actually exists a question concerning representation. On determining these, the Regional Director holds a hearing in which all interested parties, including rival unions and the employer, participate. The hearing develops formally and on the record, what the field examiner has determined in his investigation, together with the claims of rival unions, if any. After this hearing, the record goes to the Board in Washington for study and decision. When it is determined by the Board that the business does affect commerce, and that the unit is appropriate, the Board will then direct that an election be held among all the employees in the unit found to be appropriate, with the names of the contending unions and a choice of "No Union" on the ballot. This procedure is inevitably time consuming-- frequently taking from 3 to 10 months. If a union receives a majority of the votes cast, it then is certified as the official exclusive bargaining representative of all the employees in the appropriate unit, and there may not be another election on the subject of representation in that unit for a year. Because of the time element involved in this

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The most widely used strategem in an organization program in the old days was to get a handful of designation cards and then write to the employer and say, "We represent a majority of your employees. We want to make a date to come in and sign a contract with you." They may not represent five percent, but they say it just the same. Then they go out and say to the employees, "Your employer refuses to have anything to do with us." Then there is other propoganda of that sort which further disrupts your production. That was one of the things this law was designed to correct.

The Taft-Hartley Act has corrected that, so that, now, whenever a union makes a claim upon an employer to represent his employees, even though there may be no other union in the picture, the employer may immediately file a petition with the Board, setting up that such a demand has been made, and requesting the board to take necessary action to determine the validity of the union's claim. The board then proceeds as it does in any other case, investigates, holds hearings, and directs an election. The election is ultimately held. Again a long period of time has elapsed, but that is the only way in which that matter can even be approached. The result of this provision has been to greatly decrease premature demands for recognition by labor organizations in process of activities.

I do not think I have to call attention to the fact that the decrease in those demands has probably afforded considerable relief to the employers from annoyances and definitely has taken away one of the causes of unrest in the plant which usually results in decreased production. This feature has another deterrent, in that if such an election is held at the instance of the employer and the union fails to win it, then there may not be another election for purposes of representation within that unit for a year.

Another thing the Taft-Hartley Act has done, but which was not present under the Wagner Act, is to afford the employees themselves an opportunity to get rid of an unwanted union. Under the Wagner Act, once a union was certified, that union's representation of a majority of the employees was presumed to continue until successfully challenged by a rival union, or by the employer, at some later date, who, if he sincerely believed it had lost majority, could refuse to continue to recognize it. But this latter action on the part of the employers was dangerous if an unfair labor charge should be filed against him and he should turn out to have been wrong. Now, however, at any time after the union has been certified for a year, or recognized, or any contract that is outstanding is approaching its expiration, the employees themselves may file a petition with the board to decertify the incumbent union, and if this petition is backed up by written evidence that it is supported by 30 percent of the employees in the unit, the board will hold an election, after the usual proceedings, on the proposition of

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employees who would be affected by the contract. It is not, as in most elections, determined by the majority of those voting; in this case, an absent voter is registered as voting against the proposition. Not until such an election has been held and carried, may such a provision in a contract be enforced with impunity. To attempt to put it into a contract without such an election, and to enforce its provision, also constitutes an unfair labor practice with which both the employer and the union may be charged before our board.

You begin to see now, whereas under the Wagner Act unfair labor practices could be charged against only the employer, now the union is being tied into them, and in almost every instance the union is charged with the same general type of unfair labor practice that the employer still is charged with and that he was charged with under the old act.

I must remark in passing that a brand new provision of the law which brought about some confusion in the decisions of the board classifies supervisors as a part of management. They no longer are employees within the meaning of the law, and as parts of management, they have no protection under the law in the general sense. Guards also have been placed in a different category. Under the Wagner law a plant guard could be represented by the same union that represented the production and maintenance workers. There was an integration there that was found to be objectionable. Consequently, guards no longer may belong to any union which is affiliated directly or indirectly with production and maintenance employees. They may organize, but only in wholly unaffiliated organizations.

I was going to pass over the unfair labor practice part of the law as it applies to employers. That has been the law for 12 years and has been carried over, almost in its entirety, into the new law. I assume you are reasonably familiar with it. Time, or lack of it, also demands that I dwell only sketchily with unfair labor practices charged to labor organizations. They are interesting, but I wonder if they play a very important part in the work that you will have to do. These, as I have indicated earlier, are aimed at the correction of previously protected practices of some labor organizations which the public has demanded should be eliminated.

It now becomes an unfair labor practice for a labor union to attempt to force or coerce an employee into joining any labor organization, and it becomes an unfair labor practice for a union to attempt to force an employer to designate a certain person or organization as its bargaining representative.

