

Collective Bargaining, An Interpretation

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the crisis demanded solution. Evasion and vacillation are impotent; for, "he who fights and runs away, will live to fight another day."

The National Recovery Act and its Codes are advanced industrial legislation and may be viewed as a current on which the Ship of State rides between the Scylla of imperial industrialism and the Charybdis of dictatorial communism.¹³⁰ There is pressing need to distinguish the progressive and the radical, the constructive and the destructive in the gigantic program of economic rehabilitation. The history of American political and social crises engenders the confidence that necessity will call forth another John Marshall to pilot the Ship of State into the open sea; there are natural rights of civil and organic nature, inherent in the American Constitution and our common law, which transcend and must survive the enactment and enforcement of social and industrial legislation. It is to this problem that the judiciary of the nation is addressed; the society and industry of the future rest in the lap of the lawyers of the United States.

EMIL F. KOCH.

COLLECTIVE BARGAINING, AN INTERPRETATION.—When the present administration came into power the nation was in the throes of economic despair. Labor and industry called, from that deep morass of disorganization and self-destruction, for some hand which they might grasp, for some guide by which they could lift themselves from their desperate plight. The administration answered that call. It set up a system that would enable business to regulate itself and by which this ruthless and anti-social industrial warfare would cease; and so the N. R. A. was born.¹

It was soon evident that this regulatory system was threatened by the tendency of one group to raise itself out of the mire by subjecting the other to oppression. To remove this threat a clause was inserted by which these two opposing factions could be placed upon a more equal footing, and by which it could be made evident that the aspirations of both were inextricably bound up, and that one must rise or fall with the other. This idea was embodied in a section of the National Industrial Recovery Act, now famous as §7A, and it is an interpretation of this feature that is here sought to be made.²

The clause as it was written into the N. R. A. is on its face unambiguous. It provides simply, that "Every code shall contain the following conditions:

¹³⁰ LEVINE, RED SMOKE (1932); WELLS, KAPOOT (1933).

¹ N. Y. Times, March 4, 1934, §IV at 5:1.

² N. Y. World-Telegram, Feb. 7, 1934, at 24:1.

“(1) That employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint or coercion of employers of labor or their agents in the designation of such representatives in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; (2) that no employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing or assisting a labor organization of his own choosing and (3) that employers shall comply with the maximum hours of labor, minimum rates of pay and other conditions of employment approved or presented by the President.”³

This is it and nothing more. As simple, plain and open on its face as President Roosevelt thought at first,^{3a} it has created such controversy, caused such dissension in the ranks of labor and industry and been subjected to so vast an amount of interpretation and explanation, that as a result, at this writing there is imminent industrial warfare between labor and capital of so ominous portentions that it threatens to wreck the administration's entire recovery program.⁴ The purpose of this article will be to reconcile the various interpretations, and to give an account of 7A's reception.

To organized labor §7A was a clarion call which aroused a feverish activity upon the part of labor unions to save themselves from a stagnation to which they were slowly but surely sinking, and to cause them to rearm for the conflict.⁵ Labor hailed 7A as its Magna Charta and thought that its fondest dreams were to be turned into verities.⁶ No longer would it be criminal to preach the doctrine of trade unionism, or to solicit members for trade unions; no longer would the howls of the “yellow dog” plague its already fretful slumbers. Labor was free.⁷ It was quick to realize the fruits of its freedom and to rally its forces under the banner of 7A. In a short space of time trade union membership had doubled, while company union workers had increased threefold.⁸

³ N. R. A. Act of June 16, 1933, c. —, 48 Stat. [§7A, 15 U. S. C. A. §707 (a) (1)].

^{3a} BUSINESS WEEK, Sept. 23, 1933, at 7.

⁴ NEW REPUBLIC, Jan. 3, 1934, at 210-211.

⁵ NATION, March 14, 1934, at 291.

⁶ TODAY, Feb. 10, 1934, at 3.

⁷ *Ibid.*

⁸ *Supra* note 6.

Before June 16, 1933—423,945 employees in company unions.

Before June 16, 1933—2,800,000 in trade unions.

