The Fight Over Jobs, 1877-2024

An Accounting of Events Distorted, Suppressed or Ignored

Fred Siegmund

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Preface

The Fight Over Jobs, 1877-2024 narrates the confrontations between capital and labor at the bargaining table, on the shop floor, the picket line, the streets, the National Labor Relations Board, the courts, the media, especially the press, and in political debate. Six parts divide the history, further sub divided into twenty chapters, which should be treated as evidence for the discussion and frank assertions made about America's labor and labor relations in Part VII. Part VII, Labor History's Déjà vu, offers arguments, interpretations, conclusions.

I have tried to keep personal interpretations to a minimum in the first twenty chapters to let readers discover the cycles of solidarity, division and defeat in American labor history and form their own opinion about it. At the end of some sections or chapters I sometimes write a sentence or short paragraph that has my personal reaction or response; what I thought when I finished writing what I wrote, but otherwise I try to hold my views on the evidence to Part VII.

Discerning readers read the preface, I know I do. Since a book necessarily reflects the background and personal characteristics of its author it provides the best opportunity to evaluate credentials, standards of documentation, and the open or closed mind of the author.

For credentials I have an undergraduate degree in history and a doctorate in economics. I learned more while making a living with two lengthy stretches of employment as an economics professor specializing in industry and labor economics and as part of a small contracting firm, Job Trends Associates, doing labor market analysis within the Department of Labor's American Labor Market Information System(ALMIS). I entered graduate school thinking economic study would provide an excellent analytical framework in the study of history. However, I found a graduate faculty and an economics profession indifferent to, or downright hostile to, the study of history. Economics education in the United States walks a fine line between social science and physical science: people behaving like molecules.

I accepted the profession as I found it, but never gave up the idea that history and economics go together. As a lonely outlier I pursued my beliefs on the side since professors have time to do such things. Hence, this book became a personal project not funded or influenced by an employer, non-profit association or other outside source of funding. I wrote at a leisurely pace, to put it mildly. I estimate as much as a quarter of the original draft material was typed on an old Swiss portable before I knew I was writing a book.

For documentation, I have adopted the method of documenting blocks of text rather than individual passages as a single note. It allows a reader to follow sources that interest them without having hundreds upon hundreds of notes. They use the full author, title, publisher and date for first citations in a chapter and then an abbreviated citation afterwards.

Americans seldom learn about strikes in their secondary school or college education. More often they bumble into them years later in some other context, as I did. The surprise that follows has generated many book length accounts of

strikes. This book started from these histories. Strike narratives here were written as distillations of these many accounts and with further investigation into their well-documented sources. I lived through later strikes such as J.P Stevens and PATCO as current events, although these more recent strikes have also generated excellent and well-documented books, which I cite.

The rapid advancement of the Internet and the digitizing of books and documents allowed the opportunity to add to these secondary materials by downloading primary material now readily available: Google, Hathi-Trust, Government sites and others. These include the many memoirs of participants, the many congressional hearings, commission investigations and official inquiries cited. Academic journals are available through on-location, university web sites. Newspapers and journals of current events commentary going as far back as the 1840's such as Debows Review and Overland Monthly are available for Internet download. Finally, the extensive labor law narrative derives entirely from primary material; these are the five principal statutes and the study of NLRB and court opinions, all readily available for download. These include all NLRB decisions, and all federal district court, circuit court and Supreme Court rulings.

Open minded investigators should be able to adjust what they write to the evidence they find. I have tried to do that but I have found over the decades that sometimes Americans promote or excuse episodes of barbarity, violence and racial and ethnic discrimination in their executive decisions, judicial review and partisan politics. Those who read here, know in advance, I'm against that.

Part I - Searching for Solidarity – 1877-1913

A house divided against itself cannot stand. I believe this government cannot endure permanently half slave and half free. . . . It will become all one thing, or all the other. Either the opponents of slavery, will arrest the further spread of it, and place it where the public mind shall rest in the belief that it is in the course of ultimate extinction; or its advocates will push it forward, till it shall become alike lawful in all the States, old as well as new – north as well as south.

---------Abraham Lincoln, from his House divided speech June 16, 1858

Many times Abraham Lincoln proved himself the best economist of his day as in the quotation above when he reminded the white community that slavery is also a system of cheap labor that will ultimately debase everyone who works for wages. Historical accounts of slavery concentrate on the ethical and moral objections, but Mr. Lincoln needed votes, which helps explain his appeal to working class self interest.

His words suggest a clear understanding that people who work for wages have common legal, social and economic interests. Since Lincoln's time a few others in politics and the labor movement tried to persuade working people to recognize their common interests, but with limited success. After the civil war southern plantation owners lost the right to own slaves, but they adapted with share cropping and other repressive schemes to maintain the prewar system of cheap labor. Southern white working classes joined in the southern system of oppression, but they lowered their own wages and standard of living in the process. They did not recognize the common interests of labor.

In the struggle for labor rights in the 19th and 20th and 21st century brief periods of economic gain were followed by losses as the courts, business and politicians adapted to restore the supply of cheap labor. Many times the working class divided and some joined in support of repressive and violent tactics used against labor during repeated cycles of unrest. They did not recognize the common interests of labor. It is still so today.

Chapter One - Start with the Great Upheaval of 1877

It is cheap labor, more than any other fact, that most endangers our institutions, cheap labor serving corporate wealth, intent upon nothing but more wealth. Here is where capitalists make the gravest mistake, and the great strikes of the present year should be taken as a wholesome warning. Capitalists consider their direct interest in the cheap labor they hire, and not their indirect interest in the dearer labor that buys what wealth wishes to sell.

----------from the Annals of the Great Strikes in the United States: A Reliable History and Graphic Description of the Cause and Thrilling Events of the Labor Strikes and Riots of 1877, Joseph A. Dacus, editor, St. Louis Republican, 1878

The great upheaval of 1877 erupted as a spontaneous reaction of angry railroad workers mostly unorganized by unions. It was not the beginning of organized labor, or labor law, or labor history, but the actions and reactions of business, labor, the courts and elected officials opened a new age of labor relations. The strikes came during the fourth year of a severe depression that started following the bankruptcy of Jay Cooke's brokerage house and the collapse of Wall Street in 1873. Early measures of industrial production included indexed series of pig-iron production, coal production, cotton consumption, railroad revenues, merchandise imports and bank clearings. The combined index dropped 32 percent. Prices dropped 20 percent. Unemployment in New York reached 25 percent. Depression continued with little relief until 1879. (1)

The years after 1873 generated desperate homeless wandering the streets of American cities amid growing evidence of starvation. On January 13, 1874 15,000 of the hungry and unemployed assembled on Tompkins Square, New York demanding the government create jobs with public works projects. Even though organizers had a permit, city officials responded to public worries of violence and authorized mounted police to break up the rally, which ended in a riot. "All we want is work" organizers told the New York Times; they got their heads bashed instead. (2)

The Great Upheaval

The strikes of 1877 started following a cartel agreement by four major railroads for a second round of 10 percent wage cuts. The Baltimore and Ohio became the last of four major railroads to announce wage cuts on July 11th 1877. Strikes broke out July 16 at Camden Junction, Maryland and later the same day at Martinsburg, West Virginia. Strikes quickly spread to other states and other railroads in a mayhem of disruption and violence concentrated over ten days. Strikes that started in West Virginia, and Maryland triggered more strikes in Pennsylvania, New York, Illinois, Indiana, Ohio, Kentucky, and Missouri. The railroads refused to recognize or acknowledge workers and rejected strike demands as their unilateral prerogative. Railroad officials demanded immediate

police and militia action against the strikes, which city mayors, state governors and President Rutherford Hayes agreed to as their first response. Brute force provoked picketing strikers to disable locomotives, uncouple cars, block tracks and destroy property. (3)

Newspapers favored management and argued the railroads should never give in. Press accounts published comments demanding strikers should be "shot like highway robbers." Women's rights advocate Lucy Stone wrote in the Women's Journal that "The insurrection must be suppressed, if it costs the lives of a 100,000 and the destruction of every railroad in the country." Her comments were published on July 28, 1877 as the strike was winding down so perhaps she was swept up in the hysteria of the moment, but a women's rights advocate might be expected to recognize the common interests of labor and the country. (4)

Before it was all over President Rutherford Hayes, Governor Henry H. Mathews of West Virginia, Mayor Ferdinand Latrobe of Baltimore, Governor John Lee Carroll of Maryland, Governor Thomas Young of Ohio, Governor John F. Hartranft of Pennsylvania, Governor Lucius Robinson of New York, Mayor Philip Becker of Buffalo, Mayor Monroe Heath of Chicago, Governor Shelby Cullom of Illinois, Governor John S. Phelps of Missouri, and Governor John B. McCreary of Kentucky all deployed military forces to do whatever was necessary to break the strikes.

Four Days on the Baltimore and Ohio

At Camden Junction near Baltimore about noon Monday July 16, 1877 forty locomotive firemen and another twenty or thirty brakemen stepped off their trains and refused to work and then hung about the yards to convince company scabs from taking their place. Mayor Ferdinand Latrobe agreed to call in police and three were arrested, charged with threatening to riot. Others working in Baltimore as box makers, sawyers, and fruit can makers joined them in support, but passenger trains and some freight trains continued to run; all remained peaceful.

The same afternoon the strike spread to Martinsburg, West Virginia, another important Baltimore and Ohio rail junction. Locomotive fireman took over trains and blocked tracks in and out of Martinsburg while crowds gathered to cheer them on. When city police in Martinsburg could not keep order, Baltimore and Ohio Vice-President John King demanded troops, but West Virginia could not afford a National Guard. Instead Governor Henry M. Matthews sent volunteers of the Berkeley Light Guard Infantry that arrived the morning of July 17 with Colonel John Faulkner, 75 troops and orders to prevent obstruction of trains.

Thomas Sharp of the B&O tried to move a cattle train out of Martinsburg, but one of the strikers, William Vandergriff, turned a switch to sidetrack the train and then stood guard with a pistol. As the train approached John Poisel jumped from the train to challenge Vandergriff who shot Poisel in the temple, except the ball he shot only broke the skin. Poisel and several others armed with rifles returned fire at close range. Vandergriff collapsed and died later from his wounds, but the scab crew left the train. Colonel Faulkner decided to withdraw his outnumbered men. He complained "Most of them are railroad men and they will not respond.

The force is too formidable for me to cope with."

B & O president John Garrett demanded Governor Matthews call for federal troops. The governor assured Garrett another light guard unit was on its way to Martinsburg. When it arrived Wednesday morning under command of Colonel Robert Delaplain all was quiet even though strikers were on the streets and trains were not running. The Colonel worried the troops might "further exasperate the strikers" and so after delay and deliberation he notified Governor Mathews two hundred federal troops would be necessary. Governor Mathews wired President Hayes: "Owing to unlawful combinations and domestic violence now existing at Martinsburg and other points along the line of the Baltimore and Ohio Railroad, it is impossible with any force at my command to execute the laws of the State. I therefore call upon Your Excellency for the assistance of the United States military to protect the law-abiding people of the State against domestic violence, and to maintain the supremacy of the law."

President Hayes stalled. West Virginia needed to be in a state of insurrection to justify federal troops, while Governor Mathews carefully avoided using the word insurrection in his telegram since there was a strike in Martinsburg, not an insurrection. When John Garrett received notice of Governor Mathews telegram, he wrote directly to President Hayes telling him that West Virginia had done all it could to "suppress the insurrection" and so this "great public highway can only be restored for public use by the interposition of U.S. forces." He went on to warn President Hayes the strike will expand if nothing is done now.

President Hayes owed his job to railroad interests given that Tom Scott of the Pennsylvania Railroad helped arranging the deal to give him the disputed electors in the Hayes-Tilden election. He ordered "all persons engaged in said unlawful and insurrectionary proceedings to disperse and retire peaceably to their respective abodes on or before twelve o'clock, noon, the nineteenth day of July instant, and hereafter abandon said combinations and submit themselves to the laws and constituted authorities of said State …" (5)

When Federal troops under Colonel William French arrived in Martinsburg the morning of July 19th they found 1,500 freight cars and 73 locomotives blocking the tracks but no "riotous crowds." By afternoon they had a coal train ready to leave for Baltimore under heavy guard, but it proved difficult to find a crew. Management offered substantial pay increases to at least five crews, but all refused. The Newspapers reported a scab engineer, known only as Bedford, was about to leave when his wife arrived, mounted the cab, and with "agonizing cries besought him to leave the position." Bedford left his locomotive, but another engineer finally agreed to drive train number 423, which departed Martinsburg late on July 19.

By July 20 officials at Martinsburg declared the strike was over. However, strikes and strikers remained west of Martinsburg at Cumberland, Maryland and at Keyser, Grafton and Wheeling, West Virginia and Newark, Ohio. At Cumberland coal miners, C&O canal boatman and a hellion of young boys, idlers and vagabonds were busy blocking tracks and breaking into freight cars. President Garrett of the B & O met with Governor John Lee Carroll at a Baltimore hotel

to demand Maryland National Guard troops to break the strike at Cumberland. Governor Carroll ordered the 5th and 6th Maryland National Guard regiments to assemble at Baltimore armories in preparation to board a B & O train for Cumberland.

The Baltimore Sun reported strikers in Baltimore "maintained perfect order" in contrast to the serious disturbance" at Martinsburg. By 5:00 p.m. Friday July 20 a troop train was ready at Camden Station to head for Cumberland. Less than half the troops had arrived at the two armories and an impatient Brigadier General James Herbert wanted the City Hall emergency alarm set off to speed up arrivals. It sounded at 6:35 p.m. as the Baltimore working class was leaving work, which brought the curious into the streets around the armories. By 7:30 p.m. thousands filled the streets. The 5th regiment of 250 men marched through and made it to the Depot, but they marched through angry crowds howling abuse and throwing rocks and paving stones; some troops were injured.

Troops of the 6th regiment made several attempts to leave their armory but turned back in a hail of paving stones until finally the troops started shooting. The crowds scattered and several companies of the 6th regiment continued their march to Camden depot with soldiers shooting at the crowds and into restaurants and stores as they marched.

A Baltimore Sun reporter looked on: "The streets were quickly deserted and the detachment passed by the Sun office, still firing random shots over their shoulders with apparent recklessness." By the time troops arrived at Camden station ten civilians were dead with twenty-three more sprawled in the streets with gunshot wounds. Baltimore "looked like a butcher's pen." Two more would die to bring the death toll to twelve.

Some of the soldiers dropped out of the march and got away to change into civilian clothes. Only 59 soldiers of 120 of the 6th regiment made it to Camden depot, but they had to charge through crowds with fixed bayonets to get the last few blocks. Police sealed off the depot, but a crowd of 15,000 roamed into the rail yards and circled behind the station to ransack the telegraph office, and set fire to several passenger coaches. The locomotive crew wisely deserted their train even though militia and Baltimore police were able to get in and protect Camden depot. Rioting continued into the evening but petered out by 1:00 in the morning. Saturday was mostly quiet with minor scuffles.

The two National Guard regiments did not leave for Cumberland. Governor Carroll agreed to request federal troops for Baltimore at the insistence of B & O president Garrett. President Hayes promptly authorized troops. General William Barry at nearby Fort McHenry was ordered to protect Baltimore under orders from Governor Carroll. U.S. Major General Winfield Scott Hancock brought troops down from New York. By Sunday July 22, over a thousand troops with Gatling guns and artillery pieces maintained quiet. Police arrested at least ten for inciting riots. The strike was over in Baltimore by Sunday. Trains started running in and out of Camden station on Monday. It would be several more days before trains would run through Cumberland on the B & O.

Railroad workers complained few of them participated in the Baltimore

riots as the newspapers correctly reported, but it made no difference to Governor Carroll who lectured them: "You are responsible for the violence that his been done whether or not you actually engaged in it or not."

Striking B & O rail crews passed out handbills to publicize their cause. They complained of three hourly wage reductions in three years, a lack of full time work and no pay check on payday: more than a month delay to pay for time worked. Crews were frequently detained in Martinsburg because the B & O would not issue passes to return home by passenger train. They could be stranded for days waiting for a freight train and compelled to pay room and board in company hotels. In some slow months they had no pay at all and could not support themselves or their families working for the B & O. Some of the men could not pay debts and had their wages attached, grounds for dismissal on the B & O R.R.

Another B & O vice president William Keyser answered worker complaints in writing. Rescinding the wage cut would mean "all discipline, all law, and all order would be sapped to their foundations and the principle would be established that a small minority of men, discontented with their real or imaginary grievances, could assume the position that the great mass of their colleagues should be forced into compulsory idleness on their account." (6)

Pennsylvania

News of the B & O strikes spread to Pittsburgh, Altoona, Harrisburg, Johnstown, Philadelphia, and Reading, Pennsylvania. In Pittsburgh many hated Tom Scott and his Pennsylvania Railroad Empire. The city's businessmen "were bitter enemies of the road on account of the discrimination in freights that existed."

Pittsburgh----On Thursday, July 19, right after the second ten percent wage cut, the Pennsylvania RR superintendent at Pittsburgh, Robert Pitcairn, announced single trains would be converted to doubleheaders, effective immediately. Turning two trains into one eliminated the jobs of a conductor, a flagman and two brakemen for each train and made work more dangerous for those who remained. As at Baltimore and Martinsburg, crews stopped work, and took control of switches to block trains in and out of Pittsburgh. Soon sympathetic mill workers, coal miners and the unemployed described variously as tramps, vagrants and idlers showed up at the Twenty-eighth Street grade crossing in a growing crowd of supporters.

Chief clerk of the Pittsburgh Division, David Watt, demanded Pittsburgh Mayor William McCarthy supply ten police to break up the strikers. When he refused Watt found and paid ten recently laid off police officers to go with him in a futile effort to open switches and run trains. Strikers allowed passenger trains to run, but striking rail crews uncoupled and parked freight cars on the tracks to block freight trains. By 5:00 p.m. Watt was back at the mayor's office demanding fifty more police before getting Allegheny County Sheriff Richard H. Fife to take up his cause. Late in the evening July 19 Sheriff Fife climbed on a pile of lumber to speak to the crowds who answered his threats and "go home" orders with hoots and howls.

Pitcairn and railroad attorneys convinced Sheriff Fife to demand National

Guard troops in a telegram to Pennsylvania Governor John Hartranft. He was on a western vacation as a guest of the Pennsylvania Railroad but left written authority to Adjutant General James Latta to act in his place. Latta ordered General Alfred Pearson, commander of the 6th division of the Pennsylvania National Guard, to assemble troops from Pittsburgh to break the strike. The 18th regiment assembled first followed by the 14th, and 19th regiments.

Striking rail crews assembled in mass early July 20 and voted resolutions and a committee of five to present demands. Vice president Alexander Cassett told Robert Pitcairn "Have no further talk with them. They've asked for things we cannot grant them at all. It isn't worth while to discuss the matter further." Nine hundred freight cars sat idle blocking tracks; no trains could pass.

As Friday progressed more strikers and sympathizers joined the crowds at Twenty-eighth Street and east through the yards and tracks out to a depot at Torrens. Rail officials would not restore wages or make any concession, but demanded more troops. Pittsburgh militia units were slow to arrive for duty and rail officials did not believe they could be trusted to fight their striking friends and neighbors. Latta shared their doubts and so called the rest of the 6th division from Harrisburg and shortly after the 1st division from Philadelphia that would arrive on trains arranged by railroad officials. The 1st division had regiments totaling 1,400 troops. Latta and Cassatt ignored local warnings that Philadelphia troops could provoke violence. Cassatt called it the duty of the government to open the road regardless of the consequences.

Early Saturday afternoon July 21, six hundred troops from several regiments of the 1st Division of the Pennsylvania National Guard stationed in Philadelphia arrived in Pittsburgh under command of General Robert L Brinton. Angry mobs at Harrisburg, Altoona and Johnstown stoned both trains that arrived battered with windows smashed out. The "Pittsburgh" regiments already there supported or sympathized with strikers. Rather than break the strike they lounged about chatting with friends and neighbors.

Thousands stood about near the depot and along the tracks: miners, steel workers, mechanics, women, children, tramps, idlers and strikers. All remained calm in mid afternoon when rail officials insisted on moving freight trains. Cassett, and Pitcairn marched with the Philadelphia regiments as they made their way to the rail yards. Troops marched in four columns dragging a Gatling gun. Sheriff Fife and local Pittsburgh police walked ahead to arrest strike leaders after an attorney for the Pennsylvania Railroad prevailed on a state judge to write a warrant for the arrest of fifteen strike leaders.

Crowds estimated from 5,000 to 7,000 hissed and booed marchers marching with fixed bayonets. The march rapidly escalated into violence with Sheriff Fife making arrests and General Pearson deciding "We must clear the tracks." Crowds along the tracks and the surrounding hillsides taunted troops and threw a hail of rocks and debris down on soldiers. Someone apparently grabbed at a soldier's rifle that triggered shooting directly into the crowds. Repeated volleys followed from other soldiers over several minutes killing at least sixteen and wounding at least twenty-seven more.

The eight Pennsylvania House and Senate members who later signed the "Report of the Committee appointed to investigate the Railroad Riots in July 1877" offered their opinion of the shooting. "Your committee have found, from the evidence, that General Pearson did not give the orders to fire, but we are of the opinion that he would have been justified in so doing, and that if he had been present at the time, he would not have been justified in withholding such an order for a moment later than the firing actually occurred. Neither can any blame be attached to the troops themselves."

The shootings provoked an "angry surging tide of humanity" descending on the rail yards. Rioters fanned out through the streets and rail facilities late Saturday evening and into Sunday breaking into gun stores, looting freight cars and setting fires that burned through the night and into the next afternoon. Thousands looked down from the hillsides. The outnumbered Philadelphia troops took refuge in a roundhouse and machine shops. General Brinton had a Gatling gun and artillery in the roundhouse, but rioters were determined to attack it in the early hours of rioting. Rioters stole an artillery piece of the Pittsburgh militia and trained it on the machine shop, but General Brinton drove them off in a hail of gunfire; at least eleven lay in the street dead or wounded. The Roundhouse was at the bottom of a gentle slope and rioters released burning freight cars to coast down the hill into the Roundhouse. Troops trapped there were able to post pickets, derail some of the cars and hose down their roundhouse haven to survive the night.

About 8:00 a.m. fire spread close to the roundhouse making it necessary to evacuate. Troops towed their Gatling gun and marched east on Pennsylvania Avenue in four columns intending to find safety at the United States Arsenal. The still enraged crowds lined the sidewalks and leaned out of windows cursing troops or followed along the march. One had a breech loading rifle and a cartridge belt full of ammunition to shoot at troops. More rioters fell in behind the march exchanging gunfire with troops. Bullets hit soldiers and bystanders alike as the march progressed eastward. When they reached the arsenal the commander there allowed the wounded to stay but worried about more violence and refused admission to the Philadelphia troops. They kept marching east out of Pittsburgh until they reached the relative safety of the Allegheny County workhouse.

Trains did not move in lawless Pittsburgh on Sunday July 22 when the Pittsburgh regiments had disbanded and the Philadelphia regiments were gone, Sheriff Fife stayed home and Mayor McCarthy and the chief of police tried to organize the few scattered police left at station houses. Looting continued in the rail yards as large numbers hauled wagonloads of booty up the hillsides: barrels of flour, barrels of whisky, bales of cotton, crates of fruit, or shoes, clothes, books, and bibles. News of the rioting spread to surrounding areas and more showed up to have a look or join the looters. Thousands jammed the streets "so you could hardly get through."

Fires continued to spread, or be spread, through the day Sunday; rioters cut fire hoses. Rail cars loaded with petroleum and coal helped fuel fires that destroyed 39 buildings of the Pennsylvania Railroad including the depot, a depot hotel, its surrounding buildings, roundhouse facilities along with 126 locomotives,

46 passenger cars and over 1,200 freight cars. Fire left the tracks from the union depot out through the rail yards warped and twisted, ties burned and destroyed.

Fires destroyed other property including a 150 foot grain elevator even though officials complained to rioters it was not owned by the Pennsylvania Railroad, but to no avail; "It's owned by a damned monopoly, let it burn." Crowds cheered as it burned for three hours and collapsed in a heap of rubble. Fires spread and destroyed buildings of the Adams Express Agency, the Pan Handle Railroad freight depot, twelve brick tenements, a blacksmith shop, a cooper shop, a furniture factory, and at least twenty frame houses.

Sunday Governor Hartranft made the call for federal troops. Still vacationing in Wyoming, he wired President Hayes that Pennsylvania needed federal troops to "assist in quelling mobs." In the second he claimed "domestic insurrection already exists in Pennsylvania which state authorities are unable to suppress…"

Rioting petered out by late Sunday evening before federal troops arrived. Monday morning nearly two miles of Pittsburgh lay in smoldering ruins. Some of the dead did not get counted, but the coroner's office reported receiving twenty-four bodies; three were railroaders; five were Philadelphia guard troops. The strike was over in Pittsburgh, but not in Pennsylvania. (7)

Reading—The 1,500 residents of Reading, Pennsylvania who worked for the Philadelphia & Reading Railroad learned what was going on in Pittsburgh from their Sunday paper, the Reading Eagle. As the riots in Pittsburgh were ending Sunday angry crowds started ripping up tracks and vandalizing railroad property. They dumped oil and set fire to a timber truss railroad bridge. Monday they blocked trains and uncoupled cars.

The President of the Philadelphia & Reading Railroad, Franklin Gowen, did not bother contacting civil authorities but had his general manager speak directly to Major General William Bolton of the 2nd division of the Pennsylvania National Guard. Bolton promptly ordered the 4th and 16th regiments to Reading: two hundred and fifty-three troops. It was 7:30 in the evening Monday, July 23 when seven companies of the fourth regiment arrived including one of the companies known as the Easton Grays.

Large crowds blocked a train on the Philadelphia & Reading tracks leading into the Penn depot in Reading. To get to the depot troops from the Easton Grays marched on the tracks through a cut at the bottom of a 30 foot high embankment lined with the bitter and angry residents of Reading. They were armed with piles of rocks and boulders they heaved at the troops below amid a steady stream of taunts and ridicule. There were reports of pistol shots, but injuries were cuts and bruises.

When the Easton Grays made it through the cut and approached the depot and the Penn Street grade crossing they opened fire into the crowds "without a word of warning." Six were killed. At least fifty had gunshot wounds including five Reading policemen. More would die later for a death toll of thirteen. The shooting set off a riot. Rioters set fires, tore up tracks, cut telegraph poles and vandalized

and robbed freight cars. The 16th regiment of the Pennsylvania National Guard arrived the next morning and took over the depot; the 16th regiment refused to shoot rioters who continued to block tracks and make threats to destroy more railroad property.

Federal troops arrived Tuesday to restore order. The troops of 4th and 16th regiments left Reading, but the Easton Grays had to march home; train crews refused transportation. Tracks were repaired and trains ran Wednesday, July 25, the strike was over in Reading. The July 24, 1877 edition of the Reading Eagle, included a brief assessment of the troops. "The shooting down of quiet, inoffensive citizens at Seventh and Penn Streets, and the wounding of good citizens who were standing in the doors of their residences by the militia is little better than cold-blooded murder."

Philadelphia—The Philadelphia Inquirer announced the strikers have "declared war on society." Mayor William Stokely apparently agreed. He refused to allow union groups to hold rallies in support of striking trainmen. Police blocked a meeting hall and clubbed protesters on Tuesday. Wednesday two efforts went ahead to hold outdoor mass meetings, but police broke them up, charging in with Billie clubs. More attempts came Thursday at two locations. Rallies stalled police were so aggressive, but 1,500 assembled at another site before 180 police charged into the crowd with Billie clubs and shut it down. Some of the teenagers in the crowd stayed on the streets and eventually exchanged gunfire with police. An 18 year old was killed. Mayor Stokely maintained no meetings could take place "for the present." (8)

New York

In the state of New York rail crews took over locomotives and blocked tracks on the Erie Railroad at Hornell, New York. The strike on the New York Central and Lake Shore Railroads started at Buffalo before spreading to Rochester, Syracuse and Albany.

Hornell, NY--The Erie Railroad was bankrupt as a result of financial manipulation and looting by Jim Fisk, Jay Gould and Daniel Drew and so controlled by a court appointed receiver named Hugh Jewett. In June, before the July 1 wage cuts, Erie RR workers in the western division at Hornell New York elected a Committee of Fifty to approach Jewett and explore restoring wages and other grievances. Crews were forced to live in one-room company shacks at confiscatory rents. They were forced to pay train fare home after a day's run; management refused them return passes. Jewett claimed he could not restore wages and rejected all demands, but after considering the matter for several days train crews and maintenance workers took a vote to keep working. Then Jewett fired all fifty members of the committee for "flagrant violations of discipline."

On Friday, July 20 the firings and news of the other strikes provoked a shutdown of the Erie RR at Hornell, a place in western New York vulnerable to shut downs as a major transfer point of three branch lines, north to Buffalo, and

east and west. It had a concentration of two hundred working in the maintenance shops and five hundred more engineers, firemen, conductors, brakemen and trainmen in residence.

Word of the strike spread and brakemen, trackmen and trainmen from around New York boarded trains bound for Hornell, hoping to enlarge the strike. The company responded by diverting trains to branch lines and finding ways to keep more strikers away from Hornell, but at least five hundred strikers had freight trains sidetracked at Hornell where 700 cars blocked tracks with cars uncoupled and pins tossed away.

In lieu of negotiations Jewett complained to New York Governor and Erie Board member Lucius Robinson who ordered troops to Hornell: four hundred from the 54th regiment of Rochester and 200 from the 110th regiment of Elmira. A separate train with a load of ammunition and camp equipment arrived later, but there were delays that infuriated Governor Robinson who declared martial law before ordering additional Brooklyn militia regiments to Hornell.

Management attempts to move stalled trains out of Hornell on Monday generated a variety of resistance. Passenger trains with mail cars were sidetracked, the passenger cars detached and passengers stranded; mail cars were allowed through. To keep scab crews from leaving Hornell strikers guarded switches to sidetrack trains and had their wives prepare buckets of thick soap to spread on the tracks of an uphill grade west of town. When a westbound train slowed to a crawl, striking brakemen jumped aboard and set the brakes.

The additional troops left Brooklyn on a train provided by the Erie Railroad. The train had to stop multiple times to repair tracks torn up by strikers, but it finally pulled into Hornell. A thousand troops sealed off the yards and cleared the tracks but there were no crews willing to run trains. Erie management at Hornell agreed to give up rent on company shacks and the Hornell strikers went back to work; trains started running late Wednesday, July 26, after six days of strikes.

Buffalo and Beyond--The strike on the Erie spread to Buffalo, which had ten rail lines into the city including the Erie, New York Central and Lake Shore railroads. Crowds of several thousand surrounded the Lake Shore roundhouse and spent Sunday afternoon blocking freight trains. A single company of twenty-two troops from the 65th National Guard regiment of Buffalo attempted to clear the Roundhouse. An unruly mob howled abuse and tossed rocks at troops who threatened to shoot, but elected to withdraw.

Monday a mob of strikers and sympathizers took over the Erie and Lake Shore maintenance shops and the outnumbered troops could not take them back. Crowds of several thousand blocked tracks, uncoupled cars and pulled crews off stalled trains. Late in the day a passenger train with a coach filled with troops arrived and shooting erupted as rioters swarmed onto the train and exchanged gunfire with soldiers. There were severe gunshot wounds on both sides, but only one confirmed death in spite of reports of counting “nine bodies.” Travel came to a halt on all ten Buffalo rail lines.

Tuesday another mob ranged about town pressing mill, factory and

stockyard workers to join a general strike. Some left work to join the throng but the strike started to lose energy by Tuesday and Buffalo Mayor Philip Becker swore in sixty more police and added a curfew for 10 o'clock. The sheriff added three hundred special deputies and the Grand Army of the Republic supplied volunteers to patrol Buffalo. Governor Robinson did not hesitate to order more National Guard regiments to Buffalo: the 49th regiment from Auburn, the eighth regiment from New York City and the 74th regiment diverted from Hornell. He threatened strikers with prison under state law making it a crime to obstruct rail traffic and offered $500 reward for information leading to convictions.

Troops guarded depots and spread out over nearly ten miles of rail yards east of town while police worked to restore order in town. A mob attempted to burn the New York Central Depot, but police were well enough organized by then to go on the offensive and "Bash 'em" away from the depot. Trains started running by Thursday July 26.

Elsewhere in New York William Vanderbilt shut down rail traffic on his New York Central, but periodically offered pronouncements to reporters camped outside his mansion at Saratoga, New York. "I am proud of the men of the Central Road, and my great trust in them is founded on their intelligent appreciation of the business situation at the present time. If they shall stand firm in the present crisis it will be a triumph of good sense over blind fury and fanaticism."

Pressured further about switchmen and brakemen who earn $.90 a day after repeated wage cuts he replied wage cuts are a "fact of life." … "Intelligent" men on the New York Central know that, "although I may own the majority of the stock in the Central, my interests are as much affected in degree as theirs, and although I may have my millions and they the rewards of their daily toil, still we are about equal in the end."

Strike leaders stalled hoping Vanderbilt would respond to their grievances, but Governor Robinson sent more troops. By July 24, the Third Division of the New York National Guard from Albany, and the Ninth Regiment from New York City had Albany surrounded and officers there pledged to clear the tracks "blood or no blood." The Eighth New York regiment was busy clearing out Syracuse and Rochester. On July 26, Vanderbilt posted notice for New York Central employees to return to work by July 30 or be dismissed.

New York City-----The rail strikes did not make it to New York City, but organized labor officials planned a rally for Tompkins Square on July 25 to show solidarity with strikers. The mayor gave in and granted a permit and then worried it would be a repeat of the 1874 rally. He had the entire police force ready and called out the first and second divisions of the New York National Guard. When the first of nearly 20,000 started arriving they found a large sign posted with the slogan "Don't Unchain the Tiger." A message below counseled non-violence and made it clear the Tiger was a working class mob.

The principal organizer, Justus Schwab, addressed the crowd. "Fellow workman the newspapers have stated we are a mob, incendiaries, and I know not what else that is bad. I ask you by our orderly conduct tonight to disprove

these base and calumnious assertions." Both Justice Schwab and John Swinton of the New York Sun who spoke at the rally recognized the early but growing tendency to label working class gatherings as an unruly and dangerous mob. As the upheavals of 1877 slowed down they wanted to promote collective solidarity while steering the working class to conform to middle class notions of proper behavior.

The needs of the working class during the late years of the 19th century would bring unity and the growth of trade unions, which frightened the propertied classes. The rout of previous riots like the Tompkins Square riot of 1874 encouraged the worriers to feel the contagion that started riots would not infect "the truly honest and well meaning laboring masses." Still over the next twenty years the press would describe labor rallies as potential riots and insurrection.

Over 8,000 police and troops looked on as speakers addressed the crowds; there was no riot, only speeches. One speaker wanted to know why three million unemployed vagabonds on the verge of starvation could expect nothing from President Hayes but "the hangman's rope and the soldier's bullet." (9)

Illinois and Missouri

In Illinois at Chicago thousands gathered for days of street corner lectures, speeches and harangues before a general strike turned into rioting and death. In Illinois at East St. Louis, rail crews voted to strike beginning Monday July 23, which quickly expanded to a general strike in St. Louis.

Chicago-----Chicago was home to the leaders of the Workingmen's Party of the United States (WPUS), a group combined from the European International Workingmen's Party and American socialist and labor parties. Three years of depression brought unity to disparate groups of foreign born: German, Polish Bohemian, Irish, Scandinavian living in ethnic districts. Many were factory workers and many worked outdoors as dock workers, lumbershovers, coalheavers as well as railroad workers. Many could only find seasonal jobs and spent months every year with no employment. In spite of ethnic and philosophical differences representatives agreed to unite during meetings at Philadelphia in the summer of 1876; they would all work as one to improve life for the working class.

The Workingmen's Party had several outspoken and articulate speakers. One was Albert Parsons, a native American living in Chicago. Well before the rail strikes of 1877 the Chicago Tribune decided Parsons was "a parcel of blatant Communist demagogues." On Saturday, July 21, Parsons spoke several times on street corners and at Sacks Hall where he attacked the "railroad kings" and the "capitalist press," which he accused of being spokesmen for monopolies and tyrants. He presented the socialist program and demanded government ownership of railroads.

The Workingmen's Party organized another mass meeting at Market and Madison Streets for Monday evening July 23. Parsons was the third speaker. Thousands of the unskilled and unemployed laborers listened as he denounced the railroads "who compelled their employees to work for ninety cents a day and

expected them to feed and clothe their families." He ripped into the press who never bothered to visit the factories "to see how the toiling millions give away their lives to the rich bosses of the country." He urged them to join the Grand Army of Labor and become members of the Workingmen's party in search of change and a better life.

Parson's speeches and the Workingmen's Party efforts to unify the working class of Chicago horrified city officials and the bosses of Chicago, already worried by the news from Baltimore, Martinsburg and Pittsburgh. Chicago Mayor Monroe Heath worried enough to use emergency procedures to mobilize two regiments of state militia, to authorize the hire of up to 5,000 citizen-deputies in addition to regular police, and advised the "better citizens" to arm in self defense.

The rail strike started Monday evening when John Hanlon, described as "a dark complexioned man with chin whiskers and a pipe in his mouth" convinced switchmen to leave their Chicago jobs on the Michigan Central Railroad, followed by maintenance shop workers and yard crews. Tuesday morning Hanlon and forty strikers roamed through Michigan Central rail yards, shops and buildings attempting to persuade others to leave work. They moved on to the Illinois Central, the Baltimore and Ohio and other rail yards with the intention to shut off freight service.

On Tuesday others joined the rail workers in a mass of five hundred strikers, along with some teenage boys, tramps and vagabonds. By noon they roamed through the streets into the Chicago, Burlington and Quincy yards and then to the Rock Island yelling and hooting to get people to leave work; some hesitated, many left to join the throngs. From there it was on to the stockyards, packing houses, mills and factories through the streets that expanded into a spontaneous general strike that paralyzed rail traffic and brought Chicago commerce to a halt. Officials blamed Albert Parsons, who was fired from his job as a typesetter and then police arrested and grilled him for two hours before advising him to leave town: "You are in danger." The Workingmen's Party stayed focused and announced strike demands including a 20 percent wage increase and an eight-hour day. Several thousand attended another rally Tuesday evening, which was broken up by more than a hundred police. Police did not recognize the Workingmen's Party as a source of order compared to the alternatives.

The alternatives came Wednesday morning July 25 when gangs of fifty to several hundred roamed north side and west side streets attempting to enforce and extend the strike while police and their new deputies demanded everyone go to work or stay home. Police were ready with guns and Billie clubs, but they could not always intimidate the angry, energized crowds that found ways to fight back in what turned into several days of violent street fighting.

At around six in the evening Wednesday 1,500 milled about the Chicago, Burlington and Quincy RR switching yards off West Sixteenth at Halsted Street blocking trains and vandalizing buildings when eighteen police piled out of an omnibus and charged at the crowds, guns drawn. The massive crowd on Halsted Street advanced and forced police to retreat. They retreated on the run until reinforcements arrived and they went back on the offensive, charging and firing

directly into the crowd. A press reporter declared “They faltered not in the least but stood up under fire like war scarred veterans or men resolved to perish for their cause rather than abandon it.” Police wounded nine and killed one; two more would die.

In spite of the shooting and repeated police charges the rioting continued. Mayor Heath wanted federal troops, which Governor Shelby Cullom agreed to request Wednesday afternoon. President Hayes authorized the 9th and 22nd infantry and an artillery unit; six companies of the 9th and two companies of the 22nd infantry arrived late Thursday July 26.

Large numbers of rioters remained through Wednesday night and as many as 3,000 returned Thursday morning stoning streetcars, cutting phone lines and vandalizing property. Between thirty and forty police charged at the crowds on Halsted Street with guns and Billie clubs, chasing them across the Halsted Street viaduct and down a slope toward Sixteenth Street. At Sixteenth Street the police ran into a massive, angry mob of at least 5,000, which surged at the outnumbered police bombarding them with rocks and stones.

The badly outnumbered police fired directly into the crowd. Rioters fell with bullet wounds, but the furious screaming mob had the embattled police isolated and nearly out of ammunition when more police, mounted police and militia troops arrived to carry the fight. Finally, the crowds scattered, mostly south down Halsted Street, fanning onto side streets. Rioters entered Turner Hall at Twelfth and Halsted to escape pursing police who charged in after them to beat rioters, the proprietor, and beat and shoot members of a furniture workers union meeting there. There were many gunshot wounds and broken skulls; at least one at the meeting was killed.

Troops, police and vigilantes totaled 5,000 by late Thursday when the strike and rioting finally petered out; 18 died, officially; none were police or troops, several hundred more were wounded. Trains left Chicago Sunday July 28, with military protection. The rioting in Chicago revealed sharp class divisions. The strike unified the unskilled working class that felt the “aristocrats” and “monopolists” looked down on them as a despised and inferior group. The middle class blamed the strike on drinking and alcohol while those with political power made plans to build an armory and expanded the police and militia. (10)

East St. Louis and St. Louis----On Saturday July 21, members of the Workingmen’s Party took part in a meeting of rail workers in East St. Louis, Illinois. They adopted a resolution of support for the eastern strikers. The impoverished unemployed left their tenements and hovels for bigger gatherings Sunday that turned into a daylong carnival of marching, singing and cheering during a succession of incendiary street speeches. That evening train and track crews had the resolve to call a strike. The men elected an Executive Committee to govern decisions, which started with General Order Number 1: stop all freight trains. They took over the depot, guarded the freight yards against vandalism and banned alcohol.

Monday several of the nine rail lines through East St. Louis offered to

restore wages, but the Executive Committee wanted all lines to settle at once, a decision that turned out to be a mistake. Neither East St. Louis Mayor John Bowman, nor St. Louis Mayor Henry Overstolz had enough police to cope with the crowds and so did nothing, at first. Passenger and mail trains were allowed to pass but no freight trains moved through East St. Louis for several days. However, James Wilson, the receiver of the bankrupt St. Louis and Southeastern RR had friends in the Hayes Administration. He demanded federal troops to end the shut down and President Hayes ordered six companies of the twenty-third infantry to St. Louis from Leavenworth, Kansas. Wilson also successfully convinced a Federal Court judge that the U.S. Marshall service could be used to break strikes against railroads in receivership.

Monday evening still bigger crowds gathered at Lucas Market in the heart of St. Louis. Speakers used three platforms to speak and urge defiance; "capital has overridden the Constitution, capital has changed liberty into serfdom, and we must fight or die. Which shall we do?" Tuesday a "Grand Procession" included thousands from other trades - coopers, moulders, mechanics, machinists – joined striking rail workers to march into the heart of St. Louis to hear more speakers. Resolutions for a general strike to shut down all of St. Louis brought loud cheers from crowds that newspaper reporters estimated at 10,000. The St. Louis Globe Democrat reported "that utmost good order prevailed."

By now Mayor Overstolz was discussing the strike with the business community. They wanted organized resistance and so established a "Committee of Public Safety" with a headquarters at the courthouse. Missouri Governor John Phelps agreed to send arms and ammunition from a state cache. Tuesday, July 24, six companies of Federal troops arrived at St. Louis with two Gatling guns.

Wednesday and again Thursday St. Louis and East St. Louis virtually shut down in a general strike. Both days had mass processions snaking through the streets picking up supporters who walked out of factories to join the strike. That evening at a mass rally the executive committee addressed the crowds with four demands. They wanted the government to "take possession of all railroads and run them for the general welfare." They wanted a recall of all charters of national banks, a program of public works and an eight-hour day.

Sixty factories had to close Wednesday because their work force was on the streets; twenty more closed Thursday. A news report declared "Business is fairly paralyzed here." Management at a flour mill and a sugar refinery asked the Executive Committee for permission to operate. The newspapers called it the "St. Louis Commune" and did not deny the Executive Committee ran the city Wednesday and Thursday.

Friday the Executive Committee made their fatal error. They announced "in order to avoid riot, we have determined to have no large processions until our organization is so complete as to positively assure the citizens of St. Louis of a perfect maintenance of order and full protection of property." Once the parades and street meetings stopped the mayor had police, troops and armed vigilantes fill the streets and takeover.

The Executive Committee met Friday morning in Schluler's Hall in St.

Louis while a large crowd of strikers waited outside impatient for direction. The Executive Committee posted notice for the workingmen of St. Louis to be patient and wait while they make decisions. By afternoon mounted police and soldiers descended on Schuler's Hall ready to club the crowds waiting there. The Executive Committee asked for negotiations, but vague threats of a riot were no longer a credible bargaining power. The mayor and the railroads ignored them and the general strike came to an end with barely a whimper of resistance. (11)

Indiana, Ohio and Beyond

In Indiana, train crews stopped work at Fort Wayne on the Pittsburgh, Fort Wayne and Chicago RR on July 21, which spread to other lines through Indianapolis and Terre Haute. At Indianapolis, organizers passed out handbills calling for a mass meeting Monday, July 23 "for the purpose of sympathizing and taking action with our starving brothers in the East …" Crowds gathered to block trains but only briefly. Here it was federal judge, Walter Gresham, responsible for several railroads in receivership, who notified the federal government the city was controlled by a mob. He used his authority as a judge to swear in deputy U.S. Marshals and organize a committee for public safety. There was no violence and all was quiet but Judge Gresham complained until President Hayes sent a regiment of troops from the U.S. Third Infantry. General Benjamin Spooner and the U.S. Marshals used threats of contempt of court to get rail crews to let the trains run.

The independent Vandalia Railroad at Terre Haute, Indiana followed the four major trunk lines and cut wages. Workers there followed the progress of the strike for a week, but although unorganized by unions they demanded a 15 percent wage increase from owner William Riley McKeen. They set a deadline for Monday July 23, or they would strike and block trains through Terre Haute. When McKeen did not answer, a large crowd took over the rail depot and shut down trains. Strikers protected rail property and avoided violence but they vowed not to accept control of wages by the railroad monopoly, meaning Tom Scott of the Pennsylvania RR.

On July 28 McKeen announced he would open repair shops and shortly the U.S. Third Infantry arrived from Indianapolis to disperse strikers and open the depot. Troops left Terre Haute for Vincennes, Indiana but had to return after McKeen wired Judge Gresham "the men are turbulent and the men who desire to work are intimidated." Strikers felt betrayed that a local resident like Riley McKeen would break the strike without bothering to speak with them, but they voted to end the strike rather than resist the troops.

Ohio had strike related disruption in at least six cities. At Cincinnati a "Great Mass Meeting" went ahead at 2:00 p.m. Monday of July 23. As thousands listened to speakers denounce the slaughter in Pittsburgh, rail crews from the Ohio and Mississippi RR blocked tracks and switches and took over the roundhouse. Nothing happened until Wednesday afternoon when a hundred police moved in to disperse strikers and arrest leaders. At Toledo, a committee of ten organized demonstrations and a parade through the streets to demand higher wages.

Enough people left work and joined the parade to shut down Toledo for two days until the mayor ordered the police force to patrol streets and halt the parades. At Cleveland crowds blocked the freight yards Sunday and officials cut off rail service. At Columbus and Zanesville small crowds ballooned to several thousand marched around town disrupting business and shutting down mills and factories. Disruptions petered out with minimal violence.

In Kentucky, ten percent wage cuts July 1 on the Louisville & Nashville RR and the Louisville, Cincinnati & Lexington RR were accepted with little comment. By July 22 the strikes and violence in West Virginia, Maryland and Pennsylvania energized as many as 500 Louisville area rail workers to meet, form a committee, and demand wage cuts be rescinded. The committee met with Dr. E. D. Standiford, president of the Louisville and Nashville Railroad, during the day of July 24; he agreed to accede to their requests. However, there were striking construction workers and others unemployed in Louisville ready to demonstrate as part of national labor protest. The evening of July 24, a large crowd gathered in front of city hall when Louisville Mayor Charles Jacobs read a statement. He instructed the workingmen of Louisville "to heed not the talk of idle and worthless creatures, who, unwilling to work themselves, would gladly get you in trouble, that they may feast upon your misfortune." His statement did not calm the crowd that dispersed to the streets and paraded to the rail depot. Police arrived there and arrested three as strike leaders. The rest ranged through the streets "yelling like fiends" and smashing and breaking windows. Enough police arrived to restore order, but Mayor Jacobs wired Kentucky Governor John B. Cleary to request help. The governor sent four hundred troops with extra rifles and ammunition. Quiet returned to Louisville by evening Wednesday July 25.

Demonstrations and other strike related protest took place in the south at New Orleans, Galveston and Marshall, Texas, and Little Rock, Arkansas, in New England primarily in Boston, and in the mid-west and west at Kansas City, Denver and San Francisco. At San Francisco an open air rally organized by the Workingmen's Party for Monday July 22 turned into a riot. Crowds listened to WPUS organizers until around 9 o'clock when a mob of disgruntled whites attacked the Chinese and burned and destroyed their Chinatown ghetto. (12)

The Abrupt End

Everywhere strikers and protesters melted away once confronted with regiments filled with armed federal troops. Even though strikes and disruption got started over several days and at dozens of places they ended most places by Thursday July 28, 1877. The railroads refused to restore wage cuts. Hundreds were fired and blacklisted and not just on the railroads, and not just for striking. Hundreds were prosecuted and convicted of crimes: conspiracy, rioting or minor misdemeanors. Many were fined and some served short jail sentences.

President Hayes maintained a command post at the White House during the strike, consulting with cabinet officers and higher ups in the military. Mostly the group read telegrams from governors that pictured chaos followed by a plea for federal troops. A few railroad officials like Tom Scott and Franklin Gowen had

direct access to the president and so offered their instructions, but federal troops were everywhere by the weekend of July 28, 1877.

U. S. Army officers do not decide when or where troops should be used to end civil disorder and protect the public safety; they follow orders. In July 1877, the President instructed military officers to restore order, except that restoring order walks a fine line between breaking a strike and restoring order.

In Baltimore, Pittsburgh, Reading, and Chicago where the primary slaughter of strikers and protesters took place, it was police and state National Guard troops that were there first to lead the slaughter. Federal troops generally arrived later and they were much less violent, and while that is a good thing, neither the President, nor the state governors attempted to mediate or conciliate, or propose a compromise. Instead of an active role to resolve the strikes, the president allowed his army officers to decide how to restore order, which they generally did in consultation with corporate officials, whose primary interest was to break the strike.

Federal troops made it unnecessary for management to negotiate. Soldiers broke up picket lines and union meetings, arrested strikers and strike leaders and provided armed soldiers to escort the trains. Military officers were in daily contact with local officials to discuss the best places and best ways to deploy troops. After the strikes ended at the end of July, the military remained in Maryland, West Virginia and Pennsylvania to harass union members to halt or prevent more strikes. General Winfield Scott Hancock settled into camps at four locations in Pennsylvania, but complained the regular army "should not be made into a permanent police force for the state. …" (13)

In the minds of constituted authority in 1877, collective action by labor was the equivalent of mob rule. To the capital classes, labor could strike but under no circumstance could labor deny others the right to work or deny capital the use of their property. Picketing strikers claimed the right of free speech and free assembly, but the more solidarity among strikers the more the picketers looked like a mob.

The events of 1877 exposed angry social and class divisions severe enough to recall the civil war. Less than a year after the strikes ended one of those who lived through it wrote a summary opinion.

"The strength, the fearful power, which stopped the wheels of commerce, closed the marts of trade, and threatened to engulf all wealth, institutions, social organization —everything in the vortex of ruin, was not the offspring of a conspiracy, was not generated by elaborate planning, and did not result from mature deliberation. And in this very fact, the man of calm reflection discovers, not far ahead, the rocks on which the ship of State is likely to be driven— on which every hope of mankind may be wrecked. If it had been a deliberately planned and concerted movement; if those engaged in it had exhibited evidence of organization, then its failure would have given a better promise of enduring peace and order. But the spontaneity of the movement shows the existence of a wide spread discontent, a disposition to subvert the existing social order, to modify or overturn the political institutions, under which such unfavorable conditions were

developed. Somewhere, there must be something radically defective; either in the system, or in the manner of its control." (14)

The defects in the system surfaced again and again over many years and especially in 1886, 1888, 1892, and 1894. During these years the Congress discussed legislation to address strikes in a predetermined way, but always managed to discuss without passing legislation. It would be 1898 before Congress passed the Erdman Act, a modest labor statute that applied only to railroads. During these years the courts tried to end strikes and avoid violence by dividing and suppressing labor unrest with dismissals, threats and injunctions. The use of the court injunction in labor disputes continued to evolve for decades, but its initial adaptation permitted the courts to use force to end strikes while judges ignored arbitration and other means for resolving labor unrest. During these years labor organizers tried to unify the working class and persuade them to recognize their common interests in the economy and at the ballot box. Labor organizing picked up after 1877, but only a few recognized the division and the violence ahead.

Labor and the Courts

When President Hayes sat down to address the strikes with his cabinet, there were no federal labor statutes or other law to guide his decisions. He reviewed and discussed strike reports as they came to him and decided he had constitutional authority to intervene in a domestic insurrection or obstruction of state laws. Hayes hesitated until the strikes generated reports of rioting the states could not suppress, before sending troops, but he did not consider alternatives or other legal reasoning. Toward the end of the great upheaval, several federal district court judges were not so timid or restricted. They developed, or invented, legal reasons to intervene in the strikes in Indiana and Illinois.

As already mentioned, several railroads involved in the 1877 strikes were bankrupt and operated with court appointed receivers. Even though railroads were by far the biggest industry in the U.S. economy, their financial leverage and rapid expansion made them financially vulnerable to depressions like the one of 1873-1878. Federal court judges tended to be sympathetic to railroad financial troubles in part because some of the many attorneys working for the railroads accepted appointments to the federal courts. The "railroad" judges developed the practice of appointing receivers to operate bankrupt railroads as a way to protect them from economic loss and dissolution while ignoring the wishes of creditors.

One of the receivers appointed by Judge Thomas S. Drummond petitioned the district court in Chicago for assistance when strikers took physical possession of railroad property and rolling stock. Judge Drummond declared "A strike or other unlawful interference with the trains will be a violation of the United States law, and the court will be bound to take notice of it and enforce the penalty." Judge Drummond in Chicago and Judge Walter Gresham in Indianapolis both issued a writ of assistance that ordered U.S. Marshals to arrest anyone who interfered in the operation of the lines. Judge Gresham in Indianapolis demanded and got federal troops to assist U.S. marshals to enforce his orders.

Judge Drummond and Judge Gresham's legal reasoning was the beginning of an evolution of court actions against unions and strikers that continues in related ways to this day. A writ of assistance to protect a railroad in receivership did not fit the usual conditions of an injunction that anticipates irreparable injury to property caused by delay and names the people to obey the court's order. The judge did not name anyone, nor suggest irreparable harm, but held that interference with the court's responsibility for operation of a railroad in receivership could be stopped as a contempt of court. It allowed for a significant expansion of judicial authority to halt strikes as a substitute for the failure of executive and legislative effort to mediate.

Some strikers were arrested for ignoring Judge Drummond and charged with contempt of court. Judge Drummond lectured them that a railroad was more than private property, it served public purposes transporting people, property and the mail. Anyone interfering with a railroad affects "all relations in society" and "commits as great an offense against the rights of individuals and against the rights of the public, as can well be imagined." He imposed a ninety day jail sentence to prevent any further interference in the future.

Strikes on other bankrupt railroads in receivership continued after 1877, especially in years with more recessions like 1884 to 1888 and 1893 to 1897. In these other cases strikers did not always take physical possession of bankrupt lines. Instead they tried to persuade others to strike, or picketed, or made threats, but courts held the use of intimidation by strikers could also be ended by injunction and the threat of contempt of court.

It was not long before courts received petitions to protect solvent railroads from the actions of strikers. Instead of receivership orders courts issued injunctions on behalf of solvent railroads that included the names of employees directed by the court's order and implied that doing business was a property right where the loss of revenue might cause irreparable harm. (15)

The Knights of Labor, the A. F. of L. and the Chicago Idea

The loss of the strikes of 1877 and their abrupt end exposed a weak and divided labor movement unable to recognize or cope with surplus labor markets. The Brotherhood of Locomotive Engineers operated as a separate craft union by admitting only engineers, excluding firemen, conductors, brakemen, switchmen, shop and maintenance workers. They regarded themselves as an indispensable and irreplaceable part of railroading with the economic power to negotiate without strikes and ignore the others. Officially they were opposed to the strikes of 1877 and expelled members who participated in order to affirm their principles: "Sobriety, Truth, Justice & Morality." (16)

One of the earliest efforts to organize new unions and unify skilled and unskilled labor came with the Holy and Noble Order of the Knights of Labor founded in Philadelphia in 1869. It started as a secret society of nine garment cutters that expanded slowly at first, but much faster beginning in January 1882 when the name and object of the order was made public. New members were allowed to form separate assemblies from other industries and crafts. By 1878,

delegates from district assemblies met at Reading, Pennsylvania to write a constitution for a hierarchical administration of local assemblies organized into district assemblies and district assemblies organized into a general assembly. Annual meetings of the general assembly amended the bylaws almost every year, but final authority tended to remain with the Executive Board of the General Assembly. A declaration of principles declared "The alarming development of great capitalists and corporations, unless checked, will inevitably lead to the pauperization and degradation of the toiling masses."

The Knights had an ambitious reform agenda that called for the distribution of land to settlers instead of railroads and corporations, an 8 hour day, abolition of prison labor and child labor, equal pay for women, government ownership of railroads and telegraphs and a graduated income tax. They promoted and used dues to finance their own labor collectives.

When Terence Powderly took over as grand master workman in 1879 the Knights had 9,300 members in at least seven states. Membership jumped to 42,000 by 1882 and 71,000 by 1884 and over a 111,000 by 1885 with craft assemblies and mixed assemblies scattered in every state. Membership was open to everyone: skilled, unskilled, whites, blacks, women, farmers, shopkeepers, even small employers. Those selling intoxicating liquor, lawyers, bankers, professional gamblers and stockbrokers were excluded.

The Knights preferred cooperation, boycotts and arbitration over strikes. Strikes were useful for "temporary relief" and only after board approval. The Knights proved they had economic power with many successful boycotts of newspapers, shoes, clothing and dry goods sold at retail. They also expanded boycotts to secondary boycotts, boycotting stores that continued to sell boycotted products.

Boycotts showed the economic power solidarity could bring to restoring wage cuts and challenging the domination of employers. Boycotts proved to be a powerful tool to prevent wage cuts. Published commentary in 1886 expressed some fear and lots of anger at K of L boycotts. One comment came in the North American Review in 1886: "No matter how mildly practiced, boycotting is a crime, a conspiracy, that should be punished without fear or favor. The laws in the different States are not stringent enough to meet this particular offense, and a general law should be enacted without delay, which should place those engaged in boycotting behind prison bars. This would speedily end the infamous practice. Let the remedy be universal and sweeping, the punishment the same in all States and Territories, and its application instantaneous." (17)

Not everyone was happy with the Knight's emphasis on social reform and politics, or the organization of mixed assemblies. Samuel Gompers was a cigar maker and also a member of the International Cigar Makers union. He had more immediate and practical goals than he found in the Knights of Labor. He wanted higher dues to build economic power to withstand strikes and provide member services. The young Gompers advocated a broad solidarity for labor but gradually changed to advocate national unions of individual skilled crafts.

