Evolution of the National Labor Relations Act

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Citation
Chapter 1

Evolution of the National Labor Relations Act

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

*National Labor Relations Act, 1935*

As stated above, the National Labor Relations Act was passed in 1935 in order to protect workers' civil liberties with regard to the right to seek union representation and to bargain collectively with employers. Although these rights were not to be fully sanctioned by the law until the Supreme Court ruled on the Act's constitutionality in 1937, passage of the Act was a permanent and radical departure from American labor law history.

This report comes nearly 50 years after passage of the National Labor Relations Act (NLRA) but, as reported herein, much of the intent embodied in the Act is presently being frustrated and to no small degree. The focus of this study is upon investigating why 25-30 percent of the time workers, after exercising their rights under secret ballot to be represented by unions, fail to negotiate contracts with employers. As will be fully documented herein, NLRB case
handling delays, discriminatory discharges of union activists, and employer refusals to bargain are major impediments circumventing the "protected" rights of workers to union representation.

Chapter 1 provides a brief historical overview of American federal labor law. Although our history of union-management relations has been marked by considerable conflict—including the loss of lives and destruction of private property—chapter 1 does not focus on these tribulations. Instead, its purpose is to trace the legal antecedents and lay out the framework of our present labor law. Chapter 2 reviews the workings of the National Labor Relations Board (NLRB), which is the federal agency charged with interpreting and applying the NLRA. The chapter's primary focus is upon the policies and administrative procedures of the NLRB in protecting the rights of workers to bargain collectively once they have gained those rights through secret ballot voting. These first two chapters are written to provide essential background material for chapters 3 and 4. Chapter 3 presents an investigation and analysis of the factors that help explain the dismal failure of unions (in general) to obtain first contracts after winning the right to negotiate those contracts. Based on these findings, various public policy recommendations to better safeguard the legislated rights of workers to bargain collectively are discussed and evaluated in chapter 4. Finally, chapter 5 briefly summarizes the key points, findings, and recommendations of the study.

A Period of Judicial Hostility

Before describing the purposes behind and enactment of the NLRA in 1935 and its amendments in 1947 and 1959, let us take a brief look at the legal history of labor relations in early America. The story begins with union organizing efforts in the early 1800s. The most celebrated case and the one that set the early tone for union organizing and collective
bargaining was the 1806 Philadelphia Cordwainers Case. Cordwainers (better known as shoe and bootmakers) in Philadelphia initially organized a guild of journeymen, the purpose being to insure quality products. Later, however, with a rapid extension of product markets and increasing competition, the journeymen were motivated to maintain their earning power. In their efforts to raise wages and secure "closed" shop agreements (i.e., every worker must be a union member), the shoemakers found themselves in court. The 1806 case led the Philadelphia court to find the union to be nothing less than a form of criminal conspiracy. The conspiracy doctrine was based on several governing principles of English common law, including:

- Unions interfere with the freedom of contract and property rights of both individual workers and employers.
- Unions have monopoly power and are thus disruptive to both market competition and to the political system.

The so-called conspiracy doctrine took hold in the various courts of early America and workers were largely deterred from even forming unions (see Wellington, 1968, pp. 7-26).

Not until the early 1840s did the conspiracy doctrine begin to give way. In the landmark case of Commonwealth v. Hunt, a Massachusetts Supreme Court judge decided a case where a union of shoemakers refused to work for their employer unless the employer fired a "scab" (i.e., a non-union worker). Judge Shaw reasoned that the court must be a neutral umpire in deciding union organizing and collective bargaining rights. To find a union unlawful under the conspiracy doctrine, Judge Shaw held, the courts must find the objectives and/or activities of a union unlawful. In and of themselves, unions were not unlawful.

Shaw’s decision, however, does not appear to have had all that much influence upon restricting the courts’ use of the conspiracy doctrine—only the focus had shifted. Employers turned to the courts to block specific union activity—strikes,
pickets, and boycotts. The courts after 1842 acted much like my landlady who, concerned primarily about the interests of her other tenants, agreed to let me have a piano in my apartment—as long as I did not play it!