Approx. Feb. 10, 1934—1,164,294 employees in company unions.

Approx. Feb. 10, 1934—4,100,000 employees in trade unions.

In contrast to the attitude of labor has been the cool reception of 7A in the camps of industry, for the conflicting views and attitude toward that section have resulted in the complete breakdown in the machinery of enforcement which in turn has necessitated the new Wagner National Labor Board Bill, to interpret and strengthen 7A in the interest of labor and labor unions.⁹

It must be noted, that the N. R. A. provides in §7(b) that the agreements arrived at through collective bargaining shall be encribed in the codes and with the approval of the President shall have the same effect as codes of fair competition in other ways created.¹⁰ To enforce 7A the National Labor Board was called into being on August 5, 1933, to cope with labor unrest and to assure to labor the practical and actual benefit of what it achieved in theory.¹¹ Eighteen Regional Labor Boards were set up at strategic points through the country.¹² It was early seen that the board was pusillanimous in the face of opposition.¹³ On February 1, 1934, President Roosevelt^{13a} issued an executive order which, at that time it was believed,¹⁴ put teeth into the enforcement power of the National Labor Board by giving the board sweeping power to order elections for employee representation upon its own initiative, to supervise the elections and to execute the election mandates. To enforce the elections in all its aspects the board, while itself powerless to act, could refer the case to the national or local compliance board or call upon the department of justice or the attorney-general to institute prosecution actions for violation of the provisions of 7A or the authority of the board. Too, the board could act in furtherance of industrial peace by providing the machinery for conciliation, mediation and arbitration.¹⁵

The national Labor Board did do work of a constructive nature along these lines,¹⁶ but most of that was done before its inherent

(a) Figures of National Industrial Conf. Board.

(b) N. Y. Times, March 4, 1934, VIII, at 2:7.

(c) Pres. Green of A. F. L. estimates an increase of from 1,500,000 to 2,000,000 in labor union membership in the months of June to October, 1934.

⁹ N. Y. Times, March 11, 1934, §IX at 1:8.

¹⁰ *Supra* note 3, §3 (a).

¹¹ *Supra* note (5).

¹² *Supra* note (1), §VIII at 2:8.

¹³ *In Defense of Labor*, NATION, Feb. 14, 1934.

^{13a} Amendment of executive order No. 6,580 of Feb. 1, 1934.

¹⁴ U. S. NEWS, Feb. 5, 1934, at 1:1.

¹⁵ *Ibid.*

¹⁶ The Regional Board for New York, while calling for broader powers of subpoena and realizing the imminence of trouble, stated that as of Feb. 1, 1934, out of 234 strikes called, the regional board had settled 181 and averted 35, and had obtained the reinstatement of 1,793 workers and had handled cases involving 97,913 employees.—N. Y. World-Telegram, Feb. 27, 1934, at 13:2.

weaknesses had become obvious, and before both labor¹⁷ and industry¹⁸ had begun a wholesale revolt from the ranks.

The board's inaction has been condemned by laboring groups for their dilatory tactics which served to strengthen their traditional enemy, the company union, thereby lessening the chance of the unions for success. Such procrastination (until the machinery of arbitration could be set in motion) gave the employer the opportunity to carry on influential campaigns against the labor unions.¹⁹

The "opposition," if it can be called such, to the National Labor Board by labor groups was not because the aims and ideals which 7A and the National Labor Board were created to accomplish were inimical to their best endeavors, for just the contrary is true, but rather because the board's weakness stood in the way of the attainment of its good intentions. The Labor unions saw "what was held up to them as a new charter being treated as a scrap of paper."²⁰ On the other hand the antagonism of industrial groups was engendered by real differences of opinions, by positive incompatibility of interest, and because of what 7A promised to labor.²¹

The National Labor Board's authority has been constantly challenged²² even as to the authority of the regional boards in ordering elections to choose representatives of the employees in collective bargaining proceedings.²³ Employers have intimidated employees,²⁴ have threatened to discharge, and have discharged those participating in the elections,²⁵ and have posted evasive notices as to the rights of employees to organize.²⁶ Nor have these violations been purely local, for the American Federation of Labor charges that there is a nationwide conspiracy afoot to thwart the very spirit and purpose of the collective bargaining provisions of 7A.²⁷

What are the causes of these startling violations of authority? There has been a criticism of the personnel of the board itself. Its members have been accused of showing a lack of interest in its work,

The work of the National Labor Board was commended by President Roosevelt (in a letter to Chairman Wagner), who took occasion to express his appreciation of the board in furtherance of the administration's ideal of industrial peace.—N. Y. Times, March 5, 1934, at 6:7.