Gompers attended a gathering in Pittsburgh, Pennsylvania in 1881 as a

delegate of a conference to organize a federation of craft unions to be called the Federation of Organized Trades Unions of the United States and Canada. Some at the conference objected to the craft limitation and proposed to include both semi-skilled and unskilled affiliates and to have both men and women as part of efforts to organize "the whole labor element in the country."

The conferees agreed to call their new federation the Federation of Organized Trades and Labor Unions and to include unskilled unions as affiliates, but the concession did not resolve the disagreement between those like Gompers who preferred a strict jurisdiction of unions by craft from those like Powderly who wanted mixed assemblies open to all. Discussions continued at annual conventions until the 1886 Columbus, Ohio convention when the Federation was reorganized with a new name. After December 8, 1886 it was the American Federation of Labor (AFL) with Samuel Gompers as its President.

Gompers brought energy and direction to the AFL based on the guiding principles of the founding craft unions. Members would be autonomous unions with strict craft jurisdiction: iron molders would not organize carpenters, typographers would not organize tailors and so on. By-laws allowed for Federal Unions of the unskilled. Member unions were free to join or withdrawal at any time. The A. F. of L. constitution and by-laws assigned duties to the president and executive council but not power to direct member unions. The executive council granted new charters, collected dues, and promoted labor unity through education and public relations. Dues were high to build reserves for unemployment benefits, strike funds and death benefits.

The AF of L wanted to put organized labor in a secure financial condition based on sound business principles. They accepted capitalism as they found it and intended to avoid strikes as much as possible with centralized negotiations based on carefully nurtured economic power. They did not support the electoral politics of one party over another, aiming to reward friends and punish enemies without regard to partisan politics. AFL policies and practices came to be known by the summary term: business unionism. (18)

The Great Upheaval energized debate in the Workingmen's Party of the United States(WPUS), which voted to change its name to Socialist Labor Party(SLP) at the December 1877 party convention. One faction of the party wanted to work at labor union organizing. A second faction wanted political action to elect representatives to fight for a legislated working class agenda.

Albert Parsons of Chicago emerged as a party leader in debate after the 1877 strikes, partly for his speaking skills and partly for his ability to see the merit in both sides and speak to either faction. Parsons helped write and edit a party newspaper and organized the Chicago Trades and Labor Council. In these initial years he worked for the eight hour day arguing "Labor will continue to suffer defeat until it learns how to take its surplus from off the market by reducing the hours of labor until there are no unemployed men."

The Socialist Labor Party had to compete for allegiance from alternative groups. Immigration in the 1870's and 1880's helped breed working class anger and hostility expressed in a variety of foreign language newspapers and in political

societies common in the ethnic neighborhoods of American cities, especially in Chicago and New York. Immigration not only maintained a surplus of labor that kept many in poverty through much of the era; it brought people opposed to capitalism and willing to discuss and promote alternative philosophies.

Some of the European immigrants brought variants of the Anarchist philosophies of Peter Kropotkin and Mikhail Bakunin, both Russians. Kropotkin thought individuals had the ability to live in response to natural conditions and that free of the constraints of government would do so. Initial attempts to organize an association of socialists and anarchists in the United States came at a meeting in Chicago in October 1881. Albert Parsons and August Spies of Chicago and Justus Schwab of New York took important roles in a small group that met to discuss principles.

Some like Parsons and Spies accepted politics and the vote as a means to protect the rights of the working class as long as efforts included direct action: strikes, boycotts, picketing. The more militant in attendance favored the methods of insurrection; armed and organized workingmen physically ready to protect their rights. The Socialist Labor Party was too mild for them; they preferred terms and ideas that included revolution. It was a divisive meeting of strong-minded people, but they did agree to organize a federation of membership groups they would call the International Working People's Association. The more militant groups among them adopted the term "Propaganda by the Deed" to characterize their brand of direct action. It was a term favored by a German immigrant, Johann Most.

Johann Most arrived in New York from Germany in 1882 with an anarchist philosophy he turned into his own movement. He arrived following 16 months in a German prison at hard labor served for what he published in Freiheit, a working class journal opposing capitalism and repressive state practices. After a speaking tour starting in New York he decided to stay in the U.S. and publish Freiheit in New York, which he continued to do for twenty-four years.

Johann Most took the initiative to organize another convention of socialists and anarchists. After a year in the United States he wanted the "Socialists of North America" to have "a uniform, practical and effective organization and agitation." The convention known as the "Pittsburgh Congress" took place in October 1883 at Turner Hall in Allegheny City across the river from Pittsburgh. Albert Parsons and August Spies were invited along with delegates from twenty-six cities.

Parsons and Spies made very different proposals than Johann Most and others from New York and New England. Johann Most maintained the rich would never surrender political power to the poor without militant action and violence. He wanted confrontation as a source of change rather than union organizing he viewed as a source of delay and failure. Parsons and Spies were not quite so pessimistic and so they offered proposals that made labor unions and the labor movement a force for change. The philosophy of anarchy combined with union organizing proposed by two men from Chicago defined the "Chicago Idea."

Parsons and Spies viewed the trade union as the best place to organize a social revolution. They wanted to end capitalism and replace it with a society run through the active participation of the working class. Parsons called unions "the

embryonic group of the future free society" and what better place to organize mass support to empower the working class to change the structure of government than labor unions. (19)

Delegates to the Pittsburgh Congress adopted the "Chicago Idea" as part of a document drafted by delegates at the Congress; it was known as the "Pittsburgh Manifesto." It promoted changes to government that made it a revolutionary manifesto; it included intentional similarities to the United States Declaration of Independence.

Albert Parsons and the others who drafted the Pittsburgh Manifesto compared the abuses they lived with to the Declaration of Independence where "a long chain of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty to throw off such government and provide new guards for their future security."

Thomas Jefferson wrote in smooth intellectual prose that avoided slogans and inflammatory phrases, but he wrote to justify a revolution to overthrow established government through armed resistance. "Our forefathers have not only told us that against despots force is justifiable, … but they themselves have set the immemorial example." (20)

The Pittsburgh Manifesto wanted to eliminate "unjust, insane and murderous" class rule and replace it by building a society based on anarchist philosophy. The Greek word anarkhos translates to "without a ruler" and so the anarchists of the day wanted to abolish laws, police, priests and government from an oppressive class system protected by government, sanctioned by the church, and enforced by militia. They hoped to build support for change by persuading the working class to unify in a labor movement built around their common legal, social and economic interests. It was always a struggle and often violent, but anarchy would be a part of the American labor movement for decades to come.

The Depressing 1880's

Economic depression returned in the mid 1880's after a few good years. Like the previous depression from 1873 to 1878, and the next depression from 1893 to 1897, the one from 1883 to 1887 was allowed to run its course. There was no such thing as unemployment compensation, a social safety net or use of monetary and fiscal policy to relieve an economic downturn no matter how severe. A shortage of room, board and charity brought more strikes, especially rail strikes, and a campaign for the eight hour day. The post upheaval years did not show signs of cooperation or respect in labor relations, but few were ready for what happened in Chicago after a bomb exploded at Haymarket Square on the evening of May 4, 1886.

The Knights of Labor and Jay Gould's Southwest Strikes

Jay Gould controlled a railroad empire during a 19th century period when rapid expansion brought many bankruptcies. His empire included railroads he

owned, railroads he leased, and many charged, included railroads in receivership, nominally controlled by a federal judge in a bankruptcy proceeding. He was a wily and patient adversary ready to dodge and deflect during a string of strikes from 1884 through 1886. These were depression years when union solidarity prevailed for a while, but ultimately Mr. Gould would get his way.

Union Pacific, 1884--The men working in the maintenance shops of the Union Pacific Railroad in Denver did not have a union to represent them when management announced 10 to 25 percent wage cuts May 4, 1884, but five hundred of them left work anyway. Several of the strikers paid a visit to Joseph Ray Buchanan, the long time editor and publisher of a labor journal: The Daily Labor Enquirer. They had a hall for a meeting but needed advice, which he agreed to give. Buchanan drafted a resolution, which they all signed that obliged everyone "individually and collectively, to refuse to do any work under the jurisdiction or upon the premises of said Union Pacific Company until such time as the notice of reduction of wages is withdrawn…" Within two days shops from Omaha to Ogden telegraphed their support and left work. Their refusal brought freight trains to a halt; Union Pacific President Charles Francis Adams could not find replacements at these far flung locations and restored wage cuts.

Buchanan persuaded the men to be ready for the next round of wage cuts; he organized an assembly with the Knights of Labor. Management posted new wage cuts August 11, 1884 at Ellis, Kansas and twenty men were laid off in Denver. Every shop on the Union Pacific shut down the next day. After stalling for a week management restored the cuts and jobs. (21)

Missouri Pacific System, 1885-----A series of 10 percent wage cuts and layoffs started in October 1, 1884 on the Missouri, Kansas and Texas Railroad. More 10 percent cuts came February 26, 1885 for shop men on the Wabash, St. Louis, and Pacific Railroad. The next day shop men at Moberly, Missouri left work in a strike after another 10 percent wage cut and again March 7, 1885 at Sedalia, Missouri, all in a protest of wage cuts on Jay Gould's empire. The same afternoon shop men left work at Atchison and Parsons, Kansas, Palestine, Denison, Fort Worth and Dallas, Texas and two days later at St. Louis and Kansas City. The strike had popular support among the cities and towns where many businesses and families were sick of the monopoly abuses of Jay Gould. The strike had the all important support of the "runners" meaning the railroad brotherhoods that operated the trains – engineers, firemen, conductors, brakemen. (22)

Again Joe Buchanan arrived to make the rounds. He arrived first to speak at Kansas City and then on to Sedalia, Missouri, to Hannibal and eventually back to St. Louis and each place organizing new Knights of Labor assemblies. Buchanan described his efforts: "Wherever we went … gangs of private detectives and guards swarmed at every point where there were strikers. Some of these fellows were employees of regular detective agencies, and some were loafers and idlers that were picked up and sworn in as deputy sheriffs and deputy constables; but all were interested in provoking trouble …"

Missouri Governor John Marmaduke sent his Commissioner of Labor to

Sedalia. He reported that the strike "was not an impulsive outburst of dissatisfied employees, but it was an action decided upon after full deliberation and consideration of every point. The grievances of the employees were based upon repeated reduction of wages and shortening of time in the shops … bringing the wages below the wages by other lines in this state and in Kansas and Texas."

Further the Commissioner wrote "The feeling of dissatisfaction was intensified by the publication of the financial statement of the Missouri Pacific Railway Company at the last annual meeting of its directory, showing a large earning for the road … and when, on February 9, a notice was posted in the shops that another reduction would take place, dating from March 1, the employees determined to quit."

In summary comments, the commissioner declared the strike to be "the first strike that has ever been made where strikers were thoroughly and systematically organized, and the control and management of it remained in the hands of the organization. Every movement was directed by the executive committee, and a perfect police system maintained, under which the property of the railroad company and private individuals was fully protected."

The union executive committee demanded a restoration of wages and hours, but there was no response from management. The Brotherhood of Locomotive Engineers joined the strike and the public generally sympathized with strikers. By March 9, freight traffic on the Southwest system ground to a halt with 1,500 loaded freight cars sitting idle in St. Louis rail yards.

The economic losses to Missouri and Kansas alone were severe enough soon enough, that State officials organized a conference with Southwest system officials March 15, 1885. State officials agreed to "recommend and request said company to restore to its striking employees in Missouri and Kansas the same wages paid them in September, 1884, including one and a half price for extra time worked; and to restore all said striking employees to their several employments without prejudice to them on account of said strike." Their recommendations were signed by Kansas Governor John Martin, Missouri Governor John Marmaduke, the attorney general and railroad commissioner of both states, and Oscar Kochtitzky, the Missouri Commissioner of Labor. Southwest system officials "approved and fully concurred in" these requests and the Executive Committee in Sedalia declared the end of the strike March 16, 1885. (23)

At the time of 1885 strikes the men in the shops at Sedalia, Missouri did not have a union to represent them; they organized themselves. Soon after Joe Buchanan showed up to help organize an assembly with the Knights of Labor. In the next month Buchanan traveled to other shops through the Southwest system to organize more assemblies, which combined to be District Assembly 101. The assembly elected Martin Irons to be their grand master workman to lead D.A. 101.

Wabash, 1885--Shortly after the settlement of the Southwest strike officials at the Wabash abandoned the terms of the agreement one by one. The shop men of District Assembly 93 at Springfield and Decatur, Illinois and Fort Wayne, Indiana left work in early August; the company did not pay wages once a

month as required by law and their agreement. Shortly the superintendents posted notice that union members of the Knights of Labor would not be employed, but locked out.

The Wabash was in receivership and managed by a court appointed general manager, a man named Talmadge. Mr. Talmadge refused to meet with anyone from the Knights of Labor; he saw no reason why such a conference was needed. The District Assembly 93 Executive Board voted for all Assemblies of the Knights of Labor in the employ of the Wabash system to quit work at noon August 18, 1885.

As August 18 approached, with no progress in settling the disputed lockout, other District Assemblies debated joining the strike in sympathy with the Wabash Shopmen. These other assemblies on the Southwest System proposed to "refuse to repair or handle in any manner Wabash rolling stock until further orders for the general executive board, and if this order is antagonized by the companies, through any of its officials, your executive committee is hereby ordered to call out all Knights of Labor on the above systems, without any further action."

The District Assemblies that wanted to join the Wabash strike invited Joe Buchanan to attend a meeting in St. Louis where they asked him to approach the National Executive Board to authorize the sympathy strike, but Buchanan opposed the idea. He advised them they did not have funds to carry on a strike, nor the support of the brotherhoods. Shop men alone could not stop the trains; a sympathy strike would be defeated.

Buchanan and several colleagues exhausted many hours on trains before they tracked down Mr. Talmadge for a meeting. It turned out to be in New York at the Offices of Jay Gould. Terence Powderly was at the meeting and produced a variety of written evidence to show widespread discrimination against union men. Mr. Talmadge denied it all but Buchanan suggested he could solve the problem if "you would indite [i.e. sign] a telegram, which can be put upon the wire right here in this building, instructing the superintendents to order the withdrawal of notices to refuse to employ Knights of Labor, where such notices exist, and to forbid discrimination against our members by division superintendents, foremen and bosses." Reports indicate Mr. Talmadge got quite angry at this suggestion but negotiations continued until August 29, 1885 when Terence Powderly, Jay Gould and Mr. Talmadge accepted a plan to rehire the shop men.

The successful conclusion of these Gould strikes added to the growing interest in the Knights of Labor. The Gould strike and the continuing agitation for the eight hour day brought a surge of new local assemblies, 1,632 in the first three months of 1886. Membership jumped to 730,000 organized into 9,000 assemblies. To the Executive Board it looked like the entire working class wanted to join the Knights of Labor, "rushing into the Order like prospectors to a reported gold rush." (24)

Southwest System, 1886--Jay Gould treated the 1885 settlements as a brief delay. Instead of honoring the negotiated agreements he continued to dismiss union members and failed to restore wage cuts or pay overtime in violation of his pledge. The Knights of Labor did not publicly acknowledge involvement in the

1885 strike, but in the aftermath the Knights District Assembly 101 expanded with thirty local assemblies and thousands of members all on the Missouri Pacific Railroad, part of Gould's Southwest system. Local efforts to enforce agreements failed and the District Executive Board lost patience with Gould, who still would not recognize the union.

On January 10, 1886 a convention of Southwest System Assemblies met and voted to authorize a strike if the Executive Board could not negotiate recognition for the Knights of Labor and a minimum wage of $1.50 a day for unskilled workmen. Then on February 18, 1886 a court appointed receiver of the Texas and Pacific Railroad dismissed a skilled workmen, Charles A. Hall, from the maintenance shops at Marshall, Texas claiming he was absent without leave. He had attended a union convention.

Members of the Marshall, Texas assembly wrote to the general agent for the Texas and Pacific receivers, a man named Colonel George Noble, to request that he "settle trouble in the shops." Colonel Noble denied there was trouble and ignored the request. Next, District Assembly 101 Chair Martin Irons reminded the receivers of their responsibility to abide by the 1885 agreement. He sent a telegram requesting a meeting to one of the receivers, John C. Brown, who was also the Governor of Texas; Governor Brown did not respond. At a meeting of D.A.101 Executive Board, Irons and the others present interpreted their refusal as "a direct thrust or insult offered by the railroad officials to the organization."

Irons polled all local Assemblies in D.A.101: "Will you sustain your Executive Board in demanding the reinstatement of Brother Hall?" After an overwhelming vote of approval, Irons called a strike on the Texas and Pacific RR that began March 3, 1886 explaining that "the strike was not in the interest of one man, but for a principle involved; that the contract between the employes[sic] and the railroad made through the mediation of the governors of Missouri and Kansas one year ago, had been violated."

The receivers responded by setting a deadline of 10 o'clock March 4 to return to work or be fired and replaced. A Committee of Citizens of Marshall, Texas requested a conference with Governor and receiver Brown, but he refused and informed them the receivers "feel compelled to invoke the aid of the United States Court with all the powers at its command…"

In a telegram of March 4, 1886, Circuit Court Judge Don A Pardee ordered the receivers to petition the court for a writ of assistance. He went so far as to tell them the wording he wanted them to use by setting out the facts of interference and to pray for an "order to the marshal of the district with such force as may be necessary to at once restore possession and control of all the property of the Texas and Pacific Railroad to the receivers, and to protect the said railway property, and arrest and bring before said court to answer for contempt, any and all persons interfering with the possession of said receivers, or in any unlawful manner hindering or obstructing the said receivers in the control, operation and management of said railway property." As in 1877 such a writ of assistance protected property from irreparable harm, but the word "operation" suggests doing business is property to be protected from a strike.

After the strike on the Texas and Pacific Railroad started, it spread to other Southwest system lines. On March 6 shopmen on Missouri Pacific Railroad joined the strike until by March 8 shopmen over the entire Southwest System were out. On March 9, 1886 the New York Times ran a caption "Freight Trains Tied Up" and reported "To-day the Gould system appears to be thoroughly at the mercy of the Knights of Labor." Trackmen, switchmen, and other less skilled employees joined in support, which was enough to shut down the Southwest system. Freight traffic came to a complete halt; passenger and mail trains were allowed to run. Deliveries of basic groceries and fuel slowed; life's necessities got scarce. (25)

Martin Irons and DA101 called the strike without getting approval from Terence Powderly and the Knights of Labor Executive Board. Powderly and the Board let Irons and the local leadership manage the strike until late March when Powderly intervened with an appeal to H. M. Hoxie, the managing vice president of the Missouri Pacific in St. Louis. After those efforts failed he appealed directly to Jay Gould. In a telegram dated March 28, 1886 Gould included a transcript of instructions to managing vice president Hoxie. It read "We see no objection to arbitrating the differences between the employees and the company, past or future."

Powderly interpreted the wording as an agreement to arbitrate and notified Martin Irons the same day telling him that "President J. Gould has consented to our proposition for arbitration, and so telegraphed Vice-President Hoxie. Order men to resume work at once. By order of the Executive board." The wording of the telegram appeared to vindicate Powderly's preference for measured negotiations to settle disputes.

Vice President Hoxie would not meet or arbitrate with the Knights of Labor; he would only meet with a committee of workers already at work. Jay Gould supported Hoxie's decision by announcing to the press that it was up to Vice-President Hoxie how to end the strike. In spite of the deception Powderly ordered Irons to meet the Hoxie conditions; he did not consult the membership, who were furious as was Martin Irons.

The strike continued with angry shopmen swarming through rail yards, hosing down locomotive fireboxes, setting brakes, removing coupling pins and blocking trains in repeated tirades that continued into early April. The governors in Illinois, Kansas and Texas called out state militia that brought a variety of confrontations, but did not end the strike.

On April 3 at Fort Worth five men exchanged gunfire with police, wounding three police and one striker. On April 9 strikers and sympathizers blocked a coal train from passing a grade crossing and departing East St. Louis. By afternoon rail officials for the Louisville & Nashville sent nine men armed with rifles and revolvers to act as deputies to clear the crossing. When the nine arrived they were pelted with a hail of stones. One of the deputies fired into the crowd, which set off repeated rounds of gunfire. The crowds scattered until the crossing was cleared, but six men and one woman were killed and another seriously wounded. In the dark of evening, rioters set fires on rail cars and ultimately sixteen freight cars were destroyed. (26)

The economic impact of the strike got the attention of the United States Congress and House of Representatives, which voted April 12, 1886 to conduct an investigation of the labor troubles in Missouri, Arkansas, Kansas, Texas, and Illinois. A committee of seven House members began hearing witnesses on April 20, while the strike continued. However, by late April the public was worn out with the strike and the divisions within the labor movement were about to end the strike. The Brotherhood of Locomotive Engineers and the other rail brotherhoods - firemen, conductors, trainmen - did not join the strike. Without their support Jay Gould was able to restore most of the freight service. The Executive Board of the Knights wrung their hands and wavered without active support until calling off the strike May 4, 1886 without a single concession from Jay Gould or a vote of the membership. Virtually all the members of the K of L were black listed; none were rehired unless they resigned from membership in the Knights of Labor.

In their final report the House Committee wrote "There can be no doubt that the concentration of wealth and power, and the oppressions which have occurred, as shown in the evidence taken, may have promoted the unrest of labor, as is painfully apparent." … In addition the committee "found in the evidence that there were grievances of which the laborers and workingmen of the roads had just reason to complain, and these may have extended or enlarged the strike." … "It is also shown, as will be noticed in the testimony, that the Texas and Pacific Company had what is known as a black list, which contained the names of some of the persons. By no combination of capital or no extent of incorporated power can the listing of an American citizen as being unworthy of employment be justified."

The House Committee did not exercise the same written moderation for Martin Irons, whom they characterized "as a dangerous if not pernicious man." They declared him as the primary cause of the strike. There would be no legislation to regulate the black list or do anything about the unfair treatment of labor the committee admitted; again, as in 1877, the courts did not hesitate to act. (27)

The end of the strike turned unprecedented K of L growth into unprecedented decline. The 730,000 members dropped nearly 70 percent in two years. Joe Buchanan knew of "no man more unpopular with the Chicago workingmen than Terence Powderly." The early decline turned into steep descent until membership was barely 20,000 just seven years later in 1893. Some of the local assemblies were expelled following disputes with Powderly. Others stopped paying their dues and left voluntarily. Powderly was removed as Grand Master Workman in 1893.

Terence Powderly favored conciliation and arbitration instead of strikes, which proved to be no match for unscrupulous employers like Jay Gould. The officials and members of the assemblies of the Knights of Labor seemed to understand that better than he did. The local assemblies continuously confronted employers who would not meet or speak with labor union organizers or officials, much less conciliate or arbitrate.

From 1878 to 1883 delegates to General Assembly Conventions supported strikes as an option, but Terence Powderly always spoke in favor of a union movement that promotes broad change for the interests of the larger society. After 1883 the union constitution was amended to make a strike difficult to call.

In successive years Powderly and the Executive Board persuaded delegates to require a two-thirds secret ballot vote of striking assemblies, and the rules allowed the General Executive Board to order repeated votes during a strike to assure continuing strike support. In addition, the General Executive Board must approve a strike if local assemblies expect to receive any financial aid to support striking members. At the national conventions the question would come up: "What are we organized for?"

While Martin Irons tried to resolve the dispute that set off the March 1886 strike through negotiations he did not consult the Executive Board or Powderly before calling a strike. When Powderly took over and settled the strike he used the authority in the union constitution, but his actions met with nearly unanimous opposition of his membership. (28)

To his critics Powderly was a dreamy eyed professor and a sappy sentimentalist, but Powderly expressed his views in a vast correspondence and eventually in an autobiography: The Path I Trod. The Powderly that emerges in his writing reveals a thoughtful, literate humanitarian who opposed the brutalizing effects of corporate greed as much as Karl Marx, but he opposed confrontation and looked to other methods of reform that included sponsoring and funding education programs, labor owned collectives and promoting the general public good.

Powderly believed in the power of labor solidarity, which makes the disastrous outcome of the Southwest strike all the more ironic for he failed to utilize the astonishing solidarity of the union he so skillfully organized. In 1886 the Knights of Labor had the solidarity and economic power to force changes in labor relations during early formative years. The Knights initially had widespread public support given the unpopularity of Jay Gould and other gilded age figures.

A powerful union withered away in just seven years, primarily the result of internal conflicts. No union before 1886 achieved anything close to the working class movement of the Knights of Labor. The record of labor relations since 1886 makes it hard to decide, even today: Did it ever happen again?

Haymarket Bombing

The depression from 1883 to 1886 left thousands out of work and made it easier for people like Albert Parsons and August Spies to organize converts to the anarchist cause. Immigrants continued to arrive filled with stories of jobs and a better life, but found themselves destitute. After the 1883 Pittsburgh Congress, Albert Parsons started publishing a subscription journal, the Alarm. August Spies published his own journal, Arbeiter-Zeitung, in German. Both were regular speakers, who did speaking tours, organized rallies, raised funds and mingled with Chicago immigrants on a daily basis. Both made Chicago the capital of philosophical anarchy for the American labor movement.

May 1, 1886 was the date set to stop work for mass rallies and marches in cities around the country to show solidarity with the campaign for the eight-hour day. The idea for the eight hour rally started at the 1884 convention of the Federation of Organized Trades and Labor Unions, the predecessor to the AFL,

but the campaign for the eight hour day got started soon after the civil war. It brought solidarity to the working class in correspondence to the growth in union membership around the country, especially the Knights of Labor.

Parsons and Spies looked on the eight-hour rally in Chicago as their contribution to the 8 hour campaign and the end capitalism. In comments before May 1 Spies said "Let there be no halt … until the last stone of the robber Bastille is removed and enslaved humanity is free." More than 300,000 took the day off to attend rallies around the country. The Chicago rally turned out 80,000, by the far the biggest of the rallies. The May Day rallies went as planned in Chicago and elsewhere and without violence or disruption.

But on May 3, 1886 trouble erupted at the McCormick Reaper Company's Blue Island Avenue plant over management's use of scab replacements. Picketers heckled their replacements at the end of the workday as they left the Plant. A street fight ensued and patrol wagons with as many as seventy five police arrived to break it up. Police beat picketers with Billie clubs who responded by throwing a hail of rocks and debris; police in turn fired shots directly into the crowd, killing at least two and wounding many others.

August Spies was speaking nearby at an open-air rally of the Lumber Shover's Union. He arrived at McCormick in the aftermath. Angry and distraught Spies immediately wrote and printed a handbill titled "Revenge" that started with "Workingmen to Arms!!!" It was printed in English and German and ended with "destroy the hideous monster that seeks to destroy you. To arms we call you, to arms!"

A copy of "Revenge" circulated at a saloon during an evening meeting of a group of German anarchists. Gottfried Waller, George Engel and Adolph Fischer were three Germans in attendance. The group debated a response to the McCormick shootings and decided to hold a protest meeting at Haymarket Square the next evening. Haymarket had a two block space big enough to hold 20,000 people.

Adolph Fischer prepared a handbill to advertise the Haymarket meeting and ordered 25,000 copies. Fischer worked for August Spies at Arbeiter-Zeitung but when Spies saw a copy of the handbill he ironically objected to the last line: "Workingmen Arm Yourselves and Appear in Full Force." Spies declared "it was ridiculous to put a phrase in which would prevent people from attending the meeting." The offensive lines were removed and another 25,000 copies printed for distribution. Spies ordered the offending copies destroyed, but apparently some were mixed with the new copies and distributed; it would turn out to be a troublesome mistake. The Haymarket meeting was set for 7:30 p.m. May 4, 1886. (29)

Only about 3,000 gathered at Haymarket Square the next evening for a meeting that did not begin until 8:15 p.m. Three speakers addressed the crowd over several hours. Chicago mayor Carter Harrison walked over to the meeting to monitor potential violence. August Spies spoke first, speaking in English from the bed of an empty wagon on Desplaines Street just north of Haymarket Square. He said "There seems to prevail the opinion in certain quarters that this meeting has

been called for the purpose of inaugurating a riot, hence these warlike preparations on the part of so-called 'law and order.' However, let me tell you at the beginning that this meeting has not been called for any such purpose. The object of this meeting is to explain the general situation of the eight hour movement…" The newspapers blamed Spies for instigating the McCormick rioting, which he took pains to deny. His comments included "There will be a time when monsters who destroy the lives and happiness of the citizens will be dealt with like wild beasts."

Albert Parsons spoke second in support of socialism as the best hope for the working class. Mayor Harrison characterized the speeches as a "violent political harangue against capital" but moderate compared to what he was used to hearing. Carter left for home about 10:00 p.m. after Parsons finished. Samuel Fielden spoke last. "There is no security for the working classes under the present social system. A few individuals control the means of living, and hold the workingmen in a vise." As Fielden was finishing some in the crowd started to leave and two detectives left to report to Captain John Bonfield at the Desplaines Street Station only a block away.

Captain Bonfield led a police detail that marched to the speakers wagon; "I command you, in the name of the people of the state of Illinois, immediately and peaceably to disperse!" Fielden complained "But we are Peaceable." After a brief delay the captain repeated his order and Fielden replied "All right, we will go."

In these few seconds someone threw a bomb over the crowd that exploded where the police were standing. Some officers fell; after brief seconds of delay in the evening darkness police drew their guns and starting shooting into the crowd, which continued for two to three minutes. Police admitted later, they emptied their guns. The Chicago Tribune reported "Goaded to madness the police were in the condition of mind which permitted of no resistance, and in a measure they were as dangerous as any mob, for they were blinded by passion and unable to distinguish between the peaceable citizen and the Nihilist assassin."

The crowd scattered in a mad scramble; bodies littered the streets after the shooting stopped. Samuel Fielden and Albert Spies made it down from the speaker's wagon and off the street, but a bullet passed through Fielden's knee in the process. Seven police were killed and sixty more wounded; six of the wounded would die later. Only one police officer died of wounds from bomb fragments, the others died of gunshot wounds as police shot each other in the rampage. Several in the crowd had handguns, but there was no mention in newspaper accounts, or other evidence, of shots fired from a terrorized crowd.

Civilian dead and wounded could not be firmly established. Survivors justifiably feared arrest and so death and injury among civilians was not always reported. The names of nine civilian dead appeared on several lists compiled by newspapers and unofficial sources, but only four civilian deaths were definite; anywhere from thirty to sixty were wounded.

Mayor Harrison and newspaper reporters in attendance on the street all agreed the meeting remained peaceful. Police deliberately interfered with free speech to break up the meeting, but there was no violence until after the bomb exploded. Captain Bonfield and police authorities claimed it was Fielden's use of

the word, “throttle” as in throttle the law that triggered his decision to break up the meeting. As one police official reported “There was a blunder on the part of the man who commanded the police on the night of the Haymarket murders, or this fearful slaughter would not have occurred. Bonfield made the blunder, and he is held responsible for its effects by every man injured there.”

Police never found evidence to link anyone to the Haymarket bombing, but in spite of the lack of evidence ten people were blamed and charged with murder for the bombing on Haymarket Square. An elderly resident remembered Chicago after the Haymarket bomb: “The city went insane and the newspapers did everything to keep it like a madhouse. The worker’s cry for justice was drowned in the shriek for revenge.”

Big city newspapers in New York, Philadelphia, St. Louis, Chicago and other cities called for shooting or lynching Spies, Parsons and Fielden. The May 5 New York Times ran a story titled “Anarchy’s Red Hand” that began with “The villainous teachings of the Anarchists bore bloody fruit in Chicago tonight, and before daylight at least a dozen stalwart police will have laid down their lives as a tribute to the doctrine of Herr Johann Most.” Mayor Harrison abandoned free speech entirely, making public gatherings or speaking cause for arrest and detention.

Chicago police ran a post-bomb reign of terror rounding up labor advocates, anarchists, everyone working for radical newspapers and other suspected troublemakers, breaking into homes and offices without warrants, holding people in detention without charges, and mixing interrogation with beatings and threats.

A grand jury heard testimony before Judge John G. Rogers beginning on May 17. The ten indicted for murder were Albert Parsons, August Spies, Michael Schwab, Samuel Fielden, George Engel, Adolph Fischer, Oscar Neebe, Louis Lingg, William Seliger and Rudolph Schnaubelt. Twenty-one others were charged with conspiracy, rioting and unlawful assembly.

Only August Spies and Samuel Fielden were on the speaker’s wagon when the bomb exploded, as previously mentioned. Parsons left the speaker’s wagon and the meeting before it ended; he was in Zepf’s Hall with his wife, Lucy, and two children a few blocks away when the bomb exploded. Rudolph Schnaubelt sat on the speaker’s wagon, when he saw the police coming and decided to leave. Michael Schwab was at Haymarket before the meeting but left before it started. George Engel was home playing cards with a friend. Adolph Fischer attended the meeting but was at Zepf’s Hall with Parsons when the bomb exploded. Neither Oscar Neebe nor Louis Lingg, nor Lingg’s roommate, William Seliger attended the meeting and were not near Haymarket Square at the time of the bombing.

A friend of the Parsons with them at Zepf’s Hall convinced Albert Parsons he should leave town. He boarded a train for Geneva, Wisconsin to hole up indefinitely. After a short time at Geneva he moved and spent most of the next six weeks at Waukesha, Wisconsin. Parsons was innocent and decided he could prove so at a trial. After days of deliberations and discussion with attorneys he returned to Chicago to join the seven already in custody. Only eight of the ten indicted were tried. William Seliger testified for the state and Rudolph Schnaubelt left Chicago

and successfully made it out of the country. He was never heard from again. (30)

Parsons voluntarily arrived at the court when the Haymarket bombing trial got under way June 21, 1886. Judge Joseph E. Gary presided over the trial in a way that shocked his colleagues. Judge Rogers from the Grand Jury declared Judge Gary was "ignoring every rule of law which was designed to assure a fair trail for a defendant on trial for his life." His son-in-law, also an attorney and judge remarked that Gary "manufactured the law" and "disdained precedent in order that a frightened public might be made to feel secure."

The Judge refused to allow separate trials but combined them all as one in a single trial. It took twenty-one days to seat a jury after questioning 981 candidates, but it was impossible to find twelve people who had not already decided they were guilty. The defense had twenty preemptory challenges for each of the eight defendants, but defense attorney's soon realized they would have to weigh prejudice by degrees because Judge Gary would not excuse even crudely prejudiced jurors for cause.

The process would start when a man would admit he was biased and could not be an impartial juror. The defense would challenge for cause; Judge Gary would deny the motion and take over the questioning. William Neil who served on the jury admitted he was prejudiced. "It would take pretty strong evidence to remove the impression that I now have. I could not dismiss it from my mind, could not lay it altogether aside during the trial. I believe my present opinion, based upon what I have heard and read, would accompany me through the trial, and would influence me in determining and getting at a verdict." The Judge badgered Neil until he told the court he could give a fair verdict on the evidence. He served on the jury as did others like him who were 12 white men from Chicago and no one from the working class or an immigrant. One of the jurors was a relative of one of the police who died in the bombing.

The jury was seated and the testimony got underway July 15, 1886. Judge Gary allowed the state's prosecuting Attorney, Julius Grinnell, to call the defendants "loathsome murderers, organized assassins, traitors, godless foreigners, infamous scoundrels, and the biggest cowards that I have ever seen in the course of my life." The Central Labor Union in Chicago arranged for three attorneys, Captain William P. Black, Moses Salomon and Sigmund Zeisler to defend them. Black was a civil war veteran and the older and more experienced attorney, but he decided to retain a fourth attorney, William Foster, who had more experience with criminal law.

Defense attorneys had many eye witnesses to prove only two of the eight defendants were on Haymarket Square when the bomb exploded with the other two on the speaker's wagon in full view of the crowd and the police. The prosecution could not connect any defendant to the bomb or the unknown person who threw it. Failing that prosecutor Grinnell declared "Although perhaps none of these men personally threw the bomb, they each and all abetted, encouraged and advised the throwing of it and are therefore guilty as the individual who threw it."

In the alternative to proving murder Grinnell made a charge of conspiracy in a terrorist plot to throw a bomb planned at a meeting of conspirators May 3.

The conspiracy charge depended on testimony of people who attended the May 3rd meeting and were paid by Captain Bonfield to testify for the prosecution. Only two of the eight defendants were at the meeting, but it was impossible to show a conspiracy when the bomber remained unknown.

After failing to show conspiracy the prosecution took days to read articles, editorials, and speeches of the defendants attempting to show they were advocates of anarchy, insurrection and violence. Judge Gary announced advocates of insurrection and violence could be guilty of murder even though it was not known if it influenced the bomber. He declared if "by print or speech advised, or encouraged the commission of murder, without designating time, place or occasion at which it should be done, and in pursuance of and induced by such advice and encouragement, murder was committed, then all of such conspirators are guilty of such murder, whether the person who perpetrated such murder can be identified or not."

The trial ended August 19, 1886 and the jury started deliberations, which were short. They were ready the next morning at 10:00 am with their verdict and penalty. A large crowd assembled on the street outside the court. All were declared guilty of murder with all but Oscar Neebe to be executed; Neebe was sentenced to fifteen years.

The verdict and penalty of the jury exactly fit public opinion in Chicago and around the country. One newspaper after another cheered the verdict. Parsons commented that "The only fact established by proof, as well as by our own admission, cheerfully given before the jury, was that we held opinions and preached a doctrine that is considered dangerous to the rascality and infamies of the privilege, law-creating class, known as monopolists."

Prosecutor Grinnell seemed to agree when he addressed the jury before the trial: "Gentleman, for the first time in the history of our country are people on trial for their lives for endeavoring to make Anarchy the rule, and in that attempt for ruthlessly and awfully destroying life." At the end of the trial he told the jury "Anarchy is on trial. These men have been selected, picked out by the grand jury and indicted because they were leaders. They are no more guilty than the thousands who follow them. Gentlemen of the jury, convict these men, make examples of them, hang them and you save our institutions, our society."

Defense attorney, Captain Black, made a motion for a new trial, which was denied October 7. All eight of the doomed men addressed the court before Judge Gary passed sentence. All spoke with angry and defiant comments that took three days, making it clear in the process they were ready to die for their principles.

All denied they had any part in the bombing or murder, such as Adolph Fischer who said "I was tried here in this room for murder, and I was convicted of anarchy. I protest against being sentenced to death, because I have not been found guilty of murder. However, if I am to die on account of being an Anarchist, on account of my love for liberty, fraternity and equality, I will not remonstrate. If death is the penalty for our love of freedom of the human race, then I say openly I have forfeited my life; but a murderer I am not."

Several of the men addressed the use of force and violence. Michael

Schwab said “Violence is one thing and Anarchy another. In the present state of society violence is used on all sides, and, therefore, we advocated the use of violence against violence, but against violence only, as a necessary means of defense. … I have not the slightest idea who threw the bomb on the Haymarket, and no knowledge of any conspiracy to use violence on that or any other night.” George Engel said “We see from the history of this country that the first colonists won their liberty only through force; that through force slavery was abolished, and just as the man who agitated against slavery in this country had to ascend the gallows, so must we. He who speaks for the workingman today must hang.”

Judge Gary replied that defendants had a trial “unexampled in the patience with which an outraged people have extended you every protection and privilege of the law which you have derided and defied” He set execution for December 3, 1886. (31)

In the aftermath of conviction there was time to correct the parody of justice and apply the law without regard to persons as judges take an oath to do. On November 2, Captain Black filed for a writ of error with the Illinois Supreme Court. On November 25, Chief Justices John M. Scott granted a stay of execution until a hearing on the appeal.

A defense committee formed to raise funds for their legal defense and to publicize the abuses of the trial and conviction of innocent men. A protest movement built in the months following the verdict as some from the clergy, the law, writers and editors from newspapers and the journals of the day wrote their objections. Writer and muckraker Henry Demarest Lloyd, journalist John Swinton, labor journalist Joe Buchanan, professor William M. Salter, academic, lawyer and civil war general Matthew Trumbull were among the objectors. Trumbull wrote “The record shows that none of the condemned men were fairly proven guilty, while some of them were fairly proven innocent; not innocent of sedition, and inflammatory speech, but innocent of murder.” Convicting men for their words and beliefs troubled most of those who wrote against the verdict.

The hearing on the writ of error took place in March 1887, but the justices waited until September 14, 1887 to announce a decision, which they affirmed by unanimous verdict. The justices set November 11, 1887 as the day of execution. Justice John Mulkey wavered slightly, but voted with the group. He wrote “I do not wish to be understood as holding that the record is free from error, for I do not think it is. I am nevertheless of the opinion that none of the errors complained of are of so serious a character as to require a reversal of the judgement.”

On October 27, 1887 Captain Black assisted by several new attorneys filed for a writ of error with the United States Supreme Court. They argued the arrest and conviction raised constitutional violations of First Amendment rights of freedom of speech, Fourth Amendment rights against illegal search and seizure and Fifth Amendment rights of due process. After two days of argument and three days of delay, the Supreme Court refused to act, claiming they had no jurisdiction to hear a case with no federal issues. The vote was unanimous. Oscar Neebe was removed to Joliet to serve his 15 year sentence; the others were held for execution in nine days.

In the meantime pressure built from around the country and abroad for Illinois Governor Richard Oglesby to grant clemency. The Defense Committee and a new Amnesty Committee circulated handbills and needed only two days to get 40,000 signatures on a petition for a grant of clemency. A flood of letters demanding clemency poured into the governor from around the United States and abroad.

Illinois required all doomed men to file a written appeal before a governor commutes a death sentence. Only three of the seven could be persuaded to do so: Samuel Fielden, Michael Schwab, and August Spies drafted a joint letter.

Spies signed with reservations: "I am, as a matter of course, sorry for the poor devils who lost their lives at the Haymarket, but I am more so for the lives of the poor devils who perished on the previous day. Who cares for their wretched families? Nobody. Now, for me to express condolence over the killing of the policemen, and not at the same time over that of the poor fellows at McCormick's … would be an act of hypocrisy such as I would not be guilty of under any circumstances. Suffice it to say that I abhor murder in every form. If I did not I would never have become a socialist!"

Adolph Fischer, George Engel, Louis Lingg and Albert Parsons refused to write for commutation. Fischer explained "I love my family as much as any father is capable of loving his family, but to beg for leniency would be contrary to my sense of human dignity. No scintilla of proof has been forth coming, and, having done nothing wrong, I cannot sign an appeal for mercy. So let them proceed to murder me.!"

Engel explained "I willingly sacrifice my life if in any manner it will teach the working people who are their true friends and who are their enemies." Lingg remained defiant: "I am firmly convinced that the sacrifice of our lives, if it should occur now, will further the decline of capitalism infinitely more than if it should take place three or four years hence, when the federal court will have decided." Parsons wrote "I am prepared to die. I am ready, if need be, to lay down my life for my rights and the rights of my fellow men."

Letters poured into Governor Oglesby demanding clemency, a smaller number demanding the executions go forward. Governor Oglesby looked for support from the business community. He suggested to Executive Officer of First National Bank, Lyman Gage, that he would commute the sentence of Parsons, Spies, Fielden and Schwab if the business community wanted it. Gage called a meeting of Chicago businessmen and with up to fifty people present he argued execution would unnecessarily turn the condemned men into martyrs. The prosecutor Julius Grinnell opposed any action and Marshall Field concurred. The matter was dropped and the meeting ended. Gage admitted later "It was mortifying to me. Afterwards many of the men present came around to me singly, and said they had agreed with me in my views and would have been glad to join in such an appeal, but in the face of opposition of powerful men like Marshal Field they did not like to do so, as it might injure them in business or socially, etc."

Sunday morning November 6 guards discovered four pipe bombs in a box in Louis Lingg's cell, smuggled past careless guards by a regular visitor. The

short, thin bombs had a one inch fuse suggesting use in a suicide, but newspaper speculation exaggerated their power and provoked widespread public outrage. August Spies supporters arranged for him to condemn Lingg's actions in a letter to the Chicago press, but the Lingg bombs diffused clemency pressures at a critical time.

Governor Oglesby went ahead with plans to hear final arguments for clemency on Wednesday, November 9 at the state house. By late morning several hundred waited to address the governor in a large state house assembly room. George Schilling introduced the governor. Captain Black spoke first while continuing and new supporters waited their turn. Speakers continued until 5 p.m.

As the November 9 meeting ended the governor accepted a request to meet privately with labor journalist Joe Buchanan. Buchanan had a letter from August Spies addressed to the governor, which Spies wanted him to read in private. William Demarest Lloyd, William Salter and attorney Samuel McConnell accompanied Buchanan to make private appeals. Buchanan read letters from Spies and Parsons. Spies withdraw his commutation request after the German community of Chicago had called him a coward for signing it. Spies asked to be executed in place of the three others. In Parsons letter he wrote that if he was to be hanged for his presence at the Haymarket meeting he hoped a reprieve could be granted until his wife and children present at the meeting could be tried and convicted. Buchanan quoted Oglesby who gasped "My god this is terrible. " Buchanan presented a written petition from a Knights of Labor convention urging commutation and then left the meeting.

Lloyd spoke and called commutation "the greatest question of State since the pardoning of Jefferson Davis and Robert E. Lee. … Justice demands that the punishment should be less than death." Walter Salter called commutation a wise policy and presented a petition signed by more than a hundred respected people from around the country. Attorney Samuel McConnell made a personal plea for Albert Parsons: "If he is hanged, I will be responsible for his death." McConnell was one of the attorneys who convinced Albert Parsons to return to trial as the best way to clear his name.

The next morning around 9:00 a.m. on November 10, Louis Lingg successfully committed suicide in his cell. He had a dynamite cap, dropped off by the same visitor who dropped off the pipe bombs. Lingg lit his cigar inserted with dynamite. The explosion blew off much of his face, but he lived six hours until almost three in the afternoon. Always defiant, he successfully evaded the humiliating hangman in a way that again attracted worldwide attention.

Around 3:00 p.m. November 10, a telegram arrived in Captain Black's office. The sender, Attorney August Wagener, claimed he had proof under oath the anarchists were innocent. Captain Black, Buchanan and an emissary of attorney Wagener, William Fleron, agreed they should return to Springfield to appeal one last time to Governor Oglesby.

At 5:20 p.m. still on November 10, the Governor commuted the sentence of Samuel Fielden and Michael Schwab to life in prison, but refused to do so for Albert Parsons, August Spies, George Engel, and Adolph Fischer; they had not

written to request commutation. Their execution would go forward the next day as scheduled.

Once Governor Oglesby made up his mind, official Chicago assumed the need for brute force to prevent an assault to free the four men. Three hundred well armed police stood at the windows, covered the roof, and lined the sidewalks around Cook County Jail. Regiments of militia camped at city hall with Gatling guns and cannons. The fire department prepared for arson or bombers. Judge Gary, prosecutor Grinnell, the jury, and police officials got special armed protection. Factories and some shops and businesses closed; newspapers, banks, other businesses and the Board of Trade had armed guards.

A plan to dynamite the jail did go forward, but the four condemned men opposed it. Adolph Fischer explained "that such reprisals accompanied as they surely would be by terrible destruction and bloodshed, would have put the movement for liberty and solidarity backward many years."

Captain Black, Buchanan, and Flernon arrived in Springfield the next morning, November 11 at 7 o'clock after governor Oglesby agreed to meet with them. Mr. Flernon explained the connections that made them believe the Haymarket bomber was in the custody of New York men from an anarchist cell. They asked for a sixty day reprieve to investigate the claims. It was only hours before the scheduled execution and the governor turned them down.

On the morning of execution several wives including Lucy Parsons tried to see their spouses, but all were denied. When Lucy Parsons pressed the issue officials stalled and told her to return at a specified time, but each time she was turned away. When she pressed one last time she, her friend Lizzie Holmes and her children were strip searched and dumped into a basement jail cell. At a few minutes past noon she was notified, "It's all over."

At 11:30 a.m. the sheriff read the death warrants. All had a leather belt tied around their chest, were handcuffed from behind and covered with a floor length, armless muslin shroud. They were marched onto a scaffold in front of an audience of 170 seated in chairs lined up in rows looking ready to hear a string quartet or watch a brutal execution.

White caps and then a noose was put over them all. After a brief pause several spoke a few words before a loud bang at the release of the trap door and all four dropped in unison. Their bodies convulsed and thrashed while four physicians stood by announcing their pulse. It took seven minutes and forty-five seconds until the last one died from strangulation. It was 12:06 in the afternoon: "It was all over." (32)

November 12, Fielden and Schwab were sent to Prison in Joliet and the bodies of the executed men were turned over to their families: all were married and three had children. As many as 10,000 came to see the body of Albert Parsons. The funeral went ahead on Sunday November 13, 1887. The new mayor, John Roche, interfered, apparently fearful a funeral march might promote anarchy or cause a riot. He certified the line of march and insisted there would be no banners, no placards, no arms displayed, nor music played, no speeches delivered, nor demonstrations made. A hearse went from house to house picking up Spies, then

to Fischer, Parsons, Engel and Lingg. Following a funeral attended by 20,000, crowds estimated at 200,000 lined the streets as the procession made its way to the train station where bodies were moved by special train to Waldheim Cemetery west of Chicago. There were many who offered eulogies at the burial attended by upwards of 10,000.

The case lingered on. The victors spoke to justify their work; the losers denounced the verdict variously as "civic or judicial murder," a "political execution," a "horrible wrong" against men "slaughtered by the law," a repeat of the Salem "witch hangings," a "respectable legalized vengeance," a "legal lynching, American style" and so on. Johann Most spoke in blunt and hostile terms to a crowd in New York the day after the hangings; he was arrested and sentenced to a year in prison.

A letter in the papers of Governor Oglesby compared the verdict to Russia: "Even in Russia or Germany the lives of these men would not have been forfeited. That was reserved for this land of 'free speech.' The stain of this murder will not be forgotten in a hundred years." Another deplored the divisions: "But our pain struck deeper because of our realization that the American workers had remained indifferent or, in many cases, had even applauded the execution."

Authorities maintained an aggressive opposition to anniversary memorials. Police broke up services and arrested Lucy Parsons and other speakers for many years. On June 26, 1893, Illinois Governor John P. Altgeld pardoned the two survivors and released a statement to the press that all of the accused were innocent victims of bias and judicial misconduct. The pardon ended the political career of Governor Altgeld.

Tom Paine remains famous in American lore for several slogans. One was "That government is best that governs least," essentially an anarchist philosophy. Thomas Jefferson was also suspicious of government and envisioned an America of small farmers largely left alone by government. After Haymarket public opinion made Anarchists into violent lunatics assumed to be immigrants and foreigners associated with organized labor. Haymarket stalled efforts for the eight hour day and even the cautious and conservative Samuel Gompers realized Haymarket "struck at the foundations of the organized labor movement." Corporate America found it easier to justify any level of aggressive anti union tactics.

On the gallows August Spies spoke his last words: "The time will come when our silence will be more powerful than the voices you strangle today!" The Haymarket executions and the gradual accounting of the legal abuses that followed did bring a wider interest in the study of Anarchism. Emma Goldman, Alexander Berkman, and William D. Haywood were unknown at the time, but later they would concede that Haymarket changed their lives.

After Haymarket newspaper reports of rallies and speeches promoting working class unity would become a mob of foreigners promoting insurrection. Except for Albert Parsons the Haymarket martyrs were aliens, which made it convenient to direct fears and anger at foreigners as the un-American source of dissent rather than the poverty that plagued all of the working class, Americans and immigrants alike. Today the media describe foreigners as undocumented

illegals or suspected terrorists, which helps divide the working class as it did in 1886. (33)

Burlington Strike

On February 27, 1888 the engineers and firemen of the Burlington railroads walked off their jobs in a wage dispute. They wanted uniform wages for engineers and firemen and opposed a three-tier wage classification with lower wages for new hires. Almost immediately the Burlington was able to hire replacements. Just two years before the Engineers refused to join the Knights of Labor in the 1886 Southwest System strike. Knights of Labor officials in Reading wired Burlington management they had three hundred experienced engineers available to fill the empty jobs. Hard feelings among the Knights of Labor in St. Louis and Reading, Pennsylvania generated a flood of applications. Hard feelings helped divide Burlington conductors, brakemen and switchmen from Burlington engineers and firemen who found excuses not to join the strike.

In response, the leadership at the Brotherhood of Locomotive Engineers called on their members working on other railroads to boycott Burlington freight by refusing to drive trains with Burlington cars. It was a sympathy strike intended to show the economic power of the Brotherhood of Locomotive Engineers.

When crews on the Union Pacific Railroad went along in sympathy with Burlington strikers and detached Burlington cars, Burlington management petitioned the Federal Courts for an injunction to end the boycott. The court's injunction treated the actions of Union Pacific engineers as an illegal conspiracy to violate the Interstate Commerce Act, a new Federal law to regulate railroads passed just one year before in February 1887.

The Interstate Commerce Act was the culmination of a long protest from isolated cities and towns victimized by discriminatory rail rates. The law prohibited discrimination in rail rates and required the exchange of freight cars in interstate rail traffic. It provided for enforcement against discriminating railroads through commission decision or court action. The new law defined violations as a criminal conspiracy and authorized courts to issue injunctions to end violations and impose penalties. In the Burlington case the court refused to distinguish the actions of the Union Pacific crews from the duties of the railroad to interchange traffic, but ruled the sympathy strikers had no right to demand a railroad violate the law or ignore company obligations as common carriers.

When other railroads hoped to avoid disruption by allowing their engineers to boycott Burlington traffic, Burlington management sued them as well. One court after another granted injunctions without acknowledging the boycotts as a labor dispute between train crews and railroads, or that Congress intended the law to address managerial decisions that discriminated toward shippers and towns or cities. It would not be the last time the courts adapted a statute to grant authority for a court to end a labor dispute.

The Burlington strike ended in complete failure for the engineers and firemen. The Brotherhood did not have the solidarity or economic power to bring an end to the classification system and raise their wages. It ended without federal

government intervention and without significant violence. It dragged on for months long after it was obvious the Burlington Railroads could carry on without members of the striking brotherhoods. Chicago, Burlington and Quincy president Charles Perkins continued to meet with strikers and strike committees. Each time he agreed to take back as many strikers as he could, but never by replacing the new men. Perkins understood who had the upper hand. The Engineers held out to the bitter end, until there were no jobs left.

The Engineers overestimated their importance to the railroads and remained aloof from other occupations on the railroads, as though their skilled trade alone, without a broader solidarity, was enough economic power to force strike concessions. Their attitudes exposed the divisions in working men who could not act on their common interests. They also failed to recognize the ominous expansion of the court injunction to halt strikes. Soon more judges would neutralize labor's economic power by having their strike ending with injunction orders enforced with all necessary force. (34)

Chapter Two - The Confrontations of 1892 - 1894

Statistics point with unerring precision to the fact that the profits on Bessemer [Steel] Specialties for 1891 ranged from 33 to 66 percent. And yet, we find the manufacturers pleading poverty and resorting to every device that shrewd and able minds are capable of suggesting, to reduce the wage worker's income, and, incidentally, to cripple the organization that has protected him from becoming the intelligent slave of an unscrupulous master."

----------from The Siege of Homestead, Myron Stowell, 1892

Strikes filled the summer calendar of 1892. One came in July in a strike of miners at Coeur D'Alene, Idaho, and then a rail strike in Buffalo and battles over prison labor in the mines of Tennessee in August. Switchmen at the Buffalo rail yards demanded a ten-hour day after the legislature passed a ten-hour limit for railroads. They shut down freight traffic for five days but went back to work without a ten-hour day. Coal miners in Tennessee fought a continuing battle with mine owners over their use of prison labor in the mines. Armed miners expelled the prisoners prompting the governor to call out the National Guard to force them back. The worst strike though came in July in the infamous steel strike at Homestead, Pennsylvania.

Homestead Strike

In 1892 the Homestead Steel Works at Homestead, Pennsylvania eight miles south of Pittsburgh was part of the Andrew Carnegie Steel Empire, a limited partnership under the laws of Pennsylvania. In addition to Homestead, Carnegie had two more steel works and other mills, ore mines and coke works near Pittsburgh. It had combined employment of 13,000 men with 3,800 at Homestead. (1)

By 1890 Andrew Carnegie dominated the iron and steel industry with a fully integrated company built through mergers and the investment in the newest innovation that brought his steel making to the cutting edge of technology. No other foreign or domestic company could match his low cost or under price Carnegie Steel. Yearly earnings in the millions made him one of the wealthiest men in the country. He fancied himself a philanthropist and used his celebrity and virtuous public image to speak and write in favorable ways for labor rights and union organizing: "The right of the workingmen to combine and to form trades-unions is no less sacred than the right of the manufacturer to enter into associations and conferences with his fellows, and it must be sooner or later conceded." Another favorite aphorism was "Thou shall not take thy neighbor's job."

Carnegie was fifty-five years old in 1890 and spending more and more time abroad, but he did not retire from managerial decisions. In previous strikes going back more than twenty years, he shut down the Edgar Thomson works twice in lockouts and got his way with wage reductions. He recruited replacements in other strikes. (2)

The Amalgamated Association of Iron and Steelworkers originated as a union from a merger of three existing unions in 1876. It was affiliated with the AF of L and had local unions organized in 292 lodges around the country with a national membership of 24,000. It enrolled skilled members working in the iron and steel industry. Unskilled laborers could be admitted at the discretion of individual lodges. Skilled work was boilers, puddlers, heaters, rollers, roughers, catchers, hookers, and helpers. There were eight lodges with 325 skilled members at Homestead steel works and a total of 800 members. The nearby Edgar Thomson Steel works and the Duquesne Steel Works were non-union. (3)

Understanding the Productivity Dispute---In 1889 Carnegie wanted to cut costs that reflected increasing productivity and proposed a 25 percent cut in wages. The union rejected his proposal but Carnegie left for Scotland and allowed his chairman, William Abbott, to negotiate the contract. A strike, mass picketing and riots apparently intimidated Abbot because he agreed to contract concessions that angered Carnegie. What was signed and sealed would last until June 30, 1892, but Carnegie was determined the new contract would bring a different result.

The union would have to negotiate a new contract with a new chairman, Henry Clay Frick. Mr. Frick incorporated his Connellsville, Pennsylvania coal business in 1871. He was one of many suppliers of coal converted to coke for use in steel production prior to the long recession of 1873 to 1878. Frick was able to consolidate failing companies until he was the sole source of coke to Pittsburgh, which caught the attention of Andrew Carnegie. Carnegie decided to invite Mr. Frick into Carnegie steel as a partner and then as Chairman. Frick had a history of winning strikes against the United Mine Workers.

Meetings and negotiations for the new contract took place beginning in January of 1892. Carnegie and Frick had Homestead plant superintendent John Alfred Potter pass their written proposal to the union negotiator, William Roberts, who made a written counter offer. Wages for the skilled workmen depended on a complicated formula based on the price of steel and the tons of it produced and sold. For this reason the skilled workmen called themselves tonnage men. The unskilled men worked by the day at a fixed rate, which was $.14 an hour for a ten hour day.

