

SPHEX CLUB, March 31, 1938.

LABOR UNIONS, IRRESPONSIBLE OR RESPONSIBLE

Mr. President and Gentlemen:

The question of Labor Unions and their responsibility is of growing importance to everyone in this country. We all realize that improved conditions among our workmen are essential to our continued progress. Political Parties are continuously trying to solve this problem through legislation.

Unfortunately their efforts have been limited to two major steps. First, fixing maximum hours and minimum wages by law. This is not a popular step among skilled workmen who are naturally more vocal than common labor. They realize that limiting their hours of work, limits their earnings, and they know that raising minimum wages does not of necessity raise wages in the higher brackets. The other step, encouraging Labor Unions, has been popular among the large mass of workmen. The Union has been the weapon used to increase earnings in the past and is the one with which they are familiar.

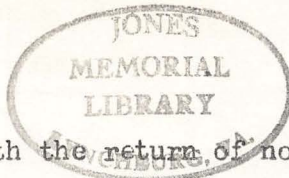
The sponsors of the National Labor Relations Act (The Wagner-Connery Bill) have stated that its major objective was to encourage Labor Unions. This Law went into effect July 5, 1935, but it was not generally operative until it was upheld by the Supreme Court on April 2, 1937. Since that time Labor Unions have been very active and by using the argument that "The President wants you to join the Union", membership has almost doubled. If the claims of the American Federation of Labor and the Committee for Industrial Organization are accepted each organization contains approximately 3,500,000 members or a total Union membership of 7,000,000 individuals.

Although the ultimate object of the National Labor Relations Act was to prevent "strikes and other forms of industrial strife", actually it has had the opposite effect.

During 1935, 13,901,956 man days of work were lost in the United States. This figure represented almost half the time lost due to strikes in 21 countries, as reported by the International Labor Office. However, for 1937 the figure is even more staggering. During the first ten months of last year more than 28,000,000 man days were lost to American Labor. According to government statistics there were more strikes during the first ten months of 1937 than in any of the past 20 years. And most of these strikes arose about matters of collective bargaining and union recognition.

"The acute outbreak of strikes in 1937 has been attributed by some government officials to the widespread refusal of employers to recognize the rights of workers assured to them under the Labor Relations Act. As a matter of fact, certain of the "unfair labor practices" prescribed by the Act are so vaguely and ambiguously defined in the statute that no employer, however zealous he may be in trying to comply with the law, can be sure to avoid violating it. Moreover, the Act, itself, has provided a direct stimulus to inter-union controversies and to strikes for organizational purposes in situations where no violation of the statute by employers has even been alleged.

As should be expected, the present depression has reduced the number and severity of strikes. A clear indication of the reduced activity on the part of organized labor may be found in the fact that during December 1937 only 611 new cases were filed with the National Labor Board, compared with an average of over 1200 new cases filed with the Board each



month last summer. With the return of normal business, labor will again become active and the comparative freedom from trouble which industry is now enjoying will cease. As has often been stated, "workers do not strike when jobs are scarce." So the fact that the headlines are not at present full of strikes and labor troubles does not mean that we can ignore the problem.

Under the beneficent protection of the National Labor Relations Law, the acts of organized labor have been particularly vicious during the past year. At no time in the history of this country have the wishes of workmen, often a majority, to maintain their jobs been so completely ignored. The losses resulting from unnecessary strikes, that is, strikes in which wages or hours were not the primary consideration, mount to almost unbelievable totals. Obviously, the claim made early last year by Chairman Madden of the Board that labor trouble would cease when the Supreme Court approved the Act, was in error.

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All the old weapons of labor and several new ones have been used in an effort to force recognition of this or that union.

The right of workers to strike has long been recognized and the attitude of strikers towards scabs is understandable. However, the brutality evidenced during last year toward workmen who felt that "their right to work was sacred" is an indication of the irresponsibility of organized labor. Another indication may be found in the sabotage practiced during recent strikes. One important example of the latter was the dynamiting of the water supply mains of the Cambria Works of the Bethlehem Steel Corporation.

An authoritative record of the direct loss due to strikes in 1937 gives \$1,235,000 as the loss to America in wages and productivity.