In March the average of cases settled was 80%.

In February the average of cases settled was 69%.

Cases pending in March were 531, an increase of from 18 to 26 per cent.

Of over a million workers whose affairs have been dealt with, 750,000 have had their disputes adjusted.

¹⁷ *Supra* note 13.

¹⁸ N. Y. Times, Feb. 9, 1934, at 1.

¹⁹ *Supra* note 13.

²⁰ N. Y. Herald Tribune, March 5, 1934, at 1.

²¹ *Supra* note 6; N. Y. American, March 7, 1934, at 1:8.

²² *Supra* note 2.

²³ N. Y. Post, Feb. 28, 1934, at 7:1; N. Y. Times, Feb. 10, 1934, at 1.

²⁴ N. Y. Herald Tribune, Feb. 28, 1934, at 11:1; *supra* note 1, at 20.

²⁵ N. Y. Post, *supra* note 23; N. Y. World-Telegram, Feb. 28, 1934, at 11:1.

²⁶ N. Y. World-Telegram, Feb. 2, 1934, at 21:8.

²⁷ N. Y. Times, Jan. 30, 1934, at 13:3.

and of failing to attend to its business and to its meetings because of other immediate duties.²⁸ Too, the board is composed of a bi-partisan rather than a non-partisan membership, and instead of a conciliating and compromising attitude in the formation of its policies, the factional interests come to the fore.²⁹ This defect has been partly met by the executive order of the President increasing the membership of the board by five additional members, and today there are thirteen members, yet "six represent industry and six represent labor."³⁰

Another difficulty which has lately been overcome was the dependence of the National Labor Board upon the National Compliance Board, which had the power to review the findings of the former, make totally new ones, thus slowing up the wheels of the National Labor Board when speed was most vital, and shearing it of power when strength was its most urgent requirement. Thereupon President Roosevelt, upon the advice of Secretary Perkins and Administrator Johnson, severed the two boards, thus permitting the National Labor Board to make findings of fact which are to be binding upon the Compliance Board.³¹ When we take these defects into consideration with the fact that the board has no power to subpoena, to employ investigating officers, nor to mete out punishment, we see that the board is helplessly shorn of strength.

The result of the increased laxity of enforcement of 7A by the board and, therefore, the consequent restlessness on the part of labor,³² has been a proportionate loss of prestige and respect for the authority of the board, and an attempt by laborers to insure for themselves the benefits guaranteed to them, by their only other alternative when conciliation and arbitration fail, the strike.

In the past few months there has been an epidemic of strikes,³³ the like of which our country has never seen before in a similar period.³⁴ Throughout the nation Craft Unions have been restless and ready to strike.³⁵ In almost every community throughout the nation talk of strikes is prevalent.³⁶ At this writing, in the automo-

²⁸ *Supra* note 13.

²⁹ *Supra* note 5.

³⁰ *Supra* note 1, at 1:3.

³¹ N. Y. World-Telegram, March 27, 1934, at 16:1.

Administrator Johnson says that the National Compliance Board might hold its own hearings and make its own findings of fact whether they coincide with those of the Labor Board or not.—N. Y. Times, March 4, 1934, at 1:3. It appears to the writer that this interpretation by Johnson is untenable in reference to enforcement of 7A, but may be justified under §7 (b) in so far as it relates to code enforcement, for under §7 (b) agreements arrived at through collective bargaining are just as essential a part of the codes as any other sections in them.

³² Edward A. Filene, U. S. News, March 12, 1934, at 12:1.

