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Labor Laws and their Application

Although workers' organizations have existed in the United States continuously since 1892, their growth prior to 1930 was slow. In 1928 slightly over 3,500,000 American wage earners were members of labor organizations and the labor unions were losing members steadily. This lag in the logical trend towards unionization can be attributed to the individualistic traditions of the United States and to the absence of caste distinctions in this country. On the other hand it was these conditions that gave unions their political power, which for the first century of their existence was used for the benefit of the country as a whole.

When, however, labor unions tried to secure from private industry, limitation of hours and improvement of wages and other economic conditions through Government action, they encountered such obstacles that, in time, their faith in this approach was much weakened. In their struggle for social legislation they were opposed not only by the employers and trade organizations but also by the farmer. The courts, however, proved the greatest obstacle, for they were none too favorable to legislation suggesting an abandonment of freedom of contract.

The first law passed in this country which was definitely favorable to labor was the Norris-LaGuardia Anti-Injunction Act passed March 28, 1932. Under this law no federal court may issue an injunction in a case involving a labor dispute unless unlawful acts are threatened or substantial and irreparable

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damage will be the result of the strike. This law is still on the statute books and has been very helpful in preserving for workers their right to organize and their right to enforce their demands by a strike.

The gravity of the unemployment problem had attracted the attention of Congress increasingly during the years 1929-1933. In the latter year there was introduced in Congress one of the most comprehensive and elaborately executed pieces of legislation in American economic history. This bill, known as the National Industrial Recovery Act of 1933, gave the President authority to promulgate codes of fair competition for industries, for the purpose of achieving economic recovery. The bill was passed as emergency legislation and limited to two years. Although by its terms its operation was confined to industries engaged in or affecting interstate commerce, the code administrative body construed the commerce clause in a broad sense which brought within the ambit of the code-making power virtually every industry in the country.

From an employment standpoint the most important features of these codes were the child labor, minimum wage, and maximum hours provisions. These varied with the particular code but in general the normal code limited the hours of labor each week to forty. In Section 7(a) of this measure it was directed that every code should contain provisions guaranteeing to employees the right to bargain collectively through representatives of their own choosing and to be free from the interference of employers in their self-organizations.

Although the National Industrial Recovery Act was accepted as a device for spreading work and reducing unemployment through a shorter work week, the other phases of the Bill were of great benefit to labor. From the employers point of view little had been lost as for the first time they were assured that they were subjected to the same conditions as their competitors.

The experience of the Glamorgan Pipe and Foundry Company under the N.R.A. was very satisfactory. Every step for the improvement of labor conditions was worked out between the Government, Labor and our Industry. No individual company was hurt, in fact Glamorgan was permitted to continue the task system which though theoretically contrary to the principle of N.R.A., was of benefit to both the Company and its employees.

Just as the two year period was almost over and while Congress was considering legislation extending the N.R.A., the Supreme Court declared the Act unconstitutional and it was abandoned. With the passing of the Codes went the last chance for improving labor conditions in an orderly way.

The N.R.A. was declared invalid because, "It was so vaguely worded that it amounted to an improper delegation of legislative authority by Congress to the Executive Branch of the Government". However, Congress felt that there was no question of their having control over Government purchases.

Accordingly on June 30, 1936, the Walsh-Healey Public Contracts Act was approved. This Act stated that all persons supplying material to the Government in contracts over $10,000 should conform to the labor provisions of the Act. These provisions are as follows:

1. No labor shall work more than 8 hours a day or 40 hours a week.
2. No child labor or convict labor may be used.
3. Minimum wages as determined by the Secretary of Labor must be paid.
4. Working conditions must be sanitary and not hazardous or dangerous to health or safety.

This was later changed by the President so that longer hours could be worked if time and a half were paid.

This Law preserved some of the benefits of the N.R.A. in a limited field. At the same time it worked no particular hardship on the manufacturer in that he knew the conditions under which he must operate at the time he took the contract. In practice this law has been very successful. This is evidenced by the fact that there is no major court case of record questioning the enforcement of the law.

