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SYMPOSIUM ON THE NATIONAL LABOR RELATIONS ACT*

THE PHILOSOPHY OF THE WAGNER ACT OF 1935

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THE National Labor Relations Act,¹ commonly called the Wagner Act, is in many respects a statute of constitutional rank. It created a new composite of jural relations, generated a fresh body of laws, and proclaimed a bold and different policy in the area of labor relations. Although it is not technically a part of our Constitution with a capital "C," it has so vitally altered the framework of the American labor scene that it may properly be labeled as part of our constitutional system. It has been described by many as a labor's Magna Carta.

When Congress enacted the National Labor Relations Act, it rooted the new policy in a firm base of justice and fairness which sought to make cooperation between labor and management possible. It chose to avoid direct coercive action by the government in setting rates of pay and other details of employment contracts. It endeavored instead to equalize bargaining power between industrial managements and their

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¹ 49 STAT. 449 (1935).

labor forces, and to leave them free to agree upon terms by the process of collective bargaining. Wages and working rules would be determined by collective agreement and mutual assent. The emphasis of the new policy was laid not on the compulsion of government but on the cooperation of men and women in industry.

The prologue of the Act set forth the broad foundation upon which it was built and the tenor of the new policy. It recited the inequality of bargaining power of employees who did not possess full freedom of association or actual liberty of contract; the depression of wage rates and purchasing power of wage earners and the ensuing burdensome effect on the flow of commerce. It declared it to be the policy of the United States to protect full freedom of association, self-organization, and collective bargaining.³

The Wagner Act and its provisions have often been carefully analyzed and studied. One author has likened it to a human being in that they both have a vital central portion or heart, with the other portions extending to or from the heart and giving and getting life therefrom. The heart of the Wagner Act consists of the right of collective bargaining and its protection. Just as the human heart is divided into auricles and ventricles, so may the Act be portioned into four units comprising the core or "heart." Section seven sets up the fundamental principle that all workers are to have the right to bargain through their own representatives;⁴ section eight effectuates that right by proscribing "unfair labor practices";⁴ section nine delineates the means by which the right to bargain is expressed, that is, voting for their representatives;⁵ and section ten yields the means of preventing the proscribed activities through complaints, charges, hearings, orders, and so forth.⁶

Every student of the science of government knows that legislation of this magnitude must be the product of arduous labors and the slow filtering process of time. This Act had

² National Labor Relations Act § 1, 49 STAT. 449 (1935).

³ *Id.* at 452.

⁴ *Id.* at 452-53.

⁵ *Id.* at 453.

⁶ *Id.* at 453-55.

a long history and evolution but, as is the case with many of our great documents, it required the perspicacity, timing, and devotion of a leader. The Act is an eloquent symbol of Senator Wagner's place in the public life of our country.

It has been said by H. A. Millis, former Chairman of the NLRB and Professor of Economics of the University of Chicago, that the National Labor Relations Act is:

... a law without precedent, in scope or promise, in the history of our Nation. In fact, there has been no similar enactment on the statute books of any other country. It is the product of experience, a fertile mind, and social vision. Both mind and vision belong to Senator Robert F. Wagner, and those he selected to work with him. It is indeed fitting and proper that this law is popularly known as "The Wagner Act."

Senator Wagner's interest in and preparation for the role he would play in 1935 began 30 years earlier in 1905 as a young New York Assemblyman. This interest continued to develop during his service as State Senator (1908), majority leader (1912), and Lieutenant Governor (1913). In those days, the battle centered on workmen's compensation, minimum wages for women, and sanitary factory conditions. Such were the fighting fronts in labor's efforts to attain human dignity and decent working conditions. But this training would not have been sufficient without the intellectual probings into the history of labor and the great examples set forth by the Papal labor encyclicals.

After serving as a Justice of the New York State Supreme Court, to which he was elected in 1918, Senator Wagner went to the United States Senate in 1926—the main arena for his struggles on behalf of labor and the economic stability of the country for all its people.

There is no need at this time to go into the long history of the difficulties which confronted the American labor movement. One need only mention a few of the cornerstones to remind us, lest we forget the bitter struggles—the conviction of the journeymen cordwainers of criminal conspiracy for seeking better pay and working conditions; the famous decision in *Commonwealth v. Hunt*;⁷ the short-lived success of

⁷ 45 Mass. (4 Met.) 111 (1842).

the Knights of Labor; the hard years of the American Federation of Labor under the guidance of a young cigar manufacturer named Samuel Gompers. By painstaking and gradual steps, labor did acquire some semblance of vitality. However, the AFL and other unions could not achieve recognition of collective bargaining by means of legislation or judicial decision and were forced to resort to the industrial weapon of the strike, which affected the economic welfare of the entire nation.

