UNIVERSITY OF ILLINOIS LIBRARY
AT URBANA-CHAMPAIGN
BOOKSTACKS
The person charging this material is responsible for its return to the library from which it was withdrawn on or before the **Latest Date** stamped below.

Theft, mutilation, and underlining of books are reasons for disciplinary action and may result in dismissal from the University.

To renew call Telephone Center, 333-8400

UNIVERSITY OF ILLINOIS LIBRARY AT URBANA-CHAMPAIGN
THE DEVELOPMENT OF LABOR LEGISLATION AND ITS EFFECT UPON THE WELFARE OF THE AMERICAN WORKMAN

BY EDWIN E. WITTE

Professor of Economics
University of Wisconsin

LECTURE SERIES NO. 11

UNIVERSITY OF ILLINOIS
Return this book on or before the Latest Date stamped below.

University of Illinois Library

<7 1964

FEB 27 1964
THE DEVELOPMENT OF LABOR LEGISLATION AND ITS
EFFECT UPON THE WELFARE OF THE AMERICAN WORKMEN

by

Edwin E. Witte

(Address given at the Conference on Government and Public Affairs of the University of Illinois and Twin City Federation of Labor, October 31, 1954, at Illini Union, University of Illinois, Urbana, Ill.)

Labor legislation is a term whose meaning has undergone a great change in the last 20 years. "Labor legislation" until these recent years referred to legislation for the protection of working people from substandard to otherwise undesirable conditions of employment. Since passage of the Taft-Hartley Act, most people think of "labor legislation" as regulating and restricting labor unions and their activities. Both protective and restrictive labor legislation are still on the statute books, and the total volume of labor legislation in this country is very large. Measured in volume, the protective labor legislation is still the most extensive, and state labor legislation far overshadows that of the national government. But for a decade and somewhat longer, almost the entire interest of union and management people - and also of the general public and of students of industrial relations - has been in labor relations legislation, which is largely restrictive legislation and mainly national legislation.

Labor legislation of the protective type is as old as is the modern employer-employee relation, as distinguished from the older master and servant relationship. Its beginnings in this country date back to the first half of the nineteenth century. The earliest protective labor laws were mechanics' lien and wage exemption laws and laws requiring a small prescribed amount of school attendance by employed children. The first
such laws were enacted in the 1830's, in which decade there also developed the first important labor movement in this country.

These laws were followed in the next decade by a Massachusetts statute restricting the hours of labor of children under 12 to 10 per day - the first child labor law in this country. Before the outbreak of the Civil War in 1861, six states had some restrictions on child labor. Soon after the Civil War, laws were enacted providing that the workday should be limited to 8 or 10 hours per day, in the absence of contract provisions to the contrary - laws which were wholly ineffective, because contract provisions to the contrary became practically universal. The first effective restriction of the hours of labor of adults was the 10-hour maximum law for women enacted by Massachusetts in 1874. In the 1870's also were enacted the first laws relating to the guarding of machinery in factories and to fire prevention in places of employment. Even earlier, in 1868 Massachusetts established the first bureau of labor statistics, out of which, in time, developed the modern state labor department.

Considerable progress in protective labor legislation was made in the 1880's and early nineties. Most of the industrial states during this period enacted a considerable volume of industrial safety legislation and laws regulating the manner and time of wage payments. At this time, also, came the first labor relations laws of the restrictive type, imposing special penalties on acts of intimidation and violence committed during labor disputes and a few laws prohibiting boycotts. Offsetting these were laws restricting private detective agencies and the importation of strikebreakers. Very important was the establishment during this period in many states of bureaus of labor and the beginning of factory inspection.
In the next 15 years there was slower legislative progress but growing support for protective labor legislation. In 1890, Ohio established the first public employment offices, and other states followed suit around 1900. Child labor laws were improved, and a number of states restricted the hours of labor of women employees and of all employees in a few specified occupations. Several state supreme court decisions held unconstitutional all restrictions on the freedom of contract of adult employees, but the United States Supreme Court found constitutional the limitation of the hours of labor of women employees and also of male employees in especially hazardous employments.