The tonnage men were wedded to older methods of production. The expiring contract was filled with work rules and tonnage payments that allowed the skilled craft workers to exercise some initiative and managerial types of controls over their work and a measured benefit from productivity increases. Even though a tariff on imported foreign steel protected prices, Carnegie expected to apply his new technologies and cut costs in competition with other steel companies. He was certain new production methods would allow him to replace the skilled work men with unskilled labor at fixed wage rates to capture the productivity gains for Carnegie steel. Carnegie's proposals would be an early sign that craft unions were obsolete in an industry that could replace skilled with unskilled labor.

Carnegie proposed new rates to the same wage formula used in the 1889 contract; it applied only to the tonnage men. The first part of the formula had a

sliding scale of wages tied to a base price per ton of steel. If the price of steel went above the base price, the base wage would go up by the same percentage and similarly if the price went down, except the base price had a minimum, which in turn fixed a minimum base wage.

The second part of the formula depended on tons of steel produced. The tonnage men got a wage supplement set as cents per ton of steel produced. The cents per ton payment rewarded higher productivity since tons of production per day reflects productivity. The cents per ton formula varied depending on the work the men performed. Jobs as heaters, shearman and rollers were the highest skills. Heaters got 14 cents a ton in the 1889 contract, but tableman was consider a lower skill and so got 10 cents a ton and so on for other skills. However, productivity increased so much prior to 1889 that the union accepted tonnage cuts in the 1889 contract and still got an increase in wages because they produced more steel per day.

The price of steel was $27 a ton in the first years of the 1889 contract, but in 1891 and into 1892 the price dropped as low as $22.50. Carnegie and Frick proposed a reduction in the base price from $25 per ton to $22 per ton. Their proposal also called for a 15 percent reduction in the tonnage payments. The combined decrease Carnegie admitted was 18 percent. A third proposal in the 1892 contract shifted the contract expiration date from the end of June to the end of December 1895.

Not only did the men object to a cut in the base price and the loss of tonnage pay, they objected to changing the expiration date to December, a seasonal period of low steel demand. Weak December steel sales would weaken union bargaining power and make it easier for the company to hold out in a contract dispute or strike.

The wrangling went on through the winter and into the spring of 1892. The men were upset because production at the Duquesne mill flooded the market for steel billets and depressed the price. Frick maintained that higher productivity would increase tonnage and ultimately make up for base and tonnage cuts. (4)

Negotiations Breakdown---Carnegie left for Europe in early May, but kept a correspondence with Frick in letters of May 4, June 10, and June 17, 1892. In one letter he wanted Frick to notify Homestead employees that Homestead would be non-union. Frick waited and continued with negotiations, but in May he ordered a tall stockade fence constructed around the Homestead plant. It had thick two-inch boards topped with two rows of barbed wire with three-inch portholes every twenty-five feet. Water pipes ran along the inside of the fence and mobile searchlights could light up the surrounding area or the boat landing on the Monongahela River. When negotiations reached a stalemate, Frick notified the union on May 30 he would not meet again if the union did not accept the contract by June 24.

In the letter of June 17, Carnegie wrote “Far too many men required by Amalgamated rules.” Frick wrote to Robert Pinkerton on June 20 requesting the services of Pinkerton guards. Frick agreed to a final contract negotiation June 23

where he decided to raise the minimum to $23 dollars at the suggestion of his plant superintendent, but Amalgamated Association officials ignored it and urged all members to continue working until the June 30 contract ended. However, Frick dismissed groups of one to two hundred men a day beginning June 25 until Homestead shut down by July 1, the same day he announced the company would operate as a non-union open shop that would contract with individuals but not with anyone from a union or a labor organization. The union voted to strike July 1 and elected an Advisory Commission to plan their response. The Advisory Commission had five each from the eight lodges.

Frick hoped he could reopen the Homestead works July 6 with non-union replacement workers with the assistance of the local Sheriff, William H. McCleary. Frick had his law firm ask Sheriff McCleary to deputize the Pinkertons, but he stalled. Then the law firm asked Sheriff McCleary to appoint a hundred deputies to remove the picketers blocking the plant, now empty and silent. The sheriff could not find men from Homestead to be deputies, but he sent his deputy sheriff, Samuel Cluley, to Pittsburgh to recruit outsiders. In the meantime, the Advisory Commission had organized a military style hierarchy of groups that surrounded the Homestead works in three round the clock shifts of picketers intended to protect the plant and prevent replacements from taking their jobs. More men were stationed around town, on roads into town, and at the rail depot. A steamboat, the Edna, patrolled the Monongahela River to intercept efforts to land replacements by boat. Some strikers camped along the river. A steam whistle was ready to sound the alarm.

When Cluley returned with twelve recruits he had to confront a determined throng of a thousand picketers deployed to protect the plant and block entry. Cluley could do nothing and so Sheriff McCleary went to the Homestead works to talk with Hugh O'Donnell, Chair of the Advisory Commission. He convinced O'Donnell to allow him to use his legal authority to appoint a separate group of fifty deputies to take over protecting the plant, but fifty people to deputize could not be found and so the compromise failed. Frick made another attempt to take back the Homestead works in a July 4 letter to McCleary, but now it was a standoff. There was no violence yet; Homestead remained tense but quiet. (5)

The Battle Begins---It was now July 5 and most of Homestead expected forcible efforts to remove the picketers and bring in Pinkertons and a replacement workforce. The men would soon learn the Frick plan called for deputy sheriff, Joseph Gray, plant superintendent John Potter, and 316 Pinkerton Guards to board barges moored on the Ohio River north of Pittsburgh at Davis Dam. The specially outfitted barges had bunks and galley big enough to board the men like a residence hotel. The barges had cabins loaded with bedding, food, Winchester 45-70 rifles and plenty of ammunition. After dark July 5 two steamboats, the Little Bill and the Tide, pushed the two fully loaded barges, the Iron Mountain and the Monongahela, down the Ohio and into the Monongahela River toward the boat landing at the Homestead works.

The use of Pinkerton Guards in labor disputes was already controversial

and so much so that the U.S. House of Representative established a committee of five to investigate the role of Pinkertons in railroad labor disputes. That was May 12, 1892, before the troubles at Homestead. On July 6, during the Homestead battle, the House voted to append the duties of the committee. Their resolution called for them to "investigate and report on the character of the employment of said forces [Pinkertons] in the present instance, and the causes and conditions of the sanguinary conflict now going on at Homestead, Pa." The committee traveled to Pittsburgh and opened hearings July 12, 1892. The committee took 247 pages of testimony from twenty witnesses; all direct or indirect participants in the Battle of Homestead. Witness testimony established a sequence of events in the battle and the thoughts of combatants, but the strike continued during the hearings and nothing was said or done to resolve the dispute.

Frick testified twice during the hearings in which committee members pressed him with questions about his use of Pinkertons, among other things. The committee wanted to know when and why he wanted a private armed force to protect Homestead. Letters of correspondence established that Frick made arrangements to bring 300 Pinkertons to Homestead in secret as early as June 20, before the strike started. Under questions from the committee Frick admitted he was "anticipating trouble." The committee wanted to know if Frick intended for the Pinkerton guards to arrive with arms and ammunition. He answered "We hoped they wouldn't be necessary but the arms were there in case they were needed."

The committee had Frick read them his July 4 letter to Sheriff McCleary.

> DEAR SIR, [Sheriff McCleary]:
>
> Will you please take notice that at, and in the vicinity of our works in Mifflin Township, near Homestead, Allegheny County, Pennsylvania, and upon the highways leading thereto from all directions, bodies of men have collected who assume to and do prevent to our employees access to and egress from our property, and that from threats openly made we have reasonable cause to apprehend that an attempt will be made to collect a mob and to destroy or damage our property aforesaid, and to prevent us from its use and enjoyment! This property consists of mills, buildings, workshops, machinery, and other personal property.
>
> We therefore call upon you, as sheriff of Allegheny County, Pennsylvania, to protect our property from violence, damage, and destruction, and to protect us in its free use and enjoyment.
>
> H.C. Frick

Committee members knew that Frick waited to apply to the sheriff until after finalizing arrangements for the Pinkerton guards, but Frick justified it with "I did not think the sheriff would furnish them …" He was right but also impatient; the strike was six days old and he did not have replacements to operate the plant. No government official stepped forward to mediate a bitter and angry standoff.

The attempt to sneak private guards into the plant in the middle of the night at gunpoint provoked a deadly battle. (6)

Few stayed asleep in Homestead through the early morning hours of July 6. As the Pinkerton armada entered the Monongahela River lookouts spotted the running lights and passed the word. The Tide broke down approaching the last turn to Homestead and so the Little Bill had to tow both barges the rest of the way. When they got close to Homestead about 4 a.m. Hugh O'Donnell blew the steam whistle. Thousands responded with many running along the riverbank, some with revolvers shooting in the air or taking potshots at the Little Bill and the barges. When large numbers got to the Homestead works they ripped down a section of the barbed-wire fence to make their way down to the boat landing.

The shooting woke up the sleeping Pinkertons. Their captain, Frederick Heinde, distributed rifles and ammunition. Some refused the rifles. They complained they were hired for guard duty not to fight, but there was little time to bicker. The captain of the steamboat, William Rodgers, was about to run the barges up on the gravel landing.

Thousands more from Homestead - strikers, wives, children, sympathizers - poured down toward the landing, more and more of them armed. The deputy captain, Charles Nordrum, announced to all who could hear on shore, "We are coming up that hill anyway, and we don't want any more trouble from you men." Nordrum and some of the Pinkertons shoved a gangplank onto the shore.

Captain Heinde and forty armed Pinkertons emerged from the cabins; Captain Heinde and six or seven of them stepped onto the gangplank. Heinde told the crowd "We are coming ashore to take over the works." The reply came "Don't step off that boat." At least three strikers stepped onto the gangplank, apparently intending to block the Pinkertons. One of them decided to lie prone in defiance. When Captain Heinde tried to shove him off the gangplank, somebody's gun discharged and hit Heinde in the thigh.

That brief confrontation brought a deadly exchange of gunfire. Shots from the shore hit Heinde, and five of the Pinkertons: five wounded, one killed. A hail of rifle fire off the barges from the Winchester 45-70 repeating rifles aimed directly into the crowd hit at least thirty people on shore: three killed immediately. The shooting continued for three to five more minutes with the crowds on the shore scattering backwards up the hill and the Pinkertons diving for cover on the deck or in their cabins. More were wounded on both sides when the shooting stopped.

Plant superintendent Potter wanted Nordrum, who escaped injury, to attempt another landing, which he declined to do. William Rodgers, the boat driver, was able to get the Little Bill alongside the barges to get Heinde, the body of the dead Pinkerton and fourteen of those wounded aboard to safety and eventually a hospital. Rodgers could not steer the boat in the hail of bullets hitting the pilothouse. He had to let the boat drift in the current to get away.

By now the light of dawn showed on the horizon. There was a pause, a lull. On shore the strikers stacked whatever they could find on the Homestead grounds to build fortification close to the water. During the lull High O'Donnell stepped forward to the waters edge to speak with Nordrum. The conferees made crude

threats to rout and defeat each other but nothing more happened for several hours. Around 6 o'clock in the morning July 6 the Pinkerton leader stepped forward again and ordered the crowd to disperse, or he would lead his men into the mills at 7 a.m. against all opposition.

At 8 a.m. when a group of Pinkertons attempted to come on shore as promised the striking men opened fire and four Pinkertons went down; several of the strikers on shore were also hit and wounded. The shooting continued into the afternoon. Some of the Pinkertons returned fire but a hail of bullets forced them to retreat to their cabin quarters. There they stayed, trapped for hours under beds and tables, while the men shooting at them got more worked up and more violent. A few of the Pinkertons escaped by swimming across the river to Braddock, although at least one drowned.

Upwards of five thousand strikers and sympathizers had control of the Homestead grounds. Hugh O'Donnell was the closest thing to a leader, but strikers tried a variety of innovative attacks on their own initiative. Sharpshooters kept a steady barrage while others fired shrapnel from two municipal cannon, normally used during civic parades. Someone got the idea to ignite oil poured into the river, except it would not burn. Later oil pumped into the river from a fire truck failed to ignite even with burning canisters thrown onto it. Another striker showed up with a box of half pound sticks of dynamite, which were tossed at the barges like flaming grenades. Some exploded on the pilothouse and on the cabin.

As the afternoon wore on more strikers and sympathizers showed up with firearms ready to join the battle. More took positions in Braddock across the river. Some of the Pinkerton guards continued to fire out of portholes, but more of them huddled under beds and tables unable or unwilling to resist further with the danger and brutal heat of the afternoon.

At mid afternoon the Pinkertons put up a white flag; white flags were shot to shreds. Many of the strikers were out for revenge or to vindicate the strikers killed so far. Finally about 5 p.m. Hugh O'Donnell spoke to his reluctant throng of strikers and convinced the men to let him negotiate conditions for a truce. After a short parley the Pinkerton negotiator agreed to surrender in exchange for safe passage off the barges and out of Homestead. After strikers boarded the barges Pinkertons were forced to give up revolvers and firearms, but they were allowed to leave unmolested. Strikers looted the barges of everything of value before setting them a fire and cheering as they burned.

Once the Pinkertons were off the boat the surrender did not go as promised; the crowds remained violent and beyond control. The surrendered men were forced to pass through a blocks long gauntlet with some men and many angry women and boys who beat and clubbed them on a forced march that ended at a town skating rink. Some of the men had bullet wounds and all were weak and dehydrated from a hot afternoon in captivity. These were severe beatings, two died from head wounds, while some collapsed to be dragged to the skating rink. None escaped injury. Amalgamated Association President William Weihe was finally able to get Sheriff McCleary involved and make arrangements to get the Pinkerton men onto a train to Philadelphia; twenty-eight of the severely wounded

were dropped at an area hospital. (7)

The Battle Ends---The day ended with nine dead strikers and seven dead Pinkertons; forty strikers had bullet wounds compared to twenty Pinkertons, but virtually all three hundred were injured running the gauntlet. The strikers maintained control of Homestead from Wednesday July 7 to Monday July 11. Funerals started Thursday while Sheriff McCleary assessed his options. He was not able to recruit deputies from Pittsburgh and felt compelled to request National Guard troops from Governor Robert Pattison. McCleary argued any efforts to remove picketers and enter the plant would renew armed conflict.

Governor Pattison stalled by demanding assurance that local authorities could not restore order. He finally responded July 10 by ordering Major General George Snowden to Homestead to "maintain the peace, protect all persons in their rights under the constitution and laws of the state." General Snowden arrived July 11 to organize and deploy fifteen regiments of troops, three cavalry units, three field guns and six Gatling guns.

Hugh O'Donnell spoke to General Snowden. On behalf of the Amalgamated Association "… we welcome the National Guard of the State of Pennsylvania to this borough, and proffer our assistance in maintaining order." The General answered "The State of Pennsylvania needs no help from the Amalgamated Association in preserving peace."

A news reporter had a question: "General is it intended to use your troops for the protection of non-union men?" The General apparently failed to realize the reporter was not a scab when he answered that "The gates are open and you may go in if the company permits it." And so the union soon discovered the National Guard was there to keep the peace and protect Carnegie Steel's non-union replacements brought in to run the mills. Some of the 8,400 troops surrounded the Homestead works while others occupied the town of Homestead, patrolling and marching up and down the streets.

Advisory Committee Chair, Hugh O'Donnell saw what was coming with the army and offered to give up all three demands in exchange for recognition of the Amalgamated Association, in effect, a capitulation in exchange for return to the status quo. Frick turned it down cold. Strikers refused to return and maintained complete solidarity; three other area rolling mills left work in a sympathy strike July 14 and again sympathizers shut down the non-union Duquesne Works beginning July 19. Donations arrived from unions and sympathizers around the country. Many strikers doubted Mr. Frick could replace the skilled workers or operate the plant without them, but Mr. Frick and plant officials had a small crew fire up the furnaces and look busy while they hunted for replacements.

On July 16 Frick posted notice at the entrance of his mills: "Individual applications for employment at the Homestead Steel works will be received by the general superintendent in person or by letter until 6 p.m. Thursday July 21, 1892." The posted notice allowed former employees who did not "interfere with our rights to manage our business" to apply before the deadline, but not after it. The company announced plans to build one hundred houses inside the plant fence.

Strikers in company housing were notified they could leave or be evicted. Henry Frick had agents traveling the country to recruit replacements. (8)

Attempted Assassination---At the time of the Homestead strike two Russian immigrants, Alexander Berkman and Emma Goldman, operated a popular and profitable lunchroom in Worcester, Massachusetts. Both were part of a network of Anarchists that continued and expanded after the execution of the Haymarket martyrs. They decided the strike and the conduct of Henry Clay Frick provided a perfect opportunity to spread anarchist philosophy. For them Frick embodied the capitalist class, not as a man, but as an enemy of labor. Both decided to leave the lunchroom and travel to Homestead, distribute leaflets, and recruit followers to the anarchist cause. However, Berkman soon changed his mind and decided to go to Pittsburgh to devise and carry out a plan to assassinate Henry Clay Frick. Goldman did not go; she knew his intentions, but did not participate or share in his decisions after he arrived in Pittsburgh.

Berkman left for Pittsburgh July 13. Over the next ten days he tracked Frick's movement, but found him inaccessible and his residence heavily guarded. He requested an appointment with Frick by posing as a New York employment agent. On July 23, 1892 after several failed efforts he talked his way into Frick's outer office when he was meeting with John Leishman, a vice president of Carnegie Steel. Berkman pushed through a door into the meeting room and shot Frick, hitting him the neck. Leishman jumped at Berkman, but he shook himself loose and shot again, this time hitting Frick in the shoulder. As Berkman took aim for a third shot Leishman hit his wrist and another struggle ensued where Berkman pulled a knife and stabbed Frick, twice in the lower back and once in his thigh.

Noise from the shooting attracted attention on the street below and of clerks and a carpenter working in the building. Berkman continued to resist in a fury of energy until the clerks and carpenter entered the room to help subdue Berkman and get his gun. A police officer arrived and took aim, but Frick, still conscious, shouted "No, don't kill him, … raise his head and let me see his face."

A police search of Berkman turned up twelve additional bullets, a few coins, sheets of paper and a fulminate of mercury capsule he was chewing. It was like the one that killed Louis Lingg, which would have killed him and possibly some others now in the room. Police pried it out.

News of the shooting and the arrest of Berkman spread quickly. A large crowd assembled outside with some shouting demands to lynch him. It was worldwide news and reporters showed up at Andrew Carnegie's Scotland estate asking for comments on the Frick shooting and the Homestead strike. He stalled and refused to comment, which disgusted the press who called him a coward for holing up in Scotland and evading responsibility. Complaints were to no avail, he refused to suggest any course of action for Frick and claimed he had nothing to do with running the company or its labor troubles.

Frick not only survived he refused anesthesia because he thought he could help "find the bullets." After his doctors removed them, Frick recovered enough

to release a statement: "This incident will not change the attitude of the Carnegie Steel Company towards the Amalgamated Association. I do not think I shall die, but whether I do or not, the Company will pursue the same policy, and it will win."

While convalescing he "denounced the strikers as assassins and declared that if Carnegie came in person in company with President [Benjamin]Harrison and the entire cabinet, he would not settle the strike." All of Homestead knew the shooting generated sympathy for Frick and hurt their chances of settling the strike in spite of public expression of sympathy. By now, the end of July and a month into the strike, both sides resolved to fight to the bitter end. It would be a grimy battle that Carnegie and Frick would win, but it was not just a competition of money and economic power, Frick had the army and the law on his side. (9)

A skeleton crew opened the plant July 27, but it was a public relations gesture. Frick needed two thousand men to run Homestead at its design capacity and he had barely a hundred. With the army to protect the plant and the ability to house replacements inside the Homestead compound, finding and training replacements was the sole obstacle to victory. It took almost three months in a contest where both sides compromised all known standards of law, propriety and decency.

Carnegie agents hired men off the streets in places like Baltimore and Cincinnati and also bought them train tickets to Homestead. They went south to recruit southern blacks and new immigrants were a favorite target. By early August the company announced they had seven hundred back to work, but they needed time for training and so the recruits made little, if any, steel in August. Not one of the strikers returned to work, an astonishing show of solidarity considering the Amalgamated Association membership had only 325 skilled members in January of 1892 out of a workforce of 3,800. The others were day laborer and therefore paid a small daily wage without tonnage benefits. The skilled men showed little interest in recruiting unskilled members prior to 1892, but the approaching contract negotiations changed their minds. At the time of the strike Amalgamated Association membership approached 800. More important the unorganized non-union men had already agreed to accept the daily wage imposed by Frick. Therefore the three matters in dispute that caused the strike applied to only 325 men. The non-union men probably expected some benefit from higher skilled wages, but their semi-skilled or unskilled status made them easier to replace. Still they remained on strike and lived on a pittance of strike benefits offered by the union. (10)

Berkman's assassination attempt did enormous damage to public respect for organized labor, both immediately with the Homestead strike and over the long term in the decades to come. Police did not believe Berkman when he insisted he acted alone. Two Pittsburgh men, Henry Bauer and Carl Nold, were both disciples of Johann Most who helped Berkman find housing in Pittsburgh without knowing a thing of Berkman's plan. They were charged as accessories, convicted and sentenced to five years.

Police hunted for Emma Goldman who started calling herself E.G. Smith, but Police did not have sufficient reason to charge her with conspiracy

in connection with the Frick assassination attempt. She continued to appear and speak at public events. She spoke at a rally of the unemployed at Union Square, New York on August 21. In her closing remarks she warned not to expect help from the government, the pillar of capitalism. “Do you not realize that the state is the worst enemy you have? It is a machine that crushes you in order to sustain the ruling class, your masters. … They will go on robbing you, your children, and your children’s children, unless you wake up, unless you become daring enough to demand your rights.” New York police caught up with her in Philadelphia September 6 and arrested her for inciting a riot. She made bail but was eventually convicted and spent ten months in the Tombs prison.

A preliminary hearing for Berkman took place July 29. He denied any intention to kill Leishman but admitted he wanted to kill Frick. He refused an attorney and spent his remaining jail time drafting a speech to deliver at his trial that began September 19. When Berkman entered the courtroom, the jury was already seated. The prosecution displayed Frick’s bloody clothing and took testimony of Frick and Leishman.

Berkman read his prepared speech in German with a translator, but the translator stumbled badly. At 1:00 p.m. Judge Samuel A. McClung interrupted, telling Berkman he already had more time than the prosecution. Berkman went on to tell the court Frick was a symbol of tyranny he hoped to vanquish. “My reason for my act was to free the earth of the oppressors of the workingmen … I did not assault Mr. Frick but the person who had oppressed labor.”

Judge McClung ended the trial at 1:10 p.m. The prosecutor made a final statement and McClung instructed the jury, which took a few minutes sitting in the jury box to find him guilty on all six charges. He got a 22 year prison term, the sum of maximum sentences on all six charges: 7 years for felonious assault on Frick, 5 years for Leishman, three years each on three charges of entering a building with felonious intent and a year in the county workhouse for carrying a concealed weapon. Berkman complained what he did was all one crime, but that was overruled. His failure to question court procedures because he had no lawyer limited his right of appeal. It was all over in four hours. A reporter was at the Western Penitentiary of Pennsylvania when Berkman arrived to begin his sentence. The reporter asked if he regretted what he had done: “I’m sorry I didn’t kill him.” He was 22 years old. (11)

The Strike and Trouble Drag On---The city of Homestead remained a place in violent turmoil through the fall. Strikers hiding in rail cars or hiding along the Monongahela River shot at the Little Bill and the Tide bringing scabs, or Black sheep, as some preferred to call them, to Homestead. Strikers assaulted scabs on a regular basis; picked fights or tossed bricks and rocks. Frick received daily letters making threats and plant superintendent John Potter was stoned sitting on the porch of his house.

National Guard troops wanted to go home; many were bored with little to do. Some turned to drinking or making catcalls to the women of Homestead. One of them, private William Iams, was lounging when news arrived of the

Berkman assassination attempt. He jumped up and shouted "Three cheers for the man who shot Frick." His words perfectly reflected the division of opinions in Homestead. His commanding officer, J.B. Streator, heard him and demanded an apology, which Iams refused to give. Streator hung him by his thumbs until he passed out and two medics ordered him cut down. General Snowden ordered a dishonorable discharge, which Streator carried out by physically expelling him in a crude fashion intended to humiliate and debase him.

Iams made it to Pittsburgh and filed suit against Streator and the two medics. The incident turned into worldwide news since reporters were everywhere in Homestead ready to cover anything. The military establishment in Washington was none too happy with the publicity. The trial lasted eight days; but the facts were not in dispute, only the appropriate response to Iam's gleeful announcement. The judge directed the jury to find the accused innocent as long as they did not act with "malice" whatever that might mean. All three were acquitted.

Scabs soon found out they were expected to work twelve hours a day everyday except Christmas and the Fourth of July doing their work in 130 degrees of heat and raucous deafening noise while watching their confreres get burned, blinded, bashed, and killed doing exceedingly dangerous jobs around molten steel. Falling generally meant death. Frick paid the Pinkertons $5.00 a day, but scabs hired as day laborers got a dollar.

News coverage of Homestead made it harder to recruit scabs. On one occasion fifty-six recruits boarded a train in Cincinnati. When they discovered the well paid, easy jobs recruiters described would actually be at Homestead, many wanted off the train, but they encountered armed guards and blocked doors. Brawls ensued that included a few bayonet wounds, but only twenty-one got off the train in Homestead.

Some scabs worked a while and tried to quit, but that was not easy either. Those living in company housing inside the walled off Homestead compound found the gate guarded and locked. Company housing included meals, but the men started getting severe intestinal disorders that mimicked dysentery or typhoid. The sickness got so bad plant officials had the sheriff and his deputies escort some of the scabs to restaurants. The use of escorts helped the men understand their true status, which may be the reason some of them took the opportunity to elude deputies and slip out of town.

Many assumed the intestinal disorders were from the heat or polluted water, but a doctor was asked to test the food and announced it was tainted with arsenic, Croton oil and antimony powder. Pinkertons hired again to work at Homestead and to be plant spies found someone to accuse, Robert Beatty. He confessed that he paid Patrick Gallagher, a Homestead cook, to put a yellow powder in coffee and soup. Then a third man named Hugh Dempsey of the Knights of Labor was accused of organizing the entire plot. The three were arrested, tried and convicted of the poisoning but not for murder even though three men died. Dempsey and Beatty got seven year prison terms; Gallagher five years.

Soon the newspapers questioned the verdict. Dempsey denied all allegations from the start. No poison was introduced as court evidence or traced to the tainted

food that could verify the charges. Both Beatty and Gallagher recanted their testimony. Gallagher announced that he lied; the Pinkertons put him up to it and promised immunity in exchange for false testimony. All three requested pardons, but they served out their terms. The episode added to the dreary life in Homestead and did more damage to organized labor, especially the Knights of Labor, already in serious decline.

As of mid September strikers continued to hold out, none applied for jobs. Mr. Frick wrote Carnegie that "The firmness with which these strikers hold on is surprising to everyone." Neither Frick nor Carnegie had any intention to compromise, even though Homestead was still short of men and orders were going unfilled, but production continued to increase as more scabs finished training and more arrived.

On September 22, 1892 a grand jury indicted 167 Homestead strikers, some for murder, but also conspiracy and aggravated riot. As many as a hundred packed up and left town. Hugh O'Donnell and six others were arrested on murder charges and held without bail for seven months. Homestead Burgess John McLuckie, essentially the mayor of Homestead, but also a steelworker and union member, was indicted for conspiracy, but the union put up his $10,000 bail. Once freed he arranged for charges of murder, conspiracy, and aggravated riot against Frick, Leishman, Potter, nine other Homestead officials, William and Robert Pinkerton and five other detectives. Bankers Robert and Andrew Mellon arranged for their bail checks in advance, none would spend a minute in jail. There was some evidence to show how and when some of the accused strikers took part in the battle of Homestead but all those tried were acquitted.

Then the chief justice of the Pennsylvania Supreme Court, Edward Paxon, pressured the presiding judge of a sitting grand jury to let him make his case to indict thirty-five Amalgamated Association officials on charges of treason. He used an 1860 statute that defined treason as "anyone owing allegiance to the Commonwealth of Pennsylvania, who shall levy war against the same …" It was apparently a relic of the Civil War. On September 30 he addressed the grand jury in a rambling tirade and the jury dutifully returned indictments. The accused were unable to make bail and so went to prison awaiting trial, but all were eventually acquitted.

The Strike Ends---The Homestead works was getting closer to normal operation. A new and more amiable plant superintendent, Charles Schwab, replaced the severe and hated John Potter. By mid-October union defections started, only a few at first when the Amalgamated Association admitted a handful had applied for work and been rehired. Union funds to pay strike benefits were running out for the nearly four thousand strikers and dependents. Some strikers were leaving the area to find jobs elsewhere; others were broke and walked the streets as vagabonds.

A gradual withdrawal of the troops ended October 13 when the last units left and turned law and order over to Sheriff McCleary. The sheriff had a tough time keeping the peace. Replacement scabs that wanted to leave Homestead and

their jobs were now allowed out. Some remained in the area at least initially which brought angry confrontations between scabs and strikers with beatings and shootings, some of it against black strikebreakers imported into the area by Frick recruiters.

By mid-November desperation set in. A meeting of unemployed day laborers on November 18 ended when union officials sadly agreed to allow strikers to apply for daily wage jobs; hundreds did. Schwab accepted some of them. Another meeting and a strike vote took place at the skating rink on November 20, 1892. Almost 800 were eligible to vote, but only 192 took part. The vote was 101 to 91 to end the strike, now 143 days old. The Chicago Times called it unconditional surrender. (12)

Frick and Carnegie exchanged cheerful letters of congratulations. Frick wrote "Strike officially declared off yesterday. Our victory is now complete and most gratifying." Carnegie replied that "Life is worth living again." He was vacationing in Italy and remarked about "pretty Italia."

Before the strike, some of the skilled men worked eight or ten hour days. Some could afford to own a home and support their families with the necessities of life and a few of its luxuries. After the strike ended the open shop replaced the union, everyone worked 12 hour days everyday but Christmas and the Fourth of July with a 24 hour shift every other week. Sunday pay was abolished. Grievance procedures ended. Spies stalked the plant as informants posing as workmen. Efforts to organize a union brought instant dismissal. Tonnage pay was cut two thirds and then fazed out on the path to fixed wages regardless of skills. A roller was paid 14 cents a ton in 1892, but 6 cents a ton in 1894

Carnegie and Frick maintained their relentless cost cutting and price wars for another 20 years. By 1901 J.P. Morgan decided the steel markets should be orderly markets. He combined with Andrew Carnegie, Charles Schwab, and Elbert H. Gary to merge the steel industry into a holding company with 60 percent of the steel industry. At 66, Carnegie left the business and actually retired shortly after the merger. Elbert Gary, a lawyer and former judge, was elected chairman of the Board of the new company, U.S. Steel. Known as Judge Gary, he would remain as chairman of U.S. Steel and relentless opponent of organized labor until his death in 1927. (13)

Homestead---The landlords, merchants and small businesses of Homestead ended the strike bankrupt; residents destitute. Tax collections ceased. It was late 1892 and the next depression of 1893 to 1898 lurked just ahead. The fears of Amalgamated Association officials that wage cuts at Homestead would mean wage cuts everywhere turned out to be true. Membership dropped fifty percent in two years after which the union simply melted away. There would be no organized union to resist steel industry decisions or declarations until 1919.

The Russell Sage Foundation sponsored two studies published to investigate conditions in the steel industry in 1907 and compare them with those of 1892. The evidence compiled found 60 percent of employed men were classified as unskilled and paid an hourly wage of 16.5 cents an hour compared to 14 cents in

1892. The increase was 18 percent, but the Bureau of Labor reported published data showing a general increase in the cost of living of 22 percent.

Tonnage rates for the high skilled and semi skilled jobs were cut an average 65 percent, but because improvements in technology continued to raise production per hour of work, a decline in daily wages was less than 65 percent. Tonnage payments converted to a daily wage left daily wages falling as much as 41 percent unadjusted for inflation for shearmen to as low as 5.4 percent for heaters. Daily wages do not convert directly to an hourly wage because the more skilled men worked eight hours a day in 1892, but 12 hours a day in 1907. (14)

The wage policy over the 25 year period did what Andrew Carnegie intended; the skilled jobs were taken over by machinery and the higher wages of the tonnage men were brought down to equal the pay of the non-skilled. Wages would not support a family with more than a two room tenement without indoor sanitation and barely enough left over for food and clothing. Given the extraordinary accident and death rate most of the family men tried to have life insurance, but that was not always possible. Hunger was part of life in Homestead.

Working in the heat and the din 12 hours a day with alternating weeks of day to night, night to day shifts eliminates time or energy for anything but work. The night shift was 5:30 p.m. to 7:30 a.m. In the Sage Foundation study of Homestead, Households in the Mill Town, the men of Homestead were not just exhausted, they were lethargic, without hope, ambition or initiative who passively accepted the dictates of management: "What's the use?"

Spies in the plant had long ago ended free speech. The joke was "If you must talk in Homestead, talk to yourself." The company offered to sell stock to employees, but the men figured they did so to find out how much money they saved in order to cut their pay. Carnegie built a Homestead library and Frick built a park, but the men saw repeated pay cuts. "We'd rather they hadn't cut our wages and'd let us spend the money for ourselves. What use has a man who works twelve hours a day for a library, anyway?" (15)

Judge Gary demanded a 12-hour day from steelworkers, which did not end until 1923. The story goes that President Warren Harding spoke at a White House dinner for 41 steel executives. He started with "Nothing will contribute so much to American industrial stability and add so much to American industrial happiness as the abolition of the twelve hour working day and the seven day working week." Some of the steel men did not like the President's interference, but a committee was formed to "study" ending the twelve hour day. The committee concluded a 12 hour day did not injure employees "physically, mentally or morally" and did not deny a man enough time with his family. To abolish it would raise cost by 15 percent and require hiring 60,000 new employees. So the answer was no, but the president kept nagging until finally Judge Gary played the "progressive" and ended the 12 hour day in August 1923. (16)

The Future---The labor battle at Homestead defined a core of disputes for the labor battles of the future: productivity and replacement labor. Up through the 1889 contract, the Amalgamated Association was able to negotiate at least

a share of the value their work helped create through the use of new technology and higher productivity. That was the essence of the tonnage payments to the skilled men. As more tons of steel could be produced per hour of work, the skilled workmen received some of the value in higher wages.

By 1892 Andrew Carnegie was determined to get the benefit of advancing productivity for Carnegie steel; Carnegie insisted the growth in tonnage rates must stop. The correspondence from Carnegie in Scotland to Henry Clay Frick in Pittsburgh suggests Carnegie had no patience for any further discussion with the union. He wanted to get rid of it. While Frick stalled rather than throw down the gauntlet and refuse to negotiate or start by declaring an open shop, his contract terms put tonnage payments on the path to extinction.

In 2024 thirty years of advancing computer technology continues to raise productivity in today's modern economy. Productivity savings can be converted to profits or wages or some combination, which remains a part of labor relations that affects income inequality now as it did in 1892.

Replacing strikers will always break a strike as it did at Homestead. After the 1889 union contract expired June 30, 1892 the men worked "at will" meaning Frick had the unrestricted legal right to dismiss and immediately replace every striker with or without cause. Amalgamated Association members joined together in solidarity and refused to work, but their first amendment rights in the U.S. Constitution defined their only other legal rights to limit replacements. Freedom of assembly and freedom of speech permitted picketing and efforts to speak with and convince replacement scabs to join them in solidarity with their strike.

Decades of protest, strikes, federal legislation, and court rulings have kept the replacement rights discussion going, but employers have retained the legal right to dismiss employees or strikers and hire replacements, which remains a part of labor relations that affects income inequality now as it did in 1892.

Just as the Homestead strike wound to its close the country's presidential election took place November 8, 1892 between the incumbent Benjamin Harrison, a Republican, and Grover Cleveland, the Democrat. The strike figured in the campaign. The Democrats cast Carnegie and Frick as heartless moneybags while suggesting better times for labor in a Cleveland Administration. Pennsylvania and the rest of the industrial north put him back in the White House. Democrats did a good job talking their way to the labor vote in 1892 as they have every four years since, but somehow they just don't quite deliver. Soon the working class would look on as President Cleveland applied brute force to break a Chicago rail strike, one of the most incredible strikes in American labor history.

Coeur d'Alene Metal Mine Strikes and the Western Federation of Miners

Gold discoveries in the Coeur d'Alene region of Idaho in 1882 attracted miners and investors, but it was even bigger lead, copper and silver discoveries that built the metal mining industry in Idaho. At least a thousand worked in mines near Coeur d'Alene by 1892. Wage cuts by the largest mine owners during 1887 unified miners enough to organize the Miner's Union of Coeur d'Alene at Wallace, Idaho. The union negotiated a union shop with $3.50 a day minimum wage, but

mine owners organized their own association to counter the union.

In January 1892 mine owners shut down operations demanding lower railroad rates for ore shipments. After holding out for two months the railroads agreed to lower rates on March 19, 1892 and the mine owners announced they would reopen mines April 1, except they would cut pay to $2.50 a day. The wage cut set off a strike. Mine owners responded by importing Pinkerton detectives and non-union scabs. A recently passed Idaho statute forbid "any association, corporation, or company which shall bring or aid in bringing into this state any armed or unarmed force for the purpose of the suppression of domestic violence, shall be guilty of a felony" but it needed enforcement.

federal district court Judge Robert Beatty intervened with an injunction May 7 that denied strikers the right to picket. Strikers ignored the injunction and confronted strikebreakers; some left voluntarily, some needed threats. Then on July 11, 1892 a mine guard killed a miner at Frisco Mill. That set off a gun battle; miners attacked the mill and its barracks. Union miners used an opportunity to float two fifty pound boxes of dynamite down an aqueduct into the mill, which blew up, killing one and wounding at least twenty.

An hour later miners attacked the Gem mill. In the shooting, the guards killed five strikers and wounded at least fourteen more. In spite of the losses mine guards surrendered and agreed to leave the county. Next, as many as four hundred armed strikers left for the Bunker Hill Mine near Wardner where they dismissed nearly three hundred non-union scabs who were also forced to leave the county.

Idaho Governor Norman Willey responded with a declaration of martial law and sent the Idaho National Guard to "crush the mob with overwhelming force." He also requested federal troops, which arrived shortly after. The militia went on its own rampage and arrested all known union men, estimated at six hundred, and built a stockade "bull pen" to be an outdoor prison. The National Guard commander replaced local elected officials with his military underlings and turned the county into a military zone; all those without a military pass were forcibly removed.

Approximately 350 held in the bullpens survived on minimal food or camp sanitation. Some were hauled to Wallace and charged with contempt of court; twelve declared guilty spent four to eight months in the Ada County jail. Two were charged with murder in federal district court in Coeur d'Alene and another thirty with conspiracy. Four were convicted but later released by order of the U.S. Supreme Court. (17)

Ed Boyce was one of the twelve held in the Ada County jail. It was there that he and the others discussed the need to organize a better and tougher union. The abuses generated enough anger they posted notice for miners to meet and write by-laws for a new union. It would be the **Western Federation of Miners** (WFM), founded at Butte, Montana, May 15, 1893. The WFM started with about 2,000 members in 15 local unions in Idaho and four other western states. Skilled and unskilled miners were welcomed into the new industrial union. It got off to a slow start but Ed Boyce agreed to be President in 1896 and remained to lead the union until 1902. The WFM earned a reputation as a tough and resolute group that

would stick together and fight for what they believed. Although it started in Idaho it was Colorado in the Cripple Creek District after 1894, and especially in 1903, where they would gain their widest notoriety. (18)

General Managers Association and the American Railway Union Strike

The frequent labor disruptions after 1877 persuaded both labor and management to formulate new means and methods to protect their interests. Management from railroads in and out of Chicago worked to suppress their competitive tendencies and agree to uniform labor policies through informal meetings and discussions beginning in 1886. During a strike of freight handlers, for example, they met in conference and resolved that "in case any employee refuses to handle business they are ordered to, they shall be discharged and not employed by any road running into Chicago." Meetings occurred as necessary to agree on a common practice to end an ongoing labor dispute. They tried to negotiate standard wages, standard work rules and avoid strikes through a collective response to labor demands. They cautioned each other not to exploit their own advantages from strikes on each other's roads.

The General Management Association-------By January 19, 1893 the managers of the 24 railroads in and out of Chicago were able to agree on a constitution and formal bylaws to become the General Managers Association(GMA): a cartel. Their objective was simple: "Consideration of the problems arising from the operation of railroads terminating in Chicago." Funds would be raised from assessments. On February 11, 1893 they tested their new agreement by making a collective response from a threat to strike by railroad switchmen, who wanted higher pay. Each GMA member agreed to submit their separate employee labor demands for review by a new association committee and to decide a uniform wage for each occupation. The committee decided against a wage increase for switchmen; they submitted their decision to the switchmen from each of the GMA members and to the press at 3:00 p.m. March 6, 1893.

The GMA also made preparation for a strike by setting up another committee to enroll strikebreakers to bring to Chicago; but the switchmen elected not to strike. The General Managers Association's first collective effort with the switchmen worked well. They felt they were ready to successfully oppose labor demands with collective agreements almost identical to the collective bargaining agreements they opposed for labor. (19)

The American Railway Union Strike--------Eugene Debs gained national recognition in these years attempting to unify the railroad brotherhoods during the Burlington strikes. After starting work in May 1870 at the Vandalia Railroad maintenance shops in Terre Haute, Indiana he moved to working as a locomotive fireman, later becoming the secretary-treasurer of the Brotherhood of Locomotive Firemen and editor of its national magazine. During the Burlington strike Debs argued to an official of the Knights of Labor "it is your duty and mine to exert what influence we may possess to prevent organized workingmen from cutting

each other's throats."

Working as the editor of a national labor publication gave Debs the chance to write the case for unification of the railroad brotherhoods, which could work for the common interest. The railroad brotherhoods – engineers, firemen, conductors and trainmen – refused affiliation with the A. F. of L. and ignored other rail workers doing other occupations. At organizing meetings in the winter of 1893 Debs spoke of a system wide union of rail workers to unite "into one, compact working force for legislative as well as industrial action." He argued that a unified labor movement would reduce or eliminate the need for strikes, lockouts and boycotts to the benefit of employee and employer alike.

In spite of the reservations from the leaders of the Brotherhoods, Debs succeeded in attracting members into his new American Railway Union(ARU), some of them from the brotherhoods. Severe depression started in 1893, which helped recruitment. In spite of a lack of money members signed up by the thousands, forming lodges, or locals, around the country and especially west of Chicago. It looked like Debs succeeded in organizing a national union strong enough to negotiate as an equal with the General Managers Association. (20)

The American Railway Union was still expanding in early 1894 during wage cuts on James J. Hill's Great Northern Railway: first in August 1893, then again in January and March 1894. Efforts to negotiate with Hill and Great Northern officials brought firings for union supporters. When Hill refused to restore wage cuts or respond to the union the line was completely shut down in a strike that began April 13, 1894 in spite of Hill's order to fire union sympathizers. After the strike started Mr. Hill announced those who refused to strike would be rewarded.

As usual the leaders of the Brotherhoods opposed the strike, but Debs correctly sensed the sentiments of his members. He persuaded them to avoid violence or destruction of property and to protect the rail yards from vandalism. When Debs arrived in St. Paul, Minnesota April 18, 1894 Mr. Hill offered to arbitrate if the Brotherhoods were included. Debs refused in his often quoted response: "If the brotherhoods control your workers why can't they move the trains?"

Hill continued to make overtures to Attorney General Richard Olney and President Grover Cleveland hoping for federal intervention. Hill claimed the strikers interfered with U.S. mail and urged the president to assert federal authority by sending troops. During the strike Debs agreed to allow trains to run the U.S. mail, but not with passenger cars and no freight trains. Great Northern officials refused to allow mail trains to run solely as mail trains; it would be a complete train with passenger and mail cars, or none.

When the President stalled, Hill proposed that Debs speak to the St. Paul Chamber of Commerce, but when he did the Chamber wanted the matter submitted to an arbitration board without the brotherhood's involvement. The arbitration decision restored most of the wage cuts. Nothing about the arbitration required Mr. Hill to accede to union demands, but in the towns and villages from Chicago to Minneapolis to Seattle, public sympathies were with the strikers including the Populist Party governor of Minnesota, Ignatius Donnelly. Rail traffic was at a

standstill. Hill settled the strike abruptly on May 1, 1894.

Debs vision of an industrial union, his careful reading of the wishes of his rank and file along with the public sentiments in their favor undoubtedly brought Hill to his decision to suspend further efforts and allow ARU a victory. Debs arrived home in Terre Haute, Indiana on May 3, 1894 to a welcome crowd of four thousand. He told them it was the unity of the strikers that carried the day, but he went further to philosophize on the American Railway Union. He wanted the ARU to bring employer and employee into an era with closer touch and a more respectful relationship between capital and labor. “I hope to see the time when there will be mutual justice between employer and employees. It is said the chasm between capital and labor is widening, but I do not believe it. If anything, it is narrowing and I hope to see the day when there will be none.” (21)

The U.S. Postmaster General during the 1888 Burlington strike took the position that railroads must deliver the mail during a strike, but took no position on the Burlington strike or strikes in general. The second administration of President Cleveland allowed the current superintendent of railway mail service, James White, to take a different position on mail service during a strike. White wanted to make it a federal crime to delay, obstruct, or prevent the passage of any mail train on any railroad to aide a strike or for any other “malicious purpose.” White and Postmaster General Wilson Bissell requested an opinion from the U.S. Solicitor General, Lawrence Maxwell. Maxwell wrote and published his opinion that agreed with White and Bissell that anyone stopping or interfering with a mail train could be prosecuted for criminal conspiracy. The opinion was posted around the Great Northern rail yards. Since there was only one mail train a day, Deb’s decision to let it go through did not make a difference in the Great Northern Strike.

There was a catch though. The opinion declared mail trains must go through “in the usual and ordinary way.” In other words Attorney General Olney wanted strikers to know they could be charged with criminal conspiracy even if the union agreed to run a train with just a mail car during a strike and management refused their request and the mail did not go. Mail would become a factor in the next rail strike, as we shall see. (22)

George Pullman and the Chicago Strikes

The successful conclusion of the Great Northern Strike brought a surge of new lodges and new members to the American Railway Union, but the depression that started in 1893 continued. Railroad business dropped everywhere amid rate cuts and falling revenues. Wage cuts on other railroads were common and unemployment was high. Members of the General Managers Association in Chicago paid close attention to the events in Minneapolis and the Great Northern Railway strike. They were ready to test the notion a national union of railway workers could bargain as an equal with corporate business.

Just weeks after the Great Northern strike, tempers boiled over for employees at the Pullman Palace Car Company. In 1894 the Pullman Company operated a contract business for sleeping car service on passenger trains over 125,000 miles of track on operating railroads. Another department built Pullman cars and

contracted to build a variety of other rail cars for sale to operating railroads. In addition to the Pullman, Illinois shops Pullman maintained a repair service there and at three other regional locations: Wilmington, Delaware, St. Louis, Missouri, and Ludlow, Kentucky. A fourth repair service at Detroit, Michigan was closed as a "consequence of the severe depression." The depression created a surplus of Pullman Cars and a decrease in contracts to build new cars for other roads.

The Town of Pullman--------George Mortimer Pullman founded the Pullman Company with a partner in 1867 when he decided he could build a more luxurious sleeping car. Soon he bought out his partner and moved his manufacturing operation to land purchased south of Chicago along Calumet Lake. That was in 1880 when he planned and built the company town of Pullman to adjoin the Pullman works. His idea in founding a new town "in close proximity to the shops" was to build "homes for workingmen of such character and surroundings as would prove so attractive as to cause the best class of mechanics to seek that place of employment for preference to others. We also desired to establish the place on such a basis as would exclude all baneful influences, believing that such a policy would result in a greater measure of success … in a tendency toward continued elevation and improvement in conditions not only for the working people themselves, but for their children, growing up about them." (23)

Residents worked and lived at Pullman but did not vote or elect town officials, own property, or make any decision about services or living conditions. Residents believed Pullman employed "company spotters" to spy on them as he was someone who would not tolerate any objections or criticism. William H. Carwardine, pastor of the First Methodist-Episcopal Church at Pullman, confirmed a system of espionage used to control criticism and dismiss and blacklist objectors.

Tenants signed a long lease filled with rules and a clause to terminate with just ten days notice. Pullman appointed managers to carry out decisions and billed for costs incurred as part of rent and utility charges. In addition to housing, the town had a hotel, shopping arcade, theatre, library, school, a newspaper, the Pullman Journal, and a church with a parsonage for any denomination; all had fees and charges, which few residents could or would afford. (24)

Pullman was not a town or city chartered under the law of Illinois. It was the private property of George Pullman within the much larger village of Hyde Park, but Pullman was successful in getting Pullman officials onto the Hyde Park Board of Trustees. He demanded a cut in water rates and threatened to build another water system unless he got lower charges. In 1885 the village lowered water rates to 4 cents a thousand gallons which he sold to residents at 10 cents. Pullman demanded and got a substantial reduction in property taxes. In 1882 the property assessment dropped from $550,000 to $200,000 and then in 1884 to only $32,000, when Pullman paid only $2,773 in property taxes. Still Pullman argued taxes should be lower since he provided all but water and police services, not Hyde Park. A Harper's Monthly article from 1885 characterized findings on the Pullman experiment: "It is not the American ideal. It is benevolent well-wishing

feudalism which desires the happiness of the people, but in such a way as to please the authorities." (25)

The Wage Cuts----------The fiscal year ending July 31, 1893 ended with a Pullman Company profit of $6.5 million dollars with 14,500 total employees and 5,500 employed in the Pullman shops. By late summer 1893 the 1893-1897 depression caught up with the construction department when the operating railroads cancelled existing orders for cars and new orders dropped to a few. Pullman insisted that the drop in construction required a money saving cut in wages, but it turned out this requirement was open to interpretation.

The Pullman company continued to make profits in 1894 at almost the same rate as 1893 because Pullman Palace Car Service around the country continued at roughly the same level as before the depression. In addition to revenues for passenger ticket sales Pullman convinced the operating railroads to pay him two cents per mile for maintenance and repair services to Pullman cars. Profits generated for the operating department were many times more than the sudden losses on construction work at the Pullman shops. However, by Pullman's interpretation the profits in the operating department had nothing to do with the losses in the construction department. (26)

Details of Pullman Company practices came out in a fifty-four page Report on the Chicago Strike of June-July 1894 conducted by the United States Strike Commission created and authorized by Congress. The final report attached an appendix of testimony of 107 witnesses who answered questions from three strike commissioners: Carroll Wright, John Kernan, and Nicholas Worthington. George Pullman and other Pullman officials provided information and testified before the commission.

Pullman insisted wages had to be cut at the Pullman shops otherwise he declared wages paid above the market rate will mean part of wage payments are really profits and a corporation can never share profits with labor; profits can only be divided among shareholders. In 1893 the Pullman Company had $26 million dollars of undivided profits. In 1894, there were $5.2 million of profits; $2.9 million to pay an 8 percent annual dividend and $2.3 million added to a surplus of undivided profits.

During Strike Commission testimony the three commissioners put questions to eleven of the Pullman shop employees. One was Thomas Heathcoate, a workman elected as a employee committee spokesman. Commissioner Wright asked what wages he received at Pullman. "In the first two weeks of September my pay was $32.70 and for the last two weeks of September it was $12.25. … During the month of October we had no work at all. The first two weeks of November I earned $8.05; the second two weeks $20.10."

Commissioner Wright inquired about arbitration: "You asked that Pullman submit certain questions to arbitration!" … "Yes sir. Now I want to be understood in this matter; other committees went there for the purpose of asking the Pullman Company to arbitrate, and Pullman said there was nothing to arbitrate. Mr. Pullman claimed he was losing money, and then two days later declared a dividend of

$600,000 and that made the men much more determined to strike."

In further questions Mr. Heathcoate complained he was weak and hungry on the job, but still unable to earn enough to live on doing piecework: "When we left Pullman service we owed George M. Pullman $70,000 rent and our pay was such we could not pay rent and have sufficient to eat."

Commissioner Worthington inquired about the rental housing at Pullman: "Do I understand you to say that all the operatives that live in Pullman and are housekeepers live in houses owned by the Pullman Company?" Mr. Heathcoate replied "Whenever a man is employed in the Pullman shops he is supposed to live in a Pullman house until the Pullman houses are filled; that has been the case in the previous strike; when a man came to the shops he must live in a Pullman house."

On follow up Commissioner Worthington asked "Do you mean to say that a man having a job in Pullman and was living in one of the Pullman houses if he saw fit to move to Roseland and live there that would be sufficient cause for losing his job?" "Yes sir."

It came out further that pay was divided into two checks: a rent check and an amount left over after deducting rent. Commissioner Kernan asked Mr. Heathcoate how that worked in practice. "If I was in such a condition I could not pay my rent, or any part of it, of course the law of the state is that I must be paid in full; of course they could not compel me to pay the rent, but if I had only $9 coming to me, or any other amount, the rent would be taken out of my pay; that is the rent check would be left at the bank and I would have to leave my work in the shop, go over to the bank and have an argument there for a few minutes to get the gentleman to let me have money to live on, and sometimes I would get it and sometimes not. I have seen men with families of eight or nine children to support crying there because they only got 3 or 4 cents left after paying rent; I have seen them stand by the window and cry for money enough to enable them to keep their families; I have been insulted at the window time and time again by the clerks when I tried to get money enough to support my family, even after working everyday and overtime."

Jennie Curtis testified about her work as a seamstress in the Pullman Shops with five years experience at Pullman when they left work May 11. Commissioner Kernan asked about wage cuts: "… in 1893 we were able to make 22.5 cents per hour, or $2.25 per day, in my department and on the day of the strike we could only earn, on the average working as hard as we could, from $.70 to $.80 a day."

Commissioner Wright asked her if she paid rent to Pullman. It turned out she did, but she was also expected to pay back rent for her father who died in September 1893 just as the wage cuts got started. "My father worked for the Pullman Company for thirteen years. … He being laid off and sick for three months, owed the Pullman company $60 at the time of his death for back rent, and the company made me, out of my small earnings, pay that rent due from my father."

Commissioner Wright called Reverend Carwardine. He was asked to state "what you know of the causes of the strike?" " I judge from all I have found out

… the wages were cut very severely … I also realized there was a great deal of dissatisfaction with what is known as the local administration, and also on the account of the abuses that were practiced by the foreman and subforemen. … They had come to feel they could get no justice."

Commissioner Wright asked Reverend Carwardine if he had "given any attention to the subject of settling strikes and labor difficulties?" He answered in part that "I am convinced, however, of this, which of course is Utopian to those who do not look at it from my standpoint, that there will never be a settlement of these difficulties until employers are more just toward their employees than has been illustrated in this affair through which we have just passed." (27)

The Strikes----------The succession of draconian wage cuts without a penny relief from rent or expenses made it impossible to pay bills or buy basic essentials. Hard pressed employees started meeting off Pullman property to avoid detection and dismissals. In a matter of months they wanted to organize lodges under the constitution and bylaws of the American Railway Union, even though ARU bylaws restricted membership to railroad employees. To accommodate the Pullman workforce ARU officials rationalized that Pullman operated a railroad by maintaining track and a rail yard to ferry finished cars and repair work to operating railroads. By March 1894 many of the 3,100 Pullman employees that remained after layoffs paid a dollar in dues and joined new lodges organized in the ARU.

Pullman Company refused to recognize any union and would not hire union members, but agreed to meet with employees as individuals. On May 7 Thomas Heathcoate acted as chair of a Committee of 46 employees from all operating departments that showed up to meet with Thomas Wickes, a Pullman vice-president. A second meeting May 9 included George Pullman and several other company officials. The committee wanted wages restored to those of May 1893, or to have some reduction in rent. Pullman read a prepared statement that dismissed both requests as impossible. Construction contract revenues did not justify higher wages, and rents on housing had nothing to do with wages. Income from this department was quite reasonable. Three members of the committee were dismissed the next day.

Union members met in a secret meeting May 10 where they voted to strike Saturday, May 12, but a spy in the meeting informed on their plan. According to Reverend Carwardine, Pullman planned a surprise lock out for noon the next day, but a sympathetic telegraph operator tipped off the men. There were 2,500 who left work early; Pullman laid off the remaining 600 of his faithful employees and closed up the factory. That was on Friday, May 11, 1894. (28)

Soon after the Pullman employees left work one of the officers of the Pullman Company taunted the strikers. He predicted they could not hold out more than ten days, but Chicago area labor unions and a sympathetic public donated relief supplies. Eugene Debs showed up to speak and offer his support. He compared Pullman paternalism to that of a slaveholder with his human chattels; Pullman did sometimes refer to his employees as "his children." The newspapers

predicted failure for a strike aimed at the rich and intractable Pullman in a depression full of surplus labor. The Chicago Times asked Thomas Heathcoate to comment on union expectations: "We do not expect the company to concede our demands. We do not know what the outcome will be, and in fact we do not care much. We do know we are working for less wages than will maintain ourselves and families in the necessaries of life and on that proposition we absolutely refuse to work any longer."

The shutdown and strike at Pullman was about a month old when the American Railway Union met June 9 in nearby Chicago for their first anniversary convention. Delegates from 465 local unions representing 150,000 members attended the meetings. Pullman strikers attended hoping for ARU support in their strike. The convention agreed to have a committee of twelve approach Thomas Wickes, but he refused any proposals including arbitration: "We have nothing to arbitrate." A few days later, six, who were all Pullman employees, approached Wickes again, but he called them "former employees" who had no more rights "than the man on the sidewalk."

In spite of Eugene Debs' warnings against a strike and the dangers ahead, convention delegates voted unanimously June 22 to have ARU members switch Pullman sleeping cars off scheduled trains, or refuse to move a train when it carried a Pullman car, if George Pullman would not meet with ARU delegates. Delegates set a deadline of June 26 for a national boycott of Pullman cars. (29)

The Chairman of the General Managers Association (GMA), Everett St. John, called a meeting June 25 to plan strategy following reports of ARU intentions. The GMA would meet every day until mid July. On June 26 members agreed to dismiss any employee who refused to switch Pullman cars and named John M. Egan as GMA Director of Resistance. In further meetings the GMA agreed to keep a blacklist of discharged employees who would never again be employed by a GMA member and then formed a committee to recruit strikebreakers.

When the boycott started June 26 the Illinois Central Railroad put two Pullman cars and ten special officers on the "Diamond Special," a passenger train which left Twelfth Street station right on schedule. George Pullman and other Illinois Central officials were there to see it off, but it did not get far before switchmen quit work rather than turn switches for a train with Pullman cars. Up to 5,000 left their jobs the first day in a strike that stranded significant train service. What started as a local strike at the Pullman Company would soon turn into a national confrontation between labor and capital. (30)

The GMA deliberately suspended some freight and passenger service as a strategy to pressure the government to intervene. In 1894 railroads carried the mail almost entirely on the first car of passenger trains. To encourage disrupting the mail some GMA members reduced passenger service, or put mail cars at the end of the train, or halted trains miles out from city destinations claiming strikers threatened safe delivery of the mail. Debs tried to avert federal intervention by ordering the men to run mail trains with or without Pullman cars, much as he ordered in the Great Northern strike, but now GMA officials hoped disrupting the mail would provide a cause for the federal government to intervene and end the

strike.