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practice, for we feel that the injunction power should be reserved for more important uses. But it does exist. If the Taft-Hartley Act had done nothing more, the results accruing from this provision would seem to justify it. We have no statistics to which we can point, but it has been most gratifying to receive reports from all parts of the country, in these times when expiring contracts are being negotiated, that bargaining seems to have become easier, that there seems to have arisen a better understanding by both sides, and that a marked diminution of the time which it now takes to arrive at agreements is being experienced, as against the month and months which they have experienced in the past. Now, we don't know what to attribute that to. Maybe this act has something to do with it; maybe there has just been a change; but until somebody proves we are wrong, we are going to take a little bit of credit for it. There are, of course, other provisions of the law which deal with mandatory injunctions against secondary boycotts, raids on certified unions, and things of that character. I am not going to attempt to go into them at this stage because those must be handled on a case by case basis. There just isn't time enough to give you the illustrations that I would like to set up as to what they mean and what we have done with them. I hope you will not run into that. I have confined myself mostly to those things which have to do with the administration of industrial relations and to matters that have to do with these more spectacular unfair labor practices. You will be running into them, but those are things you can turn over to your lawyers probably with great advantage.

When the Taft-Hartley Bill was passed, the cry went up that labor would find itself being governed by injunctions. That is where they got the term "Slave Labor Act." It is interesting to note that in the eight months we have been in operation we have had our grist of questions, gripes and charges--all of that stuff--and under this particular provision of the act we have no discretion. If the facts exist, we are compelled to apply for an injunction--up to this time only eight such injunctions have been actually issued out of the 12,000 cases of all kinds that have come to us. That is not a very big percentage. We have filed all told, 15 petitions. Four of those petitions were dismissed by the court for various reasons which went into the technical matters of the cases. One was a jurisdictional question, which is going to the Supreme Court; two were on factual matters; two were withdrawn after being filed when the union terminated its actionable conduct; and one is still pending.

Under this discretionary authority for seeking injunctions, which I spoke of a little while ago, up to this time we have filed three petitions. As I have indicated, we don't believe that industrial

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The question of jurisdictional disputes is a feature of the act that is completely new. While there have been many jurisdictional disputes between labor organizations in general, the major portion of them seems to have occurred in the building and construction industry. This act places a responsibility on the board for determining all jurisdictional disputes where a strike has occurred and the parties are unable to settle their own differences after having been given 10 days in which to do so.

The handling of jurisdictional disputes is a highly technical matter which involves a knowledge of the employment history in each of the industries and a knowledge of the relationships of the various unions towards one another in the past. It is a new field to us, but we are very fortunate in this connection, however, in the fact that, quite recently, the Building and Construction Trades Department of AFL has worked out a mutual plan with the associations of general and specialty contractors for the creation of a National Joint Board, made up of representatives of labor and industry, which will function with complete finality on the determination of jurisdictional disputes within the building and construction industry where AFL unions are involved. I will not attempt to describe the machinery of the board to you, other than to say that where the employer is a participant in the plan, either he or the disputing unions, or both of them, may submit the dispute to the board for final determination, with a commitment on the part of the unions and the employer, which is inherent in the plan, that there will be no work stoppage nor any shutdown of the operations while the dispute is being settled. This plan does not become effective until 1 May, but we are looking forward with the expectation that it will do great work in the field of the building and construction industry, and will save, not only much time, but a great deal of money, to all concerned. I have with me a few copies of the draft of that plan which I will be glad to make available to any who may be interested. I desire to call your attention, however, to the fact that those copies are headed, "Tentative Plan." This plan is no longer tentative. It has actually been adopted by the Building and Construction Trades Department of the AFL, and is now a part of the constitution of that organization, and has also been approved by the Contractors Associations which had a part in putting it together. The impartial chairman has been chosen, and is Professor John T. Dunlop of Harvard University, a man with a tremendous breadth of experience in this field and one who enjoys the complete confidence of both the industry and the labor involved.

I happen to know Mr. Dunlop rather intimately. He has served me and my board since I have been in my present position to very good advantage, and we know how to respect his ability. When I say what I do, I say it out of a tremendous acquaintanceship with him.

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QUESTION: Mr. Denham, it is not clear to me what happens to the contractual relationship of craft unions that are already in a plant which is organized by, say, a master union and the new union becomes the sole bargaining agency for a plant?

MR. DENHAM: You are speaking of a plant where there is a scattering of craft unions, I take it, that have been organized?

QUESTIONER: Yes, sir.

MR. DENHAM: Now, if they have been organized and enjoy contractual relations with the employer, and an over-all industrial union comes into plant and attempts to take it on an over-all basis, it must justify its over-all basis before the board in the first instance. A petition would be filed alleging that the over-all production-maintenance union is the appropriate one. But the craft union would be expected to come into this proceeding by intervention and assert its claim under its contract and under the craft setup. Then that goes to the board for consideration of those two questions.