**Years of Greatest Progress**

The 10 years from 1907 to 1917, and particularly 1911 to 1915, were the years of the greatest progress in protective labor legislation in the entire history of the United States. It was at this time that the present-day type of industrial safety and sanitation legislation made its appearance. During this period also were enacted the first anti-injunction laws, the first minimum wage laws, the first laws for part-time vocational education for employed children, and the pioneer modern apprenticeship law. This was also the time that workmen's compensation made its appearance. The standards of the child labor laws were greatly improved, and most states now enacted women's hours-of-labor laws. Quite a few states modernized their labor departments, placing them on a non-partisan civil service basis, giving them broad order-making powers, and greatly increased appropriations. Throughout the period, Wisconsin was generally recognized as the leader in state labor legislation, as Massachusetts had been earlier - positions which neither of these states now hold. The United States Department of Labor was established in 1913, but it was as yet
exclusively a research and service agency. At a later date, and now, this federal department has been the leader in advancing state labor legislation.

During World War I and in the 1920's, no important new types of protective labor laws were developed, although improvements were made in details and administration. This decade was the period in which more protective labor legislation was held unconstitutional than at any other time. Minimum wage legislation for women was invalidated, as was wage fixing under compulsory arbitration laws; also, regulation of the fees of private employment agencies. The Supreme Court likewise struck down the first attempts by the national government at regulatory labor legislation of general application - the federal child labor laws of 1916 and 1919.

The 1930's, especially the years 1932 to 1938, comprised another period of great advances in labor legislation. Under imaginative leadership furnished by a strengthened United States Department of Labor headed by Secretary Perkins, many additions and improvements were made in the state labor laws, particularly in the southern states, which up to this time had seriously lagged behind the rest of the country. All states established or expanded their public employment services under the stimulus of federal grants-in-aid. Six states passed "little Wagner" acts - labor relations legislation modeled after the federal law then in effect. Much new minimum wage legislation was enacted and child labor and women's hours-of-labor laws greatly improved.

It was at this time that popular attention and interest in labor legislation shifted to the national government, with the enactment in rapid succession of the Norris-LaGuardia Act, Section 7(a) of the National Industrial Recovery Act, the Wagner-Peyser Act, the Railway Labor Act, the
Wagner (Labor Relations) Act, the Social Security Act, and the Fair Labor Standards Act. No less important were decisions of the United States Supreme Court in 1937 which reversed prior decisions holding minimum wage legislation to be unconstitutional, sustained labor relations legislation favorable to the unions, and broadly construed the powers of the national government in relation to interstate commerce.

Since 1938 there again has been a period of but slight advance in protective labor legislation. During World War II and again in the Korean War, restrictions upon child labor were relaxed in many states, and some other protective legislation was either suspended or not enforced. Most of these relaxations have since been withdrawn, and some improvements have been made, particularly in 1949, in child labor and other protective labor laws. Only three new types of protective labor laws have been developed: fair employment practices legislation, equal pay legislation, and laws requiring employers to pay for physical examinations where they are required for employment. In the main, protective labor legislation in the states (and also in the national government) in 1954 is pretty much the same as in the late thirties, but had less significance, in consequence of improved economic conditions.

In this last period, labor relations legislation has completely overshadowed protective labor legislation and the activities of the national government those of the states. A broad change in the direction of labor relations legislation, also has occurred. Prior legislation designed to encourage unionism and collective bargaining has been modified to include restrictions upon unions and governmental regulation of collective bargaining. This trend began in the states in 1939 and reached its culmination in 1947 in the substitution, nationally, of the Taft-Hartley
Act for the Wagner Act and in the enactment of "restrictive" labor relations laws in no less than 30 states.

At present, interest in protective labor legislation is not great. There are some protective labor laws in all states. These laws relate to such matters as child labor and compulsory school attendance; apprenticeship and vocational training; maximum hours of labor of minors, women, and, to some extent, of men; minimum wages of women and minors and, in some states, also of men; time and manner of wage payment; wage preferences in the settlement of estates and in cases of bankruptcy; wage assignments and garnishment; permissible deductions from wages, and laws for governmental assistance in the collection of wage claims; industrial safety and hygiene; mine safety and inspection; workmen's compensation; unemployment insurance; public employment offices; regulation of private employment agencies; home work manufacture; the housing of migratory workers; discrimination in employment by reason of race, creed or color; and discrimination in pay against women. There are labor departments in all states to enforce these laws and, in some of them, more than one department.