On June 28, George Pullman left town for his seaside house at Elberon, New Jersey. By June 29th 125,000 of 221,000 rail employees were out. The strike centered in Chicago but it spread rapidly outward to western roads and into Michigan and Ohio. A New York Times report on July, 1st declared "The strike assumed such proportions today that over ten roads abandoned all attempts to run any but mail and passenger trains." The report listed 14 roads that were "more or less crippled by the strike" where "most of these roads are not moving any perishable freight at all, and several of them, notably the Illinois Central, the Rock Island and the Pan Handle are at their wits end trying to protect their property, fill the places of the strikers, and attend to what little business is left to them." (31)

U.S. Attorney General Richard Olney took decisive Federal action from the start, even though he had no previous experience in government and had to ignore conflict of interest from a long career as a corporate attorney, mostly for railroads. On June 28 he wired Federal District Attorney Thomas Milchrist instructing him to "See that the passage of regular trains carrying mails in the 'usual and ordinary way' … is not obstructed." On June 30, Milchrist wired Washington to recommend additional U.S. Marshals to protect the mail, which Olney authorized immediately. The chief deputy of the U.S. Marshal service in the Northern District of Illinois, John C. Donnelly, swore in new deputy marshals: "The first men we got we had to go into the streets and pick up, and we got some men that were worthless … and the better class of men you could not get to do it." The new men displayed the badge of a Federal Marshal, but they were armed, directed and paid by GMA officials.

The same day, June 30, Olney appointed Chicago attorney Edwin Walker to "act for the government" in the Chicago area strikes even though he was an attorney for the Chicago, Milwaukee and St. Paul Railroad, one of the General Managers Association railroads. Olney favored using troops as he explained in correspondence to Edwin Walker "I feel that the true way of dealing with the matter is by a force, which is overwhelming and prevents any attempt at resistance." President Cleveland preferred to have them use the federal courts to end the strike by injunction.

An assistant U.S. Postmaster-General first notified the Attorney General of mail detained at western locations such as San Francisco, Salt Lake City, Portland and Los Angeles. Olney sent instructions by telegram to "Procure warrants or other available processes in the U.S. Courts against any and all persons engaged in such obstructions and direct marshal to execute the same by such number of deputies or such posse as may be necessary." (32)

As of July 1 there were no reports of rioting or disruptions in the city of Chicago, but close by at suburban locations it was a different story. At Blue Island, Illinois a crowd of two thousand tipped boxcars onto the only clear track on the Rock Island Railroad. Rail cars of this era balanced on a pivot which made it easy for thirty or forty men and boys to give the "heave ho" and turn over cars. A reporter quoted the general superintendent of the Rock Island line. "We cannot open this place in a week without troops. This mob will keep us closed until troops

are on guard. The trouble is there is no organization, or discipline, and not much bravery on the special deputies sent here. The regular men are all right, but the other fellows mix with the crowd, or bunch together because they are afraid to be alone. I know there are a dozen switchmen who have been sworn in as deputy marshals." (33)

U.S. Marshal John Arnold telegraphed the Attorney General "The situation here tonight is desperate. I have sworn in over 400 deputies, and many more will be needed to protect the mail trains. I expect great trouble to-morrow. Shall I purchase 100 riot guns?" District Attorney Milchrist sent Attorney General Olney his own telegram recommending an injunction: "The general paralysis warrants this course." (34)

Debs and the Federal Courts----------Olney concurred and had Attorney Edwin Walker meet with federal district court Judge Peter Grosscup and Federal Circuit Court Judge William A. Woods to negotiate the terms of the injunction, which was granted without a hearing on July 2. The injunction was signed by Melville Fuller, Chief Justice of the United States. In it the President of the United States instructed Eugene Debs, forty-nine named others, all other persons whatsoever, and the American Railway Union that "You are hereby restrained, commanded and enjoined absolutely to desist and refrain from in any way or manner interfering with, hindering, obstructing or stopping any of the business" of any of the twenty-three GMA railroads and "from hindering, obstructing or stopping mail trains, express trains, whether freight or passenger, engaged in interstate commerce" … and … "from in any manner interfering with, injuring, or destroying any of the property of said railroads engaged in" … "interstate commerce, or the carriage of the mails of the United States …"

The first sentence, quoted and condensed above, was more than a page long, but the second sentence denied Debs the ability to conduct a strike. It reads "And Eugene Debs and all other persons are hereby enjoined and restrained from sending out any letters, messages or communications directing, inciting, encouraging, or instructing any persons whatsoever to interfere with the business or affairs, directly or indirectly, of any of the railway companies hereinabove named, and from persuading any of the employees of said railway companies while in the employment of their respective companies to fail or refuse to perform the duties of their employment." (35)

In correspondence to Washington, Attorney Walker predicted Debs would violate the injunction giving Judge Grosscup cause to send him to jail for contempt of court, which he predicted would end the strike. However, it could be thought strikers or anyone else tipping over box cars, ripping up tracks or destroying property as suggested in the injunction can be arrested and charged with committing misdemeanor or felony crimes. Americans expect a right of free speech and free assembly protected by the first amendment to the Constitution, but if picketing and demonstrations turn into rioting police can arrest rioters, except that arresting rioters would not deter Debs or assure an end to the strike.

English and American law makes the injunction a civil law proceeding

separate from criminal law. An injunction allows a judge to protect against irreparable harm to property with a restraining order naming those who must obey the court, but as Supreme Court Justice David Brewer did concede, it should be denied to those who have an "adequate remedy at law." Between 1877 and 1894 railroad attorneys filed many petitions for injunctions in federal district courts. Many times judges adapted the law to treat strikes as a cause of irreparable harm to the public convenience and railroad revenue that justified an injunction, which was rapidly turning into a routine judicial method to break a strike.

The distinction between criminal and civil law turned into an important matter for organized labor and the ARU. Violating an injunction allows a judge to cite violators with contempt of court. People charged with a crime expect a constitutional right to reasonable bail and a jury trial, but those in contempt of court can be ordered to jail without delay and without a jury trial. Debs ignored the injunction. Since he had done nothing but send out letters, messages, and communications his lawyers prepared to defend him and to challenge the use of the injunction in labor disputes as an unconstitutional abuse of U.S. law. (36)

On July 2rd Attorney Walker wired Olney to argue the injunction might be a sufficient restraining influence on Debs to end the strike, but otherwise "I think it is of the opinion of all that the orders of the court cannot be enforced except by the aid of the regular army." After receiving the wire Attorney General Olney directed District Attorney Milchrist to consult with the Federal Marshall Service to determine if troops were necessary and to have Attorney Walker and Judge Grosscup join in the decision. On July 3rd Federal Marshall John Arnold explained "I read the injunction to this mob and commanded them to disperse. The reading of the injunction met with no response except jeers and hoots. … I am unable to disperse the mob, and clear the tracks … and believe that no force less than the regular troops of the United States can procure the passage of the mail trains or enforce the orders of the court." Within several hours all agreed an emergency existed that required the U.S. Army. The president ordered troops to Chicago without consulting Illinois Governor John Altgeld. Olney told the press "We have been brought to the ragged edge of anarchy and it is time to see whether the law is sufficiently strong to prevent this condition of affairs. If not, the sooner we know it the better that it may be changed." (37)

Unlike other strikes local officials opposed the actions of the federal government. Neither Illinois Governor, John Altgeld, nor Chicago Mayor John Hopkins wanted to surrender state authority or contribute to strikebreaking. The Mayor and his police chief Michael Brennan reported minimal disturbance as of July 3, where 3,100 police were available to maintain order. Governor Altgeld had no reports of rioting or violence in Chicago, nor any local request for troops, although he had already ordered militia units to Cairo and Decatur, Illinois following requests from local officials.

Attorney Edwin Walker and John Egan of the GMA demanded federal troops and complained in the press of a failure of law enforcement. Governor Altgeld countered with "The newspaper accounts have in some cases been pure fabrications and in others wild exaggerations." He contended the trains were not

moving because management could not find replacement crews. In correspondence Altgeld complained to President Cleveland that Illinois "is amply able to enforce the law" and that all those in Chicago who demand troops were his appointees, but to no avail. (38)

Federal troops started arriving in Chicago July 4. Eventually 1,936 troops arrived from nearby Fort Sheridan, Fort Leavenworth in Kansas and Fort Brady in Michigan with orders to enforce federal court orders, protect the mail, and execute the laws of the United States. After troops arrived crowds got bigger and more aggressive, roaming about vandalizing rail yards until by the evening of July 5 officials of the Illinois Central reported to Mayor Hopkins that forty-eight rail cars were destroyed in an arson fire. The mayor requested state troops from Governor Altgeld who ordered seven companies of the state militia to Chicago. Eventually 4,242 state militia would arrive to join 3,000 to 4,000 U.S. deputy marshals, 1,936 federal soldiers and 3,100 police.

On July 6, a railroad detective fired four shots into a crowd vandalizing trains near Kensington wounding two men and setting off a rampage of arson with siding tracks full of rail cars going up in flames; as many as 250 freight cars burned. At another location a mob burned forty more freight cars; two trains burned standing on tracks of the Illinois Central.

In the evening of July 6, leaderless mobs roamed into the unfenced and unpatrolled Pan Handle Railroad yards to loot rail cars before using oil fueled torches to set fires that burned 700 freight cars packed together on siding tracks and out of range of water mains.

On July 7, a mob of several thousand including many women and children converged on the Grand Trunk line near 49th street where a work train attempted to clear the tracks. Angry rioters pelted attending soldiers with rocks and debris. Several were wounded before the troops fired into the crowd killing four and wounding at least twenty. The death toll in rioting would reach twelve.

Union members charged that temporary deputy U.S. Marshals set some of the fires. Mayor Hopkins had police planted among these deputies and police chief Brennan suspected some of them, he described as "as toughs, thieves and ex-convicts," had set some of the fires. Apparently Attorney General Olney had some doubts expressed in a telegram to attorney Walker of July 9, 1894: "At the risk of sounding meddlesome, I suggest the Marshal is appointing deputies that are worse than useless." It was never proved that deputies set fires, but railroad employees or strikers had nothing to gain by violence or destruction of railroad property; a fact admitted by John Egan during Strike Commission hearings. Rioting and destruction was confined to railroad property and most of that to rolling stock. The rest of Chicago operated nearly as usual except the strike prevented essential deliveries of coal, fruit, vegetables, meat and milk. Prices were up and shortages quite serious. (39)

The press used the strike to make sensational national news: anarchist revolutionaries threatened the American way of life. The newspapers made it the "The Railroad Insurrection" with stories starting with "Debs the Dictator" declaring the "Mob is in Control" or "Mobs Bent on Ruin" or the "Strike is Now

War." After the army arrived headlines read "Shoot them on the Spot" or "Strikers met with Deadly Volley." Public worry around the country intensified enough that President Cleveland released a prepared statement July 8 telling the citizens of Chicago to disperse and go home or be treated as public enemies. (40)

Debs continued to manage the strike after July 3 in defiance of the court injunction. He spent several thousand dollars sending telegrams to direct the boycott: "Boycott Pullman cars and if company insists on hauling them, every man in all department quits." Orders went to places like Argentine, Kansas, Raton, New Mexico, Trinidad, Colorado, Sioux City, Iowa, Livingston, Montana and quite a few more. At Livingston, Montana someone cut two Pullman cars off a west bound passenger train with the passengers left stranded on a siding in the proverbial middle of no-where. In California strikers greased tracks, detached Pullman cars, and blocked trains in San Francisco, Sacramento, Los Angeles and other cities.

Attorney General Richard Olney wanted prompt action against Debs, but Attorney Edwin Walker in Chicago preferred to gather more evidence and apply the criminal law first and contempt of court second. He used the authority of Judge Grosscup to subpoena telegrams from the Western Union office to present to a grand jury as proof that Debs continued to urge union members to leave work in violation of the injunction, even though no telegrams advised blocking trains or obstructing commerce.

On July 10, following grand jury indictments, Attorney Walker had Debs, union officials George Howard, Sylvester Keliher, and Lewis Rogers arrested and charged with a crime: conspiracy to obstruct the mails and interstate commerce. What Eugene Debs considered a right of free speech, the Attorney General and the Federal courts defined as a criminal conspiracy. After several hours detention they were released on $40,000 bond while Attorney Walker prepared the second legal action. (41)

Debs and ARU officials managed the strike from Ulrich's Hall in Chicago where they had daily meetings open to the public. A reporter from the Chicago Evening Mail wrote "All the speeches I heard counseled obedience to law and order, and my interviews with Mr. Debs and Mr. Howard were all the same way." Other Chicago labor unions showed up at Ulrich's Hall to offer counsel and support for the ARU. During discussions union officials made arrangements for Samuel Gompers to visit Chicago and preside over a strike conference at downtown Briggs House Hotel.

The Briggs House meeting took place July 12 with twenty-four international unions represented, although the railroad Brotherhoods did not participate or support the strike. The new president of the Knights of Labor, James Sovereign, promoted a general sympathetic strike of organized labor, but Gompers and others counseled caution. The conference wired for President Cleveland to come and use his influence and the 1888 Arbitration Act to negotiate an impartial end to the strike, but the president would not answer.

Debs spoke but the trains were starting to run and he doubted a general strike could change any minds given the presence of the military and opposition

of the federal government. He asked Gompers to request a meeting with the GMA to offer an end to the strike on the sole condition the GMA rehire strikers. Gompers refused the request, but Chicago Mayor Hopkins relayed the offer to the GMA on July 14; John Egan chastised Mayor Hopkins as an "errand boy" and had it returned. All GMA officials refused discussion with the ARU. The Chicago Civic Federation offered conciliation. Detroit Mayor Hazen Pingree organized fifty city mayors to appeal to Pullman to arbitrate, but Pullman merely reworded his refusal; he had a principle to uphold, a capitalist should operate in his own way completely free from the dictation of labor or an outside interest. President Cleveland initiated withdrawal of federal troops July 19. (42)

On July 17 Attorney Walker made his second filing for contempt of court charges against Debs and the same three others for violating the conditions of the injunction. Prosecutors read some of the same telegrams from July 10 to show defendants continued to urge railroad employees to quit work. The prosecution and Judge Grosscup demanded immediate arrest. Defense attorney Stephen S. Gregory responded that quitting work could not be an offense to the court and demanded a hearing to make his case against the contempt charge. The Judge relented and scheduled a hearing July 23 over the vocal objections of Attorney Walker.

At the July 23 hearing defense attorneys argued the ARU bylaws left strike decisions to a vote of individual locals not to Debs as President of the union. Debs directed ARU members to stay away from the railroads, to allow the mails to go, and ignore replacement employees the railroads might hire. ARU officials could not control members who might violate his order and everyone knew strikers did not riot. Chief Deputy U.S. Marshal John Donnelly testified to the U.S. Strike Commission that he was present at the rail yards and did not see any railroad employees among rioters. He reported "All the burning and violence that I saw was done by a lot of boys 16 to 18 years old; a lot of toughs."

The defense also argued the contempt of court charge should be dropped because it denied a jury trial on a criminal charge in violation of Article III of the Constitution. In addition they argued the double prosecution for the same crime violated the Fifth Amendment to the Constitution against double jeopardy. Judge Grosscup refused to accept any defense argument, but the case was postponed until September 5; Attorney Walker did not feel well and complained "the heat was really stifling, and the crowd of strikers present at the hearing made the air of the room intolerable."

When the hearing resumed before Judge William A. Woods defense attorneys denied Debs and the ARU violated the injunction and then questioned the right of the court to use it, but they held back witnesses and evidence, which they preferred to use for the criminal trial yet to be scheduled.

The prosecution side was ready to claim the injunction could be sustained by the new Sherman Antitrust Act of 1890. The Sherman Act made "every contract, combination in the form of a trust or otherwise, or conspiracy in restraint of trade or commerce among the several States or with foreign nations illegal." Like the Interstate Commerce Act before it, the Sherman Act was the result of a

long protest against the power and abuses of industrial combinations. The primary purpose was to limit the monopoly and cartel practices of business including the railroads. Like the Interstate Commerce Act the law made violations a criminal conspiracy for business firms but it did not include wording to specifically exclude labor unions as potential conspirators. Hence business and the courts felt justified expanding its application to labor union actions.

Both the Interstate Commerce Act and now the Sherman Antitrust Act crossed that boundary between civil law and criminal law. The Sherman Antitrust Act specifically defined restraint of trade as a criminal conspiracy and authorized the use of an injunction against alleged violators.

Attorney General Olney had his designee Edwin Walker to make an additional argument to justify the injunction. He had him argue obstructing interstate commerce is a public nuisance that a federal district court has jurisdiction and authority to end by injunction. To Olney it did not matter that the men quit work. It mattered that they quit work with "unlawful intent" which he argued could be stopped by injunction independent of the Sherman Act.

Judge Woods took several months to write his decision, which finally came December 14, 1894. His ruling brushed aside defense arguments to find defendants guilty of contempt of court as charged. The Judge described Deb's orders to union men to avoid violence and obstruction as a political ploy. Woods imposed a 6 month jail sentence for Debs; 3 months for the others. The convicted went to prison January 8, 1895. (43)

At the time the strike started attorney Clarence Darrow was General Counsel for the Chicago, Burlington & Quincy Railroad, a GMA member. Darrow resigned his position to defend Eugene Debs and the ARU. He opposed the strike actions of the federal government in general and the appointment and conduct of Attorney Edwin Walker in particular. He would write later "The government might with as good grace have appointed the attorney for the American Railway Union to represent the United States." He filed a writ of error and writ of habeas corpus to the U.S. Supreme Court to challenge Judge Wood's ruling. Darrow also represented Debs at the criminal trial on the second charge of conspiracy, which began before Judge Grosscup on January 24, 1895.

Debs and his three co-defendants were transported back and forth from Woodstock, Illinois jail to their trial, which dragged on for a month. The subpoenaed telegrams were used against the accused again. Since the prosecution got telegrams and records of union meetings Darrow stepped up to demand minutes and records of meetings from the General Managers Association. Just then one of the jurors became ill during a lunch break and Judge Grosscup recessed the trail. Darrow demanded a replacement juror, but the government wanted to dismiss the jury and declare a mistrial; the trial never resumed. Darrow reported a juror confided that the vote was eleven to one for acquittal; the GMA meetings remained confidential. (44)

On May 27, 1895 the Supreme Court affirmed the district court decision of contempt of court in the case known as **In re Debs.** Justice David Brewer wrote the opinion of the court. The first part goes on for pages defending federal

authority over interstate commerce and the mails. The justices wanted to justify the government's refusal to abide by Article IV, Section 4 of the Constitution, which allows the federal government to protect a state "on application of the legislature, or of the executive when the legislature cannot be convened, against domestic violence." The second part of the opinion asked a question: "Is there no other alternative than the use of force on the part of the executive authorities whenever obstructions arise to the freedom of interstate commerce or the transportation of the mails?" In other words, if we want to stop rioters from blocking trains is there a better way than arresting the rioters?

Justice Brewer answered his question that "As a rule, injunctions are denied to those who have adequate remedy at law." . . . but "In some cases of nuisance, and in some cases of trespass, the law permits an individual to abate the one and prevent the other by force, because such permission is necessary to the complete protection of property and person." In other words, he needed to claim an exception to the general rule.

The Supreme Court's ruling for In re Debs made strikes an illegal conspiracy. The opinion did not comment on the prosecution's adaptation of the Sherman Act in labor cases, which would not come until 1908 in a case known as Loewe v. Lawlor, as we shall see. (45)

In the Aftermath---------Only the great upheaval of 1877 generated as much national attention or left such lingering hatred and resentment as what came to be known as the Chicago Strike. Like previous depressions the one from 1893 to 1897 was allowed to run its course with no policy effort made to relieve it. Even though the strike started at Pullman, not the railroads, the layoffs and wage cuts common to rail workers through the depression helped unify strikers and expand the strike. It was a depressed and sullen work force that severely disrupted national transportation, and demonstrated the economic power of labor solidarity, however briefly.

At the time railroads were the only means of inter-city freight and passenger transportation. A long strike on the railroads would have generated severe economic and personal dislocation, but no one in the Cleveland Administration offered a word or a thought of mediation or arbitration, or addressed the grievances that brought the strike. George Pullman had the power to force his employees to bear all the Pullman Company depression losses as wage cuts and the printed record shows he did so without a glimmer of doubt. The GMA functioned as a cartel in willful violation of the Sherman Act, but GMA members expected the law to be used against labor for acting collectively, exactly as they were organized to do, and did. The Supreme Court interpreted the law and found the words to defer to the rights of private property; it would not be the last time as organized labor would learn again and again.

Efforts of railroad managers to have revenge against railroad workers varied, partly because some were skilled and it was not easy to replace thousands of people quickly. ARU members known to be active in the strike ended up permanently blacklisted and thousands of others remained unemployed. Debs

hoped to continue with the ARU. Many visited him at Woodstock jail, but it was no place to manage a union, which melted away in his absence.

The workforce at Pullman stayed at Pullman during the strike and set up guards at the perimeter to prevent outsiders from vandalizing property. Pullman called them picketers and showed no recognition that his property remained untouched in his absence during the Chicago strikes. Governor Altgeld visited the town and wrote to Pullman that "The men are hungry and the women and children are actually suffering. They have been living on charity for a number of months and it is exhausted. Men who have worked for your company for more than ten years had to apply to the relief society in two weeks after the work stopped." Pullman blamed the strikers and again refused action; Altgeld appealed to the people of Illinois for relief, which the newspapers helped to successfully promote but with no help from George Pullman. (46)

George Pullman confronted the great equalizer; he died October 19, 1897: a heart attack. After his death the Attorney General of Illinois filed suit against the Pullman Company claiming that having and operating a Company town violated the corporate charter. Eventually the Supreme Court of Illinois agreed. Pullman corporate officials disbanded the town and sold off the property; it was gone by 1907.

The final report of President Cleveland's United States Strike Commission included comments about corporate power, in relation to the Pullman Company and the General Managers Association. On the GMA the commission wrote "The [General Managers] Association is an illustration of the persistent and shrewdly devised plans of corporations to overreach their limitations and to usurp indirectly powers and rights not contemplated in their charters and not obtainable from the people and their legislators. … The refusal of the General Managers Association to recognize and deal with such a combination of labor as the American Railway Union seems arrogant and absurd when we consider its standing before the law, its assumptions, its past and obviously contemplated future action." The Strike Commission documented the events of the strike, actions and opinions of the participants, and the facts of shootings, deaths, troops, militia, police, and marshals involved, property destroyed and money spent, or wasted, but publication in late 1894 settled nothing; the same divisions remained. (47)

Eugene Debs recognized a vast sympathy strike by the ARU on behalf of Pullman employees would stretch union power to the breaking point; he tried to represent his members anyway. George Pullman embodied the sentiments of all the tycoons of industry: labor would be bought and sold as a commodity with no right to collective bargaining. President Cleveland, Richard Olney, Everett St. John, John Egan and the other railroad presidents came from the same school of thought. Debs wanted to serve his membership, when he needed to be tough and pick a winnable battle.

Clarence Darrow went on to defend many other labor organizers and labor union officials in a long legal career that stretched into the 1930's. After the strike, in correspondence with journalist and social critic Henry Demarest Lloyd, they discussed the dangers of vested interests to the commonweal. Darrow was

pessimistic, but Lloyd insisted “Events must be our leaders, and we will have them. I am not discouraged. The radicalism of the fanatics of wealth fills me with hope. They are likely to do for us what the South did for the North in 1861.” Mr. Lloyd did not live long enough to fully realize how slick, tough, ruthless and enduring money and vested interests would turn out to be. (48)

Chapter Three - After Chicago

We are the wage slaves of slaves. We are exploited more ruthlessly than men. Wherever wages are to be reduced, the capitalist class uses women to reduce them, and if there is anything that you men should do in the future, it is to organize the women.

----- Lucy Parsons, speaking to the founding convention of the Industrial Workers of the World, June 29, 1905

Before 1894, many of those prominent in the labor movement remained hopeful civility and reason might prevail in negotiations between labor and capital. The Chicago strike lifted the veil, forcing the labor movement in new directions. As part of his Strike Commission testimony Eugene Debs declared "I think the conclusion is inevitable that every labor organization is traceable to the injustice, the oppression, the tyranny of the employing classes."

Debs abandoned labor reform entirely to speak and write for a conversion to socialism. He traveled and spoke to large crowds, mostly of the injustice and failure of capitalism rather than the socialist economy he hoped to create, but he was largely lost to labor organizing after 1894.

No one recognized the need for unity in the labor movement more than Terence Powderly. He lost the trust of his membership and left the depleted Knights of Labor in 1893 to become a customs official for the government. He was lost to the labor movement.

Samuel Gompers helped write the constitution of local 144 of the Cigar Makers International Union. It included the wording "We recognize the solidarity of the whole working class to work harmoniously against their common enemy – the capitalists. We pledge ourselves to support the unemployed because hunger will force the best workmen to work for low wages. United we are a power to be respected: divided we are the slaves of capitalists." Through Gomper's prodigious energy and effort the AF of L added new affiliates and more members. By 1894 there were reasons to be proud but the gains came as a compromise to the defiant solidarity of the young Gompers. The unskilled were left behind and despite his efforts the name Gompers came to represent disagreement and a divided labor movement. (1)

Mother Jones and the United Mine Workers Strikes

After 1894 new unions and new names filled the labor news where mining displaced the railroads as the major battleground. Mining often took place in isolated areas that made miners hard to organize and vulnerable to operator abuses. Miners lived in company towns where gun-toting mine guards enforced the operator's rules without access to local government or enforcement of state or federal law. Operators paid with script negotiable only at company stores. Safety inspectors often doubled as mine company employees. Accidents were frequent. Operators recruited immigrants from abroad, often as strike breakers.

The United Mine Workers (UMW) was a new union formed from older ones in 1890. UMW got off to a slow and tenuous start but grew with the help of labor organizer, Mary Harris Jones. She was 57 years old in 1894 when she joined the march of the unemployed on Washington organized by Ohio businessman Jacob Coxey. Before that she was an Irish immigrant leading an obscure life as a wife, mother, teacher and dressmaker, eventually settling in Chicago as a widow following a Memphis yellow fever epidemic. After 1894 she became Mother Jones, a defiant, rabble-rousing labor organizer who defined the class divisions of the era by attacking the abuses of mine operators and cajoling exploited miners into action. (2)

The United Mine Workers had barely nine thousand members in 1897 when Mother Jones helped organize "camp determination" for striking miners near Pittsburgh, Pennsylvania, a small part of a much larger protest from the oversupply of coal and wage cuts in western Pennsylvania, West Virginia and the Central Competitive Field: Ohio, Indiana, Illinois. Coal operators refused to confer and responded with another 20 percent wage cut effective May 1, 1897. Over a 150,000 left work July fourth in a strike intended to prevent more wage cuts among operators prone to price wars. Local and International union officials including Samuel Gompers met for strategy sessions through the summer at Columbus, Pittsburgh, and Wheeling, but without progress.

The first meeting of union officials with company negotiators took place August 23. In early September the two sides agreed to a tentative piece wage of $.65 a ton, which the rank and file voted to accept September 8. The agreement called for another conference in Chicago where operators and miners set uniform wages and prices, effective January 1898. In it, operators in the Central Competitive Fields established conditions that allowed all the operators to produce coal with similar cost in all districts. Prices and wages were fixed allowing for differences in the distance from the market and ease of production. Operators even agreed to a dues check off. The agreement amounted to a cartel but like all cartels it was hard to hold everyone to it. Some of the Illinois operators wanted to pay lower wages; West Virginia companies never joined the cartel. (3)

The Central Competitive Field and western Pennsylvania coal areas mine soft coal or bituminous coal. Northeastern Pennsylvania has five counties with virtually all of the country's hard coal or anthracite coal deposits. The state of Pennsylvania allowed Frank Gowen, owner of the Philadelphia and Reading Railroad, to buy 80,000 acres of anthracite coal in 1871. The purchase allowed him to squeeze small coal operators who needed his transportation. Gowen successfully ended unions in the 1870's, kept piece wages low and restored the company store while charging miners for powder and supplies. There were several strikes in the 1880's and another in 1897 when miners demanded an end to the company store. At a mine near Latimer, Pennsylvania on September 10, 1897, the sheriff and deputies opened fire on a march of at least 3,000 unarmed miners, killing 19 and wounding 40 others. Many of the miners were shot in the back. After a trial, a jury would not agree to convict police of murder.

Samuel Gompers described the anthracite region as "the shacks and huts

in which the anthracite miners lived and the "pluck me" stores were in full blast. The miner's families had not only to pay rent to the corporations which owned the shacks but they had to make their purchases of all the necessaries of life, meaner as they were, from the company stores at the higher prices for which they could be had elsewhere. If the full amount earned had not been purchased they were hauled before some overseer and threatened with eviction and discharge. The tools, gunpowder, and clothes . . . had to be purchased from the company. There was the company doctor for which men had to pay, the company graveyard, the company parson . . ." (4)

John Mitchell took over as United Mine Workers President in 1898. He had political friends, especially Republican Ohio Senator Markus Alonzo Hanna. He accepted capitalism in a spirit of cooperation and thought he should be able to negotiate an agreement with anthracite coal operators like that of the Central Competitive Field, but the anthracite operators denied their miners were union members. The union held a convention at Hazelton, Pennsylvania August thirteen and invited coal operators to meet and discuss grievances. They refused. After failed negotiations 75,000 left work the first day of the strike, September 17, 1900, although less than ten thousand were union members. After a week strikers ballooned to 134,000.

Only about 25 percent of mine employees mined coal. The others had various jobs as drivers, door boys, breaker boys and laborers all paid a daily wage. Mitchell wanted day laborers paid less than $1.50 a day to get a 20 percent raise, laborers getting $1.50 to $1.75 a day to get a 15 percent raise, laborers getting more than $1.75 to get 10 percent. Miners were paid wages by the ton of coal, which varied widely by miner and mine. However, the wage was not the wage paid, which was considered a basis wage. The actual wage went up or down for each three cent increase or decrease in the average price of coal.

There were other grievances than wages. The operators demanded the exclusive right to sell blasting powder, they claimed to maintain quality. The operators admitted they sold the powder at above cost, but "We are not making a profit on the powder at all." The mine operators did not weigh the coal, but claimed they knew the weight of it in a fully loaded car. Miners wanted an end to the company store.

A strike in essential coal during the presidential campaign of 1900 worried the Republican Party so much that J.P. Morgan intervened. Morgan's choice for president, William McKinley, told the working class he would assure them a "full dinner pail." As the key financier of the railroads doing the coal hauling, Morgan directed the Philadelphia and Reading Railroad to offer a 10 percent wage increase effective October first, which management posted at their mines without deigning to notify the union they refused to recognize. After meeting October twelfth, the union accepted the offer, which management agreed would remain through April 1, 1901. Miners returned to work October 29, 1900. The coal operators did not appreciate a politically imposed end to a strike, when they could have stalled to end the union they refused to recognize.

By the end of 1900 the United Mine Workers jumped to over a 100,000

members given the success of the strike and with Mother Jones organizing at marches, rallies and strikes. As April 1, 1901 deadline approached the operators agreed to extend the old settlement for another year to April 1, 1902. (5)

UMW President John Mitchell tried to organize negotiations with coal operators in early March 1902. The union still wanted recognition, a higher uniform wage for an 8-hour day and the accurate weighing of coal. Outside business interests got the two sides together, but the operators refused any concession. The union agreed to wait thirty days to strike, and suggested forming an arbitration panel of three that included a bishop of the Catholic Church, but to no avail.

The 1902 anthracite coal strike started in eastern Pennsylvania May 12, 1902 when 140,000 miners left work. The strike almost completely shut down the hard coal industry. The operators refused to meet with the union and did the usual: filed for an injunction.

By June the operators started hiring strikebreakers and evicting strikers from company housing. By July groups of striking miners confronted strikebreakers that provoked shootings and rioting at the Philadelphia and Reading mining properties. UMW locals in the bituminous districts called for a conference to consider a national coal strike. President Mitchell convinced the bituminous district locals to contribute money rather than join the strike and break their contract agreements, but the growing use of strikebreakers set off a string of confrontations. Shootings killed two miners in separate incidents in early July. Strikers beat a merchant selling ammunition and two guards and two deputies in other incidents. A police shooting in retaliation wounded at least eighteen strikers. Governor William A. Stone ordered two regiments of the National Guard.

During the strike a news photographer appealed to Philadelphia and Reading Railroad President George Baer to settle the strike like a good Christian. Mr. Baer replied “The rights and interests of the laboring man will be protected and cared for, not by the labor agitators, but by the Christian men to whom God in His infinite wisdom, has given control of the property interests of the country.”

By August there was more violence around Wilkesbarre, Pennsylvania: bridges burned and strikebreakers beaten. Governor Stone responded by sending 1,600 more troops, but the strike continued into late September when a striker was killed in another confrontation September 28. The next day hundreds of strikers sized the offices of the Lehigh Valley Coal Company and beat strikebreakers in the vicinity.

Coal supplies dwindled and winter approached as the strike dragged on. By now Theodore Roosevelt succeeded William McKinley as president. He invited John Mitchell and several coal operators to discuss the matter at a cabinet meeting October 3. The operators worried their attendance might imply union recognition so they refused everything including Mitchell’s suggestion for binding arbitration. With military protection they could mine plenty of coal, they claimed. Governor Stone deployed the entire Pennsylvania National Guard in response.

Coal prices remained high. Most of the east coast favored anthracite coal for home heating, but mid-western bituminous coal made its way into the east

coast market. Homeowners needed 3 pounds of bituminous to replace 2 pounds of anthracite. Prices adjusted accordingly, but there was never much chance of a physical shortage, except in the newspapers and the public's mind. (6)

The public favored the miners; discussion urged nationalizing coal mines; suggestions came from the U.S. Senate for the President to seize the mines by eminent domain. Still the operators would not give in, but most of them and the railroads that owned mines were subsidiaries of J.P Morgan interests. After President Roosevelt and a few others persuaded Morgan to act, he pressured the operators to accept an arbitration commission. An Anthracite Coal Strike Commission of seven appointed October 23, 1902 heard testimony and inspected the mines over the next few months. In exchange for binding arbitration, Mitchell ordered the miners back to work, although only for five months. The union persuaded Clarence Darrow to be the union's arbitrator before the commission. He in turn invited Henry Demarest Lloyd and Louis Brandeis to assist. Roosevelt wanted a settlement he could claim as a victory for government authority and his political career.

The mine operators were allowed to write committee qualifications to keep anyone from a labor union off the committee. Roosevelt saved face and appointed the Chief of the Order of Railroad Conductors as a sociologist, but the committee was successfully stacked for the operators. Henry Lloyd was upset. "There is something fishy about this arbitration committee," he wrote in a letter to his wife. … "It has been scandalously packed against the miners – two of the members Watkins and Parker – are coal company partisans … If Mitchell and the miners get the slightest idea that they are being unfairly dealt with – tricked – they won't vote on Monday to go back to work. It makes my blood boil with indignation to see how implicitly it has been taken for granted that the workingmen are an inferior class, not entitled to the treatment which business people or any others would demand as a matter of course . . ."

The coal companies brought 24 lawyers who did their best to avoid discussing facts in order to characterize the union as outside agitators, socialists and anarchists organizing boycotts of local business and stirring up violence. Attorney Wayne MacVeagh asked UMW President Mitchell if "he did not know that if the companies raised the wages they would have to raise the price of coal and that the burden would therefore fall on the bowed back of the poor." Mitchell answered "No, they might have to take it out of profits and so take it out of the bowed backs of the rich."

Darrow discussed the low pay and brought to life the miserable working conditions by having some of the disabled, blinded and disfigured miners explain their lives in the mines. He questioned General John Gobin, the National Guard commander, about his "shoot to kill" order. The General admitted under Darrow's relentless questions that he ordered his soldiers to carefully note the "riotous element" throwing stones and being certain of his men, to fire upon them without further orders. Darrow pressed on until General Gordon conceded the order applied to rock throwing boys and bystanders."

The commission heard a total of 558 witnesses before handing down a

report March 18, 1903. Miners got back pay and a 10 percent wage increase, a nine hour day with no reduction in pay, a right to employ a check-weighman if voted by a majority of miners working at a colliery. The settlement allowed for a Board of Conciliation to mediate disputes.

The Anthracite Coal Strike Commission Board agreed to insert wording in their report that "No person shall be refused employment, or in any way discriminated against on account of membership or non-membership in any labor organization; and there shall be no discrimination against or interference with any employee who is not a member of any labor organization by members of such organization." The Board included a right to work phrase that read "the rights and privileges of non-union men are as sacred to them as the rights and privileges of unionist. The contention that a majority in an industry, by voluntarily associating themselves in a union, acquire authority over those who do not so associate themselves is untenable. . . . The right to remain at work where others have ceased to work, or to engage anew in work which others have abandoned, is part of the personal liberty of a citizen, that can never be surrendered, and every infringement thereof merits, and should receive the stern denouncement of the law." The Board's phrasing defines a scab, as they all knew.

The agreement to begin April 1, 1903 was good for three years, but did not include union recognition. President Mitchell argued grievances before the Board of Conciliation would pressure the operators to acknowledge UMW representatives before the Board. Gompers called the settlement a victory, but President Roosevelt got most of the praise as the great conciliator. He benefited politically as a president with enough prestige and power to take on business for the benefit of the working class, even though he took no part in negotiations, nor appeared to know how impoverished the miners really were.

Darrow was disgusted. In private correspondence he described how unions recruit members. "Now agitators never make revolutions. They are made by other people entirely. All the pamphlets all the dreamers and agitators in the days preceding the French Revolution amounted to nothing. It was the tyranny of kings and princes, the blind lavish expenditures of the rich and great, wrung from the labor of the poor, that gave root to the words of the agitator." (7)

The settlement proved the power and prestige of the federal government could bring a compromise to end a strike, although the record does not make clear if President Roosevelt had more influence than J.P. Morgan. After the miners settled and the agreement began April 1, 1903 they found the government did nothing when the operators made self serving interpretation of the settlement.

Before the strike, day laborers worked six day weeks at 10 hours a day, except Saturdays when they were allowed to quit two hours early and still earn 10 hours pay. After the strike settlement the operators demanded a nine hour day, six days a week including Saturdays. The men were incensed at the extra Saturday hour and declared the settlement reduced the work day one hour: they should work seven hours on Saturday.

The men left work after seven hours on Saturday April 18, 1903, but Monday the operators locked them out. President Mitchell ordered the men back

to work pending a grievance hearing before the new conciliation board. Some of the men stayed away the next week, but several operators continued the lock out. One of them declared "The miners must learn that they cannot start to work just when John Mitchell says so. This company will control its own property and will insist that all its employees obey the regulations and orders. We do not want to punish the men, but we do intend to exact obedience." Another operator would allow the men to come back to work "provided they return in the proper manner." … "The company will take back to work only those who are willing to conform, without hesitation or trouble, to the rules of the company."

Most of the men were back at work by April 27, but the operators started the practice that remains in 2021; they did their best to undermine and delay the grievance process. Operators refused to meet with anyone from UMW, but demanded the men elect their representatives from each of the anthracite districts. "You know very well that the ruling does not provide to recognize the union, and we can do no business with you."

The men were ready to strike in spite of a no strike clause, but President Mitchell convinced them to elect representatives to satisfy the operators. The agreement granted each side three representatives on a conciliation board and so the board repeatedly deadlocked and required an umpire. The umpire's decision was final, but the whole process was fraught with delays. A grievance had to go from foreman, to superintendent, to the board for review and often ended in deadlock, requiring more delay for an umpire review and decision. One umpire, U.S. Labor Commissioner Carroll Wright, refused to settle grievances he deemed "not in the contract." It all took months and months.

The conciliation board could not stem the tide of operator abuse. An article appeared in the UMW journal complaining "Upon trivial and childish pretexts" the operators have … "destroyed the meaning and good intentions of the commission. And their amity and confidence should abide, nothing but trust and discord abound."

Miner's wages were set for a ton of coal, but operators would not weigh the coal. Instead they claimed an arbitrary tonnage by the carload. The cars were different sizes, and the operators insisted a car was not full unless topped out at six inches above the rim, which proved hard to do. The agreement allowed the miners to employ check weighman if a majority voted to pay their expense, but the operators worked to subvert it and stalled through an entire conciliation process until Commissioner Wright ruled in the miners' favor. It was all for naught; the operators ignored the ruling and nothing further was done to enforce it.

President Mitchell hoped his patience would get the operators to respect his moderation and accept UMW recognition, but to no avail. Disgusted and disillusioned miners started dropping out of the union. Dues paying members declined from 85,000 during the strike to 43,000 by the end of 1904. Mitchell traveled and spoke at one local after another to stem the tide of decline. He had some success but coal mining would continue to be a tough business with more strikes to come. He would be defeated for re-election as president in 1908. (8)

Colorado Labor Wars

The deputy commissioner of the Colorado Bureau of Labor Statistics wrote the biennial report for 1903-04. He declared his report "will undoubtedly go down in history as being more important . . . than any similar period in any state of the union, as Colorado seemed to be selected as the battlefield between organized capital, represented by the various corporations, Citizens Alliance and manufacturer's associations on the one side and organized labor on the other."

Previous Colorado Governors intervened in mining strikes in constructive ways. Governor Davis Waite traveled to the mines to mediate the 1894 strike; Governor James Orman negotiated a three year contract to end the 1901 Telluride strike. The 1902 election and January 1903 inauguration of Governor James H. Peabody would be a different story. Peabody used his inaugural address to inform his audience he would not tolerate the public disorders of the previous decade. He declared that order would be "conserved and promoted by an efficient well equipped and well disciplined National Guard." He thought Colorado had a bad reputation as an "unsafe place for the investment of capital" that made it necessary for him to use "all the power and authority" vested in his office to protect life and property.

Miner demands for an eight hour day persisted as part of continuing political debate leading up to the Peabody election. The 10th General Assembly of Colorado took up the issue in 1895, but the State Supreme Court informed them "an act such as is proposed would be manifestly in violation of the constitutional inhibition against class legislation." The 12th General Assembly considered the matter again and this time it passed another law taking effect June 15, 1899. It copied the law passed and sustained by the Utah Supreme Court and the U.S. Supreme Court; the justices agreed restrictions in the new law applied equally to all.

The American Smelting and Refining Company decided to challenge the Colorado law, which the Colorado Supreme Court declared unconstitutional July 17, 1899. The justices wrote ". . . it is manifest that this extraordinary and extreme statute is not necessary and was not intended for the protection of the public. . . . In this statute we have another example of class legislation where the legislature has attempted to improperly interfere with the private rights of citizens."

The state commissioner of labor recommended a constitutional amendment, which Republican, Democratic and Socialist parties agreed to support. The 13th General Assembly of Colorado drafted the amendment to establish the eight hour day in the mines, but it required a majority vote in a public referendum. The vote in the referendum of November 4, 1902 had 72,980 votes for, 22,266 against. The amendment provided for the state legislature to draft and pass a statute to administer the new amendment for an eight hour day.

The next General Assembly of January 7, 1903, immediately after the Peabody inauguration, debated the necessary legislation to fulfill the electoral mandate. Mine operators moved in to attack the bill, which the new Attorney General, Nathan Miller, declared unconstitutional on the grounds that corporations

could not be criminally liable for ignoring the law as stated in the bill. The legislature adjourned April 6, 1903 without an eight-hour law.

A book with a contemporary narrative of the 1903-1905 years called the Governor's efforts "predatory expeditions" of the National Guard with the account "Being a Complete and Concise History of the Efforts of Organized Capital to Crush Unionism." The worst of the battlefields of the Colorado Labor Wars were in three regions: the gold mines of the Cripple Creek District in Teller County, the gold mines near Telluride in San Miquel County and the coal mines in southern Colorado around Walsenburg and Trinidad. The assistance of Colorado Governor James H. Peabody and the efforts of Mother Jones offer stark contrast in appeals to class identity in a bitter and hate-filled class war. (9)

Cripple Creek Strike

The Colorado labor wars got started at Colorado City in the Cripple Creek district where the United States Reduction and Refining Company operated two reduction mills at Colorado City and two other mills operated by separate companies: the Portland Mill and Telluride Mill. The Western Federation of Miners (WFM) charged that a company spy named Crane identified forty-two union members who were fired for joining the union. Mill managers claimed only incompetent workmen were dismissed, but the union called it union busting. An elected WFM committee made written proposals to plant manager Charles MacNeil to recognize their right to organize a union and to raise the minimum wage from $1.85 to $2.25 for a reduction of work to eight hours a day. MacNeil denounced the committee as outside agitators making ultimatums and he refused to negotiate.

Out of 212 workers employed at the Standard plant 76 left the plant to strike and picket on February 14, 1903: 40 union, 36 non-union. Walkouts followed at the other plants in the area until 200 of 250 mill workers were on strike by February 28, 1903. Bill Haywood, Secretary-Treasurer of the WFM, remarked "The occasion of the strike was the absolute refusal of the mill managers at Colorado City to treat with or recognize the union. Our men were discharged because they belonged to the union; they were so informed by the managers. We then asked them to reinstate these men and consider a wage scale. They would do neither."

Haywood went on to describe the hypocrisy of a double standard applied by business groups: "We object to compulsory insurance, and claim the constitutional right to organize as do the operators, and want wages that will enable our men to move into houses and not rear their families in tents."

The county sheriff appointed 65 deputies to protect company property and to help strikebreakers cross picket lines and become permanent replacements for striking mill workers. The companies paid the new deputies, described as men not "fitted to shine in polite society." Even so MacNeil demanded a meeting with Governor James Peabody where he presented a petition from the county sheriff requesting National Guard troops to suppress rioting in Colorado City. The governor accepted the claims March 3 and sent 125 troops to patrol and protect

strikebreakers. The governor's decision brought angry opposition from elected city officials, the union and many residents who denied any troubles in Colorado City justified troops.

After troops forced an end to picketing WFM threatened to widen the strike to the mines that supplied ore to the metal reduction mills. There were calls for arbitration by the legislature and citizen groups. The WFM agreed to delay calling other walkouts and accepted an invitation to meet with Governor Peabody in Denver. At a general strike conference in Denver on March 14, 1903 union officials negotiated an agreement acceptable to them and two of the three reduction companies.

Governor Peabody dawdled before removing the troops and then tried to get MacNeil to soften his opposition by telling him a strike would be settled if he would "only agree not to discriminate against union men." However, Charles MacNeil, refused to go along. The strike continued and the WFM threatened again to expand the strike to fourteen mines that supplied the reduction plants.

The governor appointed an Advisory Board March 19, 1903 to hold hearings in Denver to investigate the causes of the strike and propose a possible settlement. MacNeil would not recognize the union, nor agree that striking miners were employees. Under pressure to settle, union president Charles Moyer reluctantly gave in to terms offered on March 31: an unwritten promise from MacNeil to reinstate striking miners within 60 days.

The strike ended but problems resulted quickly because the plant manager offered to rehire strikers rather than to reinstate them at their old positions. Offers to work were at positions with longer hours and lower pay: 47 of 60 refused offers. The Advisory Board met again May 1 to begin another round of hearings. While the Board regretted the March 31 agreement was not in writing and they knew perfectly well it was MacNeil who prevented a written agreement they sided with MacNeil. They told Governor Peabody the agreement was to reemploy not to reinstate. As Bill Haywood remarked later "One wretched little autocrat was able to strangle our efforts and his stubbornness was responsible for the strike that followed." (10)

While Governor Peabody authorized the use of state authority to eliminate the Western Federation of Miners, he had help from a hostile press, national and local business opponents and the Catholic Church. Bishop Nicholas C. Matz spoke and preached to almost a hundred thousand Colorado Catholics in opposition to the Western Federation of Miners and did so on behalf of Pope Leo XIII. The Pope and Bishop Matz condemned the WFM as advocates of socialism where they worried leaders elected by universal suffrage will regulate every human and institutional relationship. God endorsed private property with the commandment "Thou shall not steal."

The National Association of Manufacturers (NAM) took the anti-union lead for business. NAM President David Perry attacked unions as part of his regular speaking obligations. Perry initiated efforts to organize local opposition into affiliates of a Citizens Alliance promoting anti-union practices and policies. A businessman named James Craig organized the Denver affiliate of the Citizens

Alliance. His Denver Alliance did not need an invitation to intervene in strikes. Businesses that negotiated with unions or reached a settlement were threatened with boycotts of Alliance members.

After a bomb blast at a mine powerhouse during a strike near Idaho Springs, Craig arrived to take charge of local decisions where he decided to forcibly deport strikers while local law enforcement stepped aside. In the aftermath there was public opposition to rounding up miners not charged with any crime, but they were arrested, imprisoned, and then deported by Craig acting as a leader of vigilantes.

Opposition forces pressed Governor Peabody to guarantee due process of law. During these deliberations Craig made a public announcement that the men were "conducted out of town for good" and that appeals to the governor or other authorities were futile. In response to this blunt opposition Governor Peabody declared the dispute a matter for the courts that would make any executive action an unconstitutional use of judicial authority. He appointed Charles MacNeil to his staff and made the outspoken anti-union Sherman Bell adjutant general in charge of the National Guard along with other appointments of men hostile to labor. (11)

The Cripple Creek strike resumed after the agreement to reinstate strikers broke down. The WFM leadership expanded the strike August 10, 1903 by ordering 3,300 miners out of the fourteen mines that supplied the Colorado City Reduction plants. The announcement came after minimal progress with Charles MacNeil but the other mine owners were furious since they had already settled with the union. Several beatings and shooting incidents brought demands for Teller County Sheriff Henry Robertson to petition the governor for troops. The governor sent General John Chase to investigate and hold hearings in Victor, Colorado. Sheriff Robertson and Mayor Nelson Franklin of Victor opposed troops as completely unnecessary, but business wanted troops. On September 4 General Chase wired the governor that a "reign of terror" threatened lives and property. Plans were set to fund the troop occupation by selling bonds payable in 4 years, which the Cripple Creek Mine Owners Association cashed with the expectation the state legislature would eventually appropriate funds they would not appropriate at the time.

Governor Peabody sent 1,005 troops of the state militia to occupy the Cripple Creek District in Teller County: 600 infantry, 250 cavalry, 75 artillery, and 80 medical and signal corps. He ordered Sherman Bell to investigate a "threatened insurrection." General Bell sent Gatling guns and 60,000 rounds of ammunition in order to "do up this damned anarchistic federation." He had his field commander General Chase imprison union leaders in stockade "bull pens" without charges; any others who voiced union support could expect the same. Officials of the Cripple Creek Mine Owners Association and General Bell publicized their intention to destroy the Western Federation of Miners. Teller County sheriff Robertson wrote to the governor to protest the troops as completely unnecessary.

Soldiers surrounded the court buildings and the courts were warned not to interfere or the governor would declare martial law. Some of the district courts defied the threat and granted writs of habeas corpus to men held in fenced "bull pens" on false charges. Those arrested included public officials and the entire

staff of the local newspaper, the Victor Record. Mostly the writs were ignored, but sometimes the men were released and then re-arrested and held again without charges.

The Cripple Creek mines were operating with strikebreakers by early October 1903 when an explosion on November 21 killed two people 600 feet down in the Vindicator mine. The mine entrance was guarded by armed troops, but the WFM was immediately blamed. Several investigations could not determine a cause, but no one would call it an accident. Authorities arrested 15 miners, who had to be released by district officials for lack of evidence.

The explosion provided an excuse for the governor to declare a "state of insurrection and rebellion" on December 4, 1903 that justified his use of martial law to suspend habeas corpus. Protesters called it completely unnecessary and unwarranted, but Adjutant General Bell went ahead to enforce martial law by claiming unlimited authority to overrule "civil and penal law" at his discretion unobstructed by state or federal courts. His December 5 statement included 17 paragraphs of assertions such as "Military necessity permits of all destruction of life and limb of armed enemies and of other persons whose destruction is incidentally unavoidable. Military necessity does not admit of cruelty. It does not permit of the use of poison in any way. It admits of deception but disclaims acts of perfidy. It is not carried on by arms alone."

A new field commander Colonel Verdeckberg arrested and confined union leaders, raided homes, took firearms, ended street assembly, and censored the newspapers. However, the financial burden to pay for the troops eventually brought calls and letters to the governor to reduce the troops. Finally, all the troops were out of the Cripple Creek District by April 11, 1904. (12)

After a two month pause in the contest a train exploded at the Independence, Colorado depot at 2:15 a.m. on June 6, 1904. The explosion killed fourteen and wounded six more. The killed and wounded were non-union miners which made it convenient to blame the WFM. Leaders of the Cripple Creek Mine Owners Association(CCMOA) and a second group from the Cripple Creek District Citizens Association(CCDCA) met June 6 in Victor, Colorado where they threatened and coerced county commissioners to forcibly expel the sheriff, the under sheriff, county coroner and all other local officials suspected of the slightest union sympathies.

Sheriff Robertson refused to resign, but was forced out and replaced by members of the Cripple Creek Mine Owners after a half dozen members stepped forward with rope, tied a noose and told him "If you don't [resign] we will turn you and the rope over to the crowd outside."

Word began to circulate of a citizens' mass meeting at the corner of Victor Avenue and Fourth Street set for early afternoon. Crowds milled about the streets; many of the men brandished firearms. The mine owners association secretary and association attorney showed up to speak from a flat bed wagon. They demanded "the district must be purged of the Western Federation and it was up to non unionists and their sympathizers to do it." There were a few words of objection exchanged before shooting and hand to hand combat left two killed and

five wounded. WFM members took refuge in their union hall on the main street in Victor after a company of troops arrived. A second gun battle erupted when the troops fired into the hall. The miners returned fire, but surrendered within an hour; four were wounded.

The troops entered the hall and destroyed the contents including its library and marched their captives to the armory before conducting house to house raids to arrest every union miner in Victor. The new sheriff designated by the mine owners association raided the union store and then again arrested six clerks and the editor of the union newspaper, the Victor Record.

The Governor declared another state of insurrection and rebellion June 8, 1904 to justify another round of martial law. General Bell immediately activated units of the National Guard and allowed a tribunal of CCMOA officials to wreck the union offices, the offices of the Victor Record, to conduct forced marches, deporting union miners to Kansas and deserted areas of New Mexico with advice never to return. Known counts of deportations include 72 deported by rail on June 10 with others deported later by forced march with a reported total of 238. An unknown number left on their own in lieu of a forced march. A few who dared to return encountered vigilante mobs who beat and robbed them.

Martial law continued under General Bell's direction until Governor Peabody withdrew troops July 27, 1904. The Western Federation of Miners all but disappeared in the Cripple Creek District. No one was charged with bombing the station in Independence; there was little interest to investigate further when so much could be gained blaming the WFM. (13)

Telluride Strike

The Colorado Labor Wars included trouble in the San Juan District gold mines around Telluride in San Miguel County. The WFM demanded an eight hour day for all mill workers processing ore. Their strike started September 1, 1903 when mill workers could not reach agreement. The strike shut down six mines that supplied the reduction mills, but one of the mines, the Tomboy, reopened with strikebreakers, which antagonized the union. The strike infuriated the mining companies that responded by organizing a local chapter of the Citizens Alliance and by meeting with Governor Peabody to request troops to maintain order while they converted the mines and mills of Telluride to non-union operations.

Governor Peabody accepted a petition from city officials, members of the Citizens Alliance in Telluride, and mine and mill superintendents asserting they expected violence they could not control. The governor stalled and delayed waiting for President Roosevelt to answer his request to send federal troops; he refused. Instead the Colorado Attorney General convinced the governor a statute known as the National Guard Act authorized him to send troops where a riot was threatened.

That was November 16, 1903 but again there were no state funds so the Telluride Citizens Alliance had to accept debt certificates in exchange for privately financing state troops. Four hundred troops arrived November 24 under the command of Major Zeph Hill. He wrote Governor Peabody to report

meeting the “best people” who saw the troops as the “dawn of a better day.” The Governor encouraged Major Hill and the local sheriff to arrest striking miners as vagrants, since strikers did not have jobs or visible means of support. When state court judges released them Major Hill would arrest them again and the governor threatened to return to martial law if necessary.

As the strike dragged into December strikebreakers helped restore enough production to defeat the WFM. Still many WFM miners remained in Telluride in spite of their unemployment. Their presence annoyed and worried Major Hill and the San Miguel County sheriff. They pressed the governor to call martial law, which he did January 3, 1904 by declaring San Miguel County in a state of rebellion and insurrection.

Major Hill acted immediately to force strikers out of Telluride. In a month he deported 83 men. His instructions from Governor Peabody told him “to pay no attention to [court] orders, either by permitting service or to obey the mandate of the court if such order is issued.” Forcing the miners out of Telluride did not bring peace of mind to mill owners who began to worry the deported strikers would return when the troops left and martial law ended. They discussed having a permanent detachment of National Guard troops, but ultimately the Telluride Citizens Association decided they could take care of themselves.

After several delays martial law ended March 11, 1904; just as predicted the banished miners returned to Telluride. Many owned homes there and had family. The Telluride Citizens Association massed their members who broke into private homes and rooming houses and forced the miners at gunpoint onto a waiting train to haul them north to the town of Ridgeway. They were forced off the train and ordered never to return.

When Governor Peabody used his authority to help the mining companies break the WFM strikes he cited martial law as his legal justification. He ignored opposition no matter who, or how many, protested against it, which eventually included WFM attorneys. In an interview later on March 21 Governor Peabody advised the union to redress their grievances in court. When they did district court Judge Theron Stevens granted an injunction against the Telluride Citizens Alliance: it restrained the Alliance from actions blocking the return of miners.

Again the striking miners started returning to Telluride. The Telluride Citizens Alliance responded with a written petition to Governor Peabody claiming an invasion of armed miners will result in “great loss of life and sacrifice of property” unless the governor sends troops and restores martial law. Even though he had advised the union to redress their grievances in court Governor Peabody decided to defy the court and his own advice. He sent General Sherman Bell to command troops in Telluride.

That occurred March 23, 1904 when General Bell put Bulkeley Wells in charge of a troop of 100 men even though Wells was not from the National Guard, but a mine company manager who was part of the local vigilantes. Wells followed Bell’s orders and arrested, or abducted, returning miners and forced them onto trains deporting them to the county line where they were again ordered never to return.

On March 29, Wells arrested WFM President Charles Moyer on charges of "military necessity" and "military discretion." WFM attorneys petitioned the district court for a writ of habeas corpus that started a legal odyssey of two and a half months. The district court Judge ordered General Bell and his appointee Wells to appear in court April 11 and show cause of military necessity, but they refused to appear. When the Judge ordered their arrest on contempt of court charges General Bell claimed they were "exempt and free from arrest" and made threats to kill anyone attempting to take him.

On April 15 WFM attorneys filed for a writ of habeas corpus to the Colorado Supreme Court to release Moyer arguing among other things that Moyer's detention violated the Fourth, Fifth, Sixth and Fourteenth Amendments to the U.S. Constitution. The Supreme Court granted the writ and ordered Bell and Wells to appear at a show cause hearing April 21.