In order to overcome this nationally debilitating economic illness and to balance the disparity of power at the bargaining table, Senator Wagner set about formulating plans for legislation which culminated in the Wagner Act. In the fine tradition of his legal training, his efforts at the outset were not confined to legislation. In 1928, he championed the cause of the AFL in a legal battle which resulted in the outlawing of yellow dog contracts in this State. Then he was instrumental in the passage of the famed Norris-LaGuardia Act⁸ in 1932 which protected labor against the powerful weapon of the federal injunction which was used to stifle labor activities.

He became firmly convinced through observation and study as time went on that industrial peace would ensue only from a recognition of the right of collective bargaining.

Guidance for his program was found primarily in the Railroad Act of 1926⁹ and in his own Section 7-A of the short lived National Industrial Recovery Act,¹⁰ which declared ". . . that employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraints, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection . . ." ¹¹

⁸ 47 STAT. 70 (1932), 29 U.S.C. §§ 101-15 (1952).

⁹ Railway Labor Act § 1, 44 STAT. 577 (1926), 45 U.S.C. §§ 151-64 (1952).

¹⁰ National Industrial Recovery Act, 48 STAT. 195 (1933), declared unconstitutional in *A. L. A. Schechter Poultry Corp. v. United States*, 295 U.S. 495 (1935).

¹¹ *Ibid.*

On March 1, 1934, Senator Wagner introduced the first draft of the National Labor Relations Act and squarely set forth his untiring efforts to achieve the dual ends of economic justice and economic stability.

On May 15, 1935, a full length address opened consideration of a revised version of the bill on the Senate floor. That was indeed a memorable day as his carefully chosen words echoed throughout the solemn Senate chamber. He noted, as dispassionately as he could, the concentration of wealth and the fall in the wage earners' share of the products, and then proclaimed:

If we had succeeded in providing minimum requirements of health and decency for every deserving person in the United States, we might have said that the maldistribution of income was a fair price to pay for our industrial efficiency. But we know that we have suffered from the prevalence of poverty in a land of plenty.¹²

Now was the time when the righteous cry of American labor, presented through its spokesman, would not go unheeded. The bill was passed by the United States Senate by a vote of 63 to 12; it passed the House by a *viva voce* vote, and President Roosevelt added his favor and signature on July 5, 1935.

But the struggle was not over. Assailants of the bill challenged its constitutionality before the United States Supreme Court, and the case was to be decided in the summer of 1937.¹³ While the decision was pending, the Senator continued his untiring efforts. In an address on May 8, 1937, he stated:

Modern nations have selected one of two methods to bring order into industry. The first is to create a super-government. Under such a plan, labor unions are abolished or become the creatures of the state. . . . That is what produces the self-appointed, all-powerful leader. That is how government by the people is destroyed.

The second method of coordinating industry is the democratic method. It is entirely different from the first. Instead of control from the top, it insists upon control from within. It places the primary responsibility where it belongs and asks industry and labor

¹² 81 CONG. REC. 7567 (1935).

¹³ NLRB v. Jones & Laughlin Steel Corp., 301 U.S. 1 (1937).

to solve their mutual problems through self-government. That is industrial democracy, and upon its success depends the preservation of the American way of life.

On the basis of this and other able pleas, and the inherent fairness and legality of the Act, the Supreme Court, on July 12, 1937, sustained the constitutionality of the Wagner Act in the now famous case of *NLRB v. Jones & Laughlin Steel Corp.*¹⁴

It was a great victory. But the practical test of the Act was still to come. Senator Wagner's theory of "industrial peace through freedom" was to meet the challenge of what he called the "slide rule of economic statistics." Many diatribes and much abuse were hurled at the Act and its proponents. Time and time again, he took the floor to defend its accomplishments and with his voice always firm and honest and his quick, steady, and clear vision trained upon the critics of the Act, he would assert:

The question of whether the NLRA is diminishing labor disputes cannot be decided by general statements. It can be measured only by the slide-rule of economic statistics. I challenge anyone to produce an impartial and statistically sound study showing the contrary since the Supreme Court made the Labor Act workable by holding it constitutional.¹⁵

The opponents could not show a study because the test of the Act was fairly met and gloriously passed. In 1938 there were one-half as many strikes, one-third as many workers were involved in them, and one-third as much working time was lost, as compared to 1937. And the accomplishments of the Act continued in the ensuing years.

I could not close without bringing to your attention a portion of an article which Senator Wagner wrote for the *New York Times Magazine* 20 years ago, which so clearly reveals his profound social and political insight into our times:

The struggle for a voice in industry through the process of collective bargaining is at the heart of the struggle for the preservation

¹⁴ 301 U.S. 1 (1937).

¹⁵ 86 CONG. REC. 2774 (1940).

of political as well as economic democracy in America. Let men become the servile pawns of their masters in the factories of the land and there will be destroyed the bone and sinew of resistance to political dictatorship.

The seeds of communism are sown in industry, not in government. But let men know the dignity of freedom and self expression in their daily lives, and they will never bow to tyranny in any quarter of their national life.¹⁶

¹⁶ *New York Times Magazine*, May 9, 1937, p. 23.