³³ U. S. News, March 5, 1934, at 12:1.

³⁴ *Id.* at 16:1.

³⁵ *Id.* at 12:1.

³⁶ U. S. News, Feb. 12, 1934, at 12:1.

bile, railroad, coal mining and shoe manufacturing trades, threatened strikes may at any moment disrupt our industrial peace.³⁷ That the future bodes ill is predicted by Code Administrator Johnson who, with his finger on the throbbing pulse of our economic life, predicts that this country will shortly see the "worst epidemic of strikes in our history."³⁸

What was the outlook when first 7A came into being? Its very purpose was to insure industrial peace, and to democratize American industry.³⁹ Eventually, it was hoped, strikes would disappear, for, since labor could compel collective bargaining, there would be no need to resort to war when by peaceful measures labor could achieve the same ends.⁴⁰ Administrator Johnson thought that not only was the strike no longer necessary,⁴¹ but that it was henceforth unlawful, and since it was "economic sabotage" it could not be tolerated. It seems to this writer that under the present set up of 7A and the National Labor Board, the optimistic views of an industrial paradise can not be realized. If labor is promised the right to bargain collectively and that promise is not to be an idle gesture, then the right must be enforced. One can not effectively bargain for anything unless he can give something to, or withhold something from, the other. Labor cannot bargain unless it can strike. Its only weapon is the strike. Take away that from it, and labor has nothing with which to defend itself. A defenseless man or an impoverished one can obtain no advantageous bargain. He must take what is given him and be glad of that, and so if the power of strike is denied labor by 7A, it is shorn of its most essential right. "Nothing in the words of the Act support or require such an interpretation (that the right to bargain collectively implies as a necessary instance the right to strike), let alone the legality of the sympathetic strike or the secondary boycott."⁴² No less an authority than Miss Mary Van Kleeck, director of industrial studies for Russell Sage Foundation, and former section director of the United States Department of Labor, declares that, contrary to the ideas of the President and his associates, the interests of labor and industry are not the same and that what is necessarily to the advantage of one group is not necessarily to the advantage of the other. She maintains that "the liberty of the workers (to strike) must not be curtailed—that workers must have the right to bargain collectively if they feel that

³⁷ NATION, Dec. 27, 1933, at 73:2; N. Y. World-Telegram, March 18, 1934, at 3:1.

³⁸ *Supra* note 32.

³⁹ *Id.* at 16.

⁴⁰ Pierre S. DuPont, Chairman of the N. R. A. Industrial Advisory Board, quoted in LIT. DIGEST, March 3, 1934; Frederick Winslow Taylor, quoted in LIT. DIGEST, Dec. 16, 1933.

⁴¹ Since "labor will secure under the code the maximum of what the particular economic situation permits, and no amount of militant pressure can change the result."—Johnson.

⁴² NATION, *supra* note 37.

they are being wronged. The Government should support them in this and act in a way to end the present distrust."⁴³

When 7A was adopted, it seemed, as we have previously stated, clear and unambiguous. President Roosevelt had stated several times that clause 7A needs no interpretation.⁴⁴ N. R. A. officials have been hesitant about making interpretations of the law, and General Johnson fears that an attempt to change the statute might only increase his troubles in guiding industry; and that the efforts to modify or interpret 7A has been a futile battle from the first.⁴⁵ Others despaired immediately, and imagined that interpretations or explanations would make of this "Magna Charta" a nullity and non-entity.⁴⁶ But we have already seen that 7A in itself could not stand, for it is too vague, and is of little good in its present form.⁴⁷ We have seen how the prevalency of strikes and violations due to the ambiguity of its terms and the weaknesses and ill defined nature of the authority of the board caused its members themselves to call helplessly for legislation to strengthen the board's enforcing arm before it becomes the hated enemy of those over whom it seeks to exercise its jurisdiction. None could doubt the necessity for interpretation after the provisions of 7A were sought to be applied, in spite of the initial hesitancy of the administration.