Colorado Attorney General Nathan Miller took over to argue the Governor's position. He claimed the state acted in good faith because "the exigencies of the military situation" demanded that Moyer remain confined to prevent his "lending aid, comfort, direction, instructions and commands to . . . lawless persons" who were rebelling against constituted authority.

WFM attorneys argued insurrection and rebellion was an open state of war and not just declaratory conditions to suit the governor's political purposes. Since courts were fully operative, conditions in San Miguel County were not in rebellion or insurrection and the governor was not above the law.

The majority opinion of the Colorado Supreme Court accepted the Miller argument that the State's Supreme Court had no authority to evaluate conditions that might constitute insurrection or rebellion. The justices agreed the governor had the sole power to recognize insurrection and rebellion and after doing so he was the supreme authority. Until the rebellion was over and order restored neither the governor nor the military under his command had to show cause or respond to a civil court. As a result the governor was under no legal obligation to respond to a writ of habeas corpus or to release Moyer.

The issue of government authority under martial law moved to the federal courts in the case of **Moyer v. Peabody,** finally concluded January 18, 1909. The opinion of Justice Oliver Wendell Holmes paraphrased the Colorado Supreme Court opinion: arrests made in good faith and in the honest belief they were needed could not be subjected to legal review. If insurrection and rebellion for some looked like union busting to others, voters could decide the matter at the next election, but the courts could not act.

The strike in Telluride did not end by agreement or decision. It petered out. The vigilante troops had to go back to their jobs and businesses to make a living. Bulkeley Wells returned to his job as manager of the Smuggler-Union mine where he complained he could not find miners to re-open the mine. That was in part because he would not employ any members blacklisted from WFM local 63, many of whom were long gone anyway. Local 63 had no power or prestige to negotiate anything for its few remaining members, but it decided to call off the strike after it was necessary for the mills and mines to pay a minimum of $3 a day

for an eight hour day. Running off the union members reduced the supply of labor enough that economic forces took over to raise wages to meet the union demands. Non-union miners got the union scale. (14)

District 15 Strike

The Western Federation of Miners (WFM) was not the only union to organize Colorado miners. As far back as 1892 the United Mine Workers (UMW) started organizing coal miners after establishing their own District 15: Colorado, Wyoming, Utah and New Mexico. The two unions occasionally bickered over philosophy and membership. The WFM organized metal miners and coal miners and promoted a political agenda that encouraged socialism. The United Mine Workers avoided politics, but they wanted to organize all the coal miners. By 1903 the UMW had local unions in the lignite coalfields in Wyoming and Northern Colorado as well as locals in southern Colorado around Walsenburg and Trinidad in Los Animas and Huerfano counties.

Union members were unhappy enough with conditions that District 15 officials convened a convention at Pueblo on September 23, 1903 to discuss the pros and cons of a strike. The rank and file and District 15 officials wanted a strike but the more conservative United Mine Workers Executive Board in Indianapolis was not optimistic. Corporate power was strongest in the south where the union strength was weakest and they expected the governor to oppose them. However, in Indianapolis they knew the men were threatening to leave the UMW and join the WFM if the Executive Board did not support a strike. Finally, they agreed to go along if a majority voted to strike, which they did.

On September 25, 1903 the union delivered a list of demands to the Colorado Fuel and Iron Company, owners of the coal mining properties in Huerfano and Los Animas Counties and also a steel mill in Pueblo, Colorado. They wanted higher pay per ton, accurate weigh scales, an 8 hour day, better ventilation in the mines, and an end to pay in company script negotiable only at high priced company stores. They demanded biweekly pay in U.S. currency. Colorado Fuel and Iron Company President Jesse Wellborn offered to meet with nonunion employees, but refused to deal with the union.

After the companies refused to meet with the union 95 percent of 10,000 coal miners left work November 9, 1903. Immediately, armed company guards evicted miners who had nowhere to go except tent camps set up on leased land by the UMW. The Colorado Fuel and Mine Company manager announced “The strike will be fought out to a finish, whether it takes ten days, six months or ten years.”

Many labor organizers spoke at strike rallies encouraging solidarity. Rallies of two to three thousand listened for hours to a succession of speakers including Mother Jones. Solidarity remained in the south but soon after the strike started the Northern operators proposed a separate settlement with an 8 hour day, and an increase in piece rate wages. A separate settlement would allow cheap coal to be shipped to southern Colorado to break the strike. On November 21, 1903 in an often quoted speech in Northern Colorado, Mother Jones spoke against a

separate settlement with northern operators by defining the miners' working class in clearest terms.

"Brothers, you English speaking miners of the northern fields promised your southern brothers … that you would support them to the end. Now you are asked to betray them, to make a separate settlement. You have a common enemy and it is your duty to fight to a finish. … The enemy seeks to conquer by dividing your ranks, by making distinctions between north and south, between American and foreign. You are all miners, fighting a common cause, a common master. … I know of no east or west, north nor south when it comes to my class fighting the battle for justice."

The cooperative UMW president John Mitchell in Indianapolis supported the settlement, and after some delays the members in the northern District 15 locals voted to accept it. The vote was 480 to 130. The Colorado Fuel and Iron Company had rail cars ready to ship coal south and break the strike in southern Colorado.

In southern Colorado the shortage of coal at the Pueblo steel plant forced it to close on December 3, but the Colorado Fuel and Iron Company ordered the men laid off to work in the coal fields while it worked to recruit non-union miners from elsewhere. The UMW leadership warned their striking members to "conduct themselves in a manner which will command respect, sympathy and support from the public." The union spent a fortune recruiting strikebreakers out of the mines and into the union, and then providing them with room and board. Company publicity portrayed the union as an outside force of agitators and criminals, even attacking Mother Jones with a story she ran a whore house in Denver in years past.

The county sheriff responded by recruiting company guards to be deputies paid by the companies and use them to escort strikebreakers to the mines. Armed deputies or guards roamed about beating and arresting union men and strikers as vagrants or charging them with conspiracy or intimidation. On December 7, three were killed by deputy sheriffs and two others wounded. On December 17, five homes of striking miners were bombed.

The strike was failing badly as coal production increased, but Governor Peabody ordered the National Guard to Trinidad on March 23, 1904. Major Zeph Hill arrived with 400 troops and 100 horses and immediately declared martial law. He set a 9:00 p.m. curfew, took over the press, banned public meetings and assembly, and took over telephone and telegraph services. Major Hill justified arrests as military necessity with midnight searches of homes demanding firearms and dragging men, women and children from their beds looking for firearms. Beatings and reports of sexual assault of wives and daughters were common.

On April 15 deputies forced residents of five tent camps to move to other locations five miles away. Mother Jones and three other union officials were forced out of Trinidad. April 19, eleven strikers were arrested and deported to New Mexico. A defiant Mother Jones was held in Denver beginning April 26. The deputies deported 15 more to New Mexico April 27. One was re-arrested for returning without a permit. April 30, union organizer William Wardjon was beaten and deported for the second time. May 2, deputies deported 30 more to New

Mexico with orders never to return. May 7, three men assaulted and castrated 70 year old miner Joe Raiz. He died three days later. May 22, cavalry soldiers forced 90 strikers to walk 22 miles from Berwind to Trinidad without food or water. May 28, organizer Julian Gomez was released after 31 days of jail and given 24 hours to leave the state of Colorado. And so on.

The National Executive Board in Indianapolis concluded the strike was lost. District 15 officials convened June 23, 1904 to discuss what to do. Many were incensed at the abuses and wanted to continue, but the national office did not believe the strike could be won. With finances near the breaking point they withdrew financial support. In spite of efforts to continue, the UMW District 15 melted away. It had membership of 9,000 when the strike started, but only 425 by January 1905. (15)

Women

In the New York of 1890 the Working Women's Society reported "It is a known fact that men's wages cannot fall below a limit which they cannot exist, but women's wages have no limit since the paths of shame are always open to her." Writer-reporter Jacob Riis complained that women "who are not wholly dependent on their own labor while contributing by it to the family's earnings . . . constitute a large class of women wage earners, and it is characteristic of the situation that the very fact that some need not starve condemns the rest to their fate."

In 1890 impoverished women abandoned 508 infants on the streets of New York, a count cited by Riis as the number received from police at Randall's Island Hospital: 175 survived. In 1916 Emma Goldman would be arrested for speaking in favor of birth control and teaching contraceptive methods. She spent two months in a California jail.

In Chicago on February 1, 1900 the Everleigh sisters, Ada and Minna, had opening night at their high-class levee district brothel. Ada did recruiting; Minna did training. Opening night Minna instructed her new courtesans: "It's going to be difficult, at first, I know. It means, briefly, that your language will have to be ladylike and that you will forgo the entreaties you had used in the past. You have the whole night before you, and one fifty-dollar client is more desirable than five-ten dollar ones. Less wear and tear. You will thank me for this advice in later years. Your youth and beauty are all you have. Preserve it. … I want you girls to be proud that you are in the Everleigh Club. That is all. Now spruce up and look your best."

Five term mayor Carter Harrison II and such Chicago alderman as Bathhouse John Coughlin, Big Jim Colosimo and Hinky Dink Kenna looked the other way for brothels and resorts. Some of the alderman employed the new recruits in their sporting life, as it was called in those days, and got a bribe or two while Harrison apparently remained content to kept the clubs zoned away from respectable Chicago. He declared "I have also recognized the apparent necessity of prostitution in such social organizations as have been so far perfected in this world of ours."

The Everleigh girls doubted they would be able to get people willing to pay the $50 minimum charge: “I’ve heard of southern hospitality but not at these prices.” The first night they took in a gross of $1,000 and soon learned each of them could make a $100 a week. That compared nicely to $35 a week at a low class resort or a whorehouse, but even $35 beat the $6 a week a woman could earn working 12 hour days in the garment trade sweat shops, or a factory job.

Reformers kept a steady agitation to end the use of women for immoral purposes. On December 6, 1909 Congressman James R. Mann submitted his White Slave Act to Congress. President William Howard Taft supported the bill. “I greatly regret to have to say that the investigations made in the Bureau of Immigration and other sources of information lead to the view that there is urgent necessity for additional legislation and greater executive activity to suppress the recruiting of the ranks of prostitutes from the streams of immigration into this country – an evil which for want of a better name, has been called ‘the white slave trade.’ ”

Reformers referred to the new law as the Mann Act. It did nothing to help raise the $6 a week women’s wage in alternative employment, but some of the immigrant women turned to self-help, agitating and labor organizing. (16)

The Uprising

In 1906 seven women and six men from the New York garment district organized Local 25 of the International Ladies Garment Workers Union (ILGWU), a relatively new union founded in June 1900. Mass produced clothing developed rapidly after the Civil War in coincidence with the mass immigration of cheap labor. After 1900, thousands of Russian and Italian immigrants worked 16 hour days in hundreds of small, cramped shops, and a few larger factory operations.

The industry paid piece rates for stitching pockets, linings, collars, cuffs, everything. Companies large and small charged their help for needle and thread, electricity, the chairs they sat on. The New York summer of 1909 turned into a string of wildcat strikes in the garment industry with one of the founders of Local 25 leading the way. That was Clare Lemlich, a Jewish Russian immigrant, skilled seamstress and in her own words “an organizer, first, last and always.” Lemlich was an agitator at Louis Leiserson’s shirtwaist factory in early September when over a hundred women walked out and started picketing. Shirtwaist was then the term for a woman’s blouse.

The sorry circumstance of women garment workers drew financial support from other trade unions and the Women’s Trade Union League (WTUL). The Women’s Trade Union League was modeled from a League in Great Britain. The American version started in Boston in 1903 as an addition to the older settlement house movement where wealthy women took up the plight of poor women. The new organization “shall be to assist in the organization of women into trade unions.” Members declared themselves willing to assist those trade unions already existing and to aid in the formation of new unions of women wage earners. Members of the Board were mostly privileged upper class women.

The Women’s Trade Union League put dozens of volunteers on the picket

lines with the strikers. Mary Dreier, league president, and others joined the picketers to prevent unwarranted arrests but she was arrested for picketing and then released after she was identified. The arresting officer apologized asking "Why didn't you tell me you was a rich lady. I'd have never arrested you in the world."

As the strike dragged on Local 25 and the WTUL set November 22, 1909 for a meeting at Cooper Union auditorium to discuss a general strike. A procession of speakers including featured speaker Samuel Gompers droned on for two hours offering encouraging platitudes when Clare Lemlich made her way to the front of the auditorium, "I want to say a few words."

Then "I have listened to all the speakers, I have no further patience for talk, as I am one of those who feels and suffers from the things pictured. I move that we go on a general strike." After the shouting died down, thousands agreed to "struggle to the end" and strike during work the next morning. On nothing more than word of mouth 15,000 left work to mill about and picket in the streets. By the second day it was the "uprising of the twenty thousand." As many as 500 shops were shut down.

Some of the smaller shops and tenement subcontractors began to settle in a matter of days. They agreed to fix piece rates, a 52 hour week, limits to over time and a union shop including subcontractors, but the bigger factory operators vowed to fight to the bitter end.

The two sides settled in for a bitter fight. Strikers taunted and fought with scabs. Police clubbed and arrested strikers in droves; 723 arrested between November 24 and December 24. Magistrates imposed fines; wealthy WTUL volunteers showed up to pay the fines, which angered magistrates who dished out sentences at the workhouse on Blackwell's Island.

More wealthy women got involved; Alva Belmont staged a "monster meeting" of seven thousand at the Hippodrome; Anne Morgan, daughter of J.P. Morgan, arranged for strikers to explain their circumstance to 150 of her friends. Wealthy women brought in donations and supportive press attention, but insiders complained their presence led the public to believe there were funds enough to support strikers when there were not. The "mink" brigade did not pay the full expense of the strike, or even come close. They did raise and contribute funds and spent significant personal time on picket lines in support of a better life for immigrant women. The record does not include reports of wealthy men joining in.

The strike spread to Philadelphia December 20 where some of the New York firms got supplies from work sent from branch factories. Philadelphia strikers wanted union recognition, a nine hour day, and uniform wages. They got the same treatment as the New York strikers: police attacking picket lines and magistrates prosecuting picketers.

The drop in Philadelphia production pressured the New York manufacturers enough they offered a compromise settlement with shorter hours and higher wages but still without union recognition. After months of beatings and arrests, the women were determined to hold out for union recognition and a closed shop;

they flatly refused the offer and voted to continue the strike.

The offer and then refusal created dissension, although not among the striking women, among their varied supporters who began to hesitate. Some of the WTUL decided the strikers should return to work. The WTUL executive board divided with one of them wondering ". . . if Miss Morgan had ever been face to face with hunger or eviction for the sake of principle . . ." The striking women decided to hold out. By early February strike funds were gone and with the union's wealthy benefactors withholding support it was necessary to settle with minimal gain. (17)

The Revolt

Barely five months after the shirtwaist makers strike ended another and more extensive revolt paralyzed the garment trades. On July 7, 1910, 60,000 working in the cloak and suit branch of the industry left their workbenches en masse and marched on picket lines. There were about 1,500 shops where average wages were $15-$18 a week, $10 a week for pressers while most of the women earned only $3-$4 a week as helpers.

The union asked for recognition, a 48 hour week, double time for overtime, and abolition of subcontracting. Again the smaller shops were willing to negotiate; the bigger ones demanded an open shop. As before the manufacturers hired detectives and thugs; the police escorted strikebreakers to work and arrested the picketers. This time the manufacturers got a court injunction against leaving a job through the use of "force, threat, fraud or intimidation."

Active intervention of Gompers was necessary to get angry union leaders to a conference July 28. Lincoln Filene offered the services of Louis D. Brandeis, counsel to the Boston cloak and suit manufacturers, to help settle the strike. He suggested a preferential union shop as a compromise between an open and closed shop where an employer would hire from available union members before hiring others. Gompers urged accepting it. The strikers refused, they wanted union recognition.

Justice John W. Goff made the injunction permanent labeling it a common-law conspiracy to obtain the closed shop and thereby deprive nonunion men and women the right to work. The court authorized police to disperse pickets, peaceful or otherwise, but the strike dragged on until September 2, 1910 when the manufacturers offered a "Protocol of Peace" with a 54 hour week , overtime pay, ten holidays, free electricity, and weekly pay in cash, along with a joint board of sanitary control to help clean filthy shops.

Other revolts in the garment trades spread to Chicago, Cleveland, Milwaukee and a few more. In Chicago a cut in the piece rate at Hart, Schaffner and Marx set off an uprising of angry, unorganized women. What started with a small band of striking picketers on September 22, 1910 swelled to 40,000 in a strike of nearly four months. Strike leader Bessie Ambramowitz sought help from the Chicago Labor federation and the United Garment Workers (UGW), an older garment union founded in April 1891 by New York cutters and tailors from the largest men's clothing manufacturers. In spite of freezing winter temperatures,

373 arrests and two killed in police shootings, the strikers rejected two successive UGW negotiated settlements because they did not include union recognition.

In Cleveland, 5,600 left work in June 1911 to picket and demand a 50 hour week, an end to charges for supplies and electricity and union recognition. News in the Cleveland Plain Dealer reported "mounted police galloped headlong at the crowd when they first appeared and the hundreds who blocked the street fled in terror. They swung their clubs when they reached the crowd and forced their way through, driving scores before them down the streets. Some girls who ran from them were chased for blocks."

In strike after strike the garment industry hired thugs, stalled for time and fought union recognition until the striking women were too broke to continue. Many went back to work, some with slightly better wages and working conditions, but those who walked the picket lines saw power in numbers and learned women could be capable organizers. Women made up the majority of labor in the garment industry and they were getting impatient with outsiders and men running their affairs. There would be more changes shortly and with the special energy that comes after a horror like the one at Triangle Shirtwaist factory. (18)

Triangle

The Triangle Shirtwaist fire started at 4:40 in the afternoon of March 25, 1911 on the eighth floor of the Asch building off Washington Square, New York. Triangle Shirtwaist Company produced women's cotton blouses in the top three floors of the building. Rooms were open loft space approximately 100 feet on a side. Within minutes of the first flame, tons of cotton cloth ignited a firestorm that rampaged through the eighth, ninth and tenth flours; 146 died by burning, falling, or jumping.

The building had a fire alarm and three ways to evacuate: stairs, elevators and an outside fire escape. It was routine in cut and sew operations around the city to keep buckets of water handy to douse fires, especially where pressing required hot irons. The Triangle Shirtwaist operation was ready with 259 buckets of water and the Asch building had a 5,000 gallon water tank on the roof that could be connected to fire hoses mounted in the stairwells.

Nevertheless the building was a firetrap with known building code and safety violations, construction short cuts like no fire doors or sprinklers, and no fire drills. At 4:40 nearly 500 people were packed into the top three floors. Nearly all the 180 working on the 8th floor where the fire started were able to escape. It did not matter for them that five critical minutes passed before someone tripped the fire alarm at 4:45. In spite of the delay all but one of the 70 people on the 10th floor escaped. Some got down by elevator, but more of them climbed the one stairwell to the roof. The 250 occupants of the 9th floor were not so lucky. (19)

Escape was the only survival. Dumping buckets of water on the 8th floor had no effect but delayed evacuation and calls to the fire department; the fire hose was unraveled and hooked up but no pressure and no water. The building's two stairwells that 500 people needed to use were in the diagonal corners: the southwest corner, known as the Washington Place side, and the northeast corner,

known as the Green Street side. Building codes required three stairwells in buildings like the Asch building, but the city allowed the developers to put in two and to substitute an exterior fire escape. Fire codes required that doors to stairways be unlocked during business hours, but the door on the ninth floor at the Washington place side was locked.

The door on the Green Street side had a wooden partition in front of it because Triangle owners Blank and Harris wanted purses and bags searched at the end of each day to prevent theft. The partition allowed one person at a time to reach the stairwells. Building codes required exit doors to open out, but all doors opened inward. The code was excused because the winding and tapered steps ended only one tread from the door.

The building had two four foot-nine inch by five foot-nine inch passenger elevators next to the stairs on the Washington Place side and a freight elevator on the Green Street side. Elevators should not be used during a fire, then as now, and especially then when the elevator was a cage operated with a center cable from fixed pulleys above and below. The freight elevator was closed during the fire but both passenger elevators had operators who made daring round trips in spite of flames leaping into the elevator shaft.

The exterior fire escape was on the north wall underneath the length of two center windows that served as doors to rectangular metal balconies. Getting to a balcony required pushing up a lower window sash before pushing out metal shutters and climbing over the windowsill. Ladders between floors ran from the left side of balconies to the right side below. The need to turn left and walk the length of each balcony to go down another floor made it important to pin the shutters against the wall to keep them from blocking the balcony. The last balcony of the escape ended two stories above a basement skylight in a court yard near the property line with another building just 25 feet to the north. A six foot fence set on concrete and mounted with 4 inch spikes marked the property line.

The story of the ninth floor is quickly told. The workday ended at 4:45 just as the fire alarm sounded and just as flames appeared in the window of the airshaft on the north wall toward the Green Street side. Within seconds heat blew out window glass allowing the fire to spread into the loft. Most of the 250 people in the ninth floor loft were seated at 240 sewing machines spread along eight 75 foot rows of tables running north and south. The Washington Place door was locked, but a crush of people jammed in around the door and the elevators. On the Green Street side there was a backup getting past the narrow foyer passage and through the inward opening stairwell door. Some made it down but flames closed off the stairwell in three minutes. The last one down was burned and collapsed on the third floor. Several more who came after that were able to pass upward and made it to the roof.

Over on the Washington Place side the elevators arrived for the first of three trips, all trips went down stuffed well beyond capacity. As the third trip started down many were left and some realized there would not be time for another trip. Fire was spreading across the loft. Some jumped into the shaft and got hold of the center cable, some jumped to the top of the elevators.

Not everyone knew there was a fire escape as several survivors later reported. Since the metal shutters were always closed the fire escape was not visible from inside. Someone who knew got the shutters open and several dozen followed onto the ninth floor balcony, but their progress downward came to a halt when a metal shutter on the eighth floor got stuck across the balcony.

At least one from the ninth floor made it down to the sixth floor and got back in the building below the fire, but delay was deadly for the others because the fire escape collapsed dumping everyone into the courtyard to crash through the skylight or be impaled on the metal fence. The ninth floor was now an inferno. The first person jumped at 4:50. Others jumped but some hung along the burning windowsills until the fire reached them and they fell. The last one fell at 4:57. The others were already trapped, many of them near the locked door and elevators on the Washington Place side. It was all over in seventeen minutes. (20)

Most of those who died were young Jewish immigrants from Russia. Many spoke Yiddish better than they spoke English, if they spoke English. Many left Russia to escape the Tsar's ruthless violence and repression. The owners of the Triangle Shirtwaist Company were also Jewish and Russian immigrants. Max Blanck and Isaac Harris arrived and settled in New York a few years before the depression of 1893. Like so many Russian immigrants they joined the garment industry.

Garment manufacturers designed garments but generally found it easier and cheaper to contract some or all the production work to tenement sweatshops. The boss, his family and some hired help would toil sixty and eighty hours a week in cramped tenement parlors and hallways doing some or all of the cutting, basting, stitching and pressing before delivering their work to the next sweatshop or finished clothing to the manufacturer.

Max Blanck worked his way up from the bottom of the garment business with the help of his wife and three brothers who immigrated after him and joined the family business. Blanck got acquainted with Isaac Harris after he married his wife's cousin. Around 1900 they formed a partnership to produce the latest craze in women's clothing, the Shirtwaist. In 1902 they moved into the Asch building and rented one floor, but gradually they perfected a factory operation and expanded to three floors. As the profits flowed they opened more factories.

Financial success allowed them an upper class life. By the time of the uprising of 20,000 both partners lived in luxurious townhouses near the Hudson River. Harris and his wife had two children and four servants; Blanck and his wife had six children and five servants. They drove in chauffeured limousines. They were the largest shirtwaist producers in New York, known as the "Shirtwaist Kings."

Both Blanck and Harris shared another trait well known to wealthy men: they hated labor unions. When the uprising of the 20,000 spread to Triangle Shirtwaist Blanck and Harris took charge to convince other large producers to organize an Association of Waist and Dress Manufacturers of New York. Blanck persuaded association members to hold out and pressured others to crush unions. Eventually over 100 firms signed "no surrender agreements." At Triangle they

locked out their employees and then fired those who attended a meeting at local 25 of the ILGWU. They paid a Bowery gangster to beat up men on the picket line and hired a whorehouse worth of prostitutes to confront and pick fights with picketing women. (21)

There was outrage and protest after the fire and the District Attorney decided to indict the "Shirtwaist Kings" for manslaughter. Blanck and Harris had money to retain an expensive lawyer, Max Steuer, who was famous for winning tough cases as a tough competitor. The prosecution called 102 witnesses, mostly survivors, to establish the ninth floor door was locked during the fire, which prevented escape and caused the death of some lost in the fire. Attorney Steuer called 52 witnesses but won acquittal primarily by attacking the credibility of witnesses.

It came out in the trial that the doors and elevators on the Washington Place side were only for use of the higher ups: the owners, managers, supervisors, customers. If victims made daily use of the freight elevator on the Green Street side and the Washington place door was generally locked as they said then attorney Steuer wanted to know why they would go there and not the Green Street exit as was their custom? Ultimately an all male jury accepted the Steuer defense that the victims panicked when smarter or more rational people would have saved themselves.

Blanck and Harris made money from their insurance settlement by exploiting an unregulated insurance market where companies and brokers were ready to insure a business for more than its value. Fire insurance policies were sold by brokers paid a percentage of premiums by insurance companies. There was no incentive to reduce the risk of fire when bigger insurance policies raised broker earnings. Brokers spread the financial risk to the companies by dividing policies in small shares to many companies. Triangle collected $199,000 of insurance spread among 37 companies but outside accountants could not establish losses more than $134,000.

Max Steuer continued as Triangle attorney handling civil claims against the owners by the families of victims. Blanck and Harris paid nothing to victims. Claims of families of 23 victims against the owners of the Asch building dragged on until March 1914 when the families gave up and settled with the insurance companies for $75 a victim.

Triangle opened another factory within two weeks of the fire and continued to operate other factories. In August 1913 Max Blanck appeared in a New York court after a fire inspector found 150 women working in a room with an exit door locked during business hours. Once again Max Steuer defended Blanck who claimed the lock was approved by the state Department of Labor and necessary to prevent rampant theft by employees. Blanck got off with a $20 fine, a required minimum. He must have known by then money has its privileges, even for Russian immigrants, except his conduct does not suggest he cared two cents for his Russian roots. (22)

Union Women After the Fire

As many as 80,000 marched up Fifth Avenue in a cold hard rain April 5, 1911 to be at a funeral service for Triangle victims. Thousands more lined the street to watch and support their cause. More strikes followed in the next few years. Fur workers working 60 hour weeks endured tuberculosis and asthma from dust and black and rotting skin from toxic dyes before they left work in a strike starting June 1912. Thousands of unorganized but restive New York garment workers joined a call for a general strike that got started December 30 until a 100,000 were out and thousands were on the picket lines by early January 1913. Newspapers reported "Blood flowed freely, skulls were cracked, ribs were broken, eyes blackened, teeth knocked out and many persons were otherwise wounded in a brutal assault on the garment strikers and pickets . . ." A Russian immigrant woman offered her opinion "It's the same fight everywhere. In Russia it is the Czar. In America it is the boss and the boss's money. Money is God in America."

By the end of 1913 ILGWU had 90,000 members, 60,000 in the New York garment district; more than half of them women. They had significant gains in pay and written agreements covering work in hundreds of shops. However, the women were unhappy with President John Dyche. He did not respond to the rank and file; the women did not like it that board members, officers and organizers were all men. At the June 1914 ILGWU convention Dyche was voted out of office, replaced with Benjamin Schlesinger who promised more involvement of women in a more progressive program.

A bigger and more divisive fight occurred within the United Garment Workers. UGA President Thomas Rickert negotiated settlements that avoided strikes but with terms and concessions that divided the rank and file. He was known to accept offers and make settlements without consulting the rank and file. It was UGA that started the use of the union label for shops that accepted union principles, but Rickert was known to sell the union label to use in non-union shops.

Tailors in the New York shops tended to be eastern European immigrants who did not accept the close relationships between union officials and manufacturers, or the collaboration common in AFL affiliates like the UGA. The combined tailors of New York, Chicago and the other urban cities had the numbers to take control of the union. The hostile mood between the union leadership and the urban locals turned into action at the 1914 Nashville convention. The Rickert faction announced the New York tailors had failed to meet their financial obligations to the International and, therefore, were not entitled to voting delegates to the convention. No one from New York was recognized.

The New York tailors moved to a new venue and voted a second slate of officers. For a few months two UGA unions claimed to be the UGA. The split ended at the AFL convention in November 1914. AFL convention officials would only seat delegates from the Rickert faction. The insurgents left to form their own union, the Amalgamated Clothing Workers(ACW) union. At a New York meeting December 26, 1914 they chose Sidney Hillman as president and Joseph

Schlossberg as general secretary. A preamble and by-laws of the constitution advocated industrial unionism over craft unions and advocated organizing working classes in all industries.

Amid the turmoil at the ILGWU and the ACW women carved out a bigger role, especially as organizers. Early in 1915 ACW efforts to organize in the Chicago garment industry brought strikes and unrelenting opposition. In 1916 more strikes erupted in Boston, Philadelphia, and Baltimore. Newspaper accounts reported the presence and energy of women, but there were complaints to President Hillman: "It seems that the men are not awakened as yet to the importance of organizing the women and lose sight of the fact that women are the majority in the industry." At the biennial 1916 convention there were calls for a women's department. Dorothy Jacobs, one of only four women delegates, introduced a resolution to have the convention instruct the Executive board to work harder to organize women. She was elected to the Executive board.

By 1916 ILGWU had eight experienced women doing full time organizing. One was Rose Schneiderman, a Russian immigrant who sewed linings for hats as a twelve year old. She later recalled "It began to dawn on me that we girls needed an organization. The men had organized already and had gained some advantages, but the bosses lost nothing, as they took it out on us." She started young and organized the women in her shop. By 1910 she was an experienced organizer ready to help the WTUL and the ILGWU. Another was Pauline Newman who also started organizing through the WTUL and organized the shirtwaist shops in Philadelphia.

The new garment unions accepted women members without conditions or barriers, which was often not the case among AFL affiliated craft unions. Women had access to union sponsored educational and social services; wages were higher and hours down. Still it was a struggle. Men continued to dominate the garment unions while allowing women to have a bigger role at lower levels. Men often took charge of strikes.

Women in the WTUL and women organizing in ILGWU and the ACW got increasingly disgusted with the AFL and the words of Samuel Gompers. He offered that "False standards, false pride and misunderstandings have held many back from facing real conditions and facts and employing remedies." He charged women were not committed to working except on a short term basis or until they married and left the work force. He suggested that "permanent true betterment of the lives of the working women can be secured when these women achieve it by their own efforts." His views did not sit well with women given how AFL craft locals only organized skilled craftsmen and refused to admit women and immigrants, or to honor their strikes.

There was other conflict between women and the AFL over politics and social legislation. Many of the women organizers like Rose Schneiderman promoted socialism as a remedy to the abuses of capitalism, but the AFL opposed socialism. She and others were also advocates of minimum wage legislation while the AFL called it "government paternalism" that might become the maximum or allow the states to compel people to work at that rate. Samuel Gompers did

support a small stipend by the AFL to pay women organizers, but even that came under suspicion by the Executive board. They told Gompers to keep an accounting of the money. Relations with the women were always strained.

One exception was the Industrial Workers of the World. The IWW treated women as a permanent part of the labor force to be organized with the men, just as they work with men. “Don’t fight against woman labor; women find it necessary to work. They do not work because they enjoy making some corporation ‘rich beyond the dreams of avarice!’ They work because they have got to make a living.” It was the IWW that took the cause for the immigrant women ignored by the AFL in two massive strikes in the textile industry at Lawrence, Massachusetts and Paterson, New Jersey. (23)

Chapter Four - Organizing Battles in the Streets and the Courts – 1905-1912

In calling this convention to order I do so with a sense of the responsibility that rests upon me and rests upon every delegate that is here. This is the first continental Congress of the working class. We are here to confederate the workers of this country into a working class movement that shall have as its purpose the emancipation of the working class from the slave bondage of capitalism. . . . The aims and objects of this organization shall be to put the working class in possession of the economic power, the means of life, in control of the machinery of the production and distribution, without regard to capitalist masters.

----------William D. Haywood, from the opening address to the founding convention of the Industrial Workers of the World

The Western Federation of Miners soldiered on after the Cripple Creek and Telluride losses. The WFM leadership joined a growing consensus that organized labor needed new direction to relieve working class misery. President Charles Moyer and William Haywood represented the WFM as delegates in the formation of another new union: the Industrial Workers of the World (IWW). William Haywood brought down a rough and ready gavel June 27, 1905 in Brand's Hall, Chicago to open the organizing convention. The IWW hoped to unify everyone who worked for wages: the skilled and unskilled of every race, creed, color, sex or national origin.

Many of the original members included veterans of the Idaho bullpens and the violent repression of the western mining districts, along with socialist and communist thinkers and writers ready to change the economic system in more radical ways. In spite of arguments over socialism, Marxism, anarchy and syndicalism the convention coalesced to finish a constitution and bylaws with a slogan similar to the Knights of Labor: "An injury to one is a concern of all."

These thinkers and writers mixed with the vocal advocates of direct action in the streets. Strikes brought marching, picketing and protesting in these early efforts to organize industries, but they included considerable amounts of violence and new legal innovations in the courts.

Industrial Workers of the World

The IWW struggled with varied difficulties in its early years. For starters, the two key people, Charles Moyer and William Haywood, were arrested in a frame up for the murder of former Idaho Governor Frank Stuenenberg. A drifter named Harry Orchard confessed to the murder but found advantage claiming accomplices from the labor movement. Moyer and Haywood were in Colorado at the time, which was late 1905, but Idaho authorities ignored legal procedure to kidnap them and haul them back to jail and a trial at Caldwell, Idaho. It dragged on until acquittal in July 1907.

What little money there was for organizing mostly went to pay for the trial and attorney Clarence Darrow. During the trial a raucous and sometimes ridiculing national press followed events and paraphrased or published speeches, minutes and correspondence of Haywood and others that described the class struggle in terminology hostile to capitalism.

Leadership arguments from the founding convention continued after the trial, distracting efforts to function as a union. The labor organizers in the IWW wanted an industrial union to improve wages and working conditions by direct action with minimal concern for politics; the socialist factions, there were several, wanted to organize the working class as a political force to transform America to a socialist economy. Quite a few sympathized with both views and held memberships in the IWW and the Socialist Party, but gradually positions polarized and the more determined socialists drifted out of the IWW.

The core of Wobblies, as the IWW was known, organized the poorest of disaffected immigrants and minorities ignored or excluded by other unions, which helped make members a target of scorn and discrimination. The leadership encouraged direct action in labor disputes to improve wages and working conditions as a way to empower all of the working class in a first step to eventual social and political changes, which helped make them a target of fear, anger and attack. Labor organizing always attracts business opposition, but the IWW was more persistent and assertive than other unions. When they pressed their demands, it inevitably brought violence and a bad press.

By 1908 the distinct and notorious Wobbly identity had emerged but despite the troubles they had capable leaders in Bill Haywood, Charles Moyer, Vincent St. John, and a small but committed band of organizers. In the western timber and mining regions, the IWW insisted they could organize on street corners as part of free speech. In the east, efforts to organize thousands of unskilled immigrant factory workers brought conflict with established AFL locals. In mid-western and eastern cities especially, the AFL had local affiliates of skilled labor organized by craft, but left unskilled immigrants, women and children to their own devices. Repeatedly deplorable pay and working conditions in the mining, lumber, steel and textile mills generated spontaneous protests and strikes that brought the IWW to fill the void. (1)

McKees Rocks Strike

IWW organizers arrived at McKees Rocks, Pennsylvania on the north side of Pittsburgh well after the July 14, 1909 start of a strike at the Pressed Steel Car Company, the country's biggest rail car manufacturer, controlled since 1901 by its two largest shareholders: Frank Hoffstot and James Friend. As President of Pressed Steel, Hoffstot established an assembly line system of manufacturing by pushing car frames along tracks. Each worker repeated the same process over and over much the way Henry Ford would build automobiles.

In the beginning Hoffstot paid a piece wage, but in 1909 he switched to a "pooling system" of pay he called the Baldwin Contract system where wages of all the men working at stations along the production track would be pooled and

divided equally. Management provided the foreman with a fixed sum to build a car or cars, which provided the incentive to work as fast as possible to finish one car and get working on another. If work slowed down from mistakes or exhaustion everyone would receive lower pay, and reduce expenses and cost for Pressed Car. However, Hoffstot refused to post or announce the fixed sum to be divided, forcing the men to guess what they might earn. Before the pooling system the men made $3 to $5 a day; after the pooling system $.75 to a $1 a day.

Aside from low pay, some foremen demanded bribes to get a job. The company ran a company town known as Presston with high rents and a company store where everyone was expected to shop or be fired. Work was dangerous for a company known as the "slaughter house." Journalist Louis Duchez reported an average of one death a day. A Pittsburgh newspaper published the remarks of a Catholic priest who visited the plant.

"Men are persecuted, robbed and slaughtered, and their wives are abused in a manner worse than death - all to obtain or retain positions that barely keep starvation from the door. . . . It is a disgrace to a civilized country. A man is given less consideration than a dog, and dead bodies are simply kicked aside while the men are literally driven to their death."

The pooled pay system divided the workforce. Around 1,200 worked as skilled labor as machinists, electricians and crane operators. These men were English speaking and native Americans. Around 3,500 worked as unskilled labor. These men were mostly Poles, Slavs, Huns, and other non-English speaking immigrants. Around 2,000 more unskilled immigrants were on layoff since the plant was operating at about half capacity at the time of the strike.

On July 10, 1909, the men found pay so low they formed a committee to demand an explanation from management. The Committee met in the evening July 12, and demanded a meeting with management the next morning. When management refused to meet, a walkout began the morning of July 13 when about 600 left work. The next day all except about 500, mostly American skilled labor, left work, although strikers demanded the remaining 500 leave and shouted threats at the plant gates.

Strikers met again in the evening at Turner Hall, but after police raided the meeting the men paraded through the streets until morning when they took positions to block strike breakers from crossing O'Donovon's bridge into North Pittsburgh and to forcibly drag them out of street cars. By July 15, 1909 the plant was completely shut down.

Mr. Hoffstot announced "We will receive no committee from them. There will be no arbitration. … If they are not happy working for us, we don't want them. We will not change the pooling system … in fact we intend to increase it."

Another strike committee of six formed to attempt negotiating a settlement, but the new committee served to accentuate the differences in the work force. All six were skilled, native Americans, and did not work in the pooled group. The Committee hired an attorney, William McNair, on July 19 and established a president and a slate of officers. This new Committee of Six and the Pittsburgh Gazette newspaper solicited donations to support strikers, but the Attorney and

Committee President C.A. Wise made support contingent on letting the Americans settle the strike while the unskilled foreigners refrained from any further violence.

The Committee of Six assumed authority to settle the strike, and succeeded in getting a meeting and making a settlement with Pressed Car Officials, they claimed as a great victory. As foreign strikers feared the settlement made concessions at their expense and so they organized an "unknown" committee specifically intended to prevent the Pressed Car Company from importing strike breakers. After the foreign strikers rejected the settlement, the Committee of Six offered a second settlement August 8, but it too was rejected.

As the strike dragged into August the company ordered their private "Coal and Iron Police" to evict strikers from Presston and contracted with the Pearl Bergoff Agency in New York to import striker breakers. The first load of 350 Pearl Bergoff strikebreakers arrived August 13. They arrived by boat coming up the Ohio River. Strikers met the boat with a hail of rocks and reports of gunfire, but another boat arrived the next day with 300 more strikebreakers. The Committee of Six defeated a plan by strikers to dynamite the boat, the Steel Queen, by confiscating the dynamite.

The immigrant faction now decided to meet separately and made plans with the help of William E. Trautmann of the IWW who arrived August 16 and spoke at a mass meeting, at a place known as the Indian Mound. He spoke at another meeting August 20; he signed up three thousand in new IWW local 286.

The dispute turned into a violent confrontation August 22, after the Pearl Bergoff agency brought in more boatloads of strikebreakers. More strikebreakers required more rapid and vigorous evictions from Presston houses, which Mr. Hoffstot and authorities thought required 300 deputy sheriffs and mounted state troopers. A riot ensued with mounted troopers charging striking families and shooting into the crowds.

The next day strikers boarded a street car to go up to the strike area just north of Pittsburgh but confronted a deputy sheriff; they demanded that he get off the car. The deputy pulled his gun and the strikers exchanged gunfire killing the deputy. A second riot ensued with more death and injury. The death toll for the two days reached eleven with at least forty wounded. Ferocious resistance to sheriffs and troopers brought the battling to a standoff. The next day troopers stormed the company town raiding homes and confiscating firearms.

By now the strike was getting national attention. Newspapers blamed the violence on the strikers and management showed no sign they would give in to negotiations. About the same time the public learned the story of a Pearl Bergoff strikebreaker, Albert Vamos, who had been forcibly detained at the plant. Attorney NcNair took charge and demanded an investigation. Hearings before the Committee on Labor of the U. S. House of Representatives brought a string of witnesses telling of false promises; recruits were paid less than promised, given abominable board and room, and physically threatened for attempting to leave the plant. Several published reports alleged three died from poisoned food.

The bad publicity pressured Hoffstot and management enough to renew negotiations with attorney McNair and the Committee of Six. After several more

rounds of tentative settlements the two sides reached a verbal agreement that ended Sunday work, cut Saturday to a half day, promised a 10 percent raise in 90 days, but maintained an open shop without a guarantee of rehiring strikers. The Committee of Six scheduled a vote on the agreement for September 8.

Barely half the strikers bothered to vote but the tally was 2,511 to accept with just 12 voting no; 4,500 went back to work September 10. The Committee of Six hailed the settlement as a great victory, but the company reneged almost immediately.

IWW local 286 had 1,500 members not rehired. William Trautmann called them together to discuss continuing the strike, which they voted to do. The Committee of Six convinced the sheriff to arrest Trautmann, on a fabricated claim he was organizing without a union charter. He went to jail, but Joseph Ettor showed up to take over.

The foreigners who went back to work did not appreciate the company announcement that Saturday and Sunday work would continue as usual until further notice. On September 15 after only five days back between four and five thousand of the foreign men left work and assembled again at the Indian Mound. Joe Ettor spoke in favor of organizing strike committees.

The next morning at least three thousand showed up to picket, but Wise and the Committee of Six had several thousand Americans and some foreign strikebreakers ready to march through the picket lines with American flags waving. Hundreds of the Americans in the march were visibly armed. The second strike ended almost before it started; this time broken by the American workforce and a few hangers on.

All the newspapers applauded the settlement; they could not tolerate violence, which they blamed on the foreign element and organized labor. The Committee of Six helped organize a company union for the Pressed Car company, which their American members learned quickly would not end the ten hour day. Mr. Hoffstot had no more respect for the Americans than he did for foreigners. (2)

The Free Speech Fights

In the West, efforts to organize agricultural and lumber camp workers exposed a corrupt system of employment agencies expecting to keep unions out. Agencies charged job seekers up front fees for a job at one of the areas' scattered farming operations or lumber camps, but some found out there was no job or after working a short time they were fired and replaced. The agencies shared the fees with the crew boss and managers in on the scheme.

"Don't buy jobs" was the pitch for IWW organizers who spoke on street corners in places like Missoula, Spokane, and Fresno hoping to organize agricultural and lumber camp workers in town for the off season. In Missoula, the city council responded with an ordinance prohibiting street speaking, which organizers ignored as unconstitutional interference with free speech. Speakers were arrested anyway and given 15 day jail sentences. Those jailed include Elizabeth Gurley Flynn, a younger version of Mother Jones, as well as an equal or better public speaker. After the arrests a call was published in the IWW Industrial

Worker for others to join the Missoula protest.

Some did. Their member "Red Card" was a ticket accepted on the freight trains by the Brotherhood of Locomotive Engineers. Wobblies arrived in Missoula to be arrested for doing nothing more than speaking in the streets. Flynn moved on to Spokane where her efforts attracted national attention as an early part of a long career as an agitator that included co-founder of the American Civil Liberties Union. In Spokane, street speaking brought arrests for disorderly conduct and a 30 day sentence. Frank H. Little got 30 days for reading the Declaration of Independence. After months of challenge and arrests the IWW declared November 2, 1909 free speech day. On that day police made 103 arrests, 97 for disorderly conduct and 5 for conspiracy. During all of November police arrested 570 for breaking city ordinances: 432 arrests of IWW members with 325 convictions. More arrived to be stuffed into dark and unheated jail cells and forced to work on the "rock pile" or subsist on stale bread and water. From the end of November until mid February convictions for street speaking totaled 417; 385 of them members of the IWW.

At Fresno in the fall of 1909 a union organizer would speak and be arrested and then another and another. On December 9, police looked the other way while a vigilante group attacked and beat organizers, but more would arrive and speak and be arrested. Authorities cut board to bread crusts and water and blasted jail cells with high pressure fire hoses.

The demand for free speech dragged on for months with Wobblies committed to passive resistance and authorities determined to get rid of them. After Fresno until the end of 1913 the Wobblies pressed one free speech after another in battles with municipal authorities in some part of the United States. In the five year period 1909-1913 there were at least twenty free speech campaigns of importance, continuing under definite IWW direction for periods ranging from a few days to periods of six months. In Spokane and Fresno, relatively impartial local residents finally prevailed on authorities to abandon the battle as not worth the trouble. It was a victory, of sorts, but later at Aberdeen, Washington and San Diego local authorities made more aggressive plans to halt public speech. In Aberdeen, local authorities organized vigilantes as armed deputies. Vigilantes abandoned arrest and jail for beatings and deportations and more beatings.

Free Speech in San Diego turned into a bigger and more abusive battle that involved the AFL and the Socialist party as well as the IWW, the governor, President Taft and a special commission to document the whole depressing thing. The San Diego opponents of free speech had a wealthy member of a Merchants and Manufacturers Association that managed the government, the press, and a well equipped band of vigilantes.

By early April, beatings, torture, one death, deportations and other abuses got bad enough that calls were made to Governor Hiram Johnson to investigate. He stalled for several weeks until appointing Colonel Harris Weinstock as Commissioner to go to San Diego, hold hearings and write a report of his findings. He arrived April 16, 1912 and conducted hearings that ended April 20, 1912.

His 22 page report criticized the tactics of the free speech movement and

the IWW, but concluded that authorities denied free speech to the IWW organizers and others. After page 11 he reviewed the violence of the police and vigilantes before giving his opinion of their conduct.

"Your commissioner has visited Russia and while there has heard many horrible tales of high-handed proceedings and outrageous treatment of innocent people at the hands of despotic and tyrannic [sic] Russian authorities.

Your commissioner is frank to confess that when he became satisfied of the truth of the stories, as related by these unfortunate [IWW] men, it was hard for him to believe that he still was not sojourning in Russia, conducting his investigation there, instead of in this alleged 'land of the free and home of the brave.' Surely, these American men, who as the overwhelming evidence shows, in large numbers assaulted with weapons in a most cowardly and brutal manner their helpless and defenseless fellows were certainly far from 'brave' and their victims far from 'free.' "

Commissioner Weinstock also condemned the San Diego Press and made five long citations of newspaper editorializing. One was "Hanging is none too good for them and they would be much better off dead for they are absolutely useless in the human economy. They are waste material of creation and should be drained off in the sewer of oblivion there to rot in cold obstruction like any other excrement."

The Commissioner also reported that "It must be said, however, despite all this, as testified to at the public inquiry by captain of detectives Myers, that although there had been about 200 arrests made these had been solely for violating the street speaking ordinance; that there had been no acts of violence committed that could directly be charged to the IWW; that there had been no arrests of IWW for drunkenness or resisting an officer, and at no instance had any part of these men when arrested and searched any weapons in their possession. Their plan was purely one of passive resistance: annoying, aggravating, burdensome, but not inimical to life or property."

The Commissioner recommended that members of the vigilante committee be prosecuted. He cited U.S. statutes against conspiracy that carried 10 year prison terms. No one was ever prosecuted. When the Report of the Weinstock Commission was published in September 1912, local authorities and representatives of the Merchants and Manufacturers Association visited Washington, DC where President Taft consented to hear their complaints and demands. President Taft agreed that the IWW was engaged in a dangerous conspiracy to overthrow the government, but his Justice Department advised against indictments. (3)

Washington and Louisiana Timber Strikes

Some of the wiser souls in the IWW recognized free speech fights as a diversion from organizing unions or directing strikes for better pay. By this time it was clear street speaking reached too small a percentage of workers to recruit and organize a union. The IWW started appointing delegates to organize at work sites. Where the AFL abandoned efforts to organize seasonal or migratory workers, the IWW trusted rank and file delegates to sign up new members on freight trains,

and at the farms and logging camps. Immigrant and migratory workers found acceptance in the IWW with low fees and dues they could afford.

Lumberjacks in Western Washington and Oregon worked dawn to dusk on a few dollars pay, but that was before room and board charges to live in remote, well worn bunkhouses without bathing or laundry facilities and to survive on a diet of beans and stew. Conditions were bad enough at the vast Frederick Weyerhaeuser operations around Grays Harbor that unorganized Greek and Finnish immigrants walked off work demanding better pay and conditions for an 8 hour day. Their strike spread rapidly to other camps with IWW delegates spreading the word. By late March 1912, AFL skilled mechanics and longshoremen in Hoquiam and Aberdeen joined the walkout in sympathy to complete the shut down of the Washington state lumbering industry.

Aberdeen police chief announced he would "bust the strike or bust their god dammed heads." Aberdeen vigilante groups from the free speech fights returned to using forcible deportations; work or leave. Those brave enough to parade or picket were blasted with fire hoses, beaten, or jailed. Americans only replaced the immigrants, but employers found it necessary to pay a little more to reopen the mills and lumber camps with scab labor. The IWW was able to organize in other North West camps but with mixed and modest success, although generally with more success than efforts in the south.

Louisiana lumber mills produced 8 percent of the nation's lumber in 1910 and employed nearly 20,000 to do the work. Southern operators had an advantage over the western camps because they could use unemployed black men arrested as vagrants and forced to work in the camps. A Southern Lumber Operators Association (SLOA) coordinated anti-union policies and practices among 300 mills. Speaking for the Association John H. Kirby declared "Whenever any efforts are discovered to organize unions the mills will be closed down and will remain so until the union is killed."

In spite of the need for secrecy and considerable personal risk, organizing went ahead. By December 1910 enough of the camps were organized for Arthur L. Emerson and Jay Smith to call for an organizing meeting in Alexandria, Louisiana. Those attending agreed on by-laws for a federation of southern lumberjacks known as the Brotherhood of Timber Workers (BTW). The BTW was open to all races, creeds and colors and later decided to affiliate with the IWW. Paydays did not have fixed dates and sometimes did not occur for three months. Pay came in scrip discounted at 20 to 50 percent for cash, or time checks negotiable only at company stores. Timber workers paid high rents to live in shacks or old boxcars without sanitation, but only open vaults. Operators automatically deducted insurance fees, hospital fees, doctors fees without providing any of the services. When the new BTW met in convention June 1911, they agreed to press the mill operators to correct the worst of these abuses. The operators responded with a lock out, which ended after several months when the mills reopened with non-union labor.

The demoralized BTW began looking for outside help and turned to the IWW. After Bill Haywood and Covington Hall arrived to speak at their second convention in May 1912, the BTW voted to affiliate with the IWW. Haywood

insisted the convention hall be integrated after he was told black members were meeting separately because "Louisiana law prohibited meetings of black and white men." … "If it is against the law this is the time when the law should be broken." He reminded everyone there were two colors but only one working class.

BTW members met in the woods in secret meetings before deciding to make demands. They cautiously asked for just one improvement; they wanted their pay every two weeks. The Southern Lumber Operators Association would not relent, which left little choice but to strike. Strikers turned out to picket with speakers addressing crowds at rallies near the mills.

The operators refused to shut down during a peak period but responded by looking for strikebreakers and police to end the strike. They also hired armed patrols to attack union meetings. On July 6, 1912 gunmen shot at journalist George Creel who came to speak at Carson, Louisiana. On July 7, 1912 Arthur Emerson tried to march with several hundred union supporters from Carson to DeRidder but encountered gunmen along the way. Emerson tried to stop and speak to the group at Grabow, Louisiana near Galloway Lumber Company. As he spoke John Galloway and three other employees fired three shots into the crowd from Galloway office windows. They had Winchester rifles. Some in the crowd were armed and began exchanging gunfire with the company guards who were shooting from the offices, from a nearby mill and a railway boxcar. When the shooting stopped three were dead, a fourth mortally wounded and 40 had bullet wounds. Emerson and 64 union members were arrested along with four Galloway men. A grand jury indicted all sixty-five from the union; none from Galloway. The union men remained in jail until their trial October 7, 1912.

Hundreds left work to attend the trial where the prosecuting attorney was hired and paid by the Southern Lumber Operators Association. A parade of witnesses all testified that drunken company guards fired first. That was enough for a jury acquittal on November 2, but the companies continued attacking the union. They provoked a strike at the American Lumber Co. in nearby Merryville after the company fired the trial defendants and witnesses. The union protested firing people subpoenaed by the court, first to the governor and then President Taft.

In Merryville, 1,300 strikers maintained solidarity; locals, black and white, refused to scab. The company evicted and blacklisted union members, built a high fence around the compound and imported scabs with false promises and then locked them in the compound. The strike continued. Then 300 men from a vigilante group, the "Good Citizens League" began looting the union hall, homes and beating and deporting strikers under threat of execution. Blacks were singled out for the worst violence in a southern state where the only thing worse than a union was an integrated union. Ultimately the companies succeeded in eliminating the Brotherhood but they had to have higher pay and shorter hours to even find scabs to operate the mills. (4)

Lawrence Massachusetts Strike

In the East at Lawrence, Massachusetts on Friday morning of January 12,

1912 angry textile mill workers abandoned their jobs in a spontaneous protest from a cut in pay. It was the first payday following a new law that cut the maximum workweek from 56 to 54 hours for women and children aged 18 and under. Over half the population of Lawrence over 14 years of age worked in the mills where most of them earned $5.10 a week for a 54 hour week and the skilled men got $9.00 a week.

The strike spread from mill to mill with runners shouting "short pay, all out." And there were many mills: the Wood Mill, Arlington Mill, Washington Mill, Everett Mill, Duck Mill, Ayer Mills, Pemberton Mill, Atlantic Mill, Kunhardt Mill and more. Mill workers emptied into the frigid winter streets by the thousand. Security guards blocked entrance to the mills by protesters but windows were broken with chunks of ice to pass the word.

Textiles were protected by an unusually high tariff, but William Madison Wood of the Wood Mill and the American Woolen Trust complained a recession made it necessary to lower weekly pay because of competition and to prevent a revolt of stockholders who expected regular dividends. The decision to withhold two hours in weekly pay reduced income worth at least four loaves of bread and brought a bitter strike of already impoverished mill families.

Police soon arrived to clear the streets, except their blunt confrontations with strikers generated scattered rock throwing and street battling. Mill workers were almost entirely immigrants; fewer than 10 percent were organized in unions. A small number in ten skilled crafts belonged to an AFL affiliate, the United Textile Workers of America (UTW), others to local 20 of the National Industrial Union of Textile Workers affiliated with the Industrial Workers of the World(IWW), but it was small with barely three hundred members. No one in Lawrence had experience managing what eventually grew to 23,000 strikers out of a reported weekly payroll of 28,118.

A call went out to New York for "Smilin Joe" Ettor the experienced Italian-American IWW organizer who arrived by train Friday afternoon. Ettor spoke to strikers at city hall Saturday morning and immediately took over organizing strikers. Ettor preached solidarity, passive resistance, direct action, and the IWW version of sabotage as the method to winning the strike. "You cannot win by fighting with your fists against men armed, or the militia," but "you have the weapon of labor and you can beat them down if you stick together." He set up a committee of 56: 4 members for each of 14 nationalities. Each nationality got a vote through their Strike Committee members at daily meetings. Ettor encouraged all to participate in daily parades and picketing.

The mills remained closed Sunday as they normally would, but Lawrence Mayor Michael Scanlon called up three companies of militia troops for Monday. Thousands of strikers showed up at major plant gates by 5:00 a.m. intending to keep anyone, or everyone, from going to work. Fights broke out confronting strikebreakers; mill managers sprayed the crowds with fire hoses, by now an old trick. By mid-morning Mayor Scanlon had militia units lined up to advance with rifles and bayonets pointing into the picketing crowds that scattered in all directions.

The contest of strikers, police and militia continued through the week with Ettor's constant presence. On Wednesday January 17, and again on Thursday, Ettor organized mass parades through the streets. Gradually more left work to join the strike and many paid $.25 in dues to join the IWW. Militia guarded the mills with rifles and fixed bayonets, which allowed a reduced operation of the mills in defiance of strikers. The AFL craft unions went to work as strikebreakers, but the unskilled strikers were out in mass every day to jeer at scabs while militia arrested anyone they wanted for standing around, hounding scabs or approaching the mills. (5)

On Saturday January 20, police acting on an informant's tip found dynamite stored at multiple locations around Lawrence including a three story house, a cobbler's shop and a cemetery. Arrests of Syrian men, two women and several others followed, but Ettor suspected some of the clues and discoveries were planted to bring suspicion to strikers. Police cleared the accused by Friday but another suspect from a local family, John Breen, would be charged a few days later.

Bill Haywood arrived January 24 to rally strikers, guide publicity and raise funds to maintain relief for a long strike. William Wood agreed to meet Joe Ettor at his offices January 26. Wood actually claimed he spoke for his devoted employees, after which he refused to consider a 15 percent wage increase, overtime pay or anything else.

Provocateurs staged a hoax the weekend of January 27 and 28, when they went through mill worker tenements telling residents the strike was over. Again Ettor suspected company officials ordered the hoax. The newspapers had already reported the presence of Pinkerton and Burns detective agencies; it would be learned later that Mayor Scanlon hired a detective from the Sherman agency.

Ettor advised strikers to be out in force Monday morning January 29 to talk scabs out of going to work. Strikers roamed the streets, and some roaming the streets accosted people as suspected scabs, stoned streetcars and dragged some passengers to the streets. Police arrived to make nine arrests, but Ettor was on the streets; he was sure some in the fray were company agents intending to provoke violence and disrupt the strike.

During the morning disturbances a young woman, Anna LoPizza, was shot and killed waiting to board a streetcar and a young boy, John Rami, toting a musical instrument, died after a soldier stabbed him with a bayonet. Authorities used the death of Anna LoPizza as an opportunity to arrest Ettor and two others: Arturo Giovannitti, an Ettor assistant and Italian friend, and Joseph Caruso, a bystander. They were several miles away at the time of the shooting, but they were charged with murder and denied bail. Authorities claimed their organizing and speaking made them accessories to murder, much like the accused from Haymarket 30 years before. At their arraignment Greta Zurweil and a friend living across from the shooting gave eyewitness accounts of police officer Oscar Benoit firing four or five shots toward the victim as she fell. The judge ordered the three accused held without bail pending a grand jury proceeding, which occurred after the strike ended.