But these laws today do not have nearly as great importance as at any earlier date. For one, the labor departments are pretty much step-children in the state governments of most states. They have inadequate appropriations and are often regarded as political plums to be handed out as rewards for party faithfuuls from the ranks of labor. Much, if not the majority, of all state labor legislation is badly out of date. Improvement of working conditions, attributable to the progress of unionism and other factors, has outstripped the legal requirements and made much of the protective labor legislation on the statute books all but
meaningless. There is no value, for instance, in a child labor law limiting the hours of labor of children under sixteen to 48 per week at a time when 40 hours or less is the standard work week for adult employees. Nor is there anything significant in a minimum wage law for women workers which fixes a minimum wage of 25 cents per hour, as has been done under the minimum wage law now in effect in my state of Wisconsin.

**State Labor Legislation Needs Modernization**

But protective state labor legislation is still of great significance, although it badly needs modernization. To bring this home, I merely call attention to the fact that workmen's compensation is exclusively a matter of state legislation. The national government has nothing whatsoever to do with workmen's compensation. What workmen who sustain industrial accidents or suffer from occupational diseases can get by way of compensation and under what conditions is entirely a matter of state law and its administration. A professor of the Law School of the University of Illinois in a study completed a little over a year ago concluded that injured working people would be better off under the discredited old employers' liability system, which governed recovery for industrial accidents 45 years ago, than they are today under the Illinois workmen's compensation act. I do not believe this, but there is, certainly, much room and need for improvement in our workmen's compensation laws. This holds true also for unemployment compensation. We have what is called a "federal-state" unemployment compensation system. But every condition governing the payment of unemployment compensation to unemployed workers is determined by the states, as is the amount of the payments. Similarly, every cent expended for unemployment compensation benefit is raised by the states and collected by them, and the administration of unemployment
insurance is a state function, without any right of appeal from the states to the national government or any of its agencies. The important matter of industrial safety, sanitation, and hygiene, likewise, is entirely within state control. We have made great progress in industrial accident prevention, but even now 15,000 workers each year lose their lives in industrial accidents, nearly 250,000 others sustain accidents causing some permanent injury, and 2,000,000 workers sustain accidents producing time loss but no permanent injury. The loss in man-days attributable to industrial accidents is many times as great as that of the man-days lost by reason of strikes. In matters of industrial hygiene, new hazards develop every year with the increasing use of chemicals and dangerous materials in industry. In this field we are behind those of the advanced countries of western Europe and have only recently come to recognize the great hazards to workers and their offspring that lurk in many of the substances used in industry.

In the last 20 years, protective labor legislation has ceased to be exclusively a matter of state legislation. There is now also a considerable mass of national legislation supplemental to that of the states. This includes the Hawes-Cooper Act, governing the sale of prison-made products in interstate commerce; the Byrnes Act, prohibiting the transportation across state lines, of strikebreakers and hired gunmen; the Norris-LaGuardia Act making yellow-dog contracts unenforcible in federal courts; the Bacon-Davis Act, requiring payment of prevailing wages in federal construction work; the Walsh-Healey Act, providing for minimum wage rates in work done under contract for the government; and above all, the most important federal labor law of the protective type, the Fair Labor Standards Act, regulating child labor and fixing minimum rates,
combined with hours of labor, in manufacturing and other production for interstate commerce; also, the recent law providing for some coal mine inspection by the Federal Bureau of Mines. With the exception of the last, all these laws were enacted during the 1930's. As with state protective labor legislation, there has been but little advance in federal labor legislation since 1938. The minimum wage rate under the Fair Labor Standards Act was increased in 1951 to 75 cents per hour, which was an advance from the 25-, 30- and 40-cent minimums of the original law of 1938. But a minimum wage rate of 75 cents per hour surely needs upward revision at this time when the average factory wage in the United States is around $1.75 per hour.