The conspiracy doctrine began to wane in the late 1800s, but was replaced by court injunctions. There appeared to be little consistency in the judicial justifications for enjoining union activity, but the evidence suggests that injunctions were very easy to obtain, often without hearing the unions' side.

After the criminal sanction had been replaced by the injunction, the courts had continued to act far beyond their range of competency; adjudicating without standards, without principles, and without restraint. . . . The abuse, moreover, extended to the procedures the courts employed and the decrees they issued as well as to the substantive law they developed. . . . Standards of fair procedure and experience with equitable remedies existed, but were simply disregarded. (Wellington, 1968, p. 39)

An important development in federal law in 1890 was unanticipated. The Sherman Antitrust Act was passed by the U.S. Congress, ostensibly to impede the monopolistic appetite of industrial conglomerates. Ironically, employers were able to utilize this piece of legislation against unions who, it was reasoned, had monopolistic characteristics intended to restrain competition and disrupt interstate commerce. It is of interest to note that disruption to commerce and competition was one of the principles underlying the criminal conspiracy doctrine. It is also important to underscore here that judges for the first time based their decisions upon interpretation of federal legislation, albeit their perverse interpretation of the law probably would not have arisen without widespread judicial hostility toward unionization.
The history of the application of the Antitrust Act to union activities was most interesting. Case after case, both lower courts and the U.S. Supreme Court found unions in violation of the law—typically in cases where unions embarked upon boycotts. It was not until 1908, however, that the Supreme Court explicitly ruled that the Sherman Antitrust Act was applicable to union organizing. Here, the United Hatters of North America, in an organizing drive, engaged in a nationwide boycott against Loewe and Company of Danbury, Connecticut. The Court decided the Hatters violated the antitrust law in "that the act prohibits any combination whatever to secure action which essentially obstructs the free flow of commerce between the states, or restricts in that regard, the liberty of a trader to engage in business." 1

Shortly after the Danbury Hatters case, the U.S. Congress passed the Clayton Act. Unions first billed this act as a major victory as it was believed to have exempted unions from antitrust prosecution. The act stated that neither labor organizations nor their members could "be held or construed to be illegal combinations or conspiracies in restraint of trade, under the antitrust laws." The president of the American Federation of Labor, Samuel Gompers, declared the Clayton Act (Section 6) as the "Industrial Magna Charta upon which the working people will rear their construction of industrial freedom." (Witte, 1932, p. 68) It soon became clear, however, that the act only stated that unions, in and of themselves, were not illegal—something the courts had generally recognized after Commonwealth v. Hunt in 1842.

An important Court decision in 1921 laid to rest any question of the value of the Clayton Act to union organizing. In the Duplex decision of the U.S. Supreme Court, the Court ruled against the International Association of Machinists (IAM). The IAM, in seeking union recognition and bargaining rights, had pressed boycotts against the products of Duplex Printing Company of Battle Creek, Michigan. The
high Court ruled that the boycott was illegal under the Sherman Antitrust Act.\textsuperscript{2}

Throughout the 1920s, the lower courts (and even the Supreme Court) frequently used the Sherman Antitrust Act to enjoin union organizing activity. Furthermore, prior to 1921 the federal courts restricted the application of the antitrust law against boycotts in general and against strikes in the railroad industry, but after 1921 they widened the application to include ordinary strike activity undertaken in all kinds of industries.

Another popular ploy of employers during the late 1800s and early 1900s was to have employees sign individual contracts of employment prohibiting them from joining or acting in behalf of unions. These contracts were dubbed by union organizers as "yellow-dog" contracts. Under the pretense of freedom-of-contract principles (one of the principles underpinning the criminal conspiracy doctrine), employers would use the contracts as effective deterrents to union organizing. When union organizers attempted to organize an employer's workforce, the employer would seek an injunction against the organizers. Union organizers, it was argued before the courts, were attempting to cause employees to "breech" their private contracts with the employer.