The first sentence of 7A reads, "Employees shall have the right to bargain collectively through representatives of their own choosing, and shall be free from interference, restraint or coercion of employers of labor, or their agents, in the designation of such representatives in self-organization or in their concerted activities for the purpose of collective bargaining or other mutual aid or protection." Collective bargaining is a system by which employees and employers negotiate by groups instead of individually, to determine working hours, wage scales, and other conditions of employment which effect their mutual interest. The various groups of employees choose certain individuals to treat for all, and agree to be bound by whatever formulae the conference arrives at.⁴⁸

In a joint statement by General Johnson and Donald A. Richberg, on August 23, 1933, the collective bargaining provision was interpreted in part as follows:

"Employers, likewise, can make collective bargains with organized employees or individual agreements with those who act individually * * * but neither employees nor employers are required by law to agree to any particular contract whether proposed as an individual or collective agreement."⁴⁹

⁴³ N. Y. Evening Post, Feb. 10, 1934, at 16:3.

⁴⁴ *Supra* note 3a.

⁴⁵ *Ibid.*

⁴⁶ *Supra* note 42.

⁴⁷ N. Y. Evening Post, Feb. 28, 1934; editorial, col. 1.

⁴⁸ U. S. NEWS, Jan. 22, 1934, at 9:2.

⁴⁹ *Ibid.*

“Does the act when it says employees may bargain collectively mean, that all the employees of a whole industry may bargain as a unit, or only the employees in a restricted locality, or still more narrowly, only the employees of a given company or a given plant or mine? The act does not say. The Supreme Court, in *Duplex v. Deering*, has already held that the words employers and employees, at least as used in the Clayton Act, did not mean employees throughout an industry, but only those immediately concerned. ‘Congress,’ said the court, ‘had in mind particular individual controversies, not a general class war.’ Confronted by superficially similar language, is it unlikely that the court will give these terms a similar individualistic and restrictive interpretation * * * ?”⁵⁰

There is considerable controversy between the administrators of 7A and the unions as to who shall choose these representatives. Shall they be chosen by a majority and be privileged to bind all, or can the various minorities choose their own representatives to bind themselves alone? Thus, in a factory of one thousand workers (if the latter course be chosen), there may be five or fifty or one hundred and fifty or more various collective bargaining committees, sufficient to occupy the employers' time from morning to night, solely in collective bargaining proceedings.

Johnson and Richberg have constantly held to the interpretation that any minority was entitled to a conference for the purpose of bargaining collectively and that individuals were entitled to deal separately.⁵¹ The difficulty of upholding such an interpretation was readily seen. ‘It would strike a death blow at the practice and theory of collective bargaining. It allows the unscrupulous employer to divide the workers against themselves. No real advocate of collective bargaining would argue that a worker should be free to bargain individually after the overwhelming majority of co-workers desire an agreement covering all.’⁵²

The President on February 1, 1934, ordered that in the election of representatives and in the negotiations which follow, the representatives chosen by the majority shall represent all.⁵³ Whereupon Johnson and Richberg issued a joint press release stating that it is a violation of the law on the part of the employer to refuse to deal with the representatives of the majority, but, too, that minorities and even individuals may confer with employees on their own behalf.⁵⁴

On March 3, 1934, a decision was handed down by the Petroleum Administration Board which confirmed the view of Johnson

⁵⁰ *Supra* note 42.

⁵¹ N. Y. Times, March 5, 1934, at 2:1; *id.* March 2, 1934, at 8:4.

⁵² Sen. Wagner, N. Y. Evening Post, March 1, 1934, at 2:7.

⁵³ N. Y. Times, Feb. 2, 1934, at 8:4.