More serious even is the permanent loss resulting from those companies which went out of business as a result of labor violence. A study of 58 such companies shows 17,711 employees thrown out of work and an annual payroll loss of over \$17,000,000.

The new and very effective method of striking, the sit-down strike, was of French origin. By occupying the plants workers prevented any operation whatever and in most instances records were tied up so that collections and sales were at a standstill. Often machinery, raw material and even records were destroyed. Sit-down strikes are undoubtedly unconstitutional but every effort to have Congress take action against them failed. Fortunately, public opinion did not favor them and they were used less and less as the year wore on.

Slow down strikes were also used. Here the workers continued on their jobs but deliberately cut down their output. This type of strike was made possible by the difficulty of firing a man for inefficiency without having him reinstated by the Labor Board. In general the inefficiency of workmen during 1937 is particularly notable. For example, the B. F. Goodrich Company, in spite of a 14% increase in base rate showed over 6% reduction in efficiency.

Certain actions of the National Labor Board are bewildering to say the least. The Chicago Journal of Commerce cites the case of a "man named Hopwood, who sold his retinning business in Brooklyn last spring. Although he had spent 18 years in developing his business, he had run afoul of labor organizations and was glad when he received his price from a firm in New Jersey. He thought he was free of his troubles, but he had not counted on the Wagner Act."

"Now it is reported that after conducting hearings the local trial examiner of the labor board has recommended that Hopwood go back into the retinning business, reinstating workers who lost out when he quit business, or face a court action. The recommendation has not the force of an order, but the board has the right to go to a circuit court and obtain an order. Mr. Hopwood has no desire to go back into the retinning businessDoes it seem right that a federal board should be able to force a man to go back into business when he doesn't want to resume?"

Unfortunately, the wording of the National Labor Relations Act encourages jurisdictional disputes between rival unions. A case in point is that of the National Electric Products Corporation of Ambridge, Pennsylvania. This company had a closed shop contract with the A. F. of L. and was under orders from the Federal Courts to abide by the Contract. This meant of course that no C. I. O. man could work in the plant. The National Labor Board sided with the C.I.O. and ordered the company to deal with them. The company had their choice violating an order of the Board or of being in contempt of the Federal Court.

The American Federation of Labor claims that the Board favors Council for Industrial Organization. As a result, a recent statement of Matthew Woll, Vice-President of the A. F. of L. is easily understandable. He said the government's "attempt to control trade unions" through the Labor Relations Act" carries the threat of fascism" for the United States.

The Wagner Labor Relations Act has undoubtedly demonstrated itself to be not only one-sided in its provisions, but unworkable in its present form. It has written into law the right of workers to bargain collectively, with their employers; yet it fails to impose upon those

who have such rights, the responsibility for exercising them intelligently and justly. It seems to be almost universally regarded that this grossly unfair Act should be so amended as to balance the right it confers with obligations equally enforceable.

The need to increase the responsibility of Labor Unions is, I believe, obvious. Within four months after the General Motors Company signed a supposedly satisfactory contract with the C. I. O. there were over 200 strikes and sit-downs in their plants.

Mr. Spencer Miller, Jr. director of the Workers Education Bureau, summed up the matter very clearly in the following words:

"With upwards of 7,500,000 organized into unions of all kinds, labor has become an economic force of vast proportions!. It has acquired a new position of power and responsibility in the community. It has built instruments of public power for which, increasingly, the public is demanding some type of public regulation. Labor may assert with great vigor that it does not believe in incorporation or in any type of legal regulation. It will cite, and cite effectively, the reasons why the movement of labor should not be incorporated.

But this much is implicit in the present state of public mind-- that no agency or no group in the community can build up instruments of great public power without, at the same time, assuming a vast responsibility for the wise exercise of that power. Either labor must give such unmistakable evidence of its capacity for self-regulation to discharge its public power in the public interest, or this rising tide of public demand for public regulation will not be stayed."

The method most often suggested to increase labor union responsibility is by the compulsory incorporation of unions. Without careful study this would appear to accomplish the desired results.