Glamorgan Pipe and Foundry Company has been checked up a number of times under the Walsh-Healey Law. In one instance it was found that there had been a slight violation and we were forced to distribute twelve checks for overtime of from $0.06 to $7.83. The total amount returned to the men was $11.08, and we estimate the Government expended several hundred dollars in checking this alleged infringement.

The next step occurred two years later when Congress found that there existed in industry "Labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well being of workers". As a result of this finding they passed the Fair Labor Standards Act commonly known as the Wage-Hour Law.

This Law was approved June 25, 1938 and included the following terms:

1. Industry was required to pay minimum wages of not less than 25¢ an hour for the first year, 30¢ an hour for the next six years, and 40¢ an hour thereafter. It was understood however that the administrator could prescribe minimum rates up to 40¢ for any particular industry at any time.

2. Industry was required to observe a maximum work week of 44 hours the first year, 42 hours the second year, and 40 hours thereafter. Employees were permitted to work more than these maximum hours if time and a half was paid for overtime.

3. Industry was prohibited from making use of child labor.

There is little that appears on the face of this Law to which industry could take exception. Certainly a minimum wage of 40¢ an hour is desirable and it is possible that a 40-hour week would not be particularly harmful. However, the trend toward shorter hours is obvious and both of the large labor organizations have already declared themselves in favor of a 30-hour work week. There is certainly some point beyond which the curtailment of hours cannot go without reducing materially the standard of civilization.

At first our Company found no difficulty in operating under this law. We obtained permission to continue our system of task work and the inspectors for several years understood that this was of benefit both to the Company and to its employees. However, it was under this law that we had our first taste of "Government by personal whim".

Just two years ago we had our first woman inspector. The fact that our method of operation had been approved by the Chief of her Department carried no weight with her, and she proceeded to interpret the law to her own satisfaction. Although penalties were waived, we were forced to immediately change our entire method of operation abandoning the task system which had been developed under the N.R.A.

In her investigation she discovered a case where one of our men had assisted in preventing the roof of one of our buildings being blown into the canal at a time when he was not punched in. As a result she required that we pass a rule requiring all men to leave the plant immediately after punching out. Aside from upsetting an established method of operation, most of the hardship fell on the men. The added pay that they received for completing their work promptly was taken from them, and they lost the privilege of doing personal work in the plant.

There is one important factor in all the Labor laws mentioned up to this time. Under these laws the employer had recourse to the Federal courts to maintain such rights as were left him. It is to be noted that this feature is omitted in the more recent labor legislation.

The National Labor Relations Act commonly known as the Wagner Act, was approved July 5, 1935, for the stated purpose of diminishing the causes of labor disputes. This Law was practically inoperative until the Supreme Court upheld the constitutionality of the Act in 1937. The provisions of this Act were as follows:

1. It guaranteed employees the right to organize, bargain collectively and engage in concerted activities for these purposes.
2. It defined and prohibited unfair labor practices.

3. It provided that the representatives chosen by a majority of the employees should be entitled to exclusive bargaining privileges.

4. The Board had full power to conduct hearings and investigations and to issue subpoenas.

In practice it was not the wording of the law that caused trouble and actually increased rather than tended to "diminish the causes of labor disputes". Trouble came from the arbitrary rulings of the Board and from the type of men and women employed by them.

The Special Committee of the House of Representatives which investigated the NLRB some time ago called attention to the unique multiple role of the Board as investigator, prosecutor, judge and juror. They pointed out further that organized agents of the Board made plans with the union officials for the filing of charges, thus setting up test cases, and that the Board attempted to mediate prospective as well as existing labor disputes. Most of the emphasis of the Committee's report was on the arbitrary rulings of the Board which far exceeded their powers as set up under the law.