⁵⁴ N. Y. Times, Feb. 4, 1934, at 25:1.

and Richberg, and saves the theoretical rights of minorities, but gives a more practical interpretation of the controversy. When spokesmen for the majority arranged a collective bargain it was to bind all, unless the minorities complained. They certainly would not complain that they were getting too much, and, of course, if they felt themselves slighted or unfavorably treated, they would be given fair treatment, but "it is regarded as hardly likely that a decision would be fair if it allowed the minority to chisel under the standards set by the majority."⁵⁵

Who are the "chosen representatives of the employees"? In case of a highly unionized industry, the union was designated as the representative of the employees. But in cases where there are company unions and trade unions side by side, one may refuse to deal with the other. The railroad industry, which has a collective bargaining provision similar to 7A, has decided that whenever a controversy shall arise and the need for collective bargaining becomes apparent, the administrative authority, similar to our National Labor Board, holds an election to ascertain who the representatives are to be, and those chosen at that election act for all and bind all groups.⁵⁶

Another important question which arose out of the difficulty of interpreting 7A has been settled partially by the courts. That question was whether an employee who goes out on strike, thereby leaving his job and being taken off the payroll, may vote in the choice of representatives for a collective bargain. "Where the majority of the employees are members of a particular union, or desire to organize within a particular union," it has been held they are, although striking, still employees for the purpose of this Act.⁵⁷

There is before Congress at this moment a plan whereby 7A might be transformed from a meaningless scrap of paper to the real Magna Charta which labor had first hoped it might be. That bill was sponsored by Senator Robert F. Wagner, of New York, to tighten the collective bargaining provisions of the law and to make permanent the National Labor Board on a statutory base.⁵⁸ Fully aware of the impotency, the inadequacy and the temporary set-up of the present National Labor Board, and mindful of the fact that the continued challenge by industry and labor of the authority of the old National Labor Board would result in the entire collapse of the Administration Recovery program,⁵⁹ and in the imperiling of the general welfare,⁶⁰ the bill was created to establish an equality of bargaining power between employer and employee and provide the

⁵⁵ *Supra* note 51, at 3:1.

⁵⁶ *NEW REPUBLIC*, Aug. 9, 1933, at 329:1.

⁵⁷ *Fryns v. Fair Lawn Fur Dressing Co.*, N. J. Ch., 168 Atl. 562 (1933).

⁵⁸ *N. Y. Herald Tribune*, Feb. 6, 1934, at 1.

⁵⁹ *Supra* note 4.

⁶⁰ *Supra* note 2, at 24:1.

Labor Board with power to deal with problems over which it is forced to exercise jurisdiction.^{60a}

True collective bargaining is being nullified by the efforts of company unions; organizations whose membership is limited to employees of a single company under the "guiding" spirit, financial support and dominance of the employer himself.⁶¹ What a sham this could be if unscrupulously administered is self-evident, for it deprives workers of the wider co-operation essential to cope with the methods of exploiters and denies them the opportunity to truly present their own views. How quickly the company unions sprang into being we have already seen. How like unto Jason and the dragon's heads it was, for as quickly as Jason cut off the dragon's heads, just as quickly did two new heads spring forth; and as speedily and as strenuously as labor battled to achieve its victories, just twice as quickly did company unions, like dragon heads, rise to plague it.⁶² In all fairness to the company unions it must be said that they exercise some very valuable functions: that of promoting group welfare activities and of improving personal relations. It is argued that company unions have their place in avoiding disturbances,⁶³ but tranquility may exist side by side with injustice and exploitation, and where industrial slavery is bought at the price of peace, peace is too costly. Nor have the advocates of company unions demonstrated that their proposition of peace is true, for our present state of industrial unrest exists because of the failure of employers to observe the spirit of 7A, in advancing the company union as the employees' sole representative in collective bargaining.

Through trade associations and chambers of commerce, employers have been able to pool their information and resources and act concertedly in the attainment of favorable legislation and in shaping public opinion. Unless labor is organized under their own leaders, and permitted to unite for the same purposes, no equality exists. When an employee of a particular company has to haggle and argue for his group and against his employer, since their interests necessarily conflict,⁶⁴ the danger to the continuance of the source of his livelihood is apparent. Besides the threat of company unionism to industry which he seeks to avert, Senator Wagner wants to

^{60a} N. Y. Evening Post, March 2, 1934, at 2:6.

⁶¹ Sen. Wagner, N. Y. Times, Feb. 4, 1934, §IV at 5:8.