Protective Labor Legislation Merits Attention

Protective labor legislation merits much greater attention than it is receiving, not only from organized labor, but from all citizens who believe that the government should establish and enforce minimum standards for working conditions to protect public health, safety and welfare. Through protective labor legislation, no more can be accomplished or should be attempted than to bring the laggards among employers up to a decent level sanctioned by public opinion as a minimum which all workers should enjoy. But there are many laggards today, no less than at earlier times. With all the progress made, much further improvement in our protective labor laws is urgently needed. This cannot be won through collective bargaining alone. Much protective labor legislation benefits peculiarly the unorganized, but organized labor has always regarded itself as the spokesman for all labor. And many of the subjects with which protective labor legislation deals are not adapted to collective bargaining - for instance, the guarding of machinery, and safeguards against industrial
poisoning, or even such matters as workmen's compensation and unemployment insurance, which needs must be dealt with on a broader basis than plant or company. Organized labor, like all other Americans, has much at stake in the resumption at an early date of the forward progress of labor legislation.

But it is with labor relations legislation, rather than protective labor legislation, that organized labor is most concerned at this time. And well it might be. Not only was the Taft-Hartley Act designed to place restrictions upon unions and their activities, but, with only one minor modification, it remains on the statute books as written. In 1952 both the Republican and Democratic parties pledged revisions of the Taft-Hartley Act. President Eisenhower, in the 1952 campaign, pledged elimination of what he referred to as "the union-busting provisions" of the Taft-Hartley Act. With some truth, he has claimed that his administration was not responsible for the fact that this pledge has not been redeemed. But the fact remains that the present 83rd Congress has left the Act as it found it.

At least equally serious, if not more so, have been changes in the interpretation of the Taft-Hartley Act. These have followed the appointment in 1953 and 1954 of three new members (of the total of five members) of the National Labor Relations Board. It is a truism that no law is better than its administration - that how good or bad a law may be depends on its interpretation. Through interpretation, the Taft-Hartley Act has become a very different law since the President replaced a majority of the N.L.R.B., as constituted at the end of the Truman administration, by new appointees. In at least 20 important respects, the new N.L.R.B. has reversed interpretations of the Taft-Hartley Act arrived at by the Truman
board, and every one of these reversals has been of a position deemed favorable to labor. And the end of this process does not appear to be in sight. There is every reason to expect that the present board will go even further in its holdings against labor than it has to date. In the hearings on the revision of the Taft-Hartley Act, early in the last session of Congress, the major business organizations of the country not only strongly opposed the changes in the law proposed by organized labor and many of the changes suggested by President Eisenhower, but advanced many proposals of their own to increase the restrictions upon organized labor. After the N.L.R.B., newly constituted, had got into operation, however, it took the position of "leave well enough alone." It joined forces with organized labor in favoring the shelving of the Administration bill. Labor apparently believed that it would fare better in the next Congress than it could hope to in the present Congress. The large employer groups acted similarly, apparently in the belief that the new N.L.R.B., through interpretation, was changing the Taft-Hartley Act to accomplish about everything which these groups hostile to organized labor originally thought would require amendment of the law.

Restrictive State Labor Laws

Ominous, too, has been the multiplication of restrictive labor relations legislation in the states. Such restrictive labor relations legislation on the state level antedated the Taft-Hartley Act. As early as 1939, six states passed such laws, many provisions of which were written into national law in the Taft-Hartley Act of 1947. A few more such laws were enacted in the early 1940's, and more than 20 of them in the legislative sessions of 1947, the year Congress passed the Taft-Hartley Act. By 1950, no less than 30 states had restrictive labor relations laws, and
five more passed such laws in 1953 or 1954. None of these state laws are as comprehensive as is the Taft-Hartley Act, but many of them go beyond it in some respects. This is most true of the so-called "right of work" laws which outlaw any form of union security. Such laws are now in effect in more than a third of the states of the Union, including nearly all of the southern states, in which organized labor has found progress to be extremely difficult, and also in some predominantly agricultural states of the north and west, including Illinois' and Wisconsin's neighbor, Iowa.