In spite of the fact that several states passed laws and the U.S. Congress passed the Erdman Act in 1898 that forbade employers in the railroad industry from executing yellow-dog contracts, their use became quite widespread—especially after the Supreme Court ruled in 1908 that such contracts were legal.\textsuperscript{3} Here, the United Mine Workers (UMW) attempted to organize the workers of Hitchman Coal and Coke Company in West Virginia. Aware that the Hitchman employees had signed yellow-dog contracts as a condition of employment, the UMW organizers attempted to get workers to "agree" to union representation, but not actually join the union per se. The union's strategy was to convince a majori-
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A majority of workers to agree to union representation and subsequently call a strike for recognition. The Court ruled, however, that the union was still attempting to convince workers to breach contracts, which the majority of the Court believed workers entered into on a "voluntary" basis.

What this meant to collective bargaining and unionization was indeed profound. Faced with an organization campaign, the employer made the execution of the yellow-dog contract a condition of employment. In periods of less than full employment, workers would be economically coerced into the agreement. The employer then applied for an injunction restraining any person who might encourage workers to join a union. Any disobedience to the injunction was punishable as contempt of court. (Taylor and Witney, 1983, p. 45)

Injunctions against union organizing and collective bargaining activity had become so widespread in the early 1900s that the period has generally been characterized as "government by injunction." Our brief review of the era of injunctions, however, would not be complete without referencing the historic "Debs" case. In that case, the American Railway Union in 1894 induced a series of strikes against the railroads. The Union was attempting to force the Pullman Car Company to reinstate a number of discharged union leaders and to negotiate over Pullman's cut in wages. A lower court enjoined the union and shortly after imprisoned its president, Eugene Debs, for violating the terms of that injunction. The U.S. Supreme Court, upon hearing the union's appeal, decided that the use of injunctions was constitutional. Coupled with the blessing of the Court, the national publicity surrounding the strikes invariably popularized the use of injunctions by employers seeking to block union organizing and impede union power in collective bargaining.
Antecedents to the NLRA

Except for a brief period during World War I when President Wilson got a pledge from both labor and industry leaders to avoid strikes and established the War Labor Board to help resolve labor disputes, it was not until 1926 that the federal government successfully intervened to promote industrial peace, support collective bargaining, and protect workers' rights to organize. That government initiative was embodied in the Railway Labor Act of 1926. The Act, albeit limited to the railroads, stands as a major precursor to and model for the NLRA that followed in 1935. Congress, in enacting the Railway Labor Act, sought labor-management peace in the railroad industry. The assumption was that the process of collective bargaining could bring that peace and that procedures for mediation and arbitration of disputes could facilitate any necessary resolution of disputes. Of greater interest to our present inquiry, the framers of the 1926 Act presumed that nonunionized workers would elect representatives for collective bargaining. It had become apparent that many carriers had established "company unions" to "represent" the interests of the workers. But these company unions were effectively controlled or dominated by company officials. They had no affiliation with union organizations outside of the company and the company restricted negotiable issues. The legitimacy of the company union practices under the Railway Act was soon tested in the courts. The Brotherhood of Railroad Clerks charged that the Texas & New Orleans Railroad had violated the new law because it would not recognize and bargain with them. Instead, the railroad had established its own company union, the "Association of Clerical Employees - Southern Pacific Line." Upon reaching the high court in 1930, to the surprise of many, the Court ordered the railroad to cease its interference with the right of workers to select their own union representatives. The Court, therefore, also upheld the constitutionality of the Railway Labor Act. And although the law was thwarted by continued use of company
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dominated unions until further amended in 1934, the Supreme Court’s decision was a historic moment in labor relations law. For the first time, the Court had recognized the right of the federal government to enact legislation intended to protect workers’ rights to self-organization and to encourage collective bargaining.

After the Railway Labor Act of 1926 had been enacted, Congress was apparently in the mood to legislate away some of the inequities imposed by the courts upon labor-management relations. In 1927, public hearings over an anti-injunction bill were begun. In 1932, the Norris-LaGuardia Act was enacted, which had been constructed to greatly curtail the use of injunctions against union organizing and collective bargaining. The Act very clearly stipulated that the courts were to leave unions free to strike, to picket, and to boycott. Only in cases where violence or fraud were present or union activity fell outside the scope of a very broadly defined “labor dispute,” were the courts free to enjoin union related activity. In addition, the Norris-LaGuardia Act made yellow-dog contracts unenforceable in the courts. Again, to the surprise of many, the U.S. Supreme Court upheld the constitutionality of that act.