Bill Haywood was ready to lead the strike after Ettor's arrest where he found strikers as defiant as before. Others from the IWW arrived to assist: Elisabeth Gurley Flynn, William Trautmann, James Thompson and eventually Carlo Tresca. The January 29 disturbance worried Mayor Scanlon so much he took advice from Colonial E. LeRoy Sweetser to bring in more troops; by January 30 over 1,500 troops patrolled the Lawrence streets along with the Lawrence police force. The New York Times described the street marches: "Flags were displayed, and many men and women carried banners on which was printed "We strike for justice." Forming into line, the strikers, consisting mostly of foreigners, marched into Essex Street, shouting and cheering. Many had tin pans, cow bells and other noise-making articles."

On February 8, the state legislature appointed state Senator Calvin Coolidge to mediate, but the mill owners informed him they would never meet with strike committees. Coolidge commented privately that "The trouble was not wages. It is a small attempt to destroy all authority whether of any church or government." On February 13, Mayor Scanlon met with Governor Eugene Foss to discuss strike management. The Mayor spoke with the press afterwards and called the strike an "incipient revolution . . . the beginning of a wage war which is to spread throughout the country." He admitted to reporters that mill owners paid "starvation wages" along with "tremendous dividends that the mills declare and the immense salaries paid to their officials." Several hundred of the immigrant strikers packed up and left to return home. A reporter quoted Italian Arturo Massavi, "We were urged to come here by posters spread throughout Italy by the American Woolen Company, describing how mill owners will treat us like their own children. … We were treated like dogs. Our Italy is bad but your country's textile mills are worse." (6)

As the strike wore on several Italian families suggested that parents board their children in homes of volunteers in other cities until the strike ended. On February 10, 1912, 119 children and their chaperones went by train to be guests in homes in New York; over 100 more left on February 17 and February 22. The so-called Children's Exodus angered Mayor Scanlon and city hall officials who called it a cheap publicity stunt. The children's exodus promoted Colonel Sweetser to announce that anyone gathered in "riotous assembly" … "maybe fired upon without warning."

By now the strike was getting national press attention, much of it criticizing officials in Lawrence. Haywood was determined to keep it going while noting many of the children were cheap labor for the plutocrats: "Afraid of losing their little slaves, in whom they have only a material interest, our smug Boston exploiters and their ladies now sound the alarm." Only 46 of 200 children scheduled to leave on Saturday morning February 24 showed up at the train depot with parents, but police chief John Sullivan, four militia companies and a military transport arrived as well. Chief Sullivan announced he would arrest parents and children if children attempted to board the incoming train. Reporters were present and numerous press accounts include dragging, clubbing and beating women and children. The police denied the accounts and no photographs can be found but they did not deny arresting and physically forcing women and children into trucks

and driving them to the police station.

The nine women and fifteen children forced from the depot were stuffed in jail cells with twenty-five other women arrested that morning for picketing. A judge arrived at the police station in mid-afternoon to hold court. The picketers were each fined $5.00 for picketing, almost a week's wages, which all refused to pay and so all returned to jail. The judge piously accused the nine women of child neglect: "When parents voluntarily allow their children to go from their custody to a city hundreds of miles away it appears to be nothing short of neglect." The judge ignored their attorney's protest and fined the nine women $3 each for creating a disturbance. He ordered all fifteen children into city custody to reside at the city's poor farm to await another hearing in three days. When probation officers started removing children, parents and others resisted and rioting ensued. Police had to fight off a mob of hundreds to load the children into police vans. One man got his children away from the police. Overnight, angry strikers posted flyers calling for a general strike; the mistreatment of children brought a wave of national protest. Newspapers sent reporters to investigate; none supported the misconduct toward children.

The next day, Sunday February 25, Father O'Reilly, a revered Priest of St. Mary's Church in Lawrence delivered a sermon condemning the IWW. The strike "is a war against lawfully constituted authority – against religion, against the home, against the people. It is a world-wide war of class against class and the Lawrence trouble is only a flash in the pan." … The strike is run by "a revolutionary organization that has declared a general war on society and decided to make of Lawrence a test case against the whole country."

U. S. Senator Miles Poindexter remarked in comments published February 27, 1912: "It's like a chapter in the story of Russia's brutal treatment of the Jews. I never expected to hear of such things in the United States. The state of Massachusetts, in Lawrence, is Russia."

In Boston, Friday morning, March 1, Mayor Scanlon and the Coolidge Committee finally convinced William Wood to negotiate; he offered a five percent wage increase. Back in Lawrence the Arlington Mill posted a printed offer for a 5 percent raise to settle its strike, but it was for the 54 hour week and so amounted to only a 1 percent raise in wages. John Golden of the UTW-AFL tried to convince his skilled members to accept it, but the unskilled thousands on strike turned it down.

At the insistence of Congressman Victor Berger, the U.S. House of Representatives agreed to hold hearings in Washington that began Saturday, March 2. Hearings included testimony from 5 adults and 13 children from Lawrence among other witnesses. Testimony documented the grim life of Lawrence mill families working for American Woolen, which Berger described as "one of the most oppressive trusts in the country." Pictures from the mills showed young girls working bare foot.

Lawrence adults gave eyewitness accounts of police beatings at the depot. "They lifted them from the ground like dogs and threw them down into the big automobile that was waiting." And "Well I saw the policemen with their clubs

club a women, while putting them into the wagons, into the breast and stomach and all that, and grab them by the hair and so on you know. I saw that."

At the hearings on Monday thirteen children brought to testify answered questions about life in Lawrence. The eleven on the committee all asked questions in what appeared to be random curiosity. Many questions were repeated, but not all; there was no system. The children worked at jobs they called doffer, bobbin boy, spooler, twister, burler. They all started working at fourteen or soon after. Some said they left school in the fourth grade; none went longer than the seventh grade. Committee members wanted to know: Did American Woolen charge mill workers for water? Seven of the thirteen said yes, $.10 a week; two said no; one said he drank canal water; three were not asked.

John Bodelar, age 14, answered questions from William B. Wilson, Pennsylvania House member and later Secretary of Labor under Woodrow Wilson. Master Bodelar lived with his parents and two sisters. His salary working in the Arlington Mill was $5.49 a week and his father, who earned $5.10 a week at the Wood Mill, paid $2 a week rent on three rooms where they lived. He left school to put food on the table, which consisted of bread and molasses and occasionally some beans and once a week on Saturday, meat. Furnishings he said were two beds. Wilson wanted to know "Have you carpets on the floor?" Master Bodelar answered "I guess not; I guess some horses live better than we do." Wilson responded "I would rather you answer my questions nicely, John, rather than be funny; it doesn't pay. We just want to get at the exact conditions with all of you people that live in that city and work in those mills." The hearings did not resolve how good answers would pay.

Testimony included Camella Teoli, who entered the mills under age 14. Her hair caught in the gears of a spinning machine at the Washington Mill and scalped her. Officials got the two hunks of her scalp in a bag for the trip to a hospital. She spent 7 months in hospital recuperation, American Woolen paid her hospital bill. Her parents allowed her to work underage and so no attorney could help get compensation.

The Massachusetts delegation did not like testimony they regarded as bad for "the fair name of Massachusetts." They demanded Lawrence officials have a chance to cross-examine witnesses, which they were allowed to do. No city officials or members of the Lawrence clergy would admit poverty in Lawrence.

In his testimony, Reverend Clark Carter of the Congregational Church, graduate of Harvard and Princeton, called the children's diet of bread and molasses a luxury since working people so often ate bread without molasses. It turned out he ran the Lawrence Mission to the Poor where he saw some living "in narrow circumstances." He approved of child labor because children need to be "kept occupied at something profitable." … "Those that are idle until they are sixteen years of age do not amount to much afterwards." … He thought "sometimes it is better that the education be where it is congenial to the child, as it is in many cases in the mill, than where it is uncongenial as it is in school." In March 7 testimony, company paymasters claimed they tried hard to avoid hiring underage children and admitted the companies charged mill workers for drinking water.

After more stalling William Wood agreed to make a better offer to the IWW strike committee in a meeting in Boston, Thursday March 7. He promised to send a detailed wage schedule in a few days. Back in Lawrence 10,000 restless strikers marched and paraded through Lawrence streets in wait. The call finally came March 12 for a strike committee of ten to go back to Boston. After a long meeting they reached a settlement announced back in Lawrence March 13, 1912.

All would get higher wages; some fifteen percent, others less but the lowest paid of the unskilled would get more than 15 percent. Overtime pay would be time and a quarter. There would be no reprisals and everyone would return to their former job. At a gathering on the Lawrence Commons the strikers accepted the settlement March 14, 1912 and went back to work.

Bill Haywood spoke to strikers "You have won the strike … over the opposed power of the city, state, and national administrations, against the combined force of capitalism, in the face of armed forces." Lawrence calmed down. Mill workers went back to work. The children came home to another parade and celebration, but there would be more trouble to come. (7)

In April a grand jury indicted Joseph Ettor, Arturo Giovannitti and Joseph Caruso for conspiracy to murder Anna LoPizza. In May, John Breen was convicted of planting dynamite and fined $500 while the judge hinted he thought others were involved. On August 27, a builder named Ernest Pitman committed suicide after he confessed to the district attorney that he made a payoff to have John Breen plant 28 sticks of dynamite. He named other Mill officials including William Wood in the plot. Wood was arrested, indicted and released on $5,000 bond.

Fierce opposition to a murder trial developed after the Wood indictment. The trial did not begin until September 30, 1912 in Salem, Massachusetts, notorious for witch trials. Opponents had months to stage rallies, which took place in the U.S. and in other countries around the world raising thousands for the trial defense in the process. In the fall Carlo Tresca and Elisabeth Gurley Flynn held regular rallies and protests in Lawrence. Tresca led marches to Anna LoPizza's grace site on Sundays until the chief of police denied a parade permit and Father O'Reilly locked the gates.

A protest march went ahead on the Sunday before the trial. Someone in the march carried a flag that read "Arise!! Slaves of the World!!! No God! No Master! One for all and all for one!" which further infuriated the already nervous officials and members of the Lawrence Citizens Association, organized to oppose the unions.

When the trial finally got underway, Judge John Quinn had the accused stuffed into steel cages. He had to call a recess after days of jury selection did not find a single juror who could, or would, judge the case on the evidence. After several days of recess jury selection resumed until a jury of twelve men could be empanelled from 506 potential jurors.

During the recess Mayor Scanlon organized a counter parade urging citizens to wave flags "as a rebuke to those detractors of our National Emblem who would dare carry the red flag of anarchy through our streets on the Lord's Day. "Their Creed is 'No God, No Master.' Let ours be: 'For God and Country.'"

Trial prosecutors alleged the three accused did by their words incite, procure, aid, counsel, hire or command the killing of Anna LoPizza. In prosecution testimony police and reporters described what they saw during the strike and paraphrased parts of Ettor's speeches. On cross examination some of the prosecution witnesses admitted their testimony came from reporter's notes. Others admitted they were brought to Lawrence and paid $15 a day to stir up trouble, roughly double the weekly wage of mill workers. Detectives infiltrated meetings, but could not understand Italian.

The prosecution wanted to clear officer Benoit of murdering Anna LoPizza and so had a witness testify that someone behind Officer Benoit fired the deadly volley. The prosecution finished their case when the judge allowed the prosecutor to read from an IWW pamphlet filled with direct action appeals for the coming class war.

The defense case began November 1. Defense witnesses came forward again to testify they saw Officer Benoit fire the fatal bullets. As the trial neared its end Saturday November 23, Joe Ettor was allowed to address the jury. "For my part, I have not been tried on my acts. I have been tried here because of my social ideals. … Since I was a boy and I could lift my voice for the cause that I thought right, I did. … And as I have gone along I have raised my voice on behalf of men, women and children who work in the mines, who work in the mills and who work in the factories of this country, who daily offer their labor and their blood and even their lives in order to make the prosperity of this country. I have carried the flag along."

Giovannitti spoke and among other points in his long address he questioned the prosecutor's reference to the "New England Tradition" applied to his trial in Salem, Massachusetts. Was it a tradition "where they used to burn the witches at the stake" or the one where men "refused to be any longer under the iron heel of British Aristocracy and dumped tea into Boston Harbor." The trial ordeal finally ended with a not guilty verdict on Tuesday, November 26, 1912 after 58 days. (8)

The Lawrence strike would be known later as the crest of IWW organizing success. IWW membership in Lawrence jumped to 14,000 by the end of the strike and 28,000 by June 1912. The IWW claimed locals of a thousand members or more in other New England mill towns especially Lowell and New Bedford. However, Haywood, Ettor, Flynn and the experienced IWW organizers left town for other strikes and speaking engagements. Only a few remained in Lawrence to manage Local 20; mill management hired spies to infiltrate the union and fire and blacklist union leaders. Membership fell to 700 by October 1913. Partly though that was a result of a disastrous strike in Paterson, New Jersey that followed in January 1913.

Commentators of the era wrote about the Lawrence strike as a conflict without precedent in America: "All the world saw that the new movement had a revolutionary aspect." Lincoln Steffans noted the labor leaders are intent upon spreading revolutionary doctrine. Journalist Walter Weyl spent days in Lawrence during the strike watching, listening and talking to mill workers. He decided "Haywood and Ettor, are far more radical and revolutionary than are the rank

and file of the strikers." He thought Haywood to be a "thoroughgoing idealist" with hopes to "revolutionize society on industrial lines." … "Haywood interprets the class conflict literally as a war … which can end only with the conquest of a capitalistic society by proletarians or wage workers, organized industry by industry."

To Haywood and Ettor, the strike was a symptom of proletarian revolt. Ettor told negotiators "You may turn your fire-hose upon the strikers, but there is being kindled in the heart of the workers a flame of proletarian revolt which no fire-hose in the world can ever extinguish." Weyl attended too many meetings of Lawrence strikers to believe they would be part of a proletarian revolt. He saw them as "peaceful, determined, self-sacrificing, compromising, more intent on, wages, hours, and conditions than on any overthrow of capitalism, ultimate or immediate."

Strikers in Lawrence were too hungry to be philosophers, but they welcomed Haywood and Ettor and the IWW for their leadership skills to organize the strike and unify so many conflicting nationalities. Haywood told them "The only enemy here are the capitalists." The press branded Haywood a syndicalist as a way to characterize him as a dangerous person. The strikers in Lawrence showed no interest in Syndicalism if they even understood it. The disconnect between labor leaders hoping to bring long term fundamental change and strikers hoping to survive in the present would be repeated again and again in the decades to come. Syndicalism would be just one of many names to brand labor organizers as dangerous people. There were already socialists and anarchists. Bolsheviks, Communists, Trotskyites would follow in various classifications. They all had one thing in common; they all worked on a better deal for the working class.

William Wood and two others, Dennis Collins and Frederick Atteaux, were tried in May 1913 for the allegations in the dynamite plot. Breen testified that Collins handed him the dynamite in a Boston bar and that Atteaux delivered him a bag of cash the same night on a Boston street corner. The prosecutor had a voucher signed by Wood and a taxi driver who clamed he picked up Atteaux at Wood's home and delivered him to the drop site. The defense attorney created doubt when the taxi driver did not have a travel journal and was not sure of his route. The jury found Collins guilty and Wood not guilty; a divided jury could not decide on Atteaux.

Wood remained depressed that his "fellow workers" rejected him. He used company funds in a real estate project that lost money for stockholders. His daughter Irene died in the Spanish Flu epidemic in 1918. His son William Wood Jr. tried to get his father to improve employee relations, but died when his Rolls-Royce hit a telephone pole at a hundred miles an hour. Wood remained despondent according to his son Cornelius and then left the company in 1924. He committed suicide by .38 revolver near Flagler Beach, Florida, February 2, 1926. Disgruntled stockholders sued his estate. (9)

The McNamara's

A few minutes after midnight October 1, 1910 a bomb blast followed by

a second explosion turned the Los Angeles Times building into a burning ruins. Twenty-one died and there were many more injuries.

The next day the union-hating, union-baiting owner of the Times, Harrison Gray Otis, published a one page edition of the paper printed at an auxiliary plant. The Headline read "Unionist Bombs Wreck the Times." Without having the slightest idea who planted the bombs he wrote "O you anarchic scum, you cowardly murderers, you leeches upon honest labor, you midnight assassins, …" The labor movement immediately denied any involvement. Samuel Gompers stoutly resisted any suggestion organized labor would do such a thing, but of course he had no idea who planted the bomb either.

About noon October 1 a police search at the Otis home turned up a strange suitcase in the yard. When police went over to investigate they heard a ticking noise and ran for their lives. They were far enough away when the bomb blew up that no one was injured but it blew a hole in the yard and broke windows for blocks. Another bomb was discovered at the home of Felix Freehandelaar of the Merchants and Manufacturers Association, but it did not explode. It had 16 sticks of dynamite with a date stamp and the manufacturer's name.

On October 15, police got another break when a landlord called them with news that three tenants deserted their apartment but left several crates of dynamite behind, which it turned out matched the dynamite from the Freehandelaar house. The bomb mechanism and dynamite also matched those from other labor disputes leading officials to suspect union officials and members from the International Association of Bridge and Structural Iron Workers, with headquarters in Indianapolis, Indiana.

There on April 22, 1911 police along with detectives hired from the William J. Burns Agency broke into union offices without a warrant and removed everything including 86 sticks of dynamite and other bomb making effects. They seized John J. McNamara at the offices. His brother, James B. McNamara, and Ortie McManigal were already in a Chicago jail after they were arrested earlier with a load of dynamite, apparently on their way to their next job. They were all hauled back to California without an extradition hearing. Ortie McManigal confessed; James B. tried to bribe the guards.

In the 1900-1910 era the International Association of Bridge and Structural Iron Workers union survived the onslaught of anti-union attacks in the steel industry where all other steel unions disappeared after Homestead. Prior to the Los Angeles Times bombing the Iron Workers confined themselves to bombing building sites under construction with non union labor. John J. in Indianapolis had a budget of a $1,000 a month and picked the sites; James B. was "handy with the sticks" and planted the bombs. The McNamaras had a reputation as family men, devout Catholics, members of the Knights of Columbus and always good to their mother.

Through the summer of 1910 militant businessmen fought to maintain Los Angeles as an open shop town with Otis announcing "It was war from the jump" in the Times. The Merchants and Manufacturers Association hired detectives to infiltrate and spy on labor, bullied or bribed judges and pressured the city council

to ban picketing and street meetings. Police arrested hundreds for violating the new ordinance.

Militant Los Angeles union officials countered with their brand of violence sending out their toughest sluggers to attack and beat up non-union strikebreakers. It was local union officials that contacted the McNamaras to invite them to Los Angeles to bomb the Times building. James B arrived September 29, planted the bomb about 5:30 p.m. September 30 and then boarded a train for San Francisco. There were eight more bombings over the next six months, including one Christmas day in Los Angeles at the Llewellyn Iron Works, before the Burns Agency sleuths finally caught up with them April 22, 1911. (10)

Organized labor did not know the evidence against them or that Ortie McManigal had confessed. Both the McNamara's publicly denied any involvement so labor officials continued to defend their innocence and deny any part in the bombing. Samuel Gompers approved a $300,000 appropriation to retain Clarence Darrow to defend them.

After Darrow got to work he realized they were "guilty as hell" but both John J and James B pleaded not guilty with James B's trial set for October 11, 1911 before Judge Walter Bordwell. Jury selection went forward slowly and under a cloud of misconduct since both sides sent operatives to "talk" with jurors. Burns told his agents to "Weed out the son of bitches who will not vote for conviction. No man's name goes into the box unless we know that he will convict."

During delays over jury selection Darrow finally decided his clients "could not be saved" but politics opened a window for a plea bargain. In the Los Angeles race for mayor the incumbent John Alexander, strongly favored by business, had to beat candidate Job Harriman in a run off election December 5. Harriman ran as a socialist labor supporter; business panicked when it appeared he might win. Prosecutor John Frederick allowed a guilty plea with life in prison as long as it came before the election. Harriman lost badly.

After the trial prosecutors claimed they put a dictograph in Darrow's hotel room and in rooms of spies employed as Darrow agents. On November 29 the District Attorney's office arrested two Darrow detectives and charged them with bribing a juror. At least one of the two was the district attorney's spy. Darrow was tried twice for jury tampering; first with a hung jury, second with acquittal. (11)

The guilty bombers horrified Samuel Gompers "Labor needs to be strong in numbers, in effective organization, in the justice of its cause, and in the reasonableness of its methods. It relies on moral suasion." Gompers worked hard to repair the damage to organized labor and maintain a reputation for non-violence for the A. F. of L. He had some success, but the 1919 to 1933 years of Prohibition and the Volsted Act generated a growth industry in organized crime, which would expand to labor racketeering.

Dynamite returned to the labor movement, but often as the work of contractors hired from organized crime. Gradually the contractors began to muscle their way into union offices and in a few cases take over a union. By 1930 the Chicago Tribune would write "organized labor in Chicago stands in peril of being delivered into the hands of gangsters, according to labor leaders who expressed

their fears today. Already several unions, rated as the most powerful and active in the city, have been taken over completely by Alphonse Capone and his crew of gangsters, it was pointed out." James R. Hoffa was then 17 years old. (12)

Labor and the Courts After Chicago

The A.F. of L. evolved slowly following the Pullman strike and after the turn of the century. Samuel Gompers continued to emphasize economic power over politics as the means to higher wages and a better life. However, in the years after 1894 business organized for relentless open shop and anti-union drives. A Citizen's Alliance to oppose unions opened in Dayton, Ohio with other chapters organized around the country. Anti-Boycott Associations and the National Manufacturers Association also started in these years.

In response to the aggressive use of spies, firings, blacklisting and anti-union practices of employers, the AFL started appointing full time labor organizers who were paid a salary out of the much higher union dues that were part of business unionism. Such a person could not be confused with a spy or fired or blacklisted. Their separation from employers translated into independent power as a business agent to be an intermediary organizing and negotiating for members of a local union or regional federation of AFL craft locals. To the employer, the business agent worked as an outside agitator who arrived to stir up trouble with his otherwise contented employees. Employers supported the right to work of individuals who did not want to join a union.

The courts helped protect the right to work of non-union employees by finding state and federal labor legislation an unconstitutional interference with the liberty to contract by using the Fourteenth Amendment interpreted to halt "the taking of life, liberty or property without the due process of law." In 1905 in the famous case **Lochner v. New York**, the Supreme Court found a New York law restricting the hours of bakers to ten per day or sixty per week an unconstitutional interference in "the right to purchase and sell labor." … "Viewed in the light of a purely labor law, with no reference whatever to the question of health, we think that a law like the one before us involves neither the safety, the morals, nor the welfare of the public, and that the interest of the public is not in the slightest degree affected by such an act." The justices declared a law that regulates the terms of a contract to be a "meddlesome interference with the rights of individuals" … that potentially subjects all persons and contracts to the "mercy of legislative majorities."

A similar case known as **Adair v. United States** started in 1906 after William Adair, a supervisor of the Louisville and Nashville Railroad dismissed master mechanic O. B. Coppage solely because he was a member of a labor organization. Adair was tried and fined $100 for violating the Erdman Act, the Federal law passed in 1898 in response to the Pullman strikes. The Erdman Act established procedures to settle labor disputes on the railroads through mediation at the request of either labor or management: voluntary arbitration. Section 10 of the Act made it a misdemeanor crime for railroads to require employees to make a pledge against unions. The pledge was an employment contract known as the

"yellow dog" or "iron clad" contract where employees could work if and only if they swear not to be or become union members.

Appeal was taken from the Adair conviction and the U.S. Supreme Court reversed the lower courts, calling Section 10 "repugnant to the 5th Amendment to the constitution declaring that no person shall be deprived of liberty or property without due process of law." The justices would not allow any interference with liberty of contract. They called it "inconsistent with the public interest" … "hurtful to the public order" and … "detrimental to the common good." The "yellow dog" contact would now be a legal and enforceable contract. The justices would not allow legislation to change or modify a contact, a.k.a. liberty of contact, unless it is necessary to conserve public safety "under pressure of great danger."

By 1906, the tide of opposition to labor was enough to move even Samuel Gompers to modify his conservative views. He started to speak against the anti union attacks as attacks on free speech and the basic rights of a democracy and called for corrective legislation outlined in a Bill of Grievances. Legislative demands included an anti-injunction bill, an 8 hour a day bill, a bill to end the use of convict labor, a bill restricting immigration, a bill to end involuntary servitude for seamen, and exemption for labor from the Sherman Anti Trust law.

The use of the Sherman Act against labor after the Pullman strike was a special worry for Gompers. If trial courts could apply conspiracy to unions as they did against the American Railway Union, then unions were finished. The Supreme Court did not mention the Sherman Act in upholding the trial court actions in the Pullman strike, but decisions in three later federal court challenges to labor unions left no room for doubt: Loewe v. Lawlor, Gompers v. Bucks Stove and Range Company and Hitchmen Coke and Coal v. Mitchell.

Loewe v. Lawlor, also known as the Danbury Hatters case, got started after Loewe & Company of Danbury, Connecticut refused to limit hiring to members of the Brotherhood of United Hatters of America. In response, the Brotherhood organized a boycott against the firm's products by informing retailers they risked a secondary boycott of their stores by all AFL affiliated union members if they sold hats made by Loewe & Company. Loewe filed suit for damages August 31, 1903 under the Sherman Act claiming they lost $88,000 as a result of the boycott. The trial court dismissed the suit, but a company appeal for a writ of certiorari (request for hearing) to the Supreme Court brought a unanimous ruling for the company on February 3, 1908.

The justices in Danbury Hatters applied the Sherman Act to labor unions in a written opinion for the first time. Counsel for the company claimed the Sherman Act applied to labor unions because Senate debate included provisions that exempted labor unions, but the exemptions were not in the final bill. Therefore, counsel argued the Congressional failure to exclude labor unions was not an oversight and concluded for the court that Congress did not intend exemptions of any class of one over another. The judges accepted the wording of company attorneys and paraphrased it in their opinion.

The Lowe v. Lawlor decision to apply the Sherman Act to unions ended their legal right to function given the court conclusion that any evidence of any

combination that obstructs the movement of commerce will be illegal. Further the decision made secondary boycotts illegal and allowed suits against union members for treble damages under Section 7. The Supreme Court sent the case back to the trial court but only to determine damages, which were assessed against individual union members and then affirmed by the Supreme Court at 3 times assessed damages of $74,000, or $252,000. Union actions were now illegal conspiracies where collective action would be punishable as misdemeanor crimes.

Gompers v. Bucks Stove and Range Company resulted after the American Federation of Labor added Bucks Stove to a list of firms to boycott, which it included on a "Do not patronize" list published in its national magazine. A federal court granted the company's request for an injunction to end the boycott by enjoining all efforts to publicize or advertise a boycott.

When the AFL ignored the injunction, Samuel Gompers and two other officials were sentenced to prison for contempt of court. The matter dragged on until May 1911 when the Supreme Court found a reason to keep Gompers and the others out of jail but rejected labor's claim that speaking and writing are protected forms of free speech when there is restraint of trade. The justices wrote the Sherman Act covered any illegal means to restrain trade "whether the restraint be occasioned by unlawful contracts, trusts, pooling arrangements, blacklists, boycotts, coercion, threats, intimidation, and whether these be made effective, in whole or in part, by acts, words or printed matter." In other words speaking and publishing are normally legal, but not when used to aid a strike or other restraint of trade. The mention of blacklists on a list of restraint of trade is ironic given the repeated practice of employers to keep blacklists and blacklist, or boycott, union members.

Hitchman Coke and Coal v. Mitchell started after the United Mine Workers sent organizers to northern West Virginia to recruit new members. The company got a temporary injunction from a federal court that banned all organizing without company consent. The court justified the ban on the grounds that union organizers would cause irreparable harm to property rights. That was in September 1907. The district court made the injunction permanent in December 1912. The judge justified his decision in several ways. First, union procedures interfered with an employee's right to work and an employer's right to hire and fire. Second, the judge decided the United Mine Workers and coal operators from other states in the central competitive field were conspiring to monopolize the coal industry in violation of the Sherman Act. "By reason of its unlawful organization, purposes, and practices as herein before set forth, this organization, combination, or union, as now constituted, is unlawful, and under the law, therefore, has no right to seek plaintiff's employees to become members thereof or to become party to its unlawful purposes and practices."

Appeal was taken until the U.S. Supreme Court upheld the permanent injunction and decided "yellow dog" contracts were valid and enforceable against unions because their organizing encouraged a breach of contract to company employees. The justices did not address the Sherman Act district court opinion suggesting district courts could continue to declare a union an unlawful conspiracy

under the Sherman Act and order them dissolved.

Samuel Gompers continued to oppose labor's entry into partisan politics. A growing contingent of the rank and file from AFL affiliates pushed to organize a labor party. Others were members of the Socialist Party who voted the socialist ticket in local elections and for Eugene Debs in presidential elections, but always against the advice of Samuel Gompers. Gompers thought he could protect labor as a respected insider, or by collaboration as the IWW called it. He accepted capitalism as a fait accompli and worked to maintain friendly social relations with businessmen and politicians. Gompers joined the National Civic Federation, a clubby mixture of businessmen, politicians, civic minded reformers and well spoken labor leaders like himself. He was a charter member as was John Mitchell, head of the United Mine Workers.

The Civic Federation was intended to promote contact between business, labor and the public to smooth over and settle disputes before they started, like the Pullman Strike. Its first president was Mark Hanna, a shipping magnate elected Senator from Ohio and appointed chair of the Republican National Committee to direct the William McKinley presidential campaign. Hanna was a smooth talking, well-intended leader who hoped the Federation could help avoid strikes and battles. Members included many from American corporations like John D. Rockefeller, Andrew Carnegie, V. Everit Macy and August Belmont, but many others in business found the federation too progressive and refused to join.

In spite of Gomper's civility as a civic federation member President Roosevelt, President Taft, and the Republicans that controlled Congress ignored the Bill of Grievances and plight of labor. Proposed changes that would exclude labor from the Sherman Act went nowhere. Then in the 1912 presidential election Woodrow Wilson campaigned on a Democratic platform that included appeals to the labor vote. A Wilson campaign advisor, Louis Brandeis, helped him find the phrases he needed to attract the labor vote. When he spoke to labor he assured them he would protect labor's right to organize. He called labor law one-sided and opposed the unlimited use of injunctions, but the record does not show he promised to support exemption from the Sherman Act for labor following the precedents set by the Supreme Court. (13)

Part II - The Era of Woodrow Wilson - 1913-1921

If the accumulation of fortunes goes on for another generation with the same accelerated rapidity as during the present, the wealth of this country will soon be consolidated in the hands of a few corporations and individuals to as great an extent as the landed interests of Great Britain now are. Neither strikes of the laboring classes, which it controls, nor the governmental control of the great railroad and other corporations, will remove the existing conflict between labor and capital, which has its foundations in unjust laws, enabling the few to accumulate vast estates and live in luxurious ease, while the great masses are doomed to incessant tool, penury, and want.

----------Lyman Trumbull, writing in Public Opinion October 18, 1894

"The ownership of wealth in the U.S. has become concentrated to a degree which is difficult to grasp. The 'Rich,' 2 per cent of the people, own 35 percent of the wealth. The 'Middle Class,' 33 per cent of the people, own 35 per cent of the wealth. The 'Poor,' 65 per cent of the people, own 5 per cent of the wealth. The actual concentration, however, has been carried much further than these figures indicate. The largest private fortune of the U.S., estimated at one billion dollars, is equivalent to the aggregate wealth of 2,500,000 of those who are classed as 'poor' who are shown ... to own on the average about $400 each."

---------- Basil Maxwell Manly from "The Final Report of the Commission on Industrial Relations" published 1915

The era of Woodrow Wilson really started in 1910 when he became Governor of New Jersey, two years before his 1912 election as president. Before 1910 he studied at Davidson College, the College of New Jersey, soon to be Princeton University, then two years at the University of Virginia law school. After a couple of years with an Atlanta law practice he entered a graduate program in history and government at Johns Hopkins University. After completing study for a Ph.D. he took teaching positions at Bryn Mawr College, Wesleyan University, and finally Princeton University before he become its president. His career up to 1910 defines an ivory tower intellectual; he had lots of writing and published work to show for it.

His college years left him restless and eager to apply his views in elected office. As of 1910 William Jennings Bryan remained a political force in the Democratic Party in spite of his three election defeats, but few wanted him to make a fourth run in 1912. While speaker of the House Champ Clark had presidential aspirations, but the field was open for Wilson to begin a nationwide speaking campaign that concluded with the Democratic Party nomination for president.

The 1912 campaign for president had three candidates, but the incumbent William Howard Taft had little chance of winning after former president Theodore Roosevelt entered the race as a progressive candidate from the more liberal wing of the Republican Party. Roosevelt and Wilson campaigned as reformers with both

advocating from a list of domestic policies, but typically with differing views. One of their disagreements came over the growth of monopoly and the use of the Sherman Antitrust law of 1890 to promote competition and protect the country from concentrated wealth. Both agreed antitrust law needed to be changed after more than 20 years of failure. Roosevelt wanted regulation of monopoly treating concentrated wealth as a fait accompli. Wilson wanted more and better antitrust law and enforcement.

Antitrust law began when Senator John Sherman of Ohio introduced bills in the Senate to prevent business price fixing combinations on August 14, 1888 and again on December 4, 1889. His bill of December 4 entitled "A Bill to declare unlawful trusts and combinations in restraint of trade and product" went first to the Committee on Finance where Senator Sherman was chairman.

The Finance Committee debated and revised the bill, which the full Senate debated for the first time March 21, 1890. Several senators doubted the language of the bill could limit the evils of trusts without a variety of unintended consequences, especially eliminating farm alliances and labor unions. Senator Frank Hiscock, Senator Henry Teller, Senator James George, and Senator George Hoar expressed a need to exempt farmers and labor from antitrust enforcement. Senator Sherman assured the Senate his bill did not interfere with farm alliances or labor unions, but he offered a proviso exempting labor anyway, which passed by voice vote.

The next day, March 27, 1890 Senator George F. Edmunds of Vermont expressed the only opposition to the labor provisos. He objected to making it a crime for business to combine to raise prices but a valuable and proper undertaking for labor to do the same. Senate debate did not reach a consensus for phrasing to go in the Sherman Bill while several Senators raised doubts the bill could be constitutional. The constitutional concerns brought motions to move the bill to the Senate Judiciary Committee, which after several tries passed in a roll call vote 31 to 28, with 23 Senators absent.

The Judiciary Committee redrafted the bill with a new title: "A bill to Protect Trade and Commerce against Restraints and Monopolies." Senator Edmunds was chair of the Judiciary Committee and wrote sections 1, 2, 3, 5, and 6 as he later explained. Senator George wrote section 4; Senator Hoar wrote section 7; Senator John Ingalls wrote section 8. The law kept the name Sherman Act, but it was Senator Edmunds' law.

The Senate took up the new bill April 8, the same day it debated and passed the bill by a vote of 52 to 1. The House debated and passed the bill on May 1, 1890 by voice vote. The House added a phrase about goods shipped in interstate commerce, which was removed by the conference committee. The Senate bill became law July 2, 1890.

The House did nothing to the Senate Bill, which suggests the intent of Congress equals the intent of the Senate. The new Edmunds' bill that replaced the Sherman bill had wording to prevent restraint of trade and attempts to monopolize. However, new debate over the replacement bill did not include discussions of labor exemptions and no one who offered labor exemptions in the first bill offered

phrases to exempt farmers and labor in the replacement bill even though all of them voted for the final bill. Given the recorded Senate debate left out a proviso to exclude farm and labor from restraint of trade in the revised bill suggests neglect as much as intent. The final wording of the Sherman Act does not assure Congress intended to include labor and collective bargaining as a restraint of trade as counsel for Loewe & Company insisted they did in the case of Loewe v. Lawlor.

As Woodrow Wilson took office in 1913 the antitrust enforcement that preceded him made collective bargaining an illegal restraint of trade for unions under the Sherman Act in addition to having price fixing restraint of trade and attempts to monopolize illegal for business or business combinations. Actually twelve of the first thirteen cases to go to a federal district court declared labor union activities an unlawful restraint of trade, which included disputes arising from Eugene Debs and the Chicago strikes.

Senator Edmunds point during Senate debate that combinations to raise prices should be regarded and treated equally with combinations to raise wages suggests strategies to raise prices or wages need identical collective decisions. The term collective bargaining connotes employees who combine in solidarity to negotiate a wage for all as a monopoly. Corporate America does the same thing when it negotiates mergers or sits down together to negotiate or make a single price for many firms. In a merger two firms agree to combine as one, and then again and again, all by negotiated agreement that eliminates competition between them.

The ability of business and labor to maintain solidarity changes over time. Business solidarity in restraint of trade brings meetings to negotiate mergers and agreements to raise prices that generate monopoly profits and economic power, which continues to do so overtime. Union solidarity in restraint of trade bring collective bargaining and strikes to raise wages that immediately put members out of work and erodes economic power over time. Many strikes fail from the slide into hunger and financial desperation.

Senator Edmunds's view suggests he intended, or hoped for, a balance of enforcement for capital and labor. From the beginning corporate America fought efforts to enforce the antitrust laws and limit their collective actions to monopolize product markets while coincidentally attacking collective bargaining by organized labor: a double standard. The corporate practice of firing union members and sharing their names on a do-not-hire blacklist is a restraint of trade promoted and used repeatedly during the 19th and 20th century. The corporate use of the "yellow dog" contract and use of the term "right to work" attacks collective bargaining and union membership as an unpatriotic attack on individual rights.

These attacks took place while corporate America made collective decisions to negotiate mergers and set prices in restraint trade. Recall that mergers created the United States Steel Corporation in 1901. From 1907 until 1911 Judge Elbert H. Gary, a founder and chairman of the United States Steel Corporation, sponsored well publicized corporate meetings, known far and wide as "Gary Dinners" to discuss and set steel prices for the steel industry.

Gary also sponsored a steel trade association, the American Iron and Steel

Institute, in order "to afford means of communication between members of the iron and steel trades upon matters bearing upon their business affairs." At its first meeting October 14, 1910, Gary preached stability which he thought could be maintained "by frank and friendly intercourse; full disclosure of his business by each to the others; recognition by all of the rights of each." Since 1910 many more industries have organized trade associations, organizations that resemble unions of wage earning members looking out for their collective interest.

The enforcement of the antitrust laws continued to plague labor as Woodrow Wilson campaigned and then took office. To secure the labor vote he pledged to help guarantee labor's right to exist knowing Samuel Gompers and the labor movement wanted exemption from the courts treating them and their strikes and boycotts as a criminal conspiracy to justify court injunctions as part of antitrust enforcement. During Wilson's first term when he concentrated on, and succeeded in, passing a variety domestic legislation, he agreed to support two labor sections, Section 6 and Section 20, inserted into the new Clayton Antitrust Act of 1914. He attempted to fulfil his campaign promise, but corporate America had friends in the courts, as we shall see. (1)

Chapter Five - Labor in the Pre-War

"The conflict between the policies of the Administration and the desires of the financiers and of big business, is an irreconcilable one. Concessions to the big business interests must in the end prove futile. The administration can at best have only their seeming or temporary cooperation. In essentials they must be hostile. While we must give the most careful consideration to their recommendations and avail ourselves of their expert knowledge, it is extremely dangerous to follow their advice even in a field technically their own."

---------Memorandum from Louis Brandeis to President Woodrow Wilson, June 14, 1913.

President Woodrow Wilson made some favorable gestures toward labor with appointments like William B. Wilson of the United Mine Workers to be the first Secretary of Labor, a new department created in the last days of the Taft administration. In his last State of the Union Message in 1912 President Taft urged Congress to form an Industrial Relations Commission. Legislation authorizing the commission passed in the summer of 1912. President Wilson appointed the members of the commission, which started work during the first months of his administration. They would investigate the Colorado coal strikes about to begin, among many other industries.

In the meantime Samuel Gompers wrung his hands and worried the opponents of labor in the judiciary, the Congress, and another administration could dissolve unions. Gompers pleaded with the President to give unions a legal right to exist. Since new legislation was part of President Wilson's campaign promise to be the friend of labor, political pressure built inside and outside the administration to act on the party platform. The pressures culminated in congressional debate to include two labor sections in new antitrust legislation, finally signed into law on October 15, 1914 as the Clayton Antitrust Act.

The Strikes of 1912-1914

Woodrow Wilson was elected and inaugurated during a wave of strikes. The nearly two years between his November 1912 election and the signing of the Clayton Act would be another test of his campaign promise to be the friend of labor. The Cabin Creek and Paint Creek, West Virginia coal strikes were winding down. Other strikes turned into defiant battles at Akron, Ohio in the rubber industry, at Paterson, New Jersey in the textile industry, at Detroit, Michigan in the auto industry, at Keweenaw, Michigan in copper mining, in California in agriculture and especially in southern Colorado in more coal field wars.

Paint Creek, Cabin Creek, Coal Strikes

The coal strikes at Paint Creek and Cabin Creek, West Virginia reached a critical point at the time of the new President's inauguration in March 4, 1913. A new West Virginia governor took his oath of office the same day and announced

new plans to end the strike, now a year old. Rank and file opposition continued with more wrangling and threats, which provided an early chance for the new president and his Secretary of Labor William B. Wilson to step in and be a friend of labor.

West Virginia coal mines had especially valuable deposits of low sulfur coal, which burned hotter with less ash than coal from other regions. Coal ran in large seams on gentle hillsides above the water table, which made it cheaper to mine than other regions.

Absentee mining companies - New York, Philadelphia, Boston, London - mined the coal lands they acquired through controversial means. In the 1780's, West Virginia's unsettled lands originally sold to absentee owners reverted to state ownership for failure to pay taxes. The state sold the land again in the 1880's to the people who had settled there. However, corporate interests were able to purchase the deeds of the original owners and claim the right to take the land. A Federal Judge agreed to let them, but the local residents always claimed the companies stole their land. There was no market for coal in West Virginia; the absentee owners sold virtually all the state's coal in other states. Coal revenues and profits left the state.

The State government and a succession of governors did not enforce existing employment law or mediate for miners. West Virginia had workmen's compensation, but did not collect premiums; child labor law, eviction rules and safety regulations were consistently ignored; companies paid wages in script in defiance of state laws to prevent it. The Governor vetoed a bill to certify mine inspectors. It posed "too much risk to our greatest commercial interests."

The strikes at the Paint Creek coal mines along the Kanawha River in West Virginia got started April 18, 1912. The only United Mine Workers contract in West Virginia ran out and the operators refused to negotiate a new one. Instead they withdrew union recognition and ordered company guards to evict miners and their families from company housing. In response striking miners moved to tent colonies at Holly Grove and Eskdale, not far from Charleston. The non-union miners at nearby Cabin Creek mines joined the strike demanding union recognition for miners.

The operators brought in 300 more guards from the Baldwin-Felts detective agency who installed search lights and machine guns at the mines. Baldwin-Felts personnel and company guards controlled the roads and prowled the hollows like army regiments. Guards worked to prevent strikers from leaving their camps and blocked the use of bridges, forcing strikers to wade streams; guards patrolled the rail station to prevent strikers from boarding trains; several who tried were beaten and thrown off passenger cars. Guards also killed miners in ambush style shootings and made unprovoked surprise attacks on the tent camps shooting at random, day or night.

Strikers and miners did not ignore the danger. They fought back in armed response. Wooded hillsides provided good cover to make revenge attacks. July was a violent month, especially July 26, 1912 when the two sides exchanged gunfire in a daylong shoot- out known as the Battle at Mucklow. Twelve miners

and four guards were killed. More of the Baldwin-Felts mine guards would die in shootouts with angry and determined strikers.

When the strike started the United Mine Workers hoped to organize more of West Virginia coal mines to prevent its cheaper and better coal from eroding the national price structure and industry wide wages. Instead the burden of supporting the West Virginia miners used strike funds and union reserves at an unsustainable rate. Help came at a critical time when Socialist Party officials decided to enter the fray and support the strike. They staged rallies, raised funds and covered events in their Socialist Press to a degree the strike turned into a joint effort of the United Mine Workers, the Socialist Party and Mother Jones.

Mother Jones arrived from another UMW strike in Colorado to speak repeatedly at organized rallies around the state. She challenged Governor William Glasscock to attend a rally she held on the steps of the state capital to deliver a living petition. The Governor failed to attend, but she denounced him as a coward and demanded that he rid Paint Creek and Cabin Creek of Baldwin-Felts mine guards, she referred to as thugs.

The operators hated her; she gave their miners confidence to believe in themselves and act against them. She told them the bosses, the ministers and the politicians would do nothing, "we the people, have to do it." She would not let their strike be just a strike; it was a crusade for human dignity and their rights as American citizens. Cowardly ministers were sky pilots; the rich were high class burglars. She spoke of a better day and better life for their children. Her dedication to the fight and willingness to confront mine guards and face jail encouraged them not to back down; they did not. Mother Jones brought an indefinable element of solidarity to the strike that kept it going longer than anyone expected. (1)

Governor Glasscock started slowly by making a Catholic Bishop head of a Commission to study the strike and make a report to the legislature. Then on September 2, 1912 he called out three companies of National Guard troops and declared martial law. He directed guard troops to seize guns and ammunition and authorized the military to arrest citizens and conduct military trials. The union demanded civil rights in civilian courts and filed for a writ of habeas corpus, but got no where. The State Supreme Court deferred to the governor and the military courts where eventually sixty-six were convicted and sent to prison. The convicted were denied counsel, a jury trial and rights against self-incrimination.

On October 14, Governor Glasscock decided to end martial law, but soon changed his mind. The companies were advertising for strikebreakers in eastern newspapers, which brought renewed violence when armed miners blocked trains transporting strikebreakers escorted by company guards. His second declaration of martial law of November 15, 1912 called out four companies of militia that stayed until early January 1913. In General Orders, No. 23 the governor defined guidelines for the military commission as written by Adjutant General C.D. Elliot.

"The military commission is substituted for the criminal courts of the district covered by the martial-law proclamation, and all offenses against the civil laws as they existed prior to the proclamation of November 15, 1912, shall be regarded as offenses under the military law, and as such punishment therefor [sic]

the military commission can impose such sentences, either lighter or heavier than those imposed under the civil law, as in their judgment the offender may merit." … "Offenses against the civil law as they existed prior to November 15, 1912, committed prior to the declaration of martial law and unpunished, will be taken by the military commission."

The civil courts remained open while a second round of military trials took place where an indeterminate number were tried and sent to prison on various conspiracy charges. Meanwhile the Governor's Commission filed its report November 27, 1912. The commissioners recommended some new legislation and declared that miners have a right to organize a union, but they declared the peculiar circumstance of West Virginia made unions impossible for West Virginia coal mines.

As the strike dragged into January 1913 those in the tent camps repeated a maxim: "Just wait until the leaves come out." Winter slowed the fighting, but shooting did not wait for the leaves. On February 7, 1913 striking miners shot at a strikebreaker passing near Holly Grove. Guards moved in and exchanged gunfire in a standoff. By now mine operators had a special steel paneled train regrettably built by union labor in the Chesapeake and Ohio Railroad shops at Huntington, West Virginia: "A hellish contraption it surely was—covered with steel plates, bristling with machine guns, and loop-holed for rifles." The strikers called it the "Bull Moose Special", which operators used to machine gun the tent camps and houses from tracks alongside their camps. One was killed and others wounded in the initial attack, which triggered the Governor to declare martial law for a third time and call out six companies of troops.

Troops arrested several hundred striking miners but no mine guards. Mother Jones was on her way to Charleston to protest when she was arrested. All were held at Pratt, West Virginia where Mother Jones was kept at a boarding house and the others in outdoor bull pens. UMW attorneys filed for a writ of habeas corpus but again the West Virginia Supreme Court would not limit a Governor's military powers; they argued a state of war existed in West Virginia. (2)

When Henry D. Hatfield took over as the new West Virginia Governor in March 4, 1913 the striking rank and file had a year of resistance behind them without the slightest breakdown in solidarity. During the election campaign candidate Hatfield claimed he had a plan to bring the strike to an end during his first days in office. He released a few prisoners to silence protest but held the troublemakers and continued with martial law and military courts. In the first week he court-martialed 51 socialists, miners and Mother Jones. Military troops arrested civilians on civilian charges to be tried in a military court. Mother Jones refused to present a defense and declared "Whatever I have done in West Virginia I have done it all over the United States, and when I get out, I will do it again." The others refused to plea.

Since the operators could not find enough scabs to break the strike, they wanted Governor Hatfield to get them a settlement. UMW President John White also wanted to end the strike and sent Thomas Haggerty of the UMW to arrange a settlement in a meeting that took place on March 26, 1913. Haggerty reached

agreement with the governor without consulting the rank and file or local officials.

The rank and file were furious with the settlement, which contained nothing new, or not already required as part of rarely enforced law. They did not believe the operators could hold out much longer. Their local Socialist Party supporters agreed: "It contained absolutely nothing in way of concessions from the operators." Both President White and Haggerty doubted they could win a strike vote; they agreed with the governor to hold a convention in Charleston to begin April 22, 1913, where they expected they could pressure delegates to ratify the agreement and end the strike.

After three days of unanimous rank and file opposition, Governor Hatfield lost patience. He threatened to deport miners from the state if they did not return to work in 36 hours. He sent soldiers into the camps to "escort" the miners back to work. On April 30, 1913 Hatfield used force to shut down an opposition newspaper in Charleston, the Labor Argus, and used martial law to arrest and incarcerate two of its editors. Several days later he ordered the arrest of editors and stockholders of the Huntington Socialist and Labor Star, and had the soldiers destroy the offices and presses.

Attacks on Socialist newspapers brought calls for the national socialist party to intervene. The National Executive Committee of the Socialist Party of America (SPA) sent a committee of three to West Virginia. The committee had three national figures: Eugene Debs, Victor Berger and Adolph Germer. They arrived May 13 with instructions to cooperate with Haggerty and the UMW. The group met with Governor Hatfield and then to everyone's surprise the committee accepted the settlement as negotiated by the UMW, and then exonerated the governor as part of a written report.

The rank and file refused to accept the "settlement" as fait accompli. Hatfield decided to release Mother Jones after three months of incarceration where she proved "I can raise as much hell in jail as anywhere." Wildcat strikes, gun fights with mine guards, sabotage at the mines and preparations to renew the strike followed into the summer months of 1913. National publicity in the conduct of martial law helped justify miner demands and compelled Governor Hatfield and mine operators to re-open negotiations; he would not resort to martial law after such bad publicity. In a revised settlement of July 29, 1913 the rank and file did not get an end to the mine guard system, but the operators accepted union recognition and dues check-off in a generally better deal.

Speculations why Debs and the national Socialist Party would capitulate to the governor did not last long. Debs made matters worse by defending their actions, but significant numbers left the Socialist Party as a result. By an equally odd turn of fate Senator John Kern of Indiana successfully re-introduced his resolution for a United States Senate Committee to investigate the strikes. Hearings started June 10, 1913 and stopped after eight days but picked up again September 3 and continued until October 29, 1913. Hearings and testimony filled 2,291 pages; a Digest Report on Investigation of 41 pages came later.

The final report provided vindication for the rank and file in strong terms. The report denounced the Governor, military authorities, and the coal operators for

violation of the federal and state constitution. The governor ignored due process in favor of military tribunals when civil courts remained in full operation: "the military tribunal deemed itself alone bound by the orders of the commander in chief, the governor of the state and in no respect bound to observe the constitution of the United States or the constitution or the statutes of the state of West Virginia."

It did not go unnoticed that West Virginia miners met armed violence with armed violence in a fight with coal operators and state government. The rank and file felt the international officers of the UMW undermined their efforts. Trust declined and two of the local strikers, Frank Keeney and Fred Mooney, emerged as union leaders in Kanawha County. They would remain as West Virginia union leaders into the 1930's. After 1913, the operators organized protective associations to deal with the UMW they regarded as revolutionaries and a menace to freedom. Labor violence in West Virginia would return again and again. (3)

Akron and Paterson Strikes

Working conditions, especially the speed up, were primary issues in two 1913 strikes: the rubber industry of Akron, Ohio and the textile industry of Paterson, N.J. Business consultant Frederick W. Taylor promoted a program of production efficiency that was all the rage in American industry. His use of a stop watch to set faster work speeds was a primary cause of the strikes in Akron and in Paterson and also the auto industry in Detroit where Henry Ford was known as the "speedup king."

Akron---Akron was an open shop town when management at Firestone Rubber Company cut the piece rate of pay in the automobile tire department by 35 percent. A spontaneous strike February 10, 1913 took management by surprise. IWW organizers arrived and agreed to help manage the strike and recruit new members for an IWW local. Management decided higher productivity from new machinery justified their cuts, but tire builders saw it as a speed up by a company with enormous profits. The strike started with a walkout of just 150 Firestone tire builders out of 22,500 working in the Akron rubber factories, but three days later 4,000 were out, many of them new members of the IWW. A post strike investigation by the Ohio Senate estimated 15,000 were idle at the peak of the strike.

There were many other grievances including working conditions, which Dr. Alice Hamilton investigated for the Department of Labor. She found a factory with "really dangerous poisonous substances" such as lead oxide, aniline oil, antimony, pentasulphide, carbon disulfide, carbon tetrachloride, coal tar, benzol, naphtha, gasoline and benzene scooped or shoveled carelessly from open storage barrels, or poured into open cans without ventilation or hoods to carry off the fumes.

The presidents of the big three rubber companies – Goodyear, Goodrich, Firestone – all blamed the strike on "outside agitators." Harvey Firestone declared there was nothing in the "present situation that could not or would not have been adjusted to the satisfaction of the company and its employees"

but for "the agitation of outsiders who do not live in Akron, …" The presidents authorized common steps to break the strike, characterizing the strikers as an un-American minority imposing their will on a majority of satisfied workers. They declared union demands were arbitrary and without merit; they formed a citizens committee, the Citizens Welfare League (CWL), to influence the Akron community against the strike and sponsored vigilante activities. The Citizens Welfare Committee sponsored a "back to work" movement while the company recruited strikebreakers. It would turn out to be the precursor of the Mohawk Valley strike-breaking formula used during the depths of the great depression, less than 20 years off. (4)

In response to the strike Akron Mayor Frank Rockwell closed all the saloons and asked for the National Guard. The governor refused but sent the state board of arbitration. The mayor and the sheriff started to recruit and swear in deputies; the Citizens Welfare League recruited vigilante squads. The Akron Beacon Journal proposed a committee from the Chamber of Commerce should be appointed to represent the interests of every citizen in a "settlement that could not be refused."

Ten days into the strike a committee of strikers finally submitted strike demands - an 8 hour day, a six day week, a minimum wage of 22 ½ cents an hour, time and a half for overtime. As the strike continued State Senator William Green – later AFL President – convinced the Ohio Senate to authorize a Senate committee of three to investigate the strike. One member of the State Board of Arbitration called the strikers "a good natured crowd, not intent on violence" but the Board returned to Columbus without effect on the strike since "the rubber manufacturers will not submit to any arrangement with a union. They might agree to come to some terms with strikers as individuals, but as a body, never."

The Senate Committee started testimony the third week of the strike. Much of the testimony attacked the IWW. Union members outlined grievances, especially "the speed up." The president of Goodyear Tire and Rubber Company, Frank Seiberling, returned from a ten-day Pacific Ocean cruise to give his opinion to the press and the Green Committee. He told the committee he was always willing to meet employees to adjust their grievances, but when they tried to do so following his testimony he refused them; they were strikers, not employees.

Strike related violence did occur March 8 when police and vigilantes charged and clubbed 350 picketers at the Goodrich plant. The Akron Beacon Journal reported the "excited mob" fell back several blocks. "As the strikers were unarmed they could not long endure the severe punishment." Bill Haywood arrived March 15 to give a speech with his typical advice that included "let there by no violence" but the Akron Beacon Journal attacked him as seeking "his own selfish end" . . . "to mislead and influence the employee against the employer."

The AFL chartered a rubber workers union in 1902, but did nothing with it. AFL organizer Carl Wyatt moved in the second week of the strike to compete with the IWW in a second recruitment drive. On March 19 the AFL tried to schedule a conference with the companies, but President Seiberling replied for the big three: "My reply was that such a conference would be utterly futile as far as we are concerned. I have made my position clear at all times and still stand on what I have

said." The Akron Beacon Journal chimed in explaining "this strike was wholly unjustified by the facts in the case" and the IWW is an "immoral, irresponsible organization, whose purpose is to create trouble, distress and misery . . ."

The strike just petered out as strikers trickled back to work. At a meeting March 31, 1913 140 union members voted to call off the strike out of a total vote of only 198. The vice president of the B.F. Goodrich Company took the end of the strike as an opportunity to send a letter of thanks and a $2,000 check to Mayor Rockwell for service during the strike. The letter expressed "great pleasure that we, along with all other law-abiding and order-loving citizens, hereby express our approval of the manner in which" … Akron officials "so ably protected life and property, preserved order and enforced obedience to law during the recent attempt on the part of certain irresponsible individuals to demoralize the usual good behavior of some of our citizens. We are enclosing a check, payable to the trustee of the police fund, as a slight token of our appreciation for the services rendered, not so much to ourselves as to the city generally."

The Ohio Senate investigators blamed the strike on "a reduction in the piecework price paid to finishers in the automobile tire department" and described the speed up as "fraught with danger" that could be wisely dispensed with" but to no avail. (5)

Paterson---------- About 900 weavers at the Doherty Mills in Paterson, New Jersey left work January 27, 1913 when management dismissed a committee for objecting to the company's plan for a speed up: working four looms instead of two. IWW already had a small presence in Paterson: Local 152. Their local leadership announced a strike at the Doherty Mills for February 1. They wanted an end to the 55-hour week and demanded an 8 hour day with a minimum wage of $12 a week, and paid overtime in addition to a two loom system of work.

The strike at the Doherty Mill spread slowly at first while Local 152 officials organized strike committees, recruited new members and made arrangements to rent space for regular meetings. Over the first three weeks of February strike leaders planned a general strike for the nearly 300 silk, dye and ribbon mills at Paterson; it began February 25, 1913. Elizabeth Gurley Flynn, Carlo Tresca, Samuel Kaplan and Patrick Quinlan of the IWW arrived for the first morning to speak at Turn Hall. After Flynn finished her remarks in the late morning of February 25, Police Chief John Bimson demanded they leave town or be locked up. He called it "preventative medicine." Kaplan agreed to leave; the others would not and were arrested for "inciting a riot" and "disturbing the peace of New Jersey." Quinlan arrived too late to speak, but he was from out of town and Chief Bimson insisted out of towners were the cause of the strike. The crowd of several thousand did not accept the police roughing up Ms. Flynn and a riot ensued with police aggressively clubbing strikers. Police misconduct incensed mill workers; 5,000 broad silk weavers and a thousand dyers, and dyers helpers left work the first day. The strike would grow with daily police abuse.