Three of the major polls used to determine the trend of public opinion showed that the public was overwhelmingly in favor of incorporation of unions by law.

	<u>Yes</u>	<u>No.</u>	<u>Don't Know</u>
American Institute of Public Opinion	86%	14%	---
Fortune Magazine	72.9%	5.0%	22.1%
National Economic League	90%	10%	---

Incorporation of Labor Unions by law was made a part of the national platform adopted by representatives of Small Business at their recent Washington meeting.

Officers of Labor Unions are universally against this step. Although they avoid discussing the problem whenever possible, Homer Martin, President of the United Automobile recently answered the direct question as to whether he would favor incorporation as follows:

"I would not. I understand business incorporates not to establish responsibility but to get out from under."

In a recent talk with Mr. Costan, who works with the A.F. of L. Unions in this locality he explained their point of view. He pointed out that Labor's only effective weapon was a strike and expressed the fear that incorporation would make it possible to break a strike through injunctions.

In addition to the above there seem to be serious objections from both legal and practical angles to the method suggested:

1. A Federal statute requiring labor organizations to incorporate would undoubtedly be unconstitutional. The Federal Government has no general power of chartering corporations. This is a power which resided in the State governments prior to the formation of the Federal

Government, was never surrendered to the Federal Government, and is today exercised by the State governments. Indeed it is a questionable matter whether a State law requiring all persons engaged in business to incorporate, would be constitutional. In other words, incorporation can be required by government only where the business to be engaged in is one where, for the protection of the public itself, incorporation is an appropriate method of regulation.

2. The Federal Government may provide for voluntary incorporation at least as to corporations engaged in interstate commerce. However, there was on the statute books for many years an act of Congress under which labor unions residing in the District of Columbia could incorporate and this statute was not availed of by labor unions. On the contrary, it was repealed by Congress in 1933.

3. Business concerns, and particularly associations of manufacturers, etc. could hardly advocate compulsory incorporation of labor unions and the disclosure of their revenues, expenditures, and internal operations, unless they were willing to have the same type of legislation apply to them. This raises a serious question of policy as to whether business would consent to such regulation as a price of obtaining incorporation of labor organizations.

4. Incorporation of labor organizations is, generally speaking, desirable, but primarily for two reasons only (a) it identifies the organization, gives it a legal domicile and a definite place where it may be served with process in actions brought against it; (b) it carries with it some measures of visitation on the part of the government, whether Federal or State, which issues the charter.

Both of these things would, in the case of labor organizations, be advantageous to the public and to those who have to deal with such organizations, but aside from the advantages just cited, it is doubtful whether incorporation in itself would produce any appreciable degree of "responsibility."

As the matter now stands, labor unions are suable in the Federal Courts in their own names and, except to the extent that the remedy against them is impaired by the Norris-LaGuardie Anti-Injunction Act, they are answerable for unlawful conduct on the part of their officers and agents. In this respect incorporation would not make them any more responsible.

Under the Anti-Injunction Act it has been ruled that peaceful picketing with signs is lawful. In cases "of a union interfering in the relations between employer and employee to secure a "closed shop" and resorting to picketing, accompanied by acts of violence an injunction may often be obtained. How carefully the law differentiates is shown by a recent ruling that a man on the picket line could call a non-striker a "scab". However, when a striker added the words "you dirty rat", the magistrate held that the limit between peaceful picketing and disorderly conduct had been passed.

As the law stands today labor organizations as well as the individuals in the union are liable, and the personal property of the defendants can be used to satisfy a judgment. If incorporated the funds of the union alone would be subject to attack.

The recent decision of Federal Judge Fred L. Wham in ordering seven local unions and 66 members to pay the United Electric Coal Co. \$117,000 damages illustrates the point.

The damages assessed recalled the historic Danbury Hatters case, which was fought through the courts for twelve years before it was passed upon by the Supreme Court in 1915. The hatters' union declared a nationwide boycott on hats of an open-shop Danbury hat manufacturer, the late Dietrich E. Loewe. Hat-Maker Loewe then founded the American Anti-Boycott Association, sued the union, won a judgment of \$252,000 against 200 union members. Homes and other property of the workers were attached, but the unionists swore they would not pay even if their homes were foreclosed. In the end the claim was settled for \$150,000 raised by A.F. of L.