A further legislative development that was to serve the union movement was passage of the National Industrial Recovery Act (NIRA) of 1933, a cornerstone of President Roosevelt’s general New Deal plan to bring the country out of the depths of the great depression. Section 7(a) of the NIRA is of particular interest here, as it had the purpose of protecting the rights of workers to form or join unions of their choosing and to engage in collective bargaining. The underlying purpose of Congress in Section 7(a) was to increase the purchasing power of workers and consequently help the recovery of U.S. industry. Congress, however, failed to spell out what was legal or illegal behavior. Nor were any mechanisms provided to interpret the intent of Section 7(a) or provide for its enforcement. A wave of union strike activity occurred that summer, which apparently prompted
President Roosevelt to create the National Labor Board to interpret and enforce the new law. However, over the next year it became quite evident that the labor board could not effectively execute the law against employer recalcitrance and union impatience. Frustrated by the labor board’s inability to implement the law, Congress formed a new labor board in 1934. But, again, the labor board failed to be effective—it simply could not enforce its rulings (Taylor and Witney, 1983, pp. 166-174). Soon thereafter, the NIRA was held unconstitutional in its entirety by the U.S. Supreme Court (1935).6

The National Labor Relations Act

Exactly one month after the ruling by the Supreme Court, Congress overwhelmingly passed the National Labor Relations Act, popularly called the Wagner Act after its primary sponsor, senator Robert Wagner. Considerable work had gone into drafting the Wagner Act in the months before its passage. Having witnessed the struggle and inability of the labor boards under the NIRA to protect the rights of workers to self-organization and collective bargaining, congressional leaders under the guidance of Senator Wagner foresaw the need for separate and clearly articulated legislation. That legislation, it was also believed, would need a labor board that could turn to the courts for enforcement.

To accomplish the broadly stated objectives of the NLRA, which declared that “employees shall have the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their choosing, and to engage in concerted activities for the purpose of collective bargaining,” five unfair labor practices (ULPs) were spelled out.7

1. Employers could not “interfere with, restrain, or coerce employees in the exercise of their rights.”

2. “Domination or interference with the formation or administration of a labor organization or contribution of financial or other support to it” was forbidden.
3. Employers could not discriminate "in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in a labor organization."

4. Employers could not "discharge or otherwise discriminate against an employee because he has filed charges or given testimony under the act."

5. Employers could not "refuse to bargain collectively with the representatives of employees duly chosen pursuant to other provisions of the act."

A three-member National Labor Relations Board (NLRB) was established to interpret and enforce the Wagner Act. By hearing charges against employers in violation of the five broadly defined ULPs stated in the Act, the NLRB was charged with making explicit those specific employer practices that were prohibited under the law. After an investigation into the merits of a complaint, the Board would order the employer to cease and desist his unlawful activity if they found the employer in violation of the Act. In addition, the NLRB was to fashion appropriate remedies (but not penalties) where necessary. In order to enforce the Board's rulings and remedies associated with ULPs, the Board could call upon the Circuit Courts of Appeal to direct employers to abide by Board decisions and orders. In chapter 2, we will examine in depth the procedures and practices of the NLRB with respect to union organizing and first-contract negotiations.

Passage of legislation and effectuation of its purposes are frequently two separate accomplishments. With respect to the passage and effectuation of the Wagner Act, little could be closer to the truth. On one hand, there was widespread defiance of the Act. Employers who were willing to go to great lengths to undermine union organizing and collective bargaining before the Act were no less willing to do so after the Act. Indeed, it appears that many employers were even more willing to resort to underhanded practices in order to skirt the law. On the other hand, the NLRB was also
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swamped by suits against its own investigative and enforce-
ment responsibilities.