The board may handle them in one of two ways. They may absolutely cut out the craft union and say, "We are going to set aside the craft union--we will recognize it as a craft as we have done many times in the past--and not set up an over-all union and link this craft with the other union." Or they may say, "We will hold two elections. We will hold an election in which the members of the craft will be allowed to vote as to whether they desire to be represented by this over-all union or by their own craft union." If the election among this craft group carries in favor of the over-all union, then the craft segregation is eliminated and it is merged into the over-all union. On the other hand, if the craft group votes to stay as a craft, it is carved out as such. But all of this is always done by determination by the board as to what constitutes the appropriate unit.

You may recall quite recently--within a matter of the last few weeks--in what we call the basic steel case, there was a question that had been raised over a long time. The bricklayers, the ones who line the furnaces with fire brick, had other jobs, too. In some steel plants, these men, for years had maintained their membership in the brick masons' union, but ever since the steel workers' union has been in the steel industry, they have been in there on an over-all basis, and the bricklayers have been actually represented by the steel workers' union for bargaining purposes, and not by the brick masons' union.

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coerce them; he didn't promise them anything if they didn't join the union; he was simply expressing his opinion--that was perfectly all right. So free speech took a step or two upward. It was then that the board began to incorporate this free speech business into what they called patterns that included actual unfair labor practices. This procedure became obnoxious to the public and to Congress. So they simply said, "You can't do that any more." Now an employer may address his employees, can write them letters, talk to them and discuss the union; he can criticize its leadership; he can do almost anything so long as within his remarks there is nothing of coercion and nothing in the nature of a promise of reward if people stay away from the union. And such speeches or writings may not be considered in any way as a basis of proof of unfair labor practices.

QUESTIONER: David Lawrence recently wrote up a squib on that where you threw out an election.

MR. DENHAM: I didn't hear that. I would rather not comment on that particular thing because I couldn't understand it either. You will excuse me from that, will you?

QUESTION: Under this communist provision of the Taft-Hartley Bill, would you tell us whether the application of that is aggressive or passive? In other words, if a known Communist who is a union leader signs an affidavit that he is not a Communist, you could try him for perjury?

MR. DENHAM: We do not police those affidavits. We have to accept them at their face. If we receive an affidavit and we feel suspicious that the man who makes it is a Communist, we may institute prosecution for perjury. That is provided for, but all that is carried on through the Attorney General's office.

I may say that we have had a few--not very many--instances where persons entitled to inquire and in a position to have knowledge on the subject have inquired at our office as to whether Joe Doakes has signed such an affidavit, and we have searched our files and informed them that he has. They have then reported it to the Attorney General's office. What action the Attorney General's office has taken on that ground for perjury, we don't know. We have not been further informed on it. So far as we are concerned, we must accept them on their face. With the thousands and thousands of affidavits that come in, we could not police them. That is up to the public. We will make information available to anyone who is entitled to inquire.

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we have to hold the elections and certify the results. When you divide 30,000 elections into approximately 25 offices--because three of them are not very active--you can see what that means in the course of a year--the number of elections that have to be held. We have had to streamline them considerably. Last month we held 2,500 elections or more, of that sort--2,500 and some-odd. After some streamlining in our organization, this month we hope to reach 3,500.

Now those union shop elections are reaching for their peak. They probably will arrive at their peak volume in July, flatten out, and after a couple of months get down to a normal number. Those are not repeat elections. When you have held one, that authority continues on and on as long as that union remains the representative of those same employees. So we anticipate that load only for a period of eight or nine months.

In the meantime, current work is going on. The board is augmenting its own staff. When I say "board", I am talking about the five members who constitute the decisional part of the agency. They are working in panels. They appear to be making considerable progress. We can't say what the board is going to do and how they are going to get through the decisional operations until we have four, five, or six more months to operate. The General Counsel's office is operating on a practically current basis. All we have to do is to investigate them, issue complaints, and get ready to try them. The other part is to decide them. That takes a little longer. There are five of those men and only one General Counsel who has to make up his mind. We feel we are doing the best we can.

QUESTION: Are the mandatory injunctions required under the law used only in cases where work stoppage or interference with production is imminent? Is that the idea?

MR. DENHAM: The mandatory injunction comes under Section 8-B4. The introductory words of Section 8-B4 say that wherever there is a strike of employees, where the employees are being induced or encouraged to strike to accomplish the things that are set out in the provisions of 8-B4, then the injunction becomes mandatory. So the existence of a strike or an approach to the employees themselves, the encouragement or inducement to strike is a condition precedent.

There is a rather interesting thing along that line--we have had this case come to us in various forms a number of times--a man down here is having some sort of difficulty with the teamsters and they have a picket line at his place. The business agent goes to the company up the street, goes into the front office, sees the general manager, and says, "Mr. Jones, we are having a little trouble with this company down