In the Taft-Hartley Act is a provision to the effect that where a state places more drastic restrictions upon union security contracts than does the national law, the state law shall prevail. This reverses the basic principle in federal-state relations which, generally, prevails. In nearly every other matter, the principle is applied that when the national government validly acts on any subject such action takes precedence over any state law or other action to the contrary. This principle is grounded upon the express language of the last paragraph of the Constitution of the United States, which reads: "This Constitution and the treaties and laws made thereunder is the supreme law of the land." Congress in the Taft-Hartley Act set aside this principle derived from the Constitution itself. It made state action, in contravention of the federal law, supreme over the federal legislation on union security.

The effect of this provision has been that the union shop, which is expressly legalized in the Taft-Hartley Act, is unlawful in nearly half of the states of the Union. In some of these states, not only is the conclusion of a union security agreement unlawful, but every effort to win such a contract is a criminal offense. In the last years also, the
restrictive state labor laws have been much more drastically enforced than when first passed. In a study of the state labor relations laws made in the middle forties by Professor Charles C. Killingsworth of Michigan State College, it was found that up to that time only in Wisconsin had any extensive effort been made to enforce these restrictive laws. That situation no longer prevails. There is now vigorous enforcement of many of these laws, as many union people are experiencing to their sorrow. There have been more damage suits against unions in the last five years than in all prior time, and, also, quite a few cases in which damages have actually been recovered from unions. There has also occurred a notable increase in the number of injunctions issued against labor unions, principally under the Taft-Hartley Act. But even more, the Taft-Hartley Act and the restrictive state labor laws have been used to harass labor in organizing efforts and during strikes. Criminal actions, injunctions, and damage suits are all begun when unions try to organize new plants or become involved in strikes in which the employer seeks to operate instead of trying to effect a settlement. Most of these legal actions are withdrawn when the union has been defeated or in the strike settlement, but they serve their purpose of harassment.

In the last session of Congress it developed that the enemies of organized labor are not satisfied with the advantages they have enjoyed by reason of the disregard of the principle of the supremacy of national law, through provisions of the Taft-Hartley Act relating to union security. They made an attempt to get Congress to so amend the Taft-Hartley Act that when in any other respect besides union security a state law more drastically restricts the unions than does the national law, the state law also shall have precedence. But this does not work the other way. When a state law
is more liberal, the restrictions of the national law are to apply. This was the Goldwater Amendment, strongly supported by the major employer associations. Fear that this amendment might be passed appears to have been a major reason why organized labor preferred to have the Administration bill to amend the Taft-Hartley Act shelved in the last session. But this Goldwater Amendment, I believe, will be brought forward again in the next Congress, should it be constituted as is the present Congress, to say nothing about a Congress in which there are even more enemies of labor.

What the Goldwater Amendment sought to accomplish was to allow states to prohibit strikes in certain industries and also picketing. Quite a few states passed laws in 1947 prohibiting or drastically restricting strikes against public utilities or other strikes deemed by governors to be likely to produce emergencies. These were invalidated by the U. S. Supreme Court because these restrictions went beyond the Taft-Hartley Act. On the basis of the express provision of the Constitution of the United States, the federal law was held to take precedence. Should the Goldwater Amendment become law, this Supreme Court decision would be nullified, and the state laws restricting strikes and picketing would be restored to full effect. Other states would thus, in effect, be invited to pass similar restrictions.

Interpretation of Taft-Hartley

The Taft-Hartley Act as it operated until the past year was not the worst conceivable labor relations law. It has become a worse law by interpretation during the past year. Through amendment of the Taft-Hartley Act, or through supplemental legislation, and, to some extent merely through the process of interpretation along the lines now prevailing, more drastic restrictions may be applied to unions than are now in effect.
There are provisions of the Taft-Hartley Act of which I approve. Organized labor has taken a position, ever since the Taft-Hartley Act was enacted, that this law should be repealed and the Wagner Act restored. It has also stated that in the reenactment of the Wagner Act amendments incorporating some features of the Taft-Hartley Act might well be included. The bill favored by labor in the last session included some provisions from the Taft-Hartley Act.