By February 1936 District Courts had granted nearly forty temporary injunctions. Of eleven cases already decided the courts had ruled against the government in five. Some district judges enjoined the board even from holding hearings, the basic preliminary procedural step. (Auerbach, 1966, p. 55)

It appears that these suits against the NLRB were generally based on questions of constitutionality. Many employers and their legal counsels simply believed the Wagner Act was unconstitutional and hence openly defied it. The principle of freedom-of-contract, it was held, was being abridged. Furthermore, the one-sidedness of the Wagner Act, wherein no ULPs by unions were promulgated, rubbed salt in the wounds of hardened anti-union employers but also disturbed more fair-minded employers and less interested parties.

It became quite clear that until the Supreme Court ruled favorably upon the constitutionality of the Wagner Act, the NLRB would have little effect upon enforcing its provisions. Employers therefore continued to discriminatorily discharge or refuse to hire union activists, maintain community-wide blacklists against union activists and sympathizers, refuse to recognize unions, maintain company unions, close plants in response to unionization, refuse to bargain in good faith when so ordered by the NLRB, enlist professional strike-breaking companies, and even stockpile munitions in factories. Perhaps most appalling to the general public was the widespread use of professional spies hired to infiltrate unions, to identify union sympathizers and monitor union strategies with regard to organizing, negotiations, and other concerted activity. Some spies went so far as to take over the leadership of local unions; their mission was to cause internal union strife and break up organizations.

This invidious display of employer animus toward unionization was brought to light during the LaFollette
Committee hearings which began in 1936. The decision to conduct the LaFollette hearings was in large part a response to the findings of investigations conducted by the NLRB in its earliest months of operation, findings that demonstrated to proponents of the Wagner Act that the purposes of the Act and the role of the NLRB were, without doubt, being undermined.

Although the LaFollette Committee investigated the abridgement of civil liberties other than in union-management relations, in its first year of hearings it detailed anti-union practices of industrial espionage, intimidation of union activists by armed private police, professional strikebreaking, and the stockpiling of munitions on company premises.

These accoutrements of industrial strife represented the underside of industrial relations. Their frequent use convinced the LaFollette Committee that management was conducting 'a colossal, daily drive in every part of the country to frustrate enunciated labor policy. . . .' (Auerbach, 1966, p. 97)

Although the LaFollette Committee made it quite evident to the public that workers were being denied the right to self-organization and collective bargaining (in the most disdainful of ways), it was not until the Supreme Court (in February 1937) ruled upon the constitutionality of the Wagner Act that the NLRB was able to begin effectuating the law. In that historic decision, probably the most important Court decision in U.S. labor history, the Court examined both the issue of the Act's jurisdiction with regard to interstate commerce and whether or not the potential of labor-management strife affected the free flow of commerce. The facts of the case dealt with the discriminatory discharge of 10 union members involved in organizing activities associated with a plant owned by Jones & Laughlin Steel Corporation. The NLRB had found Jones & Laughlin in violation of Section 8(a)(3), which forbids discrimination against employees for union
activity. The Supreme Court’s decision rested largely upon the following arguments.

The steel industry is one of the great basic industries of the United States, with ramifying activities affecting interstate commerce at every point. . . Instead of being beyond the pale, we think that it presents in a most striking way the close and intimate relation which a manufacturing industry may have to interstate commerce. . .

Discrimination and coercion to prevent the free exercise of the right of employees to self-organization and representation is a proper subject for condemnation by competent legislative authority. Long ago we stated the reason for labor organizations. We said that they were organized out of the necessities of the situation; that a single employee was helpless in dealing with an employer; that he was dependent ordinarily on his daily wage for the maintenance of himself and family; that if the employer refused to pay him the wages that he thought fair, he was nevertheless unable to leave the employ and resist arbitrary and unfair treatment; that union was essential to give laborers opportunity to deal on an equality with their employer. . .