Police Chief John Bimson announced his intention to "nip the strike in the bud." His second in command, Police Captain Andrew F. McBride called the

strike “the plainest declaration of war ever written.” Picketing and mass rallies brought aggressive opposition from the Paterson police force of 149 officers and patrolmen and 60 new recruits; mill owners employed a hundred armed detectives from the Jerry O’Brien Agency.

At a Turn Hall meeting February 26, Chief Bimson showed up with 50 patrol officers and 4 mounted police to warn them “out-of-town agitators” would not be allowed to speak and they were not “to group about the mills, or parade through the streets, for that was against the law.” Mayor Andrew J. McBride (no relation to Andrew F. McBride) brushed off protest with “Protecting the city, the industries and its people against reckless agitators who have no interest in the city except insofar as it affords them an opportunity to preach revolution, does not constitute a violation of any constitutional right.”

At a Turn Hall meeting February 27, Wilson Killingbeck of the Socialist Party tried to speak to strikers, but Chief Bimson pulled him off the speakers platform and removed him from the meeting. He was an out of town speaker. Several thousand more joined the strike.

Alexander Scott, the editor of the local Weekly Issue, ran a story with the caption “Shall Police Chief Bimson override Constitution?” A small number of copies of the paper circulated early before police raided the offices on Main Street and forcibly removed and destroyed 5,000 copies of the paper. At a rally February 28, Scott read the article to a large crowd of 5,000 to 6,000. Just as Scott finished, police arrived to arrest him on the speaker’s platform and then hauled him through the streets followed by a jeering crowd. At the police station he was charged with criminal libel. A police magistrate, James Carroll, a.k.a. Recorder Carroll, set bail at $1,000 but then raised it to $2,000 the next morning. More joined the strike. (6)

The strike and the contest over picketing continued daily for five months. Anyone on the streets could be arrested as a picketer whether picketing or not. Passing out handbills or pamphlets, having or selling a copy of the Weekly Issue brought confrontation with police and often arrest. Some of the O’Brien agents taunted the picketers they shoved around on the sidewalks: “If you don’t like it, just start something.” Bill Haywood arrived March 7 and commuted down from New York several times a week. He counseled picketers against retaliation to police violence, advising them to fold their arms across their chest in response to provocation. He did not run the strike as Chief Bimson supposed and Haywood denied repeatedly; Ewald Koettgen, Adolph Lessig and their small executive committee and the much larger Strike Committee of 250 to 300 met daily to divide tasks and raise funds.

Captain McBride reported a total of 2,338 arrests in testimony to the U.S. Commission on Industrial Relations(CIR) in June 1914. The first arrests came in February, 119, and then 281 in March, 628 in April, 591 in May, 374 in June and 245 in July. Police routinely raided and broke up meetings, and used daily arrests to intimidate picketers and suppress picketing.

Attorney Henry Marelli defended most of the strikers and described the Modus Operandi of the city of Paterson in his testimony to the CIR. Picketers would be arrested, held over night in jail and the next morning an arresting officer

would make a charge of disorderly conduct or unlawful assembly to Recorder Carroll. Those arrested often appeared in bunches of a dozen or two, although once police arrested 142 at the Hall Mill in Paterson. Police would testify to Recorder Carroll that picketers interfering with traffic or pedestrians would not leave or disperse when ordered by police. The cases ended with a $10 fine or 10 days in jail or sometimes a combination of both. Attorney Marelli reported at least 1,800 appeared before Recorder Carroll with nearly 1,300 convicted and sentenced, several hundred discharged after a night in jail and three hundred others held over for Grand Jury indictment and trial.

On March 30, Haywood tried to speak in Paterson to a crowd at a baseball field called Lafayette Oval. He walked there from the train station but police would not allow him to speak. Someone in the waiting crowd suggested "On to Haledon" the adjoining town where the mayor, William Breuckman, allowed speaking and assembly. Haywood, Adolph Lessig and the crowd of around a thousand walked over a mile until they approached the city limits at Haledon. A Paterson police patrol arrived to arrest and jail Haywood and Lessig.

The next morning at a hearing before Recorder Carroll both had to defend a first charge of disorderly conduct and a second charge of unlawful assembly. Sargent Charles Ryan in charge of the police patrol explained he arrested Haywood and Lessig for interfering with people walking in the opposite direction along the public right of way. Attorney Marelli who represented the accused pressured Sargent Ryan until he admitted his patrol left the police station intending to arrest Haywood and Lessig: the charges were merely an excuse. Undeterred Recorder Carroll found them guilty of disorderly conduct and sentenced them to 6 months in the county jail. He held them under a $5,000 bond on the unlawful assembly charge pending an indictment by a Grand Jury.

Attorney Marelli immediately filed a writ of certiorari with Justice James Minturn of the Supreme Court of New Jersey requesting review of the 6 month sentences, and a Writ of Habeas Corpus to review the charge of unlawful assembly. Justice Minturn discharged Haywood and Lessig on $200 bail until the New Jersey Supreme Court could review the writ of certiorari and then dismissed the unlawful assembly charge after a hearing on Saturday April 5. At the April 5 hearing the prosecutor claimed Haywood was leading a parade without a permit.

Attorney Marelli defended others against conviction of disorderly conduct. He was able to file a writ of certiorari for some of them and Judge Minturn released them on nominal bail. Many of those cases were abandoned by the prosecutor and never went before a court, but Marelli reported over 100 of those indicted by the Grand Jury served prison terms for lack of counsel. The prosecutor did not abandon the cases of prominent strike leaders like Haywood, Flynn, Tresca, Lessig, Scott and Quinlan. (7)

The worst violence came April 17, when a bystander Valentino Modestino was shot in the back and killed trying to get off his porch and through his front door. His pregnant wife grabbed their small child as he fell. Modestino lived near one of the mills in the Italian section of Paterson. Officials including the Prosecutor Michael Dunn claimed there was a riot of strikers in the evening near

the Modestino home. Dunn alleged the rioters attempted to block repair and maintenance workers - electricians, carpenters, mechanics – from crossing the street to get into the mill. He testified to the CIR that O'Brien detectives were there to protect the mill and that "one of these detectives hollered: "Turn about; charge and drive them back." There followed 17 or 18 shots and one he claimed accidentally hit Modestino: a tragic accident in the line of duty.

However, Police arrested an O'Brien gunman and Recorder Carroll held him on a charge of murder. Witnesses at the Modestino house testified they saw the O'Brien gunman fire the shot that killed Modestino. Justice Minturn presented evidence to the Grand Jury as a prima facie case of murder. The Grand Jury would not indict. Judge Minturn presented the case to another Grand Jury, but Amos Radcliffe, the county sheriff, selected Grand Juries from panels of up to 500. State law allowed sheriffs to pick names at their discretion and so only businessmen from local manufacturers served; no one with connections to strikers or the working class served on a Grand Jury. The second Grand Jury refused to indict over the strenuous objections of Justice Minturn.

By April city officials talked with mill owners hoping to start negotiations. Mill owners signaled they would speak with the AFL but not the IWW. Once again John Golden of the AFL affiliated UTW agreed to speak at a meeting arranged for April 21 at a massive Armory in order to "tell the truth" about the IWW and recruit members into the UTW. IWW was not permitted to rent the Armory, but 15,000 strikers turned out to listen. When Golden refused to allow any IWW speaker to rebut his charges or address the meeting it broke up. The same massive crowd estimated at 15,000 attended the Modestino funeral April 26, the same day the indictments of Flynn, Tresca, Quinlan, and Lessig came down from a Grand Jury. (8)

Patrick Quinlan was first with a trial. His was an indictment for inciting a riot based on Grand Jury testimony. Police testified Quinlan addressed the audience at Turn Hall with the announcement "I make a motion that we go to the silk mills, parade through the streets and club out the mills no matter how we get them out." Another indictment charged him with unlawful assembly. Again it was a Grand Jury of businessmen and manufacturers and no one from the working class.

In the trial that followed seven police recited the exact same lines they all claimed they heard just once at the Turn Hall meeting. Quinlan denied he had a chance to speak or make any statement at all. Defense attorneys had 30 witnesses to confirm his claims. Prosecutor Dunn called Quinlan an "educated agitator of the most dangerous type" willing to commit perjury. A Paterson jury voted 7 to 5 for acquittal on May 10. The Paterson Press denounced the acquittal as a disgrace and questioned the honesty and intelligence of the jury. It claimed "all leaders arrested will surely be convicted."

Dunn scheduled a new trial for May 12. At the second trial Dunn told jurors they must convict or "Quinlan would be tantamount to rendering the county helpless, tearing down the courthouse, and declaring a state of martial law." The new jury convicted Quinlan May 14 and the judge set a fine of $500 and

a sentence of 2 to 15 years in the state penitentiary. Quinlan was released on bail: $5,000 on the inciting a riot conviction and $3,000 more for unlawful assembly. He remained free on bail pending an appeal. (9)

The Paterson Press supported the mayor and the mills and opposed the strike in threatening and toxic terms calling for vigilante attacks. A mid-March edition instructed readers to "Get Haywood. Never mind the manner; don't hesitate at the method; don't bother with the means. Get Haywood!" John L. Matthews, the editor, appeared before the CIR where the commissioners had him confirm excerpts they read from his newspaper. From the April 23 edition "No violence of consequence has occurred, but it is a question how much longer Paterson can stand for the Haywoods the Trescas and the Hogans [sic]and still be a place of safety. Los Angeles, Akron, Denver, Ottawa and other cities kicked the IWW out of town in short order. What is Paterson doing to discourage this revolutionary hord[e]?"

From the April 24 edition "Akron could not find a law to banish this dangerous revolutionist and his cohorts, but a Citizens Committee of 1,000 men did the trick in short order. Can Akron accomplish something that Paterson, N. J. can not duplicate? The Paterson Press dislikes to believe it, but time will tell."

Officials and police continued to insist there would be no strike without the IWW. Captain McBride called Haywood, Flynn and Tresca, "quite masterful in the use of language to evade the law and which would carry out the purpose of incendiarism[sic] just the same." He told the Commission on Industrial Relations(CIR) the use of "masterful" language required police to place a stenographer in strike committee meetings to monitor and verify objectionable language. At a Turn Hall meeting May 20 a union official recognized the stenographer as a spy who must leave. The stenographer was in the back of the room protected by seven plain clothes police detectives who drew their side arms and announced they would be the last to leave the hall. The meeting disbanded in a howling commotion, but resumed that afternoon in nearby Haledon. An armed Paterson detective arrived in Haledon expecting to monitor the meeting, but he was forced to leave when Mayer Breuckman refused to guarantee his safety. An angry and incensed Chief Bimson announced Turn Hall would be closed to all union meetings.

Journalist John Reed, who would become famous covering the Russian revolution, suggested a labor pageant to be performed by the strikers themselves. He came to Paterson from New York April 28 only to be arrested for refusing to move off the front stoop of a private home as ordered by police; he spent four days in jail. Reed wrote the script for the pageant, billed as America's first labor play, performed to a full house June 7, 1913 at Madison Square Garden. More than a thousand strikers portrayed the strike put to music and reenacted on stage. Five scenes depicted the strike call, picketing, the funeral, children leaving Paterson, and a Haywood speech on a stage made to look like Turn Hall. It finished singing the Internationale. It was acclaimed as a new art form and generated significant publicity, but Elizabeth Gurley Flynn had some reservations. It diverted attention from the real strike and with only a single performance it lost money and spent

funds that could have gone to relief. Mr. Matthews of the Paterson Press used the pageant to make further attacks: he fabricated a claim Flynn and Haywood diverted funds for their private use. (10)

In early July some of the mill owners offered separate deals to return. By mid-July some of the mills started to reopen. On July 18 the General Strike Committee agreed to allow shop by shop negotiations, opposed by the IWW leadership. Local 152 ended the strike August 1. Strikers quit for lack of funds, the larder was empty, literally. In its August 9, 1913 edition the Outlook reported the strike ground to a halt "through the sheer pressure of poverty" when the hungry began to trickle back to work and others left town. Estimates suggest 2,500 left town, perhaps to avoid defeat or more likely from blacklisting and the need for a job. The outcome might have been different without the start to finish intervention of Paterson officials and police determined to break the strike.

Mill owners lost millions in sales at a critical time for spring clothing sales, strikers lost millions in wages, local landlords did not always get their rent while retail business suffered from a drop in sales; some suffered into bankruptcy. The city spent large sums on extra police working 16 hour days. The strikers settled for nothing, but back to work. Solidarity held for almost five months and while mill owners made a show of keeping the mills open, the few strike breakers produced next to nothing. It does suggest money will be no object when breaking a strike.

The conviction in the Quinlan case convinced attorney Marelli to request moving the other cases to a foreign jury; meaning move the trials to another county court where newspapers might not be so toxic and the jury so prejudiced. After a hearing before Justice Minturn the other trials took place away from Paterson. The remaining trials and appeals for Alexander Scott, Elizabeth Gurley Flynn, Carlo Tresca, Adolph Lessig, and Bill Haywood dragged on but eventually they ended with a divided jury and dismissal, or a retrial and acquittal, or reversal on appeal. Of all the convictions carried before Recorder Carroll or the state courts only one was sustained, Patrick Quinlan. He was the sole exception.

After his conviction he remained free on bail and took part in the Pageant and criticized the Paterson police as "apostles of anarchy." His appeal on the conviction went before the state Supreme Court in November 1913. A three judge panel rejected all defense arguments in a decision announced June 5, 1914. Quinlan's attorneys did not claim he was misquoted or did not speak, but instead argued that no crime occurred to prosecute. The judges countered by claiming the law passed after President McKinley's assassination made it a crime to advocate violence even if no crime took place in the process. Defense attorneys objected to testimony that quoted Elizabeth Gurley Flynn's statements as evidence that Patrick Quinlan was part of a "common design." Since police claims that Quinlan made statements similar to Flynn, the justices found it proper to admit what Flynn was alleged to say as evidence to convict Quinlan. Flynn would be tried a second time on November 27, 1915 and acquitted by a jury on the same evidence, but that would be of no consolation to Quinlan.

The Quinlan case went before the New Jersey Court of Errors and Appeals as a last and final appeal. The court affirmed the Supreme Court

decision in a 12 to 1 vote on January 27, 1915; Justice Minturn was the sole dissenting vote. Soon after the decision a man named Joseph Mangor came forward and declared he made the statements at the February 25, 1913 meeting that convicted Patrick Quinlan. Judge Klenart, the presiding judge in the May 1913 trials refused his application for a new trial, but instead re-sentenced Quinlan to serve 2 to 7 years in the Trenton State prison. That was on February 26, 1915. He applied for clemency in June, but refused to renounce support for the IWW. He would spend 21 months in prison.

His treatment brought many angry comments. Amos Pinchot offered "The wealth and power in the community is all passing into the control of a few men, and none of our political leaders dares to act in any but a narrow and prescribed manner." There would be more bluster along these lines, which kept the Quinlan case in the public eye. In a short time there would be the case of Joe Hill, of Tom Mooney and the Everett Massacre to be new symbols of injustice. (11)

The failure in the Paterson Strike ended the IWW initiative in the east and brought a chorus of scorn and contempt from expected, and some unexpected, sources. The capitalist press exulted in the complete defeat of the IWW. The AFL offered their usual contempt for industrial unionism calling it revolution when reform was the immediate goal at Paterson. The AFL predicted, and undoubtedly hoped for, the collapse and defeat of the IWW, but few in the IWW expected to read attacks from the socialists and even fewer from anarchists.

The socialist press predicted "the IWW has no future" and "it has reached its climax and decline in Paterson and will soon disappear." Socialists thought the Paterson failure brought undeniable "signs of decadence" and a "black eye." The anarchists complained the Paterson strikers did not fight back against police when they should have returned to the free speech battles of the west; the critics did nothing to help with industrial organizing.

Haywood and Flynn wrote and spoke in their own defense and tried to find something positive in the outcome. Neither Haywood nor Flynn nor any of the leaders from the international IWW actually ran the strike. They came and spoke in Paterson at the request of local 152 leaders, Ewald Koettgen and Adolph Lessig, who made the daily decisions and the decision to end the strike. That was consistent with IWW practice and policy to get as many strikers as possible involved in a strike and be active in decisions. In spite of the abuses of the local government and refusal to bargain by management, Haywood and Flynn took the brunt of criticism. They tried to justify their advice during the strike, but both agonized over their responsibility in the failure at Paterson.

As the strike ended, recrimination replaced solidarity. The failed strike generated internal dissension. Strike tactics would become an unresolved source of internal conflict. Quinlan and Tresca left the IWW after Paterson; conflict between Haywood and Flynn continued but Flynn left in 1916 after another strike in the Mesabi Range. There would be significant success in western agriculture and some in western mining and lumber industries, but World War I and Woodrow Wilson would take its toll on the IWW as we shall see. (12)

Keweenaw Copper Strike

The Western Federation of Miners helped copper miners in Calumet, Michigan draft a letter dated July 14, 1913 requesting a conference with the general manager of the Calumet and Hecla Mining Company, James MacNaughton. Copies went to other Keweenaw mine owners. Union leaders wanted to discuss the "possibilities of shortening the working day, raising wages and making some changes in the working conditions." The letter informed company officers that 98 percent of its 9,000 union members voted for a strike if management refused to meet or consider concessions.

The Calumet and Hecla Corporation with headquarters in Boston dominated several dozen Keweenaw mine owners. C&H employed over half of the 14,278 area miners in its thirteen mines. In 1901 corporate executives in Boston appointed James MacNaughton operations manager in order to improve productivity and reduce costs.

MacNaughton complained the two people who signed the union letter were not employed at C&H: they were not workers and so it was none of their business. He stated his position to his supervisor Quincy Shaw in Boston: "My present feeling is that I shall not acknowledge the letter in anyway whatever for by writing a letter to the Secretary acknowledging the receipt of this I would be in a measure recognizing the Union."

On July 23, 1913 enough of the 14,278 Keweenaw miners left work to close down 21 of the mines including the 13 mines of Calumet and Hecla. Strikers demanded an 8 hour day, a $3 a day minimum wage and union recognition. Striking miners were out in force to picket and keep non-union miners out of the mines. During the first two days of the strike, picketers arrived at some of the mines early in the morning expecting to prevent non-union men from going to work. Verbal taunts erupted into rock throwing, club swinging riots; sixteen who showed up to work were injured enough to need hospital treatment. No one was killed.

In response the mine managers pressured Sheriff James A. Cruse to request National Guard troops from Michigan Governor Woodbridge Ferris. The next day, Governor Ferris called out the entire Michigan militia, 2,565 of them, which officers declared "would be of inestimable service in case hostilities break out between the United States and Mexico." The commander of troops announced the strikers refusal to work the pumps and keep water from flowing in the mines amounts to the destruction of property. MacNaughton and other mine managers sat on the County Board of Supervisors and with their influence and position asserted authority to direct county Sheriff Cruse. In correspondence to Quincy Shaw in Boston, MacNaughton complained "The sheriff means well, is willing to do anything we tell him, but lacks initiative and force."

Sheriff Cruse had eight under sheriffs, but Michigan law allowed an employer to deputize employees if they got permission from the county sheriff. Sheriff Cruse deputized non-striking employees loyal to the mine owners and he accepted written requests to license the new deputies to carry handguns, which

were purchased and distributed by C&H. In correspondence to Shaw in Boston, MacNaughton wrote "We are assembling and swearing in deputy sheriffs as fast as possible. Have about 600 now and think we will have no difficulty in taking care of the situation."

Before the strike started James A. Waddell arrived in Keweenaw to promote the services of his New York firm the Waddell-Mahon detective agency. Waddell boasted "The Western Federation of Miners is doomed to inevitable disaster and defeat in the Upper Peninsula of Michigan." . . . "We are sure of defeating the Western Federation of Miners in this operation because we have met and defeated them before." The county board hired and paid Waddell-Mahon to have 52 of their agents to act as strikebreakers. The county paid Waddell-Mahon $5 a day plus expenses for each of the men employed, of which Waddell paid his men $3 a day, the same wage demanded by the striking miners. At least four Waddell agents had been indicted for murder and others had criminal records. Individual mine owners also hired an additional 60 Waddell agents to bring their total to 112; later some of the mines hired 120 agents from the Ascher detective agency. (13)

There was little trouble for three weeks after the initial riots while the mines remained shut down. Picketing and mass parades of striking miners and their families resumed after the mines reopened with limited operations. Long lines with six and eight abreast marched in the main streets of Calumet, Hancock and Red Jacket. A local woman, Anna "Big Annie" Clemenc, often led the parades while she carried an immense American Flag on a 10-foot pole. Strikers got out early in the morning intending to persuade non-union men arriving at work to stay out of the mines. When persuasion failed strikebreakers were heaped with verbal abuse and denounced as scabs; pushing, shoving and physical interference did occur on multiple occasions. Waddell agents and soldiers were present to keep order and make arrests, but they were ready with guns, bayonets and billie clubs. They did at times resort to main force.

Several local clubs and business groups opposed all union activity. A copper country affiliate of the Citizens Alliance operated as vigilantes the same way they did in Colorado. On July 28, MacNaughton organized a meeting of several business groups. In a letter to Quincy Shaw he wrote "I talked to them for about twenty minutes and told them we would never recognize the Western Federation and that grass would grow in the streets here before this mine or any of its subsidiaries would start up unless law and order was restored, and that nothing but complete annihilation of the Western Federation in this camp would satisfy us."

Union officials made a written request to Governor Ferris asking him to arrange a joint conference of both sides to bring a settlement. On July 30, the commander of the Michigan National Guard presented the Governor's proposal to mine managers who summarily turned them down. In their reply they wrote "we should not and can not enter into or take any part in a joint conference with the leaders or representatives of the Western Federation of Miners, which organization is solely responsible for the conditions now existing, nor any representatives of those now engaged in the strike and who falsely assume to

represent the great body of our employees." The letter continued "There have been satisfaction and contentment on the part of those employed and good feeling and mutual respect between employers and employees. We believe it can be said truthfully that in this mining district the conditions of labor, the considerations for the employees, the means taken for their comfortable housing, for their general welfare, for their health, for the education of their children, and their fair and generous treatment in every respect have not been excelled in any industry of any kind." Mr. MacNaughton ignored the 98 percent strike vote.

Governor Ferris got increasingly disgusted with the continued refusal of mine managers to allow mediation from officials who had no connection to the Western Federation of Miners. He decided August 11th to begin a gradual troop withdrawal until 500 remained by late September. He sent Wayne County Judge Alfred Murphy to the area with a letter of introduction. The letter defined Judge Murphy's mission "to mediate if possible" and to "get the facts on both sides of the controversy" in order to report back to him.

Judge Murphy filed a report with Governor Ferris where he made two points. First, "The employers insist on their individual discretion from refusing reemployment to any striker who has engaged in "acts of agitation" or who has "incited thereto." Judge Murphy considered agitation for any legitimate end a fundamental right of all. For him C&H policy is "wrong fundamentally and wholly wrong on principle. In policy nothing so much reminds me of it as the obtuse course of the Bourbons." … Second, he argued "The position of the employers that withdrawal from the membership in the federation must be a condition precedent to reemployment is equally arbitrary and untenable. In principle if the employer can do this, he can, with like propriety, compel withdrawal from any political, religious or social body as a condition of employment. It is basically un-American." On August 26 Governor Ferris responded in a public statement: "I do not hesitate to say that the men have real grievances." (14)

On August 14, two miners unknowingly trespassed across unmarked mine property walking to the village of Seeberville, where they lived in one of 3,045 company owned boarding houses. After a non-striking mine employee, Humphrey Quick, tattled to his mine boss, the boss sent Quick and a Waddell-Mahon mine guard named Thomas Raleigh to bring in trespassers Ivan Kallan and Ivan Stimac so he could talk to them. Along the way five others joined them, at least four were Waddell men. All but Quick had handguns; none of them had instructions or authority to make arrests.

When Quick and his group arrived at the boardinghouse, some of the tenants were occupied in a game of lawn bowling in a fenced yard; others were inside finishing dinner. Only Quick could recognize the men they were sent to find, but he remained on the street after pointing out Kallan in the yard. A brief standoff resulted after Raleigh yelled out "I want you" but six jumped the fence with their guns drawn after Kallan waved off their demand. The melee that resulted was indecisive but one of the six who jumped the fence panicked after a stick or possibly a bowling pin hit him in the head. He opened fire killing one of the boarders in the yard and then moved to the entryway of the house where he

emptied his gun shooting through the house. Four others emptied their guns firing indiscriminately through the house. Bullets hit three men in the house, wounding two and killing another.

The gunmen walked out to the street to reload where they convinced themselves to believe the miners had fired on them. They stormed back in the house, guns drawn, and ransacked every room looking for firearms, ignoring the dead and dying in the process. There were no guns. Both Kallan and Stimac survived the onslaught but Sheriff Cruse arrested them the next day for resisting arrest.

The county prosecutor was not as compliant as Sheriff Cruse. After holding preliminary hearings he indicted five of the shooters. Mine management put up their $5,000 bail. Ultimately four of the five were convicted and sentenced for manslaughter in a trial that ended February 15, 1914. The fifth of those charged, Thomas Raleigh, disappeared before the trial, which cost the mining companies his $5,000 bond. Sheriff Cruse kept him employed in his office for three more months before he left the area.

Following the February trial the newspapers reported a weeping crowd stood by at the depot to support the four convicted men as they boarded a train for Marquette Prison. The mining companies used their influence to attack the verdict and demand a new trial. Mining company officials and the newspapers continued to call the shootings self-defense. In a written opinion the judge described the shootings as "so reckless and heartless" as to justify a charge of murder rather than manslaughter, but his judicial opinion did not change any minds. The convicted had 7 to 15 year sentences, but their parole came in a little over a year.

After the Seeberville shootings the WFM filed for an injunction to halt the hiring practices of Sheriff Cruse. Michigan law did not allow hiring deputies that were not residents of the county. Sheriff Cruse denied any Waddell-Mahon men were hired as deputies. He claimed no Waddell agents ever made arrests, but instead they only helped him or his under sheriffs as aides to perform their official duties. Judge Patrick O'Brien admonished Cruse that "I shall expect the sheriff to keep his deputies and others in his employ within the bounds of their duties. They must not break up peaceful parades. The sheriff must assist neither the mining companies nor the strikers…" (15)

On September 1, Labor Day, a group formed early in the morning to picket. The group included women and children who were marching through the village of Kearsage around 6 a.m. when armed deputies blocked their path. Both sides exchanged taunts until one of the deputies pointed his gun at the crowd. When 14 year old Margaret Fazekas turned to run, a deputy named John Lavers took aim and shot her in the back of the head. After she collapsed in the dirt, picketers scattered but some of them were enraged enough to throw rocks and debris at the deputies who were apparently unwilling to shoot more unarmed picketers. Sheriff Cruse arrested one of the rock throwing picketers the next day and charged him with "assault with intent to kill and murder." There were so many eye witness accounts that his charges were dismissed, but the gunman was never charged or held accountable for the shooting. (16)

Requests by the Western Federation were made to the Wilson Administration to arbitrate. The U. S. Secretary of Labor William B. Wilson sent two federal mediators, John Moffitt and Walter Palmer. Moffitt made a formal presentation of eight written propositions for mediation to mine managers in a letter of September 17. The unions accepted the Moffitt proposals, but the mine managers had their attorney write a long letter of rejection concluding "we must adhere to our position that we will in no manner deal with the Western Federation of Miners, either directly, through mediation, arbitration, or any other way." Following this failure Governor Ferris contacted the Copper Country Commercial Club in Houghton and Keweenaw Counties to investigate the strike and make recommendations. The Commercial Club appointed a committee from its membership and set guidelines for an investigation. They set to work and drafted a detailed report approved October 10 and published in the local newspapers October 14, 1913. The Committee arranged a meeting with management to explain their recommendations. The mining companies issued a statement that on condition of withdrawal from the WFM beginning January 1, 1914 all former employees could return to work as before. The statement finished with "This offer will not be continued for long."

Parades and demonstrations continued in a regular routine during these fall weeks. Mother Jones arrived to march, speak and support them. On September 13 Big Annie led a parade of union supporters through Red Jacket until a National Guard troop on horseback blocked the street. One of the guardsmen knocked Annie's American flag to the ground and rode over it with his horse. She defied the troops and taunted them for debasing the American flag.

On September 20 Judge O'Brien issued an injunction that banned parades and picketing. He wrote that defendants "are combining and confederating with others to injure said complainants" who happened to be the mining companies. The injunction ended public assembly entirely, effectively halting protest. Picketing did stop but the union appealed until Judge O'Brien withdrew the order on September 29.

Not satisfied, the companies appealed to the state Supreme Court on October 8, requesting the Justices to reinstate the injunction. The Supreme Court modified the injunction and ordered Judge O'Brien to attend a hearing November 4 to show cause for his actions or reinstate the injunction.

Judge O'Brien did not wait for November 4 but instead drafted an order to the sheriff, under sheriffs and deputy sheriffs of Houghton County to bring all those alleged in violation of the injunction to a hearing set for October 24. The Judge lectured 209 men arrested by the sheriffs, telling them order and liberty go hand in hand and they must stop interfering with strikebreakers entering the mines. He then released them on their own recognizance and without bail. After the Supreme Court ordered the injunction reinstated December 6, the judge found all the picketers guilty and then released them with a suspended sentence. The mine owners were outraged. The strike continued.

In an early correspondence to MacNaughton from Quincy Shaw in Boston, he suggested "The worst part of all this is that it is going to undoubtedly drive

away a great many of our better men who don't want trouble…" It did. By late September there were only 4,000 available for work out of more the 14,000 working in July. As so often happened when management made threats and refused to bargain thousands of union and non-union miners packed up and left the area significantly decreasing the supply of labor.

Still the mine owners would not negotiate but instead contracted with the Austro-American Labor Agency in New York to bring immigrant strikebreakers to Keweenaw. The first batch of 37 Germans left New York by train in mid September. They signed contracts that informed them there was a strike on as required by New York law, but wording was partly in English and partly in German with the part about the strike in English, which the German immigrants could not read. Six learned the truth in transit and left the train before it got to Keweenaw. The rest were held captive until armed Waddell guards met them at the train depot and marched them to work; some of them made a break and found striking miners to help them. Eventually close to 3,000 immigrants were brought to the area, but large numbers of them quit in anger; many of their stories ended up as part the final report of the U.S. House of Representatives subcommittee sent to Keweenaw in February 1914 to investigate the strike. (17)

Early on the morning of December 7 twelve people from two mining families were asleep in their beds at a boardinghouse in Painesdale. At 2:00 a.m. a fusillade of rifle shots aimed into the boardinghouse killed three and wounded another. On December 9th the Houghton County prosecutor petitioned the district court to create a grand jury to investigate the Painesdale shootings and other violence in the county. During Grand Jury proceedings that began December 15 witnesses testified they heard gunfire and went out to investigate. They reported they saw two Waddell agents in the road in front of the Painesdale boarding house, but the grand jury would not vote indictments.

Later in a letter to Quincy Shaw dated February 27, 1914, MacNaughton wrote that "a "Finn" had recently confessed to the Painesdale shootings," but "those who have the information do not care to entrust it to either the Prosecuting Attorney or the Sheriff." The next day four union men were arrested along with a report that one of them, John Huhta, had signed a confession. The four men were charged with conspiracy and murder in the Painesdale shootings.

It turned out that Waddell agents had kidnapped Huhta ten days before and beaten and brutalized him until he signed a confession, written by Waddell agent Thomas Raleigh. Once they had a confession he was dropped off at the Houghton County Jail where the sheriff took custody. Houghton County prosecutor, William Lucas, interviewed Huhta, who told Lucas of the kidnapping and forced confession. Huhta remained in custody while the prosecutor discussed the case with Judge O'Brien and considered what to do. Before he could proceed, the state Attorney General removed him from the case without explanation. The Houghton County Board of Supervisors selected and paid the new prosecutor, but Houghton County Judge O'Brien refused to hear the case. The trial was moved to Marquette County with another judge.

The new prosecutor planned to use a promise of leniency and Huhta's

confession to convict Huhta and the other three. After Huhta refused to go along and recanted his confession the prosecutor put Huhta on trial, but dropped the charges against the other three. Huhta told his story to the court and his court appointed defense attorney discussed the grand jury testimony that tied Waddell agents to the shootings, but to no avail. The Jury did not believe Huhta could be coerced to confess and voted to convict him of the Painesdale shootings in just 38 minutes.

On December 10, the Citizens Alliance sponsored rallies in Houghton and Calumet to show their support for the mine owners. The Alliance claimed 8,675 members who were instructed to wear the membership badge where "it can be seen at all times." The mine owners had arrangements made to rent halls, hire entertainment and provide transportation for the rally. Speakers attacked the union in hostile terms calling it "poisonous slime" and advising listeners "to clean up this county and clean it up quick." After speeches ended the audience fanned out through the streets and broke in and destroyed union offices and contents and threatened union members, demanding they leave town. (18)

After the hardships of nearly six months on strike, miners planned a large Christmas Eve Party for union members and their families on the second floor of Italian hall in Calumet. After the party was well underway a man entered the hall, climbed the stairs and shouted "fire" into a room overstuffed with 700 people. The panic that followed resulted in the death of 73, mostly children, in a pileup and suffocation of victims toward the bottom of the enclosed stairwell in front of the exit door. (19)

Accounts of what happened varied dramatically depending on who told the story. Those in attendance at the party identified a strikebreaker named Edward Manley as the one who entered Italian hall and cried fire. Possibly Mr. Manley thought he would only create a disturbance that would disrupt miner solidarity, but enough witnesses saw his Citizens Alliance badge that the charges against him and the resulting deaths infuriated the union and its supporters in an already divided community. Mining companies and the newspapers had other stories and supplied benevolent explanations. There was a coroner's inquest with recorded testimony. The Coroner's report described the suffocation of victims but failed to meet the requirements of Michigan law to determine a cause of death: accident or homicide. The grand jury would not indict and no one was ever prosecuted or held responsible for those who died. (20)

More trouble came after Calumet & Hecla and the Citizens Alliance donated funds to families of those killed at Italian Hall; families and union president Charles Moyer refused the money, describing it as "blood money." Alliance members were enraged and the county sheriff and several Alliance members wearing their badges confronted Moyer at his hotel room. When he again refused their money they threatened him. The sheriff left but within minutes twenty men bashed down his door and physically attacked Moyer and his assistant Charles Tanner. During the beatings a handgun went off and the bullet hit Moyer in the shoulder; he collapsed wounded and bleeding. The gang stole his wallet, dragged him and Tanner to the train station and forcibly deported them to Chicago; no one

was ever prosecuted for the attacks. (21)

The strikers and their union ran out of money by the spring of 1914. The strike ended on April 12, 1914 after those who remained voted to end the strike and go back to work on the terms of the Commercial Club report. The Finnish newspaper, the Tyomies, reported that only 4,740 were left to vote one way or the other. The company had already agreed to an 8 hour day and a small raise on condition that no one be a member of any union including the WFM. The investigation of the strike by the Wilson administration described miners as "forced into peonage" while the mines made "enormous profits." It was a favorable report for the strikers from an administration pledged to be a friend of labor, but ignored in Calumet, Michigan. (22)

Wheatlands Strike

The 1913 hop field harvest in Wheatland, California degenerated to another of the summer's many strikes and battles. The 640-acre Durst ranch needed 1,500 to harvest their hops, California's single largest agricultural employer at the time. To assure plenty of help they advertised for pickers in California, Nevada and Oregon newspapers to come live at their farm and pick hops for a piece wage of a dollar a 100 pound box. The depressed economy of 1913 helped attract 2,800, nearly double their needs and a number that engulfed Wheatland, a town of 500.

Mostly immigrants and immigrant families of several dozen nationalities arrived: Germans, Syrians, Turks, Spaniards, Mexicans, Lithuanians, Italians, Puerto Ricans, Poles, Hindus, Japanese along with local poor and American migrants. Many came as families that assured at least a thousand were women and children. It took only a day to realize the advertising falsified the pay, the work, and the living conditions. The advertised pay did not mention withholding $.10 a pound payable as a "bonus" for those that finished the harvest. Demands for extra clean picking and to have all including women and children lift hundred pound boxes onto flat bed trucks reduced many to picking a single box a day.

Durst made little if any provision for housing, drinking water or sanitation. There were tents to rent at $.75 a week, but not enough, even for those who could pay. Hundreds slept in the open fields or under a few pup tents fashioned from sticks and gunnysacks. Daytime temperatures exceeded a hundred degrees, but Durst provided no drinking water in the fields, although he allowed his nephew to sell a citric acid concoction called "lemonade" at $.05 a glass. There was no provision for refuse and garbage piled up everywhere and there were just nine privies for nearly three thousand. (23)

On the second day, work ended with a protest meeting of several thousand. Richard "Blackie" Ford and Herman Suhr were pickers with experience from the IWW free speech fights who organized the meeting. Durst agreed to meet with a committee the next morning, August 2, 1913 where the committee presented demands directly to Ralph Durst. He refused to raise wages and rejected all requests except to put drinking water and privies in the fields. Then he slapped Ford across the face with his gloves before ordering him off the premises. Threats were made by Durst guards to arrest him, but Ford demanded he produce a

warrant, which he could not. Ford refused to leave and met with pickers through an afternoon of speeches. Both men and women spoke from a wooden platform to denounce the deplorable conditions. By now one had died of heat prostration and signs of dysentery or typhoid appeared among children. Ford urged that no one return to work until changes were made and ceremoniously held up a child to say "It's for the children we are doing this."

Around five o'clock Sunday afternoon August 3, 1913, Durst, the sheriff, four deputies and the district attorney, a man named Edmund T. Manwell who was also attorney for the Durst farm, arrived in two cars at the pickers gathering to arrest Ford to get rid of him as an agitator. Descriptions of the scene have Blackie Ford and some others standing on the platform surrounded by a large crowd of several thousand pickers. The sheriff fired his pistol into the air and ordered the crowd to disperse, followed by a short but tense standoff until the sheriff announced he had a warrant to arrest Ford. After pointing toward Ford he bellowed "Take that man." The pickers rushed the badly outnumbered sheriff and his deputies in a struggle for their guns. Newspaper accounts vary somewhat, but apparently one of the pickers wrenched a gun away from a deputy after beating him to the ground. The same picker, known only as the unidentified dark skinned man, shot the deputy, then shot and killed Manwell as he rushed toward him and was in turn shot and killed by another deputy. Durst and his guards emptied their guns into the crowd before retreating to their farm compound. When the shooting stopped four were dead: the unidentified picker, a bystander, the deputy and district attorney Manwell. Many more had gunshot wounds including another deputy, several women and a small child, not more than three years old.

Pickers took flight from Wheatland like war zone refugees. Only a few were left the next morning when five companies of the California National Guard arrived to keep the peace. A search of the few that remained and the empty grounds did not turn up a single gun. Authorities set out after fleeing pickers in a statewide manhunt. They paid the Burns Detective Agency to join them in the hunt. It was dangerous to look like a migrant in central California where the Burns detectives were allowed to hold, beat, and torture prisoners to force confessions and make up testimony against Ford and Suhr. (24)

It turned out the Durst brothers had to offer better pay and working conditions to get their hops harvested for the 1913 season, but the IWW took the blame for the riot anyway. Since the pickers were not organized by the IWW or any union it was necessary to blame the IWW "element" for the strike. On August 4, the local paper, the Democrat, demanded arrest and charges of murder for those with any IWW connections, publishing that "These venomous human snakes always urged armed resistance to constituted authority. . . . These human animals are more dangerous than the wild animals of the jungles."

Once Ford and Suhr were caught they were charged as accessories to murder and put on trial at the Yuba County Court in Marysville in spite of local prejudice and the judge's friendship with Manwell. Suhr was not present at the riot and the prosecutor admitted Ford did not have a gun or take part in the riot, but they were found guilty of second degree murder for leading a strike that resulted in a

shooting. Both were sentenced to life in prison and denied bail pending appeal. The judge explained to the jury "We have a right to mistrust any body of people that speaks a language not understood by civilized folks." He meant men who joined or sympathized with the IWW.

The trial attracted national attention and considerable protest that resulted in two commission investigations: the California Commission of Immigration and Housing, and the U.S. Commission on Industrial Relations. Both confirmed deplorable conditions in California agriculture, but avoided discussing Ford and Suhr. Over a year later on September 10, 1914 a California appellate court refused a new trial and the California Supreme Court concurred shortly.

Ford and Suhr's defenders outside the IWW pressured Governor Hiram Johnson for a pardon. His September 11, 1915 statement read "By a forced construction of the law of conspiracy of an industrial revolt, those who had committed no wrong themselves were convicted of a heinous offense" but he attacked the IWW as incendiary and refused a pardon. Then he endorsed an appeal by the Farmer's Protective League to the Wilson Administration to prosecute the IWW for conspiracy to create "abnormal disorder and incendiarism[sic]."

Federal agents from a Wilson administration pledged to be the friend of labor traveled to California to investigate. They estimated an IWW membership of only 4,000, many unemployed and homeless, but advised against further action because no federal laws were violated to justify prosecution. That would change shortly; the Espionage Act became law two years later. (25)

Ludlow Massacre

Nothing about life for Colorado coal miners improved after the lost strikes of 1903-1904 or the exit of Governor James Peabody. The memory of bull pens and forcible deportation remained as clearly in 1913 as in 1903. The three primary coal operators refused to recognize or bargain with a union as they refused ten years before. The Colorado Fuel & Iron Co. was the biggest company, known by its initials CF&I, with the controlling interest owned by John D. Rockefeller Jr. in New York. John Osgood established CF&I through mergers back in 1892 and then sold out to Rockefeller in 1901, but used the proceeds to buy and expand the Victor-American Company. David Brown controlled the Rocky Mountain Fuel Company, the third of the trio of big southern Colorado coal operators among many other smaller mine operators.

The 1903-1904 strikes cut earnings and brought a change of Colorado management at CF & I. John D. Rockefeller Jr. and his board of directors promoted Jesse Welborn to president and LaMont Montgomery Bowers to vice president. Later Bowers would be installed as chairmen of the executive board of CF&I. Bowers arrived in Denver in 1907 with instructions to find and fix whatever he found at fault.

Bowers wrote to New York describing prodigious waste that apparently included wages. "I always regret cutting the wages of laborers who have families to support, but considering these foreigners who do not intend to make America their home, and who live like rats in order to save money, I do not feel that we

ought to maintain high wages in order to increase their income and shorten their stay in this country."

The UMW had some success organizing in northern Colorado after 1903 but by 1912 conditions were dangerous and dismal enough in southern Colorado the miners wanted UMW to return to organize the mines around Walsenburg and Trinidad. Bowers called the District 15 organizers "lawless agitators" when he wrote to John D. Rockefeller Jr to tell him "Our men are well paid, well housed, and every precaution known taken to prevent disaster. So far as we can learn they are satisfied and contented, but the constant dogging of their heels by agitators, together with muckraking magazines and trust busting political shysters, has a mighty influence over the ignorant foreigners who make up the great mass of our ten thousand miners."

The miners had many grievances that CF&I and the other operators refused to address. The land in the area was completely controlled by the mining companies, either by lease from the state, or by ownership. The mines were scattered though the canyons in a broad area nearly 40 miles long, north to south. The mines had the same names as the little company villages built around them: Delagua, Hastings, Tabasco, Berwind, Aguilar, Forbes, Primero, Segundo, Sopris and others. Ludlow was a Colorado & Southern RR depot, post office, a few stores, and a saloon, about two-thirds of the way south from Walsenburg on the train to Trinidad.

Miners had to live in company housing at the mines. There was no public property such as streets or alleys or public or private buildings for community use. The towns were incorporated and the mine superintendent doubled as the mayor. Outsiders were trespassers subject to arrest by armed mine guards making it easy to keep labor organizers and government officials off the property. If the mine operators had the slightest suspicion someone favored, or supported, a union they were fired and their families evicted from housing. Mine operators populated the mines with 22 different nationalities, making communication difficult in the best of times, but mine operators did not hesitate to break up socializing or prevent religious services. On March 17, 1912 a meeting of the St. Peters Servian Society in Delagua brought two companies of mine officials to break up the meeting. The next day every man at the meeting working at Delagua was discharged; fraternizing might be organizing.

Mine operator control can be shown from the written evidence and testimony before the Commission on Industrial Relations(CIR). Recall Congress created the CIR that began work as Woodrow Wilson became president. Hearings and testimony covering Colorado Coal Mine Strikes filled 1,788 pages. For example, below is testimony of the Sheriff of Huerfano County, Mr. Jefferson Farr. Sheriff Farr with offices in Walsenburg, Colorado deputized 326 men as deputy sheriffs to be employed as mine guards. At public hearings CIR Chairman Frank Walsh pressured Sheriff Farr for an explanation.

> Chairman Walsh: "I notice on this list of deputy sheriffs appointed by you between January 10, 1913 and September 1, 1913 there appear 326 men.

What was the reason for such a great number of deputy sheriffs that year?"

Mr. Farr: "On account of the strike."

After several exchanges that allowed Chairman Walsh to confirm these appointments occurred before the strike, he asked "You were expecting a strike, then, were you?"

Mr. Farr: "I was."

Chair Walsh: "Did you confer with the company officials about it?"

Mr. Farr: "I did. I talked with them everyday."

Chairman Walsh wanted to identify their employer. He asked "How many of those 326 men worked for the mining company?"

Mr. Farr: "I couldn't say as to that."

Chair Walsh: "Who paid for these deputies?"

Mr. Farr: "I don't know that. The county of Huerfano never paid for them."

Chair Walsh: "Did you ever hear from them where they got their money?"

Mr. Farr: "They were paid. I didn't pay them."

Chair Walsh: "You never inquired?"

Mr. Farr: "No, sir."

Chair Walsh: "Would you turn your office over to a private party without knowing?"

Mr. Farr: "I supposed that the coal operators were paying for them."

Chair Walsh: "You know that the coal operators were paying for them, do you not?"

Mr. Farr: "I don't know for certain, but that is my belief, and I am really satisfied, but I don't know it; never saw the checks."

Chairman Walsh pressed on to find that 75 additional deputies were hired by the coal operators after September 1, and therefore, in addition to the other 326. Chairman Walsh wanted to know the qualifications for these sheriff's deputies.

Chair Walsh: "Now, do I understand you that you did not make any examination into the character of these men?"

Sheriff Farr: "I did not, sir."

Chair Walsh: “And their qualifications. They could have got, so far as you were concerned, a murderer, a red-handed murderer, and given him one of your commissions?”

Mr. Farr: “So far as I know.”

Chair Walsh: “So far as you know.”

Mr. Farr: “Yes, sir.”

Chair Walsh: “But that was left to the company?”

Mr. Farr: “The arming of the men was either left to the men themselves or else to the company.”

Sheriff Farr signed and sent blank deputy commission forms to the mine operators to fill in the names of their new hires, as part of his help to the mine operators preparing to oppose the UMW’s renewed effort to organize the southern Colorado mines. CF&I contracted with the Baldwin-Felts detective agency from Bluefield, West Virginia to recruit and manage mine guards rather than negotiate with the UMW. Albert Felts of the Baldwin-Felts agency did the recruiting and thanks to Sheriff Farr only had to fill in names to commission new mine guards as deputy sheriffs.

Felts had machine guns shipped from West Virginia and supervised construction of an armored car built at CF&I shops in Pueblo, Colorado. The car known as the “Death Special” had a protective steel cladding and space for two mounted machine guns like the one built and used in the Paint Creek and Cabin Creek strikes in West Virginia.

County sheriffs were elected positions as were the three county commissioners with governing authority, but the coal operators arranged for the county commissioners to redraw precinct boundaries, which the companies fenced in, allowing them to steal elections with impunity. Many districts were redrawn around isolated mining villages with a polling place in a company building. Precinct boundaries were patrolled by armed guards. The registration lists were kept by the companies as though private property. The state officials of Colorado attempting to enforce mining law or labor law could not get onto mine property, which exasperated Colorado Deputy Labor Commissioner, Edwin Brake. He told CIR Chairman Walsh the statute that created his office “provided that the deputy labor commissioners shall enforce all laws for the protection of wage earners of every kind and character.”

Chairman Walsh: asked “What attitude did the local authorities in Las Animas and Heurfano counties take toward the enforcement of the mining laws and safety regulations for miners. “

Mr. Brake: “Well, my experience with the local officers down there has been almost entirely through [my] deputies, and as I have reports from the deputies as to the manner in which they enforced the laws, we never could

get an absolute enforcement or partial enforcement of any of those laws."

Chairman Walsh: "Did the authorities there cooperate with your department to enforce the law?"

Mr. Brake: "No sir."

The Primero mine exploded in January 23, 1907 killing 22. The Commissioner of Mines responded with new regulations requiring sprinkling water "to purge the air as much as possible of suspended dust." CF& I ignored the mandate and the Primero mine exploded again January 31, 1910. C F & I admitted 75 died, although more remained unaccounted. On October 8, 1910 the CF& I mine at Starkville exploded killing 56 men and 27 mules. A month later the Victor American Fuel company mine at Delagua exploded killing 79. Data from Colorado Mine Inspector, James Dalrymple, shows deaths per thousand miners in Colorado at double the national average.

Families left behind from explosions or destitute from disabled miners unable to work could never recover damage awards. The Colorado District Attorney for Huerfano and Las Animas county, John J. Hendricks, reported in CIR testimony that no miner had recovered a damage award in 23 years. Coroners juries would repeatedly find that death resulted from a miners negligence or unavoidable accident. Chairman Walsh wanted to know if the three county commissioners were somehow rigging the juries.

Hendricks: Not through that means as much as the means of getting special venires.

Chairman Walsh: Tell us how that is done?

Hendricks: Well when the regular panel is exhausted for any means or any part of it, by challenge for cause or by peremptory challenge, a special venire is handed to the sheriff for the new panel, and that is where the trouble comes.

Chairman Walsh: Does the sheriff have absolute control over the selection?

Hendricks: Absolute.

Chairman Walsh had the coroner's jury verdicts from July 1905 to September 1914 placed in CIR evidence. They cover 31 pages and there was room for many verdicts per page given they were short, like the one below.

An inquisition holden at midway mine office Huerfano County, State of Colorado before S. Julian Lammie, coroner of said county, upon the body of Paul Sholtez, there lying dead, by the jurors whose names are hereto subscribed; Said jurors upon their oaths do say: We the jurors find that said Paul Sholtez came to his death by fall of rock in third south entry Walsen slope midway mine. Said rock known as pot rock was unavoidable accident. We further exonerate the company of all blame.

On August 16, 1913, Edwin Brake made a personal visit to Huerfano and Las Animas counties. Colorado Governor Elias Ammons asked him to be his personal representative and investigate conditions there and assess the chances of preventing a strike. He arrived by train in Trinidad early that Saturday evening. As he walked from the depot and approached the Toltec Hotel, shots rang out that killed union organizer, Gerald Lippiatt, in a confrontation with George Belcher and Walter Belk, both detectives of the Baldwin-Felts agency. Brake stayed about a week and spoke with miners from the state union delegation and met with Chamber of Commerce officers who described 'the terrible unrest that existed in the county." Brake notified Governor Ammons that "Trinidad was filled full of armed men, guards and detectives; that the killing of Lippiatt had created an intense feeling among miners and I apprehended if something was not done and done quickly, that there would be an outbreak there that would be disastrous."

The union held a convention at Trinidad September 15-16. The mine operators refused to meet or respond to union requests to address their grievances. Mother Jones arrived and encouraged them to fight it out. Frank Hayes, UMW International V-P, told the Rocky Mountain News "that twelve independent companies in Huerfano, Fremont and El Paso counties had signed up, agreeing to all the demands of the Trinidad convention, and added that if the small operators could afford to sign up, certainly the bigger corporations could afford to do so." The convention set a strike date of September 23, 1913 and went about leasing land and shipping tents from West Virginia to erect tent colonies.

Strikers forced out of company housing packed up household belongings. Some found other housing close by or left for UMW jobs in the mines of Ohio or Pennsylvania and the union reported more than 200 left the county for work elsewhere. Some of the more disillusioned became emigrants returning to Europe. The vast majority moved to tent camps nearby. The Rocky Mountains News had reporters there to record the move: "A cold wind penetrated their thin, water-soaked clothing, and in many instances the suffering was intense. A thousand tents from the strike area of West Virginia, scheduled to reach here today, failed to arrive." Denver Express reporter Don MacGregor described the move. "Miners and wives and children crouched pitifully on top of high-piled little wagons, bending low in futile effort to avoid the rain." . . . "What a commentary on the prosperity of the miners of Colorado!" . . . "Little piles of rickety chairs! Little piles of miserable looking straw bedding! Little piles of kitchen utensils! And all so worn and badly used they would have been the scorn of any second-hand dealer."

Tent camps were spread over a large area between Trinidad and Walsenburg. Ludlow was the biggest camp with 1,200 strikers and families living in rows of tents. The Rocky Mountain News reported 7,660 left work as of September 24. UMW records showed 11,232 ultimately left work of 13,980 Colorado coal miners. The union provided $3.00 a week of strike relief to strikers, $1.00 more for wives and $.50 more per child. Nearly half those on strike relief were children.

As the strike started Edwin Brake commented "I am of the opinion that the disclosures today proved a surprise. They had confidently counted on the fact

that many of the miners owned their homes to keep them at work. They also thought that the division in languages might separate them. But the contrary has been demonstrated. The languages among the strikers has occasioned very little difficulty, according to reports, and the men who own their own homes seem about as willing to be called out as anyone else." President Wilson had his deputy Secretary of Labor, Ethelbert Steward, travel to Colorado to investigate conditions and attempt to mediate a settlement early in the strike. (26)

The strike begins - September 23, 1913, -------- Pearl Jolly, a miner's wife and nurse, discussed her first day in Ludlow in CIR testimony: "From my first experience in the Ludlow tent colony the gunmen would come there and would try in every way to provoke trouble. The first shots were fired from an automobile that was going by the tent colony." . . . "In this automobile was this – I suppose you have heard of him- Belcher and a fellow called Lindsey and two or three other men. And as they went across there were two or three shots from the automobile into the tent colony."

Shortly the striking men began digging pits under the frame floors of the tents. Once the strikers and union officials realized the mine operators were recruiting an ever larger armed force and importing strikebreakers as they did in the 1903 strike, they took steps to resist, rather than allow a repeat of deportations and incarceration in outdoor bullpens as before. Groups of strikebreakers recruited from Eastern Europe by employment agencies had to be brought in by train and dropped off at railroad depots for escort to the remote mines. The mine operators used Ludlow depot as one arrival point for strikebreakers, which the men of Ludlow did not intend to ignore. Having the Ludlow camp close allowed picketing, which coal operators expected to stop.

Soon after the strike started the use of strikebreakers brought shooting on both sides. As Pearl Jolly's testimony verifies the mine operators expected they could coerce strikers back to work, or keep them in the camps and away from the railroad depots using routine surveillance and fear from periodic shooting into the camps. They succeeded to some degree, in that the men with wives and children tended more to stay "home," and to dig safety pits but bands of armed strikers patrolled along the Colorado & Southern RR tracks and into the hills overlooking the mines. Many of the single men in the camps were recruited as miners from Greece, which the mine operators learned to resent and blame for all their troubles. One CF&I official, E.H. Weitzel, explained he preferred ethnic Slavs to be their miners as they were more compliant.

These Greeks were a tough bunch and also armed with shotguns and Winchester rifles. Louis "the Greek" Tikas would be their informal leader. As someone calmer and more realistic about the dangers confronting the camp, he tried to moderate their hot tempers. Their patrolling brought inevitable encounters with the roving armed guards, some on horseback and some in automobiles or the death special. Both sides blamed the other for "starting it" like some school children on the playground, but the shooting could be deadly in these hate filled encounters.

On September 24, the Rocky Mountain News reported an early encounter between a hated mine guard, Robert Lee, known for many years as the "scab herder" and five men removing a handrail on a company-built foot bridge across the Purgatoire river near Segundo. The reporter, Harvey Deuell, found witnesses to give an account of Lee on horseback riding into the men and "Pressing the men from the bridge with his mount, he herded them toward the first of a row of coke ovens to the west of the structure. Two hundred yards had been traversed when the men commenced to mill about. Lee reached for his rifle, which hung in a scabbard at the side of his saddle. The men suddenly backed away and one man, identified as [Thomas] Larius, raised a shotgun and fired. The shot took effect in the marshal's neck, severing the jugular vein and killing him almost instantly."

A CF&I spokesman vowed to bring these men to justice and said "Lee has been in the employ of the Colorado Fuel and Iron company for more than ten years. He was absolutely fearless, but mild tempered and a pleasant man to meet. He was of the family of Robert E. Lee, a Virginian and a gentleman and he was highly thought of by the company." . . . "The crime, in my belief, is attributable to the incendiary utterances of Mother Jones, who has been urging the men to acts of violence in her addresses."

Mr. Deuell also reported an incident from two years before when the "pleasant" Mr. Lee entered an area saloon and "made a display of authority" to five miners already there: "He was struck over the head with an iron bar and confined to the hospital for several months." Thus proving he was indeed "absolutely fearless."

On October 7, 1913 Mother Jones and John Lawson, of the UMW executive board, spoke at a rally in Berwind Canyon encouraging resistance to the mine operators. Baldwin-Felts Guards, George Belcher and Walter Belk and several company officials left Trinidad and drove toward Berwind Canyon. When they approached the turn into the Canyon, they ran into armed strikers expecting to block entry. Shooting erupted that Belcher and Belk called an ambush. They quickly drove off but returned later with between fifteen and thirty reinforcements and advanced on Ludlow Camp. A gun battle followed with strikers defending from positions behind a line of freight cars. It went on for three hours; no one died in the battle, but bullets hit Ludlow tents.

On October 8, at least nine mine guards accompanied a large horse drawn cart heading to Ludlow depot with a crew to pick up search lights due to arrive there. Earlier LaMont Bowers wrote to John D. Rockefeller Jr. in New York telling him the mine operators wanted to install search lights to monitor the "trouble makers." Rockefeller replied "this is a mighty fine scheme." The searchlights had a range of five to six miles and they wanted them installed at eight locations including Ludlow. As the mine guards and crew came north on a wagon trial they came alongside a ranch about a half mile south of Ludlow operated by a man named Mark Powell, father of three. A gun battle erupted with strikers along the trail that killed Mark Powell, the bystander. Since no one knew which side killed him, each side blamed the other.

By now public and commercial pressure for the Governor to call out the

National Guard brought a response. He started by consulting General John Chase, notorious for his role as second in command in the 1903 strikes. In his civilian life he was a doctor but now also adjutant general of the Colorado National Guard. Given his long history of opposition to labor organizing it was not surprising he supported the use of troops in a coal mining strike.

State funds were not available to pay for troops. LaMont Bowers arranged for friendly banks to sell bonds to Colorado commercial interests to pay them. He wrote to J. D. Rockefeller in New York to assert "You will be interested to know that we have been able to secure the cooperation of all the bankers in the city, who have had three or four interviews with our little cowboy governor, agreeing to back the state and lend it all the funds necessary to maintain the militia and afford ample protection so that our miners could return to work, or give protection to men who are anxious to come up here from Texas, New Mexico and Kansas, together with some from states farther east." J.D. Rockefeller's reply included "We are with you to the end."