I was a bill draftsman for a considerable period in my life. Because I had this experience, I know that a change in law can be accomplished either by amendment of the existing statute or by repeal of the existing statute and the enactment of a new law incorporating many of the features of the old law and changing others. Both methods of procedure come to the same result. The Taft-Hartley Act, drafted along the second of these lines, repealed the Wagner Act and then reenacted it with changes. So it is understandable that organized labor now prefers the same procedure. It wants the Taft-Hartley Act repealed, the Wagner Act restored, and that act amended to incorporate some provisions of the Taft-Hartley Act. I express no opinion whether this is a wise or an unwise procedure. But it should be emphasized that organized labor is not opposed to everything that is in the Taft-Hartley Act. It is not opposed to the parts of this act copied from the Wagner Act. It is not opposed to the requirement of regular financial reports by unions. It is not opposed to notice to the Federal Mediation and Conciliation Service when strikes have been voted. It is not seeking reorganization of the Conciliation Service. And there are many other provisions of the Taft-Hartley Act which it, as I, would retain.
But there are also many provisions of the Taft-Hartley Act which are bad in every respect, and, as I see it, many more that have more of the bad than of the good. President Eisenhower has referred to the Act as including provisions which are unfair to labor and has spoken of these provisions as "union-busting". The late Senator Taft, one of the authors of the Taft-Hartley Act, in 1949 put through the Senate the Taft bill, which made no less than 28 changes in the present law, nearly all of them in the direction of easing restrictions now imposed on unions. In fairness, it must also be said that some of these changes proposed in the Taft bill would have added to the restrictions upon unions. This is why organized labor opposed the Taft bill, but it is most noteworthy that one of the two principal authors of the Taft-Hartley Act acknowledged that in more than 20 major respects this law had gone too far in restricting what labor unions may do.

The Taft-Hartley Act at the time of passage was represented as an equalizing act. But it is an equalizing act only in the sense that, as the Wagner Act imposed restrictions upon employers, so the Taft-Hartley Act imposes restrictions on unions. Supporters of the Taft-Hartley Act say that it incorporated the Wagner Act, leaving intact the restrictions on employers but supplementing them with like restrictions on unions. While it is true that the Taft-Hartley Act reenacted much of the Wagner Act, although weakening many of its provisions, the restrictions on employers are not nearly as extensive as are those on unions.

Secondary Boycott Provision

This is a matter, not merely that there are more restrictions on unions, but also that the most drastic restrictions on unions have no parallel in any restrictions on employers. The so-called "secondary
boycott" provision is a good illustration. In this provision the words "secondary boycott" or "boycott" do not even occur. The so-called prohibition of secondary boycotts is really one directed against all or nearly all sympathetic action by unions or union members in support of other unions in difficulties with employers. Unions may still contribute money to support workers of other unions who are on strike. But the law forbids unions from pressing an employer to cease dealing with another employer and also prohibits all pressure to compel an employer to recognize other than a certified union. It is spelled out that the prohibited pressure may take the form of refusing to work for such an employer or to buy, transport, or handle any unfair products. What the "secondary boycott" provision of the Taft-Hartley Act principally prohibits are strikes — strikes in sympathy with other unions, strikes against unfair materials, and strikes to compel recognition of other than certified unions. It also prohibits refusal to handle unfair products. Some of these strikes involve elements of boycotts, but the provisions go much further than boycotts, prohibiting any sort of action, other than money contributions, to help workers not employed by the same employer who are involved in strike action or any other dispute with their own employer.

These provisions directed against "secondary boycotts" have no counterpart in restrictions upon employers. Employers can give any sort of help they wish to other employers in disputes with unions. They can refrain from trying to take over their customers while a strike is on against another employer, or, if the latter employer so desires, fulfill his contracts. Under recent decisions they may even lock out their own employees to help employers engaged in strikes.
The restrictions upon "secondary boycotts" do not end with declaring them to be an unfair labor practice when engaged in by unions but not when practiced by employers. Secondary boycotts by unions are expressly stated to afford a legal basis for damage suits against unions, and many such damage suits have in fact been instituted. In the case of secondary boycotts, also, the Taft-Hartley Act expressly provides that when the Regional Director of the N.L.R.B. finds, after an *exparte* investigation and before any hearing has been held, that an act of "secondary boycott" has been committed, he shall issue a complaint against the union charging it with an unfair labor practice. The law further requires that at the same time when the Regional Director files charges of unfair labor practices against a union, to be later tried on its merits before the N.L.R.B., he *must* apply to a U. S. District Court for an injunction prohibiting the union from continuing the acts complained of until the N.L.R.B. hears the cases and determines whether the charges are valid or not.