Amendments to the NLRA

The evidence indicates that after the question of constitutionality of the Wagner Act was settled, union membership rose at an unprecedented rate, rising from some 4 million members in 1936 to roughly 15 million in 1947. The years following the Wagner Act, however, were not necessarily peaceful ones and it became more and more apparent that unions—not unlike employers—were willing to commit unpalatable labor practices. With substantially greater power, unions were able to engage in strikes and boycotts far more effectively than any time in American history. With this
power and its exercise in full public view, the public became more aware of its abuses. For instance, John L. Lewis, the powerful president of the United Mine Workers publicly defied President Roosevelt and the National War Labor Board in 1943 when he steadfastly refused to order the mine workers back to work during World War II. Ironically, further abuses stemmed from the rivalry between the AFL and the Committee for Industrial Organization (CIO). The CIO had embarked successfully upon organizing basic industries, such as steel and autos, with the purpose of organizing all skill levels. The AFL, however, wanted all craft workers in these industries under their own umbrella. Unanticipated by the proponents of the Wagner Act, the two powerful organizations clashed and often fought bitterly over jurisdictional rights. The clash between the AFL and CIO tied the hands of many employers caught in the middle of strikes and boycotts over these jurisdictional disputes; workers, too, were caught in the middle.

Other abuses arose as unions utilized strikes and boycotts against employers not directly involved in given labor disputes, attempted to impose "closed shop" agreements on disinterested employees (i.e., all workers must join the union before being hired), and discriminated against black workers. With the election of many Republicans to the U.S. Congress in 1946, coupled with an unprecedented wave of strike activity during the same year and a public impression that unions were being infiltrated and controlled by communists, the stage was set for a major change in the Wagner Act.

Passed over the veto of President Truman, the Taft-Hartley amendments to the NLRA were signed into law in 1947. The focus of these amendments was upon union unfair labor practices. For the most part the employer ULPs contained in the Wagner Act were not altered. Instead, the general intention of Congress was to balance the NLRA, checking the power of both unions and employers and, in turn, promoting the peaceful resolution of labor-management conflict.
As stated in a declaration of policy of the Taft-Hartley Act:

It is the purpose and policy of this Act, in order to promote the full flow of commerce, to prescribe the legitimate rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other, to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce, to define and proscribe practices on the part of labor and management which affect commerce and are imimical to the general welfare and to protect the rights of the public in connection with labor disputes affecting commerce.

The heart of the amendments read:

"It shall be an unfair labor practice for a labor organization or its agents -

(1) to restrain or coerce (a) employees in the exercise of the rights guaranteed in Section 7 . . . or (b) an employer in the selection of his representatives for purposes of collective bargaining or the adjustment of grievances . . .

(2) to cause or attempt to cause an employer to discriminate against an employee' for nonmembership in the union unless a union-shop agreement is in effect and the employee fails "to tender the periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership;

(3) to refuse to bargain collectively with an employer . . .

(4) To engage in or to induce or encourage the employees of any employer to engage in, a
strike . . . to use, manufacture, process, transport or otherwise handle” goods with the objective of:

“(A) forcing or requiring any . . . self-employed person to join any labor . . . organization . . .

(B) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees . . .

(C) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees . . .

(D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class . . .

(5) to require of employees covered by an agreement . . .’’ any initiation or admission fees “in an amount which the Board finds excessive or discriminatory . . .’’ and

“(6) to cause or attempt to cause an employer to pay . . . for services which are not performed or not to be performed . . .’’

In addition to the above unfair labor practices, the Taft-Hartley Act amended the NLRA in several other important ways which are of special interest to our inquiry about union organizing and first-contract negotiation outcomes. First, under Section 7 of the Wagner Act, the following clause was added in order to make it clear that workers could refrain from forming, joining, or assisting unions if they so desired, except where a legitimate union-shop agreement had been made: “Employees . . . shall also have the right to refrain from any or all such activities.’’ Second, Section 14(b) allow-
ed states to establish so-called right-to-work laws, whereby no employer and union within the given state could enter into union-shop agreements (i.e., workers must join unions after being hired). Hence, in states passing such legislation, workers under a collective bargaining agreement were still free not to join the union. Unions, however, still would be required to represent fairly these employees as the exclusive representative of all employees in a given work unit. Finally, the size of the Board was increased from three to five members. The purpose of this change was to better facilitate the speedy handling of representation elections and the resolution of labor-management disputes.