The National War Labor Board was established by Executive Order 9017 on January 12, 1942, to succeed the National Defense Mediation Board. The new Board was set up as the result of a joint labor-management conference which met at the call of the President on December 17, 1941, and agreed that for the duration of the war there should be no strikes or lockouts, that all labor disputes should be settled by peaceful means, and that a National War Labor Board should be established to settle such disputes.

Increased authority was given on October 3, 1942, in Executive Order 9250, issued to carry out the Anti-Inflation Act of Congress of October 2. By this order the Board's duties were increased so that no adjustments in wage rates, or in most salary rates under $5,000, could be made without the Board's approval.

The War Labor Disputes Act (Smith-Connally Act) of June 25, 1943, gave the Board its first legislative authority to "decide the dispute" and order the "terms and conditions...governing the relations between the parties," and subpoena witnesses or documents.

Unfortunately, as in the case of the N.L.R.B. it is not the wording of the order that is so harmful. It is the interpretations put on it by the Board itself. Far from settling disputes by peaceful means, we find the W.L.B. stirring up strife and imposing rules which in the opinion of many are actually unconstitutional.

This fact coupled with the lack of provision for legal review make this setup potentially very dangerous. I quote from a release of the Division of Public Information of the National War Labor Board.

"The National Board, under the new procedure, thus became a 'supreme court for labor disputes,' handling appeals and major cases and issuing general policy directives."

Congress, it appears, does not agree with this point of view. In the findings of a Committee of the House appointed to investigate the activities of the W.L.B. it is stated that the

Board exceeded its authority in the following ways:

1. By ignoring the financial status of the Company
2. By awarding back pay without provision for Court review.
3. By ordering Maintenance of Membership and check off.
4. By assuming jurisdiction in Industries not affecting the war.

The Governments method of enforcing the rulings of both the N.L.R.B. and the W.L.B. are certainly unique in the history of this Country. These Boards do not resort to the due process of law but bring about acceptance by threat of the withdrawal of Priority Aid and the cancellation of Government Orders. In extreme cases the Government takes over the plant of a Company that does not accede to their demands. Either of these punishments may result in the eventual closing of the company.

The ideal way to study these laws is to see how they affect one company.

The Glamorgan Pipe and Foundry Company has manufactured Cast Iron Pressure Pipe since 1887, and has always been considered a good place to work. During the year 1929 arrangements were completed to sell the Company to a competitor who planned to close the plant and transfer the equipment. At that time four local stockholders felt that closing the plant would be a bad thing for the City of Lynchburg as it would throw 300 men out of work. Accordingly they purchased the Company on the terms offered by the Competitor.

The attitude of these men has been reflected in the operation of the Company since 1929. It has always been their policy

to pay the highest wages possible and to make all reasonable concessions to the employees. During the depression, 1932 to 1934, the men were kept at work even though this seriously reduced the Company' capital.

In the face of severe competition the manufacture of pipe by machinery was not adopted as the change would result in a serious curtailment of the number of employees. In the fourteen years since the reorganization of this Company over three and one-half million dollars has been paid out locally for wages, salaries, and added compensation. Between January 1, 1941 and August 1, 1943 average wages per hour were increased 35%. The Little Steel Formula, accepted by the Government as a just basis for raises between January 1, 1941 and the present time, authorized only a 15% increase.

It is only natural under these conditions that the Glamorgan Pipe and Foundry Company should be remarkably free from labor trouble, and this was the case until Labor Departments of the Federal Government itself started to stir up trouble. During the years from 1937 through 1941, there was an A. F. of L. Union in our plant. Numerous meetings were held with the representatives of this Union, and many matters were discussed. Six major questions of policy were brought up in addition to a large number of minor items affecting working conditions. In addition fourteen individual complaints were considered. Every problem was settled to the satisfaction of the Union.

It is quite logical that a union running as smoothly as outlined above would have difficulty in holding its members, and that is what actually happened. Without Government interference

it is quite probable that this Company would have continued to operate for the benefit of the employees and the stockholders as it had for over 50 years.