It is this provision for mandatory injunctions against unions in cases of strikes and other "secondary boycott" action, of strikes to gain union contracts where the union has not been certified, and in jurisdictional disputes, which is one of the worst features of the Taft-Hartley Act. Not only has this revived "injunctions in labor disputes," but it has revived them in their worst form. It is mandatory for the Regional Director to apply for an injunction in such cases, prior to any hearing before the N.L.R.B. on the unfair labor practice charge on which the injunction is based. Further, the Taft-Hartley Act provides that the safeguards to the Norris-LaGuardia Act against the abuse of injunctions shall not apply to the *mandatory injunctions* provided for in this act.
These injunctions are to be issued before the unions have had a chance to present their side of the case or before there has been any hearing on the merits of the charges against them. In numerous cases, mandatory injunctions have been issued on charges which the N.L.R.B. found unwarranted after a full hearing — months after the injunction had been issued. The old evil of injunctions without affording the accused a hearing on the merits of the case has been revived.

The Taft-Hartley Act has no similar provisions for mandatory injunctions against employers who are charged with unfair labor practices. The law provides that the N.L.R.B. may (not must) apply for an injunction against the employer to stop a continuing unfair labor practice, until the charges are tried on their merits. In the six and one-half years of the Truman Administration after enactment of the Taft-Hartley Act, two injunctions of this kind were sought by the N.L.R.B. against employers; none in the present Administration. I do not believe that injunctions should be issued against employers before they have had a chance to refute the charges against them. That the Taft-Hartley Act requires the N.L.R.B. to seek mandatory injunctions in many cases against unions before they have had a trial on the merits of the charges is an abuse of fundamental principles of justice. Several hundred such mandatory injunctions have been issued under this law.

Significantly, most of these injunctions have been issued against AFL unions, particularly the Teamsters and the Building Trades unions. When the Taft-Hartley Act was being formulated, its proponents repeatedly said that this law was aimed at Communist-dominated and other radical unions, not the AFL unions. These proponents went so far as to say that, if all unions behaved as did the AFL unions, no Taft-Hartley Act would be
necessary. But nearly all the "secondary boycott" cases and most of the damage suits and injunctions have been against AFL unions. It is the most conservative, not the radical, unions which have suffered most from the Taft-Hartley Act.

Other Taft-Hartley Provisions

Other provisions of the Taft-Hartley Act which have hurt organized labor include those relating to union security and to the organizational efforts of unions. The union security provisions not only outlaw closed and preferential shop agreements, but make it unlawful to ask for such agreements. Unions have in numerous cases been forced to pay damages to non-union men denied employment or who were discharged on the union's demand, except where a union shop agreement of the type sanctioned by the statute was in effect. Even when a union shop agreement is in effect, the union may seek the discharge of any employee only for the non-payment of dues or initiation fees. The disloyal union member, the trouble-maker, even the Communist agitator, are all protected against discharge on the demand of the union, so long as they pay or tender the union dues. If discharged, in accordance with a union shop agreement, such people can recover damages alike from the employer and the union.

Restrictions on organizational efforts are not spelled out in the Taft-Hartley Act, but by interpretation they become very drastic and are in the process of becoming more drastic. Picketing for organizational purposes has been held to violate the Taft-Hartley Act. In restricting picketing, N.L.R.P. proceedings and orders have largely replaced injunctions issued by the courts and are equally restrictive. Even asking the employer to do something which the Taft-Hartley Act frowns upon is an actionable offense. All threats, however veiled, when made by union men are unlawful.
Threats of any kind to keep employees out of unions made by employers, theoretically, are also unlawful. The Taft-Hartley Act, however, includes a specific guarantee of the right of free speech to employers and no corresponding provision guaranteeing a right of free speech to union men; and, as now interpreted, almost anything that the employer may say or publish to keep out or defeat a union seems to be OK.