Neither would incorporation give any assurance that contracts would be performed, any more than we have such assurance in the case of unincorporated labor organizations. Under the Constitution men cannot be compelled to work, consequently no court would order the members of a labor organization to perform services in pursuance of a contract whether the labor organization was or was not incorporated. If they are going to violate their contracts, they will do so whether or not incorporated.

Incorporation would not insure any higher quality of leadership for labor organizations. A labor leader who can secure his continued election and position of dominance in an unincorporated labor union could do the same thing in an incorporated one.

In so far as incorporation might be suggested as a means of preventing labor organizations from engaging in conspiracies in restraint of trade, it should be remembered that the Supreme Court has held unincorporated labor unions to be as amenable to the anti-trust laws as any other persons.

There are no doubt many other considerations to be taken into account, but, I believe, even though compulsory incorporation were constitutionally possible, it would not go far towards bringing about real responsibility on the part of Labor Organizations.

There are undoubtedly other and more workable methods of establishing union responsibility. Among others, there are those features covered by Senator Vandenberg of Michigan in his amendment to the National Labor Relations Act, Senate Bill 2712. He proposed that:

1. It shall be an "unfair labor practice" to (a) interfere with, restrain or coerce employees into joining any labor organization; (b) interfere with any constitutional rights; (c) make compulsory assessments on union members for political purposes; (d) select aliens to head or represent labor unions; (e) strike unless the strike is ordered by a majority vote of the employees affected; (f) strike for the purpose of inducing or forcing anyone to violate the law or a contract and (g) refuse to sign a written contract if a verbal agreement has been reached.

2. Employers as well as employees and unions be permitted to ask special elections on collective bargaining.

3. Labor organizations which commit unfair practices be forbidden to receive dues or assessments.

4. Violations of contracts be declared flatly an interference with the free flow of interstate commerce.

Unfortunately Senator Vandenberg's Bill was referred to the strongly pro-labor Committee on Education and Labor. It has never been reported out of that Committee.

In view of the importance of this subject it may be well to review the history of Labor Legislation in England:

Great Britain in 1906 relieved registered trade unions of liability for the acts of their agents done in furtherance of trade disputes. Its subsequent experience was such that it was compelled to assert Parliamentary control over the general conduct of the labor combination and the relation of trade unions to public and private employment. The general strike of 1926 directly involved 2,730,000 men. The number of man days lost was about 167 millions. Communication and transportation was paralyzed. Even printing was so completely suspended that the Government got out an official publication with great difficulty. The strike was broken by an uprising of every class of society volunteering to restore every broken line of social communication.

Out of this national convulsion came the British Trade Dispute and Trade Union Act of 1927. Three years later the British Labor party came into power, pledged to repeal this legislation, but in the face of public opinion never dared to do so. It is still the law and represents a quarter of a century of experience in the development of social self-defense by a nation seeking rationally to protect itself against an abusive power by combinations of employers and employees.

While Government agencies may, with the consent and only with the consent both of management and labor, undertake compulsory settlement of labor difficulties in Great Britain, no labor board is created to offer continual invitation and incitement to industrial confusion, unrest and strife.

Specifically, the act legalizes strikes and lock-outs but, in each case, confines them to the industry in which the dispute arises and forbids "sympathetic" strikes. It forbids strikes or lock-outs to coerce the Government by inflicting injury upon the public. It defines

the rights of workers who wish to continue their jobs during a strike. It forbids the use of contributions by workers to their unions for political purposes unless so used by and with the written consent of the worker and an accounting made and reported to the Government.

And the interesting feature of this law is that it has worked to the benefit of employee, employer and the general public.

Every thinking man realizes that Labor Organizations are now an essential part of the industrial life of this Country. It may be that as their power increases it may have to be checked by law. However, it is interesting to note that, as is so often the case, labor is realizing the increased responsibilities it faces. If this tendency continues, I believe we are justified in the hope that merely clarifying the present law will solve this serious problem.

John D. Capron