Unfortunately for the well-being of the City of Lynchburg, in 1942 the United Steelworkers of America, C.I.O. picked Lynchburg as a center of their operations. On March 30, 1942, the C. I.O. started its usual organizing procedures under the National Labor Relations Board by creating an incident. In our plant on that day a number of our regular Pipe Shop crane runners failed to report for work necessitating our placing a negro on the crane. This man had been trained by the other operators for their own convenience and was the only man in the shop familiar with crane operation.

Shortly thereafter the crane runners as a group registered a protest, and these protests continued for some weeks. However, at no time were enough regular crane runners available so that we could stop using the negro crane runner.

We finally learned that it was the intention of our regular crane runners to walk out of the shop while the plant was in operation. This would create a very dangerous situation, and we adopted the only possible alternative by firing the two ring leaders. It was not until after this step had been taken that we learned that the C.I.O. was trying to organize our shop and that we had fired two of their key men. At this point the National Labor Relations Board was called in by the Union.

Never once in the two years that have followed have the N.L.R.B. acted as peacemakers. Their purpose has been continuously to provoke trouble thereby promoting interest in the Union.

The condition of unrest encouraged by the N.L.R.B. continued for almost a year without any of the matters under discussion coming to a head. During this time there were numerous investigations, on suggestions of discrimination, by the representatives of the N.L.R.B. We were also called on by representatives of the United States Conciliation Service, and discussed the matter in detail with the labor representatives of the War Production Board.

At least six representatives of the N.L.R.B. made separate investigations during this time. In addition the representatives of the Wage-Hour Law and Walsh-Healey Act enforcement group were brought into the picture. This trouble and these investigations took almost the entire time of two of our executives. In spite of repeated requests, the N.L.R.B. would not bring the matter to a final conclusion.

It was during these investigations that we had our first experience with the type of employees on the payroll of the Labor Department. It is my opinion that these employees fall into two categories. The majority of them are using their employment to further their personal ideology, most of this group are Communists. One of the women that spent a great deal of time in interviewing our employees was very frank in comparing this country with Russia much to the detriment of the United States. The other group consists of men and women afflicted with an inferiority complex who find relief in their ability to impress their will on industry.

We are fortunate in knowing just how these investigations were carried out. The following is the report of one interview made in the presence of two reliable witnesses:

"At the appointed hour I went to the hotel and presented myself to these men, and I was interviewed by a Mr. Carico. This man told me that any questions he asked and any answers I made would be treated confidentially, and then he went on to say that he wanted me to tell him whether I was being paid in full for all the time I was putting in on my job. I answered by telling him that I was receiving all the money that was due me and that I was perfectly satisfied with the treatment the Company was giving me. Mr. Carico went on to tell me that they were checking the Company's time cards and records to see whether the workers were being paid for all the time they were putting in on their jobs, and as they found the Company's cards and records in such perfectly good order they said the Company presented a perfect picture. Consequently, they were trying to find out by interviewing the workers whether the situation was quite as good as the cards showed. At this point the man asked me at what work I was employed in the shop, to which I answered by saying that I was pinch hitter for everybody. This was not quite satisfactory and he asked me to tell him what my specific job was, and then I told him that I was the general superintendent. 'My God, Man, we didn't want you up here' he said. 'I should have seen you at the plant tomorrow'."

I think all of us that attended the hearings during this period of unrest were impressed with their unfairness. Normal rules of testimony were entirely overlooked and the examiners used leading questions to develop from the witnesses just the points they wished. Representatives of the Company were insulted frequently, probably in the hope of causing them to lose their

tempers. Just what these Government employees were trying to prove is well illustrated by the remark of one investigator. When it was suggested that she should investigate the reputation of our Company locally and the fact that our working conditions and wages were obviously good, she answered, "I am not here for that, I am here to find out your attitude towards unions".