The NLRA was further amended in 1959 with the passage of the Labor-Management Reporting and Disclosure Act, more widely known as the Landrum-Griffin Act. Only Title VII of the Landrum-Griffin Act, however, amended the NLRA. All other titles were promulgated in an attempt to insure union democracy, rid unions of corruption by union leaders and corruption between union leaders and employers, and to regulate the use of union funds. Although there are a number of important amendments under Title VII (especially those closing loopholes involving secondary boycotts), two amendments are especially pertinent to our investigation and those are briefly discussed next.

First, Section 8(b)(7) was added as a seventh union ULP to the six enunciated in the Taft-Hartley Act. The proviso holds that it is unlawful for a union:

to picket . . . or threaten to picket . . . any employer where the object thereof is forcing or requiring an employer to recognize or bargain with a labor organization . . . or forcing or requiring the employees of an employer to accept or select a labor organization as their collective bargaining representative. . . .

The basic restrictions against picketing for recognition purposes are that picketing cannot be conducted (1) for more than 30 days, given that the union files a successful petition
with the NLRB to hold a certification election, (2) if another union has been lawfully recognized as the representative of the employees, or (3) if a valid election concerning union representation has been conducted within the previous year.

Second, cases of discrimination against employees by either employers or unions for union activities or inactivities are to be given priority treatment over all other cases in the regional office in which they are filed, except for cases where the Board is compelled under section 10(l) of the Act to seek injunctions against illegal union strikes, pickets, and boycotts.

Except for bringing the U.S. Postal Service and nonprofit hospitals under the NLRA in 1971 and 1974, respectively, the Act has not undergone any substantive changes since 1959. However, a labor law reform bill that would have included several important amendments to the Act was passed easily in the U.S. House of Representatives in 1977 but failed—by one vote—in the Senate by filibuster. The provisions of the reform bill were aimed at speeding up NLRB procedures and case handling and reducing the incidence of discriminatory discharges and employer bad faith bargaining during first-contract negotiations. Many of the bill's provisions are discussed and evaluated in chapter 4 and hence are not covered in this chapter.

Summary

During the period 1806 to 1932, the federal government allowed, for the most part, the federal and state judiciaries to dictate public policy regarding union organizing and collective bargaining. It is clear that the federal courts were hostile toward union organizing and collective bargaining. Their concerns were primarily with disruption of interstate commerce, freedom-of-contract, and private property rights. The courts initially saw unions as criminal conspiracies under common law and later as monopolies under antitrust legislation; they readily granted injunctions against concerted union activities and enforced yellow-dog contracts.
Although the U.S. Congress passed legislation to give workers limited rights of organizing and collective bargaining (i.e., the Erdman Act, Clayton Act, and Railway Labor Act) it was not until the Norris-LaGuardia Act of 1932 was passed by Congress that legislative action successfully blocked the judiciary from handing out injunctions and enforcing yellow-dog contracts. In 1932, the legal environment surrounding union organizing and collective bargaining shifted course from a long period of hostility to one characterized as a hands-off approach. Shortly thereafter, however, with the U.S. Supreme Court ruling favorably upon the constitutionality of the Wagner Act in 1937, the legal environment became one that encouraged union organizing and collective bargaining and in today’s sociopolitical context, ignored the rights of employers and workers not interested in collective bargaining. With passage of the Taft-Hartley Act in 1947, the legal environment then shifted to one of intended neutrality, protecting the rights of workers to decide whether or not they wanted union representation and balancing the power of both unions and employers. Since 1947, that general philosophy of labor relations law has been maintained.

Legal philosophy and its day-to-day realization, however, are frequently at odds. Part of being at odds can be attributed to the fact that parties subject to the law and affected adversely by it, often work hard to successfully undermine it. Disparity between legal philosophy and practice can also be attributed to the fact that the makers of law are unaware that legal niceties often fail to result in anticipated outcomes. With respect to negotiating first contracts, it will be shown in this study that many employers have found efficient and cheap ways to undermine the law. In turn, policy recommendations that obviate some legal niceties are prescribed in an attempt to bring day-to-day practices in line with our legal philosophies.
NOTES