⁶² The number of employees covered by Company Unions rose from 432,000 in 1932 to 1,164,000 in 1933, representing a gain of 169%. More than 69% of the Company Union schemes now in existence have been inaugurated in the brief period since the passage of the recovery act.—Sen. Wagner, N. Y. Times, March 11, 1934, §IX at 1:2&3.

In furtherance of a "conspiracy by many employers to defeat the very cause and spirit of the N. R. A. so far as it concerns the right of workers to join unions of their own choosing * * *."—Pres. Green of A. F. L., N. Y. Times, Jan. 30, 1934, at 1.

⁶³ Edward T. Weir, N. Y. Times, Jan. 6, 1934, at 22:1.

⁶⁴ Mary Van Kleek, N. Y. Evening Post, Feb. 10, 1934, at §II:1.

settle the majority-minority conflict in relation to the choice of representatives for collective bargaining, and to reaffirm the duty resting upon the employer to receive and recognize the duly elected representatives. A consideration of the bill itself would not be amiss here.

After setting forth the importance of equality in bargaining strength to the free flow of commerce,⁶⁵ a section is devoted to reaffirming the privileges secured to labor under 7A,⁶⁶ and to defining unfair trade practices as acts impairing those privileges.⁶⁷ Employers may not refuse to deal with employees' representatives,⁶⁸ engage in union activities,⁶⁹ nor contribute to the support of any labor organization (company union).⁷⁰ The closed shop may be maintained for periods of not more than one year, if such an agreement has been arrived at by the employer and the labor union representing at least a majority of the employees.⁷¹ These provisions may be enforced by injunction proceedings in equity in the district courts but solely at the request of the Regional National Labor Boards.⁷²

Title 2 provides for a permanent Labor Board of seven members appointed by the President, two representing the employers; two, the employees; and three acting on behalf of the public. The bill recognized the weaknesses of the old National Labor Board as to the conflicting interest and duties of its members and their consequent inability to devote their whole time to their work, by prohibiting the three representatives of the general public from engaging in any other business,⁷³ and fixing definite tenures of office and salaries for them.⁷⁴

The board is empowered to act as mediator in labor disputes,⁷⁵ hold public hearings,⁷⁶ make findings of fact and issue appropriate orders.⁷⁷ It may call upon the district courts to enforce such decrees,⁷⁸ but the board's proceedings may not be stayed by the injunctions of any court.⁷⁹ In arbitration proceedings the board may act upon the request of any interested group, and the agreements so reached are binding upon the submitting party.⁸⁰ The Supreme Court of the District of Columbia may make an order confirming the awards so made, upon the petition of any party to the arbitration

⁶⁵ WAGNER NATIONAL LABOR BOARD BILL §2.

⁶⁶ *Id.* §4.

⁶⁷ *Id.* §5 (1).

⁶⁸ *Id.* §5 (2).

⁶⁹ *Id.* §5 (3).

⁷⁰ *Id.* §5 (4).

⁷¹ *Id.* §5 (6).

⁷² *Id.* §6.

⁷³ *Id.* §201.

⁷⁴ *Id.* §202A.

⁷⁵ *Id.* §204A.

⁷⁶ *Id.* §204B.

⁷⁷ *Id.* §204C.

⁷⁸ *Id.* §204D.

⁷⁹ *Id.* 204F.

⁸⁰ *Id.* 206A.

proceedings⁸¹ or may vacate the order if the National Labor Board exceeded its powers, or so imperfectly executed its task as not to reach a mutual and definite award.⁸²

Who are the representatives of the employees is a question solely within the jurisdiction of the board when such a controversy might "obstruct the free flow of commerce,"⁸³ but, otherwise, it may merely offer its services in making the determination.⁸⁴ The demands of the regional labor boards for authority to subpoena witnesses and require the production of relevant books and papers has been met by §208 which grants such powers, and provides further that no witness may refuse to testify upon the plea of "self-incrimination," but evidence so compiled may not be used to prosecute him after he has claimed his privilege.⁸⁵ The boards are empowered to make new rules and rescind old ones, in order to carry out their purposes.⁸⁶ The bill seeks to resolve the controversy as to the rights of labor to strike and expressly affirms that "nothing in this act shall be construed so as to interfere with or impede or diminish in any way the right to strike."⁸⁷ It was also resolved that the bill shall supersede any conflicting provisions of 7A and of the codes adopted pursuant to the N. R. A.⁸⁸