I could go on for a much longer time, discussing provisions of the Taft-Hartley Act which are unfair to workers. In doing so I would not have to go much beyond the provisions which the late Senator Taft acknowledged to be bad and which he sought to correct in his substitute bill of 1949. The Act includes the absurd restriction that watchmen may not belong to the same unions as the production workers. Foremen are denied all protection of the law when they organize even when their unions are independent from those of the production workers. The Act allows injunctions against strikes producing national emergencies, but only after a board, named by the President because he thinks a national emergency exists, has reported to him that there is in fact an emergency. Then the President can direct the Attorney General to get an injunction against the strike, which is to be effective for 80 days. Before the end of the 80-day period, the workers must vote on the last offer to settle the dispute made by the employer. As is the case in so many other provisions of the Taft-Hartley Act, there is no corresponding provision for a vote of the stockholders on the last proposal of the union. After the 80 days during which the injunction is effective have expired, it must be dissolved. Thereafter the workers are free to strike, and the law is silent on what is to be done in that event. Such a situation exists right now in plants vital to the nation's safety: the atomic energy plants at Oak Ridge and
Paducah. An 80-day injunction under the Taft-Hartley Act was issued at the instance of the President, to prevent a strike for a wage increase in these plants. These 80 days have now expired, without anything being done to effect a settlement. The unions are now free to strike, and the Taft-Hartley Act places no further restrictions upon them. The workers have patriotically remained at work, although they are now free to strike. It is to be hoped that a settlement may still be effected through the normal processes of collective bargaining, now that the injunction is out of the way. If such a happy result should prove the end of this dispute, the credit should go to the parties, particularly the workers, not to the Taft-Hartley Act.

With all its absurdities and its provisions unfair to labor, I repeat that the Taft-Hartley Act is not the most restrictive labor relations law that could be framed. Some provisions in some state labor relations laws are now more restrictive. Through an amendment to the Taft-Hartley Act, such as the Goldwater Amendment of the last session of Congress, more restrictive provisions of state laws can be given precedence over less restrictive provisions of the national act. There is also the possibility that the restrictions upon unions in the Taft-Hartley Act may be increased, as both the National Association of Manufacturers and the Chamber of Commerce of the United States proposed in the hearings of a year ago.

The Taft-Hartley Act has not hindered unions as much as its proponents, probably, expected or hoped for. In a time of a high level of employment such as has prevailed during most of the time this law has been in effect, unions have somewhat increased their membership, although at a somewhat slower rate than earlier. During this period labor has also
suffered some setbacks, particularly in its efforts to organize the South. Very certainly, the unions have not been destroyed, and, on the whole, are stronger today than ever before. And I do not believe that the unions will be wiped out, even if further restrictions upon organized labor should be put into effect, either by way of amendment or through further unfriendly interpretations of the Taft-Hartley Act.

It must be remembered, however, that the Taft-Hartley Act has not been tested in a period of prolonged depression. In a long, severe depression, more employers can be expected to invoke the restrictive provisions of the law, and with much greater prospects of seriously hurting the union. It needs to be kept in mind also that because a particular union has not to date experienced the harshness of the Taft-Hartley Act is not to say that it will never have such an experience in the future. Many unions, and particularly AFL unions, have had such experiences, and many more doubtless will have them.

But it is high time that I should bring my talk to a close. I believe that I have said enough to indicate to you that labor legislation is of importance to workers and likely to continue to be important. It is clear that the American unions need to continue to interest themselves in the restrictive labor relations legislation we now have on the statute books and to fight all efforts to make it worse. Through restrictive legislation the efforts of workers to improve conditions of employment through economic action can be all but nullified. Unless labor has freedom to combine and to use its economic power, if necessary, it cannot make headway in the economic sphere. I believe also that organized labor in this country
should revive its interest in protective legislation. Government does matter to American labor, although it prefers to determine conditions of employment through collective bargaining. What government does or does not do needs to be watched closely by labor. Who is elected to executive and legislative offices determines whether labor will be helped or harmed by governmental action.

ILIR 93 (54-55)