Every effort was made to inconvenience the Company. On one occasion we were required to furnish 7,000 pay figures. This took considerable time and the Company was accused of refusing to cooperate. When the figures were finally available, it developed that only 30 of the 7,000 were actually needed or wanted.

During the entire summer and fall of 1942 these investigations and hearings went on. At the end of this time the Company found that it faced 8 charges.

1. Discharge of Williams for union activity.
2. Discharge of Scruggs for union activity.
3. Discharge of Walker for union activity.
4. Discharge of Loyd for union activity.
5. Lay-off of Higginbotham for union activity.
6. Lay-off of Wright for union activity.
7. Demotion and decrease of pay for Viar because of union activity.
8. Unfair labor practices in restraining and coercing employees in the exercise of their right of organization.

It is only fair to state at this point that every one of the specific accusations mentioned above was a lie.

However, the N.L.R.B. had accomplished their purpose and by agitation had built up the interest in the union and made it obvious to all our men that the United States Government favored their joining the union.

With this background the N.L.R.B. was ready to proceed with an election in our plant. Everyone is familiar with the fact that the employer has no right to even express his opinion of the union to his men. The union itself is permitted any type of promotion it desires. Representatives of the Labor Department of the Government actually appeared as speakers in the Union Hall.

The hearing on the election and the actual physical features of the election were fair. However, one of the rulings of the N.L.R.B. with regard to the eligibility of an employee is one of the most astonishing pieces of literature I have ever read. In ruling that one of our old employees could not vote the examiner based his finding on the following statement:

"Leebrick has been employed by the Company for 53 years. He formerly was engaged in production work but in recent years was made watchman without any reduction in pay. Since becoming watchman he has received several increases in pay and is presently the highest paid watchman employed by the Company. He performs the duties of an ordinary watchman, such as carrying a clock on tours of the Company's property, only when one of the other watchmen is absent. When new watchmen are engaged he trains them in their duties and all watchmen take their orders from him."

No evidence had been introduced to prove that other watchmen took their orders from him and such was not the case. However,

the rest of the finding indicates how undesirable it is for a man to stick to his job and attempt to aid his fellow workman. The C.I.O. aided by the N.L.R.B. won the election with 176 out of 263 and the C.I.O. was certified as the bargaining agency for all the men in our employ.

The cases built up against the Company had now served the purpose and the election was won. Six days later the cases were re-opened and rushed to trial.

Much has been written about N.L.R.B. trials and it is probable that we do not need to go into detail. Suffice it to say that the Government furnished the Union with lawyers and with a pro labor judge. There was a pretense of fairness but obviously the Labor Relations Board men involved would not have had their jobs unless they had been pro labor. In the face of this situation it is very obvious that the charges against the Company were faked, when the outcome is considered.

Obviously the N.L.R.B. was now anxious to get rid of the whole matter. On the recommendation of their lawyers two of the cases were dropped and the Company was given a clean bill of health on all the other specific cases as presented. However, since it is never the policy of the N.L.R.B. to let a Company off completely, they found against the Company in a situation that had not been argued and that had in fact never entered the minds of any of the attorneys. The judge ruled that we were justified in firing all men in question but that in rehiring Loyd, who as it happens was president of the Union, we had discriminated against Williams for being a member.

The N.L.R.B. used our case to illustrate their desire to prevent racial discrimination. We were congratulated for our fairness but at the same time were punished for being fair.

The Company had made it clear throughout the trial that it was their intention to appeal any adverse ruling to the Supreme Court and probably as a result of this a compromise was offered. This offer was not made until our lawyers were already on the train starting for Washington. However, it was wisely made so attractive that we could not afford to turn it down. The entire case was closed by our paying Williams $150.00 and the N.L.R.B. disappeared from the picture insofar as Glamorgan Pipe & Foundry Company was concerned.

However, our troubles were by no means over, having a union, we must now bargain collectively. I can assure you that this collective bargaining was only a farce made necessary under the War Labor Board rules. Of course, the union gains what they can during the bargaining and any concessions made must stand in the final contract.