While most commentators have long recognized that such legislation was absolutely imperative, nevertheless widespread and powerful opposition has already developed on the part of industry⁸⁹ who see in it possibility for a monopolistic power on the part of labor to strip the employer of the power to bargain effectively or to treat directly with his own employees, and they fear that the bill, if adopted, would foment industrial strife rather than tend to the peaceful settlement of disputes. It is objected that the powers of the board are more drastic than any other agency of the United States Government in peace or in war, and superior even to the courts in respect of compelling the attendance of persons, the production of records and the ability to change its rules as it proceeds.⁹⁰

Another criticism of the Wagner National Labor Board Bill is that the government's espousal of the cause of labor is incompatible with that of industry in so far as the bill makes no mention of unfair

⁸¹ *Id.* §206B.

⁸² *Id.* §206C.

⁸³ *Id.* §207A.

⁸⁴ *Id.* §207B.

⁸⁵ *Id.* §208(3).

⁸⁶ *Id.* §209.

⁸⁷ *Id.* §303.

⁸⁸ *Id.* §304A.

⁸⁹ *Supra* note 5.

⁹⁰ James A. Emery, General Council for the Nat. Assn. of Mfrs. "These groups combined are the largest employers of labor in the country. Their total payrolls exceed in numbers the entire membership of the A. F. L. or any other large Union organization. In their number may be included the automotive, steel and public utility industries of the country."—Brooklyn Daily Eagle, March 2, 1934, at —:3.

practices by labor unions, while the acts of employers are carefully circumscribed. This is in conformity with the general policy of the Administration to encourage unionization and to limit the effects of company unions in order to effectuate the purpose of 7A, and to provide equality of bargaining power and the democratization of industry.⁹¹

A movement is already afoot to bring labor unions under the regulation of the government by obliging them to incorporate and file periodic reports on their operations, for if labor is being coerced by employers, it is likewise subjected to interference and restraint by union officials who sometimes resort to violence and intimidation and oftentimes spend large sums of money illegitimately to prey upon the employees and employers alike. Certainly, if unfair trade practices are forbidden to industry they must also be prohibited to labor.⁹²

Although it is this writer's opinion that the bill in substantially its present form ought to be adopted, since it is the only remedy for 7A's ills that would placate union labor, nevertheless, its passage becomes daily more unlikely. All await the reports as to the success of the Detroit negotiations of the American Labor Disputes Boards before so drastic a change as Senator Wagner desires is adopted. The President himself has made no comment on the bill either one way or the other, and it is to him that the legislators look for a definite labor policy. If the formulæ arrived at in the settlement of the automobile strike is successful (whereby company unions were given the same status as labor unions, and minority groups as well as majorities were represented in shop councils), then little hope can be expected for the passage of the Wagner bill, for its objective is the abolition of company unions and minority representation in collective bargaining proceedings.⁹³

As to the N. R. A. itself, of which 7A is an integral part, President Roosevelt, in his annual message to Congress, said that "though the machinery, hurriedly devised, may need readjustment from time to time, nevertheless I think you will agree with me that we have created a permanent feature of our modernized, industrial structure and that it will continue under the supervision but not the arbitrary dictation, of the government itself."⁹⁴

Should the N. R. A. be deemed unconstitutional (though the trend of the decisions of the courts is towards its constitutionality), it is doubted whether labor will easily relinquish what 7A has so gloriously held out to it or will surrender without a struggle the opportunity to "exercise actual liberty of contract, to secure a just reward for his service and to preserve a decent standard of living."⁹⁵

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⁹¹ (1933) 33 COL. L. REV. 1130.

⁹² William D. Rawlins, in N. Y. World-Telegram, March 2, 1934, at 35:2.

⁹³ N. Y. Evening Post, April 9, 1934, at 12:3.

⁹⁴ January 3, 1934.

⁹⁵ *Supra* note 65.