After some weeks of intensive work the Union claimed that bargaining had broken down, and called in a representative of the U. S. Conciliation Service. The Union organizer was quite frank in stating that nothing would be gained by this step but that again it was necessary under the War Labor Board rules.

Conciliation might be a good step but it is obviously entirely dependent on the personality of the conciliator. We have had good and bad conciliators working with us. In another matter we had one man whose attitude was perfectly fair and who

came very close to solving an unfortunate situation. However, in the situation we are now discussing, we were unfortunate. The man who came to make peace stirred up considerable trouble and widened the breach between the Union and the Company.

As could be expected under these circumstances, conciliation failed and the Union requested Mr. Steelman to request Miss Perkins to certify our case to the War Labor Board under a threat of a strike. By this time, partly as a result of all our labor troubles, the Company no longer had any war business and the pipe we were making went into stock. In spite of this fact our case was certified to the War Labor Board as one which might interfere with the satisfactory prosecution of the war.

With the Union demanding everything it is obvious that there was a difference of opinion as to what the contract should contain and in order to reconcile the two points of view the case was aired before a panel theoretically consisting of a member representing labor, one member representing industry and one member representing the public. Most industry members have been helpful to the company they represent. However, we were unfortunate in that the industry member on our panel was anxious to make a record for himself in his dealing with his own union. Our public member was a very high type individual, a professor of economics who had absolutely no business training.

Although when we appeared before the panel there were seven questions in dispute, we were able by compromise, to close all but two of these questions so that the Company was at the mercy of the panel on only two matters. They were Maintenance of Membership

and Check-off, and the 8-Hour Day. The panel found for the Union on both these items. In this connection the panel stated that neither the financial condition nor the competitive position of the Company should affect their findings. Fortunately for us the Atlanta Board was more familiar with our industry than the panel, and reversed the finding on the 8-Hour Day.

With this exception the union had gotten everything they asked for including Maintenance of Membership and Check-off. However, it is a perfect evidence of their unreasonable attitude to note that they appealed this one adverse ruling. This appeal is still unsettled. We have one other open case which will probably be heard by a Hearing Officer of the War Labor Board in the near future. This is the most unusual case of them all.

For many years we have permitted our employees to share in our earnings by giving them a Christmas bonus when it was earned. Under the President's Stabilization Order it would be illegal for us to continue this practice in a year when the bonus was not earned. We have written instructions to this effect from the War Labor Board itself.

However, the War Labor Board did not have backbone enough to explain their own ruling to the union and have instead made a case of this ruling. Of course, it is necessary to go through the entire procedure outlined in the previous case. The conciliator in this instance however did his best to persuade the union to drop the matter. Frankly, I have such little faith in existing agencies of the U.S. Government that I would not be at all surprised to have them reverse their own findings.

I have outlined above how existing Labor laws, as interpreted by the Washington Agencies affect small companies. It may be well to consider what these activities have cost those concerned, and what Labor has gained from them.

At least forty-seven men and women in the employ of the United States Government have had a hand in the persecution of the Glamorgan Pipe and Foundry Company. A conservative estimate to the tax payers of this country of the expenses and salaries of these individuals is slightly over $10,000.00. The direct cost to our Company has been approximately $35,000.00 and the indirect cost resulting from increased loss and the slow down of our operations may be conservatively estimated at $80,000.00. During the two years under consideration, Labor has lost $45,000.00 in wages. To offset this Labor has made certain gains. The following gains and concessions we would have granted anyway if we had been asked:

Recognition

Contract

Job Classification

Vacations with pay

Definite gains for Labor which would not have been granted by the Company:

One man received $150.00

Regularly small yearly wage increases

Union Membership

Check-off

There is one loss however which cannot be measured. The employees of the Glamorgan Pipe and Foundry Company have, for all time, lost the faith and sympathy of the management.