Governor Ammons remained reluctant to authorize troops, but on October 17, officials at the Forbes mine reported "that at about 1 o'clock a few shots were fired from the hills upon the tipple and the mine office." Ten guards at the mine put out a call for reinforcements. Ten deputies arrived from Ludlow, ten deputies came from Trinidad and eight more from Hastings arrived later in the "death special." The mine guards and deputies took positions behind the C&S railroad embankment overlooking Forbes camp in a drenching rain. The deputies claim the strikers put up a white flag signaling a truce and then fired on them when they advanced. Another story had the deputies tie a white handkerchief to an up turned rifle, and announce their wish to confiscate illegal weapons. An attempted parlay failed quite abruptly with gunshots and men running in all directions.

A gun battle followed while women and children ran from the camp toward a stone structure, back from the shooting. Late in the afternoon the "Death Special" moved in and opened fire into the Forbes camp. The Rocky Mountain News reported the man operating the machine gun admitted "about 600 shots were fired in rapid succession from the machine." Bullets riddled the tents and destroyed furniture and belongings. One miner Luke Vahernik was killed from a bullet in the head; nine bullets hit Milka Vanlori in the left leg. The Rocky Mountain News reported "The limb will have to be amputated and he is expected to die." A deputy and another striker were wounded.

Now Governor Ammons decided to visit Trinidad to judge for himself the need for troops. He arrived October 21 to find several thousand strikers, families and supporters there for a parade and rally. Mother Jones led the parade, which ended at the governor's hotel window where she taunted him to come down and speak, but he would not. He departed October 23, but apparently without knowledge that General Chase had already decided to send National Guard Lieutenant Karl E. Linderfelt to Trinidad on an undercover assignment to "investigate" the need for troops. General Chase justified his request to Linderfelt by telling him "The governor is not ready yet," understood as not ready to send troops.

Linderfelt arrived in Trinidad October 23 where he visited Las Animas

county Sheriff James Grisham and received a commission as a deputy sheriff to be paid $5 a day. He directed mine guards assigned to escort strikebreakers to the mines as they arrived at the Ludlow depot. Previously, Linderfelt had a war record fighting in the Philippines and a period fighting in the Mexican Revolution on the Madero side. He would remain in the strike region through the spring of 1914 when he took part in the assault on the Ludlow camp, thereafter known as the Ludlow Massacre. By then he would have earned his reputation described by George West in his CIR report as "belligerent, hot tempered, domineering and brutal."

In the meantime, more gun battles of several days duration followed from an incident at Walsenburg on October 24. Strikers and some residents there had been harassing and taunting a strikebreaker walking to his mine job just west of the village until he decided to move his family to company housing. Sheriff Farr and between 15 and 18 CF&I mine guards with three horse drawn carts arrived to help him move. On lookers along Seventh Street shouted insults and tossed "tin cans and such stuff" as the cart made its way out of town. A large number of children just dismissed from school were in the street and tossed clods of dirt toward the carts. The guards, all armed with rifles and side arms, responded by taking aim and shooting directly at people in the crowds leaving three dead in the street.

Sworn statements of eleven residents entered into the record of the Commission on Industrial Relations (CIR) gave eyewitness accounts. All eleven were present when the shooting started; ten saw the shooter take the first shot and six of those named the shooter, a mine guard they identified as Jess Russell. Other mine guards joined in shooting with eyewitness estimates of 50 shots. No mine guards were killed or injured. No eyewitness saw anyone in the crowds returning gunfire.

In the aftermath both sides expected trouble. Sheriff Farr in Walsenburg feared retaliation and stationed his deputies on the rooftops for the night and called for help from Trinidad. Since the Colorado & Southern RR tracks passes through Ludlow and close to the tents, residents feared another machine gun attack. In the charged atmosphere armed strikers along the tracks near the Ludlow depot exchanged gunfire with Lieutenant Linderfelt and his men on October 25. Linderfelt retreated to Berwind Canyon and called for reinforcements. About sixty arrived, but his combined force could not defeat the strikers during a three hour gun battle. Mine guard John Nimmo died from stomach wounds. Linderfelt suspended fighting and retreated to Berwind Canyon until next morning, October 26, when the fighting renewed. Another mine guard was killed in the shooting and Linderfelt called for more reinforcements. In Trinidad, Sheriff Grisham had already gathered a force of 15 area militia and Albert Felts had 50 mine guards and a 7mm machine gun. They hijacked a northbound train with steel boxcars that arrived near Ludlow to a hail of gunfire around 3:00 in the afternoon. Unable to get off the train, they backed up four miles and took refuge at a mine powerhouse near the village of Tabasco.

The next morning, October 27, strikers attacked their refuge in a blinding

snowstorm. Shots hit the schoolhouse and at least one home where two sleeping children were injured. Militia and mine guards exchanged gunfire with strikers for about half an hour until mine guards trained a fusillade of machine gunfire into the hill sides. The strikers retreated and the shooting ended by noon. Two Greek strikers were killed and a third mine guard before the fighting broke off.

This "Battle of Berwind" brought renewed howling for the National Guard. Before calling out the National Guard Governor Ammons invited newspaper publisher and former Colorado Senator Thomas M. Patterson for help to mediate a settlement. Ammons explained "Before I call out [the National Guard], Senator, I am going to make another strong effort to bring about a settlement, an amicable settlement, and I want you to help me." The next morning Governor Ammons met with Senator Patterson, John P. White, UMW national president, Frank Hayes, national secretary-treasurer, John Lawson, UMW Board member, and John McLennon District 15 president.

Governor Ammons and Senator Patterson met separately with Jesse Welborn and John Osgood to persuade them to negotiate. Senator Patterson said "Gentlemen, I believe a settlement can be reached. The men say that if you will but grant them a conference[.]" They answered 'No we will not hold any conference with them' and they indulged in some very, very bitter language in talking – referring to these men. They said 'they were interlopers, they were intermeddlers, they had no business here, they did not live in the state and then some very bitter names were applied to them that placed the responsibility for the violence that occurred in the south on their shoulders and for that reason they would not meet with them.' I said: Gentlemen I don't think you have a right to regard them as interlopers or intermeddlers; … it is their duty and their right to give advice and to ask for information and if the striking miners wish them to help them it is their duty to help them. 'Well', they said, 'to meet with them would be recognition of the union – practical recognition.' … One of the gentlemen remarked: 'If they came into the room now we would go out. We won't be in the same room with them.' "

As the meeting ended Senator Patterson proposed to prepare a written settlement letter, which the three men agreed to consider. The plan called for the operators to accept and return the letter to Governor Ammons for his signature. The Patterson letter requested for mine operators to follow relevant state laws. First, they would comply with Section 3295 of Colorado statutes of 1908, granting the right of men to organize and belong to unions; second, Section 113 of the Coal Mining Act of 1913 providing for the use of check weighmen; third, Section 6989 of Colorado statutes of 1908 making it unlawful to pay wages with company script; fourth, Chapter 95 of laws of 1913 limiting the hours of employment in all underground mines to 8 hours within any 24 hours. The letter included a proviso that "All employees should have the absolute right, without coercion of any character, to trade at such stores or other places as they see fit, and that they should be left absolutely free to buy whatsoever they desire, wheresoever they will and that all men should have a semi-monthly pay day in accordance with the practice that prevails throughout the state."

The operators would not sign the letter; they claimed it would be "a practical admission that they had been violating the law." (27)

The Troops Arrive, October 28, 1913 ----------After this failure Governor Ammons prepared the documents to call out the National Guard effective October 28, 1913. Governor Ammons accepted a suggestion from Senator Patterson: "I think in preparing this order calling out the troops you should accompany it with an order to Gen. Chase" … that the troops were to be used to protect all property, to protect men then at work, to protect strikers who wished to return to work, … "but under no circumstances should the troops be used to aid in the installation of strikebreakers as distinguished from men who had been at work and the men who might want to return to work." The Governor agreed to the wording and also the suggestion of Senator Patterson that the terms be made public in a press release.

General John Chase arrived with troops they deployed at the mines and at Trinidad and Walsenburg. Strikers and their families in the tent camps had many reasons to doubt there would be impartial treatment. General Chase arrived with the reputation for anti union misconduct. However, he started disarming mine guards as well as sweeping through the tent camps confiscating weapons. He doubted he got all the weapons noting that strikers complied reluctantly.

An attorney from Denver named Philip Van Cise commanded Company K that camped near Ludlow. Ludlow was on the east side of the Colorado & Southern RR tracks and Company K was just over the west side, only a few hundred years to the south west. Again Pearl Jolly testified to the CIR: "When the militia came in there we made them welcome; we thought they were going to treat us right. They were escorted into the camp with a brass band. They attended all our dances. They came down there and took dinner with us two or three evenings, . . . " Captain Van Cise confirmed their arrival at Ludlow depot seemed favorable: We played football with them and seemed to be getting along all right."

The initial civility between strikers and the militia did not last long. The nice "college" men in Company K recruited from Denver asked to be relieved from duty in only a short time. Many had jobs and families to support and especially needed to return home because the state did not have funds to pay them, even though mine operators and other Colorado business interests had pledged to buy bonds for that purpose. The state budget director stalled releasing the funds. General Chase acquiesced in these requests for relief. He allowed mine guards or Baldwin-Felts recruits referred by mine operators to double as troops in the state militia, although paid by the mine operators.

District Attorney John Hendricks, questioned the authority of General Chase to overrule civilian courts soon after the National Guard arrived. General Chase assumed wartime powers to arrest and hold strikers incommunicado as prisoners of war as part of martial law. Hendricks wired Governor Ammons requesting clarification and he documented his request by providing copies of the telegrams placed into the CIR record. On November 12, 1913 he wrote "I request that you advise me by wire immediately if you have declared martial law in Las Animas County." On November 13, the governor answered "General Chase was

directed to adopt all legal methods necessary to restore order and maintain law. Please consult him." Hendricks replied the same day with "Your telegram fails to give the desired information. Have you as Governor proclaimed martial law in Las Animas and Huerfano Counties?" Governor Ammons answered "Referring to your telegram of yesterday. Consult Gen. Chase concerning military status in Las Animas County."

The Governor never declared martial law but Hendricks received an order by telegram from General Chase declaring "You are hereby informed that all persons arrested, incarcerated and held are military prisoners subject to the order of the commanding general." In effect, General Chase made the decision to close the civilian courts by making all arrests military arrests. He directed his Judge advocate, Major Edward J. Boughton, to organize a military commission to settle complaints resulting from arrest and incarceration without charges. Major Boughton was also a private attorney representing the Cripple Creek Mine Owners Association. A man named King had already been charged with assault with intent to kill through the office of D.A. Hendricks, but the mine operators wanted him released and had their attorney, Jesse Northcutt, notify Hendricks the case was dismissed with approval from Major Boughton.

President Wilson's emissary Ethelbert Stewart finally met with LaMont Bowers and CF&I President, Jesse Welborn on October 9, 1913. Neither Bowers nor Welborn would meet, formally or informally, with any union official and would not make any proposal to settle the strike. Bowers claimed 95 percent of miners were happy. He maintained the company had never recognized the union and never would.

Stewart's failed visit prompted President Wilson to write himself. His October 30, 1913 letter to Jesse Welborn described Ethelbert Stewart's assignment "to bring about conferences between the operators and the miners that would lay the basis for a settlement. His efforts were not welcomed or responded to in the spirit in which they were made, and he reports that he has met with complete failure. . . . I now take the liberty of asking from the responsible officers of the Colorado Fuel and Iron Company a full and frank statement of the reasons which have led them to reject counsels of peace and accommodation in a matter now grown so critical."

Both Bowers and Welborn replied to the president; Bowers on November 8, 1913 and Welborn on November 10, 1913 with nearly identical claims. Bowers wrote an eight-page letter where he claimed that miners live in peace and prosperity, and are happy and paid excellent wages, better than any other locality of the United Mine Workers; that he has personally attended to improving conditions of employees in the way of housing, schools, churches, Sunday-schools and the best hospitals known in this part of the country that have salaried surgeons and physicians in every mining village; that scores of people verified that Mother Jones was a woman of the red-light brothels of Denver; that no unjust treatment to our employees by superintendents, bosses, storekeepers or others connected with our company would be tolerated; that 94 percent of their employees voted against a union in a secret ballot election; that Labor Secretary William Wilson

and Ethelbert Stewart are in labor's camp.

In closing he told the President that "I am now over sixty-six years of age, … I began life without a penny, and it has always been an important part of my everyday life to do all that I possibly could for the uplift of mankind. … I repeat, that every advantage enjoyed by union miners has been freely and cheerfully given our miners unasked for, there is nothing but recognition of the union that these disturbers of peace and destroyers of life and property are insisting upon, but there is no possibility of our considering this demand, however great the sacrifice we may be compelled to make."

Assistant Secretary of Labor, Louis Freeland Post asked Ethelbert Steward to verify or contradict the views expressed in the November 8 and November 10 letters. Stewart explained the men and their families were subjected to ceaseless patrolling by armed guards at the mines and in the camps where they lived. Stewart explained the operators called them marshals and the miners called them gunmen. He stated "I can not find it possible with my knowledge of the situation to corroborate any of the statements in Mr. Welborn's letter." . . . "I submit that under a gunman regime, the company does not know whether their men are 10 percent organized, or 80 percent; that under such a system, the sullen worker tells the gunman what he thinks he wants him to say, lies about being satisfied, lies about belonging to the union, lies whenever he says anything about relations to the company." Stewart concluded no statements coming from the company could be relied on as true.

We might expect President Wilson to be angry or threaten action in response to the contempt and defiance in Mr. Bowers reply, and do so regardless of his campaign promises to be the friend of labor. Instead the President answered November 18, 1913: "I do not feel that I can at this distance enter into any questions involved in the strike. I can only say this, that a word from you would bring the strike to an end, as all that is asked is that you agree to arbitration by an unbiased board. This is only a reasonable request, conceived in the spirit of the times. … The question at issue ought to be submitted to some body of men who can make an impartial determination of the case on the merits."

As the strike moved into November, President Wilson's Secretary of Labor William Wilson was able to get Governor Ammons to arrange another conference to negotiate a settlement. Since Ethelbert Stewart could not even get the two sides into the same room, this new conference would be between the three principal mine operators and three individual miners. Governor Ammons would be the moderator for Welborn, Osgood, and Brown and three actual miners: Archie Allison, David Hammon and T.X. Evans. Since the mine operators always maintained they would talk with individual miners but never a labor official they were hard pressed to decline.

The conference was set for November 26, 1913.at 10:00 a.m. John Osgood spoke first to claim the strike was caused by union officials coming into the state to foist the union on the men in the mines. He spoke with contempt for solidarity: "A man who can make more money in mining coal is quietly told not to exert himself, as by his superior skill he will injure some other fellow, and that the

cause of one is the cause of all, and that he should hold himself back a little. We will never be able to build up the civilization that we want, until those ideals are abolished."

The three miners all spoke of a union as a local organization they would manage and utilize day to day, but not something coerced by an outside agitator. They wanted respect for their mining as a skilled craft, but found "The supers get jealous of a good man or intelligent men and what we think is that you people have not got that; you people don't know what is going on and if you people were in closer touch with what is going on at these mines I believe you would change your minds yourself."

The miners did not discuss wages or economic demands but kept going back to the benefits to safety and productivity a union could bring to the operation of the mines. Brown wanted to know if they thought "the Union can enforce the law better than the Governor or the officials in power?" In sum, Allison answered if you would trust us to manage our work we would govern ourselves better than your arbitrary superintendents and without needing state laws that you operators evade anyway.

Toward the end of the meeting that went more than twelve hours, Governor Ammons asked Mr. Allison, what he would say to the striking miners. "In going back to the mine, we, as the men, want the Union to begin with, the pit committees, and the recognition of the Union, you may call it the United Mine Workers of America, but we want the recognition of the Union." Brown declared "And that you will never get."

Governor Ammons decided the miners should settle as long as the mine operators agreed to follow all state mining laws. He made that the basis for a settlement, which the operators readily accepted for the status quo it was. To Ammons union recognition was trivial and should be ignored by the striking miners, which they rejected for the status quo it was. Ammons used the rejection to condemn the striking miners and approve having the operators bring in strikebreakers. Governor Ammons would justify his decision as author of a North American Review article published in July 1914. He wrote the union's refusal to accept his strike settlement proposal forced him to allow Baldwin-Felts guards to escort strikebreakers to the mines. General Chase issued general order No. 17 on November 28 directing an end to the ban.

Senator Patterson testified to the Commission on Industrial Relations: "It seemed to me that the absolute management of the strike territory had been turned over to General Chase. We heard daily of men being arrested and put in jail; we heard that men were being arrested and held incommunicado; that they were denied the visit of friends, the right to consult with counsel, or to do anything else … such as is usually granted to the commonest of criminals." (28)

Investigations----------As December arrived with no progress toward settlement, efforts got underway to investigate and publicize the conduct of the National Guard. In the first, union officials were especially aggravated with General Chase for having his troops arresting people without charges and detaining them

incommunicado in jail cells for days and weeks at a time.

President Wilson wrote again in a letter of December 19, 1913 to LaMont Bowers to express his growing impatience with refusals to negotiate or arbitrate an end the strike. He wrote that since "all attempts at arbitration have failed, a very thorough investigation of the whole matter is necessary for the satisfaction of public opinion and for the clarification of issues between the parties concerned."

Bowers replied by letter of December 29, 1913 in the same snippy and defiant terms as before, claiming that "We are not opposed to arbitration in principle, though we will not consent to arbitrate matters of conscience and morals …" He called the strikers "ignorant, blood-thirsty anarchists" and claimed a thorough investigation would show his miners to be forced out of work by intimidation. He also asserted the strikers had hidden 2,000 rifles in the hills and canyons around Ludlow.

Edward Keating of Colorado submitted a resolution to the U.S. House of Representatives authorizing an investigation. It passed January 27, 1914. Hearings began February 9 and continued periodically until April 23, 1914. It would be known as the Foster Commission, after the name of its chair, Congressman Martin D. Foster of Illinois.

Life in the tent camps required accepting regular searches by contemptuous guards; Mrs. Jolly testified "our tent colony was searched about once a week or more. When they came they would bring axes, picks, shovels and such things with them. They would search in all the little drawers . . . looking for things." . . . "They would take the axes and cut up the floors so that the union would have to buy new lumber in order to rebuild the floors. Our men had to stand for that." Violence tapered off some but encounters between militia troops and tent camp residents occurred through the winter.

Mother Jones returned to Trinidad January 4, 1914 during a relative lull in the action. General Chase immediately arrested and deported her to Denver. Governor Ammons remarked that the commander of the strike region had done the right thing, as three fourths of the strike violence could be blamed on her incendiary utterances." He declared she would be held until she promised to leave Colorado, but she slipped back to Trinidad January 12 and took a room. General Chase had her arrested again and held in the Catholic San Rafael Hospital. General Chase announced "Mother Jones will be kept under military surveillance until she is willing to leave the strike district permanently. Under no other circumstances will she be given her freedom. If she leaves and comes back she will be re-arrested."

The women of Trinidad organized a protest march to San Rafael Hospital, which began as planned, but General Chase arrived with mounted troops to block their advance. A melee ensued "and not until the calvary men, with drawn swords had charged the crowd several times, was the mob dispersed."

In the meantime, UMW attorneys filed for a writ of Habeas Corpus to get her released. The Colorado Supreme Court agreed to hear her case March 16, 1914, but General Chase released her March 15 to avoid possible legal precedent. Back in Denver she blasted Catholic officials as "moral cowards." In a speech she

said, “Right on the ground with that convent those uniformed members drilled every afternoon to learn how to become experts in the shedding of human blood. The military now is turned on the working class and priests and presidents and ministers endorse the crime.”

She left by train for Trinidad March 22, but troops boarded the train and put her in a basement cell in the Huerfano County jail in Walsenburg; a “Military Bastille” previously condemned as unfit for habitation. Another kidnapping and incarceration brought a wave of national protest, but Mother Jones was held as a prisoner until after the Ludlow Massacre soon to occur.

Another investigation got started when Colorado State Senator Helen Ring Robinson learned about Mother Jones arrest. Senator Robinson was in the East at the time to gather information to write legislation for a Colorado Industrial Disputes Act. She testified to the CIR that “My acute interest in the strike was aroused toward the close of my stay East after the incident with Mrs. Jones, generally known as Mother Jones. … She explained “I was constantly interrogated in regard to their holding Mother Jones, so called, incommunicado in Colorado.” . . . “[Q]uestions were constantly put to me, after public meetings, in which I was heckled most unmercifully, as to why the women of Colorado, more particularly, consented to the holding of a women of 82 by the military power of the state without objection , or protest.”

She decided to return and pay a visit to Governor Ammons, which finally occurred March 20, 1914. She reported in CIR testimony the governor would only discuss allegations Mrs. Jones ran a brothel, but remarked to Commissioner Harriman, the only women member of the CIR, “[F]inally in some heat, I told him that I was not at all concerned with the virtue of an 82 year old women, but I was greatly concerned in the rights of habeas corpus; and feeling that there was no particular help there. I left the office and began making preparations to go to the southern coal fields.” Senator Robinson made two trips later in April as we shall see.

In the early winter of 1914 Edwin Brake received repeated claims of miners forced to remain at the mines against their will. On January 30, 1914, three from his staff, Mr. Gross, Mr. Howe and Mr. Mancini returned and got off a train at Ludlow station where they were able to get mine passes from the National Guard major stationed there. They spoke first with Mr. Snodgrass at Delagua and then to Mr. Cameron at Hastings. In his report to Edwin Brake, Eli Gross reported when we explained our mission and asked to speak with miners, Mr. Snodgrass left the room. When he came back he said “Mr. Gross, you will not be permitted to conduct the investigation you contemplate in this camp.” Then “I asked Mr. Snodgrass how he expected to stop us, he said, “I hope you won’t force us to anything unpleasant, you must realize that we have sufficient men here to stop you.” They left and went to Hastings to speak with Mr. Cameron, who told us we “would not be permitted to speak to any workman in that camp or make any sort of an investigation.”

At Forbes camp they were taken to Military headquarters where Lieutenant Olinger explained that no one left the camp without having a pass to show the

armed guard at the gate. A pass had to be obtained from the Superintendent, who did not give passes to anyone in debt to them. They visited two more mines at Tabasco and Berwind but with the same result. Holding people in bondage to force payment of debt defines a practice known far and wide as peonage, an illegal practice everywhere in twentieth century America.

In the meantime a strikebreaker named Neil Smith was found dead along the railroad tracks near Forbes tent camp on March 8, 1914. He was last seen drunk and the wounds he sustained suggested he was struck by a train, an idea confirmed by the train crew. The Forbes mine superintendent decided strikers murdered him and General Chase concurred, which provided the excuse to order the militia to Forbes camp where 16 men were arrested and the camp completely destroyed leaving wives and children without shelter. UMW officials sent a telegram to Governor Ammons "It seems scarcely possible that such outrages can be permitted upon American soil. These tents are our property located upon our land and occupied by striking miners who had been thrown out of company houses. We protest against such inhuman methods and call upon you to stop perpetration of such outrages by military authorities."

Senator Robinson arrived at Trinidad on her investigative mission, April 8, 1914, where she met with Mr. Weitzel at his CF&I Trinidad office. When she was going in the door to Mr. Weitzel's office two militia came out the door. She asked an employee in the building if that happened very often. He said, "Oh yes that happens nearly every day. We call it the military headquarters." She objected to a man drawing pay as militia and pay as a mine guard. Weitzel excused that, explaining "the company was good to people that was good to them and there was no reason why he should turn from these men who had been their employees because the state chose to pay them also."

Senator Robinson told Commissioner Harriman, "The attitude of the men [militia leaders] with whom I spoke was plainly and strongly opposed to organized labor. There was plainly a feeling of bitterness toward the strikers. This was so more particularly because they repeated constantly that the strikers were of such inferior character. One militia told me that if they had been American men, or men of higher intelligence, they would have gone back to work when the militia told them to[.]"

Commissioner Harriman asked her to explain what she thought "were the principal causes of bitterness." Senator Robinson: "A great many of the operators who testified here cherish very firmly what I might call mid-Victorian ideas of the relations of capital and labor, and out of that does grow great bitterness. I found two other causes. One was the question that grows out of our tremendous immigration problem and the question of racial hatred which has developed in America to-day, and below that I found the great bitterness of class hatred, which was fearfully strong in Colorado at that time and particularly in the southern coal fields." . . . "And so I found in my two days of investigation in Trinidad, I found a vortex of mad, swirling hate that I did not know existed in the world until I went down there."

She visited Ludlow camp briefly on her first trip and Commissioner

Harriman asked her to describe the conditions she found there. “I found the people pretty comfortable, and they seemed to be rather happy. You see, the winter was just over and passed, and the spring was coming, and it comes very beautifully among our Colorado mountains, and among the women particularly and many of the children I found that this long winter had brought the nationalities together in a rather remarkable way. I found friendliness among the women of all nationalities – 22 at least – that was certainly an example for some of the rest of us who have lived here a long time. I found among the children a great deal of friendliness and I saw the true melting pot set up at Ludlow.”

On her second trip she visited Ludlow again and also spent time in Walsenburg. When she talked with the men at Ludlow, she explained to Commissioner Harriman “I found a waiting atmosphere. The people at Ludlow had shown me pits in which they were going in case there was an attack by the soldiers and for some reason or other the people believed that such an attack was imminent. I could not see any reason why they should think so, but the feeling was very present there.” (29)

Ludlow, Colorado, April 14, 1914 to April 30, 1914----------On April 14, 1914, Governor Ammons declared an end to National Guard occupation. He had plans to leave for Washington to lobby for mandatory arbitration legislation and ordered all troops to be out by his departure, but then allowed himself to be pressured into leaving Troop B with 34 soldiers positioned near Ludlow at the site now vacated by Company K. Major Patrick Hamrock took charge of Company B.

In Trinidad the withdrawal drew heavy criticism from mine owners and some officers of the National Guard. They met and organized Company A with a veteran of the British army, Captain Edwin Carson, put in command. Comments of Captain Carson recorded by the Foster Commission explained the makeup of Company A as up to 30 mine guards and others “were pit bosses, mine superintendents, mine clerks and the like.” Senator Robinson compiled a full list of the names of Company A to present to Chairman Walsh. She claimed that virtually all these 100 troops were CF&I employees.

On Easter Sunday, April 19, some residents of Ludlow had a baseball game at a field near the depot they used many times before, but Pearl Jolly testified seven militia showed up: “They stood right in the middle of the diamond with their rifles. One of the men asked if they would please get out of the diamond.” Taunts were traded until one of the soldiers got the last word: “That is all right, girlie, you have your big Sunday today, but we will have the roast tomorrow.” Others present confirmed the statement.

On Easter Monday April 20, Ludlow’s Greek immigrants, the single men, were up early and in a group singing to the music of a mandolin. They were not pleased to see men from the day before enter the camp demanding to investigate a claim made to Lieutenant Linderfelt that a man was being held in Ludlow against his will. Louis Tikas, in charge at that time, told them the man was not at Ludlow and questioned their threat to return by noon to search the camp following the Governor’s announcement to end troop occupation.

The soldiers left but soon Major Hamrock telephoned Tikas to arrange a meeting. They met at Ludlow depot. Tikas arrived to hear Major Hamrock ordering Company B to assemble at a point known as Water Tank hill overlooking Ludlow. [The water tank was a pubic source of water.] Tikas ran from the depot toward Ludlow tent camp waving a white handkerchief as many reported later. The Colorado & Southern RR depot agent, Harry Farber, saw Tikas running toward the camp and asked Major Hamrock "What seems to be going on?" Hamrock answered "I am awfully afraid there is going to be something doing?" In CIR testimony Farber explained he looked east from the depot and saw 20 to 25 of the Greeks running in a south-east direction across an open field toward an arroyo [ditch, depression or cut] east and south of Ludlow depot. At roughly the same moments he saw eight to ten troops arrive on horseback from their militia camp just west of the depot and gallop south down the wagon road to Water Tank hill.

Farber explained before he heard any shots fired that two dynamite bombs exploded. Chairman Walsh asked "Now, after you heard the two bombs go off, could you tell where and when the next firing commenced; where it came from?"

> Farber: "I couldn't tell exactly, . . . it appeared to me from the sound and things just about instantaneously from both sides, although I couldn't say as to which side fired the first shot after the two bombs were fired."

The Colorado & Southern RR needed water for steam locomotives and so employed a man to maintain a well, a boiler and a pump house at a site up the tracks about a half mile north of the depot and about 200 yards past the Ludlow camp. Mr. M. G. Low operated the facility and lived in a house provided for him and his family. He was present when he heard the dynamite bombs explode.

Chairman Walsh: "Did you hear any shot before that bomb exploded?"

Mr. Low: "No, sir; not before the bomb exploded."

He answered further that he was in the boiler room and stepped outside to see smoke and dust floating to the west near the former site of Company K. He stepped inside but in three or four minutes he heard a second explosion. "[A]nd then I went to the door and looked out, and they were running from the tent colony in all directions. Women were coming toward my place and toward the arroyo and scattering out." He was now holding his frightened six year old daughter near the boiler house "and I heard a rifle discharged, and it must have been a minute afterwards when there was a general volley all along Water Tank hill. The shots were coming from that direction; several went through the top of my building. They went high. There were 109 bullets hit the boiler house and the house I lived in; 7 hit the head of the boiler and 2 went through and penetrated the boiler."

Mr. Low testified that 70 to 75 women and children arrived at his house by around a quarter past 10:00 a.m. The well had a diameter of 22 feet and a catwalk to descend. He explained "The steps down into the well were very unsafe and kind of rotten, and I said to them 'Be careful going down these steps you might as well be shot as drown.' The well was nearly 100 feet deep. And I got them quiet

and they all went down in the well." Others took refuge in a Barn on the same property while others bailed out of the camp in a westerly direction and made it to Bayes Ranch, about a mile away. Others went east toward an area known as the black hills.

The Greek strikers took positions east of the depot, hoping to draw fire away from the tents that could not be protected sitting in an open field. Greeks and others from Ludlow camp took positions in a second arroyo behind the tent camp. They had the camp's fire arms and what ammunition they could carry. Only four men are known to have remained in the camp. Louis Tikas, was one; John Fyler, the camp secretary and paymaster another. No shots were fired from the tent camp.

Mothers with infants and small children that could not make it out of the camp were forced to find cover or enter the below ground pits. Mrs. Clorinda Padilla explained in sworn testimony. "About 9 o'clock I heard two signal shots fired and about five minutes after they started firing with the machine guns, shooting to the colony at Ludlow and then I got my four children in the hole we had made under the tent and we stayed there in the hole without food and water until 11 o'clock at night. They were shooting all day long never stopped a minute."

Mrs. Ed Tonner testified "At about 10 o'clock I was in my front room tent sweeping and I heard the two bombs fired, and I started grabbing my five children, and to throw them into a cave right under my front tent, and I stayed there until about 8 at night. All this time from about 10 in the morning until 8 at night the machine guns were going. … My tent was so full of holes it was like lace, pretty near."

Lieutenant Linderfelt was no longer a part of Company B and not supposed to be in the strike zone at all, much less take over an assault on the tent camp. He happened to be close, claiming to visit family and friends at nearby Hastings. Commissioner Walsh asked Harry Farber what he knew about his arrival and activity after the strike started. He testified that he first saw Linderfelt come back down the wagon road from Water Tank hill with 12 or 15 men shooting as they came.

> Chairman Walsh: "Did Lieut. Linderfelt get into the depot on that day?"
>
> Farber: "He was there practically all day after he – I should think when he reached there about 10:30 or 10 o'clock – in between there, in between 10 and 10:30 – he was there until in the evening about 6 o'clock."

Linderfelt had men shooting from inside and outside the depot, but did not advance on the tent colony while waiting on Company A to arrive with reinforcements. They got off a train from Trinidad about a mile south and over 100 arrived at the depot on foot about 4:30 p.m. They brought thousands of rounds of ammunition. Linderfelt had them advance northward up the tracks.

For the next several hours troops firing from Water Tank hill with a machine gun and troops along the tracks arrayed north from Ludlow depot maintained a steady fire into the tent camp; they fired at strikers in the arroyos east of the

depot and north of the tent camp. For strikers and residents now outnumbered and outgunned with ammunition running low, the situation was desperate, but got worse when around 6:00 p.m. a fire started in tent number 1 on the southwest corner of the tent camp.

Margaret Dominiske was in Mr. Low's Barn with her three children when she and others got word a tent was burning. She looked out to see the burning tent of Mary Petrucci and her three children ages four, two and six months. She had been there below ground all day, but when her tent started to burn she was able to get to a tent behind hers with another large below ground cave. There were three women and eight children already in the space below; Mary Petrucci and her three children brought the total to four women and eleven children.

The shooting and fire spreading through the shell shocked camp would have raised the death toll, but a 36 car freight train pulled into Ludlow and stopped blocking the troop's firing line, allowing many more to escape in a rush toward farms and farm houses east of Ludlow; some made it west to Bayes Ranch. The train had a five-man crew and two of them made sworn testimony to district attorney John Hendricks entered in the CIR record: conductor John Harriman, freight brakeman A.J. Riley. Both testified their train pulled into Ludlow heading south and both saw burning tents in the southwest corner of Ludlow and Mr. Riley saw troops spreading the fires.

> Mr. Hendricks questioned Mr. Riley about the train stopping at Ludlow: You came through the town of Ludlow?
>
> Mr. Riley: Yes sir.
>
> Mr. Hendricks: On what part of the train were you on?
>
> Mr. Riley: On the Engine.
>
> Mr. Hendricks: Your train stopped there?
>
> Mr. Riley: Yes sir.
>
> Mr. Hendricks: For what occasion?
>
> Mr. Riley: We had to let the passenger train pass us there. I saw the tents blazing, two of them. Then I saw a man in a military uniform touch a blaze to a third tent.
>
> Mr. Hendricks: Repeat that. I didn't hear you.
>
> Mr. Riley: I saw a man in uniform touch a blaze to the third tent; this was at 7:05 p.m.
>
> Mr. Hendricks: How many men did you see there?
>
> Mr. Riley: I judge there were about 100 strung out there from the arroyo up to the pump house to about to No. 2 switch in the yards.

Mr. Hendricks: What if anything was said to the armed men there?

Mr. Riley: Yes sir. [sic]

Mr. Hendricks: What was said?

Mr. Riley: Ten or fifteen stuck their guns in our faces and told us to move on and be damn quick about it or they would shoot us.

Mr. Hendricks: Did you say anything to these men?

Mr. Riley: No sir, not a word.

Resistance ceased and the troops advanced into Ludlow camp and took it over, permitting at least a hundred men to rampage through the camp looting and setting fire to other tents. No one including Mary Petrucci could say how her tent fire started, but recorded testimony establishes the fire was deliberately spread as part of a premeditated plan to destroy the camp.

As the invading troops spread out, they found and captured Louis Tikas. He was unarmed and brought to a point near the southwest corner of the tents and forced to confront Lieutenant Linderfelt with a large crowd of armed troops standing close around. Linderfelt later admitted he hit Tikas over the head hard enough to break the stock of his Springfield rifle and open a large gash. Whether Tikas was conscious or unconscious as a result of the blow remains in doubt, but the doctor that examined his body and testified at the coroners hearing found three entry wounds through his back and two exit wounds. John Fyler was also assassinated as was a third man, John Bartoloti, both killed from two bullet wounds.

In the CIR hearings a member wanted to have Linderfelt explain his actions toward Louis Tikas. Chairman Walsh: “I am asked to ask if a soldier is justified in striking a prisoner for calling him a vile or improper name?”

Lieutenant Linderfelt: “Anyone is justified in it, whether he is a lawyer or soldier; it is a personal matter. When a man says that to me it means something. I never use it unless I wish to fight and wish to insult a man beyond anything else; then I use a word of that kind.”

I did not find the “word” in the archival testimony but it hardly matters. Real soldiers do not conduct personal matters or beat prisoners, which National Guard protocol prohibits. Tikas certainly heard the hate filled soldiers around him shouting to lynch him and with the ready means to do so. Whatever Tikas said there, it came from someone who knew his fate.

Mary Petrucci survived the night and testified about it before CIR Chairman Walsh.

Chairman Walsh: Were you unconscious all night?

Mrs. Petrucci: Yes, sir, until the next morning at half past five.

Chairman Walsh: What was your first consciousness the next morning?

Mrs. Petrucci: As soon as I came out I went to my barrel for a drink of water. I was so suffocated, and then I happened to look back and there were five or six more tents that were not burned, and when I was going to the depot there were guards coming down and I was looking back for fear they would shoot me.

Mrs. Petrucci made it to the depot as did a second survivor of the four mothers in the cave, Mrs. Patregon. The post mistress bought them train tickets to Trinidad. Mary Petrucci spent nine days in a bed with pneumonia, but did not learn what happened to her three children or that two mothers and eleven children suffocated during the night.

The soldiers continued to reign in Ludlow Tuesday morning and for several days afterward. None of them bothered to look for survivors or bodies; the dead remained unknown for several days. Louis Tikas and John Fyler remained on the ground where they died for several days until C & S crews complained. The troops busied themselves looting and burning the remaining tents until the camp was a complete ruin with all belongings stolen or destroyed. The machine gunners on Water Tank hill remained there and riddled Frank Bayes house early Tuesday morning. He and his family and some Ludlow refugees including Pearl Jolly survived the night there, but quickly departed to a safer place five miles west. When the Bayes returned their house had been vandalized and looted and the looters left a calling card, reportedly initialed with BF & CNG. It read "This is what you get for harboring strikers. Keep it up and we'll get you." The Water Tank machine gunners fired on a horse drawn cart coming north from Trinidad with caskets. No one was killed but it had to turn back.

In the canyons and hills around the mines, enraged strikers planned for revenge. John Lawson and John McLennan put out a call for union men to join their UMW brothers and bring arms and ammunition. They made no secret of their intentions and many answered the call. They assembled in a deserted area near Trinidad. By Wednesday, April 22 an armed force took control of an area that included Ludlow, Delagua and Hastings on the south and all the mines running north, almost half way to Walsenburg. The men paid a visit to seven mines where they burned and destroyed the mine buildings and attacked any mine guards willing to resist. At Delagua 12 or 15 mine guards failed to defend against 150 or 160 attackers. Three mine guards were killed.

At Empire the mine superintendent and employees and families including children were able to reach safety in the mine while six mine guards defended. Their attackers dropped dynamite bombs into the mine's airshaft trapping over thirty people, where they remained for several days before they could be rescued. The mine superintendent took a bullet in the chest and the mine guards killed three of their attackers.

Governor Ammons remained in Washington while his Lieutenant Governor Stephen Fitzgerald tried to cope with demands to recall the troops. General Chase boasted he could get 600 troops, but many refused, citing rumors of dynamiting

trains; all wanted back pay. Major Hamrock was still in Ludlow with a machine gun and as many as a hundred men, but he was now surrounded by armed strikers with bandoleers full of ammunition happy to kill them all. An angry crowd jeered as 362 soldiers left Denver on Thursday, April 23. The troops got off the train in Walsenburg, but General Chase found the attacking miners using the hit and run tactics employed by guerrilla fighters the world over. When the troops arrived to liberate the Empire mine, the attackers were long gone and planning attacks elsewhere.

As Governor Ammons headed back from Washington, he passed up another opportunity to demand arbitration and instead wrung his hands, worried about the budget and the money to pay the still unpaid troops. He arrived in Denver Saturday, April 25th when thousands converged on the capital grounds to protest the militia killing mothers and children. It was also the day Governor Ammons wired President Wilson to request federal troops; "Conditions in this state compel me to request of you that federal troops be sent immediately into the State of Colorado." President Wilson responded later the same day: "I cannot conceive of the authority of the State of Colorado being ineffective and earnestly suggest that renewed effort be made to prevent hostile action on either side or any action that might provoke hostility."

In the meantime the President tried to mediate without sending troops. He asked Congressman Foster to return to Colorado to mediate the strike. Before he left the President arranged for Congressman Foster to meet with John D. Rockefeller Jr. "in the interests of a peaceful and humane settlement." The meeting took place Monday April 27, 1914, after which Mr. Rockefeller put his refusal to arbitrate in a letter to the President: "Dr. Foster was unable to make any suggestion which did not involve the unionizing of the mines or the submission of that question to arbitration. We stated to him that if the employees of the CF&I company had any grievances, we felt sure that the officers of the company would be willing now, as they always have been, to make every effort to adjust them satisfactorily, but that the question of the open shop, namely, the right of every citizen to work on terms satisfactory to himself without securing consent of the union, we regarded as a question of principle which could not be arbitrated."

In his response of April 29, the president wrote "It seemed to me a great opportunity for some large action which would show the way not only in this case but in many others." The president consulted his Secretary of War Lindley Miller Garrison to find a constitutional justification to send troops, which he did in a long memo of April 28. Secretary Garrison mentioned "The more embarrassing questions arise out of the presence on the ground of the militia of the state which by all of the testimony furnished you, provoke, rather than allay disorder." Given the record of General Chase, he suggested the president require removing the state militia before the federal troops arrived, which he did.

Rebelling miners continued attacking and destroying mines during negotiations. Attacks were on mines well away from Ludlow such as the Chandler mine near Canon City where a few defenders did not stay long and the attackers left the property burned and completely destroyed including offices and equipment.

They attacked the Hecla mine and Vulcan mine both near Louisville well north of Denver. They attacked the McNally mine near Walsenburg on Monday April 27 where shooting went on for two days.

The attack on Forbes camp on Wednesday, April 29 displayed a strong zeal for vengeance. Estimates range from 150 to 300 attackers, many of them Greek, converging on Forbes camp defended by 16 or 18 strikebreaking miners and the mine superintendent. Forbes mine and the village was in a canyon and attackers took positions above the camp on both sides while the others advanced from the southern end shooting and burning everything in their path. They left Forbes village and all mine structures a charred and burned ruin; nine defenders were killed in the Forbes attack.

Up at Walsenburg near the Walsen mine, the battle continued with both sides on the ridges near the mine. In Denver, General Chase and UMW attorney Horace Hawkins tried to negotiate a cease fire by telephone and messenger. They hoped to persuade the Guerrilla forces to halt the battle they were clearly winning against an inept General Veerdeckburg, a subordinate of General Chase going back to the 1903 strikes. General Chase threatened to use artillery unless they broke off the battle and left. The fight continued until the next morning, April 30, when some of the federal troops arrived at Canon City nearby and the attackers left. (30)

The Aftermath----------Federal troops arrived that ended the fighting but the strike continued. The thousands of protestors that converged on the capital on April 25 included as many as a thousand women of the Women's Peace Association. George Creel and Upton Sinclair condemned the assassins in the bluntest terms. A juvenile judge named Ben Lindsey organized a cross country march with some of the surviving Ludlow women including Pearl Jolly and Mary Hannah Thomas. They arrived in New York and staged an indoor rally where speakers condemned John D. Rockefeller Jr. in blunt terms.

The mine operators continued mining with strikebreakers. Congressman Foster could not persuade them to mediate or arbitrate. Governor Ammons and the Colorado state legislature arranged for the sale of more state bonds to pay the unpaid troops, but did not take a position on the strike, or how to end it. The legislature adjourned in mid-May, happy to let the federal government pay for an army of occupation.

In Washington news of the adjournment upset Secretary of War Lindley Garrison. He advised President Wilson to object. In a letter of May 16, 1914, the President wrote "Am disturbed to hear of the probability of the adjournment of your legislature and feel bound to remind you that my constitutional obligations with regard to the maintenance of order in Colorado are not to be indefinitely continued by the inaction of the state legislature. … I cannot conceive that the state is willing to forego her sovereignty or to throw herself entirely upon the Government of the United States and I am quite clear that she has no constitutional right to do so when it is within the power of her legislature to take effective action."

Governor Ammons wrote back the same day "I regret exceedingly you

have been misinformed." His reply was the first in a string of back and forth exchanges allowing him to stall and formulate excuses to dupe the President into leaving federal troops in Colorado. The mine operators and their legal counsel feared a return to guerrilla warfare. Governor Ammons still had the opportunity to demand arbitration, but continued to function on behalf of the mine operators.

In Denver the cynical LaMont Bowers recognized the protest as short term ventilating that would pass. He was right, the protestors did not have resources or an established institution to unify the protest and keep it going, as they never do. The press was quite willing to report the corporate view and so the aftermath turned into an aggressive campaign to restore their public image. In the immediate aftermath of killing and burning, the public did not just condemn Rockefeller, he was the first and easiest target, but the opinion of Colorado took a plunge as did Governor Ammons, the mine operators, and the Colorado National Guard.

Judge Advocate Boughton had little trouble organizing an official board of inquiry to reverse the public perception that guard troops were deliberately and gratuitously violent. Governor Ammons agreed to have General Chase appoint Boughton, Captain Philip S. Van Cise, and Major William C. Danks. Hearings began April 25 and were completed within a month; a 29-page report entitled Ludlow followed. The testimony that provided the basis for the report was secret testimony made in private and without cross examination or the ability to question the National Guard.

Their Ludlow Report exonerates the National Guard of all misconduct. The intention to deceive the public with the Report cannot be disguised, as much for the excuses it makes as for any twisting of facts. It excuses assassinating Louis Tikas because they assert he was a prisoner of war running away and they had to shoot him in the back. It admits the looting and burning of the tent camp, but blames that on the untrained men of Company A, who were not Guard troops. They excused machine gunning the tents, by claiming they waited until afternoon when they thought women and children had left the camp.

The Report characterized Lieutenant Linderfelt as "tactless" but made him a hero. After invading the camp and claiming surprise to find women and children, he did not shoot them, but that fact allowed them to make the claim he saved them from the burning tents. I quote from the Report: "We find that the work of rescuing these women and children, to the number of some twenty five or thirty, by Lieutenant Linderfelt, Captain Carson, and the squads at their command, was under all the circumstances, truly heroic[.]" Grist for good propaganda in a public relations campaign to exonerate the National Guard.

Those drafting the report made themselves an all-knowing authority by taking the liberty to describe the internal workings and social structure of the camp, except they called it a colony and the residents there, colonists. They offered their view of social relations:

> "The tent colony population is almost wholly foreign and without conception of our government. A large percentage are unassimilable aliens to whom liberty means license, and among whom has lately been spread

by those to whom they must look for guidance a dangerous doctrine of property. Rabid agitators had assured these people that when the soldiers left they were at liberty to take for their own. and by force of arms, the coal mines of their former employers. They have been sitting in their tents for weeks awaiting the departure of the soldiers and the day when they could seize what they have been told is theirs."

The corporate mine operators used their influence to define miners as lower class enemies of the public. That the residents of the camps were Caucasians recruited from Europe to be the miner's cheap labor while being told of good wages and working conditions, helps clarify racial discrimination as a subset of America's larger class warfare.

The next step in the public relations campaign to absolve the National Guard of misconduct took place with faux court martial proceedings at a rifle range in Golden, Colorado. In two weeks of ex parte proceedings, twelve men, ten of them officers including Major Hammock, were tried for murder, arson, manslaughter and looting without cross examination of witnesses and with everyone acquitted, almost. Since Linderfelt had admitted hitting Tikas with the stock of his rifle the court found him guilty of committing assault but the court "attaches no criminality thereto."

As the board of officers and court martial trials moved along Major Boughton arrived at 26 Broadway in New York for a public relations campaign. He had a letter of introduction from LaMont Bowers helping him arrange meetings with members of the CFI board and Rockefeller Foundation. As an emissary for Governor Ammons and the mine operators, he hoped to find officials ready to help promote their version of the strike in a pubic relation's campaign. JDR Jr. liked the idea, as they suspected he would, since he found the personal attacks quite wearing and unpleasant. The Rockefeller officials suggested he contact Ivy Leadbetter Lee, an experienced public relations campaigner.

The plan that developed from this collaboration called for Ivy Lee to draft a statement as a letter sent to "every newspaper in the country." It would be sent over Governor Ammons' signature and entitled "To the American People." Major Boughton provided Mr. Lee with the letters back and forth from Denver. He also had the phrases and conclusions from the Ludlow Report and court martial acquittals.

The Colorado government collaborated with corporate America to fund and carry out this public relations campaign to debase the strikers and make them responsible for the violence in Colorado, but there were other reprisals. Colorado Attorney General Fred Farrar organized a grand jury in the district court in Trinidad. Sheriff James Grisham selected the jury of three CF&I employees, three former deputy sheriffs and six merchants doing business with CF&I. On August 29, 1914 the grand jury indicted 124 UMW members and supporters; there would be more indictments later. UMW board member John Lawson was indicted for murder in the death of John Nimmo from the battle of Berwind back in October 1913, but without evidence. Arrests followed along with attempts to

secure testimony against the accused. Trials brought some convictions including John Lawson, but the cases dragged on with appeals and motions for new trials. After Fred Farrar was defeated for reelection in 1917, pending indictments were dropped and convictions overturned. It was politics all the way.

August 1914 brought another round of letters between Woodrow Wilson and Elias Ammons. On August 21, 1914 President Wilson wrote to Governor Ammons pleading for clearance to withdraw federal troops. On August 25, 1914 Ammons wrote back with another list of excuses why he could not.

In the meantime President Wilson had appointed two investigators to study the strike evidence and draft another settlement proposal. They were Hywel Davies, president of the Kentucky Mine Operators Association and W.R. Fairley a former member of the UMW executive board. On September 5, 1914 President Wilson submitted their plan to the three dominant Colorado mine operators and to national UMW president John P. White. They labeled the plan a truce to last three years to avoid calling it a contract.

The truce called for the mine operators to follow current mining law and reinstate miners not guilty of a crime. Intimidation of union or non-union miners would be strictly prohibited. There would be no increase in wages for the three years and no striking, picketing, parading, colonizing, i.e. tent camps, or mass campaigning by a labor organization.

Davies and Fairly included a multi step grievance procedure to have a grievance committee selected by majority vote of miners with six months of seniority. If a settlement of grievances could not be negotiated the dispute would go before a three person commission appointed by the President with one candidate from management, one from labor and one to be the president's choice. A commission decision would be binding. The proposed truce strictly avoided using the word arbitration, as an appeasement to the mine operators.

John P. White, National UMW president, accepted the proposal in a letter to Woodrow Wilson of September 14, and the union voted to accept it in a meeting in Trinidad on September 15, even though they got next to nothing and a weak grievance procedure. The big three mine operators and their 48 smaller ones turned the truce down cold. Osgood and Brown wrote angry letters denouncing organized labor; arbitration compromised their insistence for absolute, unadulterated authority to make all decisions without any interference from any source; no alternative source of authority could be allowed to challenge them.

President Wilson declined the AFL suggestion to take over the mines or close them instead of having federal forces there to protect the mine operators in their defiance. He received another letter from Governor Ammons on November 6, 1914, apparently realizing the president might be persuaded to withdraw troops. His letter started with "Supplementary to my letter of sometime ago in relation to the withdrawal of troops. Many strikers are rebellious and will cause trouble if federal troops leave." Then on November 19, the President got another letter from Governor Ammons in which he believed he could shortly begin the slow process of withdrawing the troops, but added a proviso. "One problem to which I wish to call your attention is the condition where the mine owners and their guards have

been disarmed, whereas the strikers still retain their guns, hidden handy enough to be available at any time."

Nothing in the archives suggest the President believed this latest blather, but rather than do anything, he went ahead and appointed the members of his truce commission, an empty gesture if ever there was one. The UMW had paid for everything: the tents, board, lawyers, hospital bills, but with their treasury close to empty and with no allies at all, union officials decided discretion forced them to cut off strike benefits and so end the strike. The miners went along and voted to end the strike December 7, 1914, knowing they would have to leave the area. President Wilson finally pulled out the federal troops January 10, 1915.

The Rockefellers ----------JDR Jr. always refused to accept any responsibility for the Ludlow massacre, claiming he knew nothing about the troubles in Colorado. Few accepted his excuse but the public attacks hurt his feelings and his self-image. Since he fancied himself a civic minded philanthropist serving humanity, he needed to change his public image. By the fall of 1914 Rockefeller was consulting with Canadian William Lyon Mackenzie King as a personal advisor and employed him to study CF&I labor relations and suggest solutions to his problems.

The more worldly King tutored the rich and isolated Rockefeller over a number of years. After he and LaMont Bowers and the mine operators defeated the strikers, King convinced Rockefeller to fire Bowers and adopt reforms they called the Employee Representation Plan written by King and Rockefeller. The Employee Representation Plan defined a constitution of employee rights in which the company agreed to abide by federal and state law, to post its work rules and its wage scale in U.S. currency, to allow employee meetings on company property, to permit employees to shop anywhere they wanted, to permit employees to appoint checkers to weigh coal, and to establish a grievance procedure with an appeals process. At the urging of King, Colorado Fuel & Iron Company agreed not to fire or otherwise discriminate against employees who wanted to join a union. John D. Rockefeller Jr. became the national advocate for employee representation plans. He spoke many times at public conferences, before Congress and to business groups promoting its use.

The Employee Representation Plan was a big improvement over the bitter hatred of mine operators like LaMont Bowers, Jesse Welborn and John Osgood, but it has no place for a union. It does not require a company to recognize or bargain with any union their employees might want to represent them. A company still hires and fires at their sole discretion and so the representative plan maintained the open shop. Nearly everyone but Rockefeller recognized the plan as a company union that conceded nothing more than a willingness to obey the law and speak to employees. Even so it makes Rockefeller the liberal outsider from New York compared with the class hatred and authoritarian brutality carried out in Colorado.

Both Governor Ammons and President Wilson solicited and got the labor vote in the 1912 elections, pledging to be the friends of labor. Governor Ammons could not cope with corporate Colorado in the many in-person meetings he agreed

to have. He could not bring himself to force arbitration and eventually became the apologist for the mine operators. President Wilson wrote letter after letter for over a year pleading with LaMont Bowers to allow arbitration. UMW officials told him he would have to use his leverage to close the mines and if necessary take over the property, but Wilson convinced himself he did not have the authority. In Colorado he would not use his leverage over federal troops to force arbitration. He worried it was unconstitutional, but he would not remove federal troops from Colorado knowing their presence was unconstitutional; a two sided failure.

The mine operators of southern Colorado had a period of years with unchecked ruling power they could have used as leaders in the larger society. Instead they would not allow the miners to quit work or leave them alone to be strikers. They went beyond merely exploiting the working class to enforcing their authoritarian demands with violent and ultimately deadly reprisals for those who refused to obey, or refused obedience to their claims of inalienable authority as members of the upper class.

The Colorado strike of 1913-14 turned into warfare fought on both sides by members of the working class. Over the nine months of battles 37 men died fighting for the management side; 20 men died for the union side; 18 died as bystanders including the 13 women and children killed during the Ludlow massacre. The 37 mine guards and strikebreakers killed fighting for management had no apparent stake in the outcome, except their pitiful working class jobs like the strikers. No sign in the record suggests any of them recognized common cause with the strikers as members of the working class. (31)

Joe Hill

Joe Hill was shot dead by a firing squad in the yard of the Utah State Prison November 19, 1915. All that worked on the farms and in the mining and lumber camps through out the west knew him as the minstrel of the working class. His lyrics and music made him a celebrity, but he remained as poor and destitute as the people who admired him. The chance circumstance that brought his execution made him a powerful symbol of anger and isolation among the working class, as his story still does today.

Joe Hill was born Joel Hillstrom in Gavle, Sweden in 1879, the fourth of nine children. Family life included lots of music around a pump organ and Joe's father found him a violin at a young age. When he was older he was quoted saying "When you know how to play music you can never be lonesome." Joe's father was killed in a railroad accident when he was seven. The family he left behind lived a meager existence where food was sometimes a luxury they could not afford. Otherwise he attended several years of school but found it necessary to work to contribute support to the family. Work at a rope factory came before a bout with tuberculosis. He recovered during a long convalescence and drifted among a variety of low paid jobs until his mother died January 1902 after months of illness.

The six surviving children sold the family property and went their separate ways. Joe and a brother came to the United States, but split up with Joe going

west to look for work. Working in the United States turned out to be as grim and difficult as it was in Sweden. He worked sporadically doing odd jobs around the docks in San Pedro, but rode the rails up and down the west coast as far north as the Fraser River in British Columbia and down into Mexico on the south. He was probably at some of the Free Speech fights, but written evidence in news accounts or arrest records make it hard to know. Those jailed often gave false names.

All this time he was writing poetry, lyrics and music for song after song after song, many as musical parodies: Mr. Block, the Preacher and the Slave, Nearer My Job to Thee and Coffee An'. What he wrote was published in labor journals and sung at union gatherings, strikes and in jail cells all over the west. His lyrics brought expression to the daily struggle of low paid immigrants working in the mines, mills and factories.

By 1913 he was well known and revered in the IWW, but it had little benefit for his daily life. He lived in a meager shack in San Pedro where the police harassed him and where he spent 30 days in jail on a charge of vagrancy. Several friends on the San Pedro docks invited him to come to live in Salt Lake City with their extended family in a modest house. He was there on January 10, 1914. (32)

On that Saturday at 9:45 in the evening John Morrison, and his sons Arling, age 17, and Merlin, age 13, were cleaning up and getting ready to close their grocery store. Two men entered wearing bandanas to cover their faces. One shouted "We've got you now" as they opened fire with colt 38 revolvers. One shot hit John Morrison in the chest, a second bullet went into the wall behind him. Arling was on the left side of the long narrow store where he grabbed a colt 38 from on top of an ice chest. As he attempted to shoot, the gunmen fired three shots hitting him in the back and killing him. Merlin called the police. No money was taken; it was not a robbery.

John Morrison was a former Salt Lake City police officer who spoke to many others including a newspaper reporter about his time as a police officer, previous armed robberies at his grocery store, and his concern for the potential danger from revenge.

Police arrested a suspect with a long string of arrests, convictions and prison time. They knew he was in the area at the time of the crime and thought he might be on a vendetta after Morrison wounded a robber in a robbery just four months before.

There were several pedestrians and neighbors who reported seeing a man leaving the area bent over and apparently wounded. Police accounts indicate the suspect was in police custody for a short time. Police released him after he convinced them he had not been involved in the Morrison murder, or possibly after a bribe. Then he was turned over to the sheriff in Elko County, Nevada where he was wanted for stealing from railroad freight cars.

Later on the same evening Joe Hill made his way to the office of Dr. Frank McHugh. He had a gunshot wound in the chest that missed his heart by less than an inch. The doctor treated the wound and asked how he was shot. Hill said "I got into a stew with a friend of mine. I knocked him down, but he got up and pulled a gun on me and shot me. I was as much to blame as the other guy and I want

nothing said about it."

During the next four days the doctor heard about the Morrison shooting and also of a $500 reward for information about the crime. He notified police that Hill should be a suspect. When he went to check on his patient on Tuesday January 13th Hill rested on a cot in the same house and room where he lived with his "friend," Otto Applequist, who shot him. The Doctor administered a dose of morphine, which put Hill in a groggy stupor when three police arrived the next afternoon with guns drawn to arrest him. Police fired on him at point blank range, claiming he was going for a gun, even though he was unarmed. The bullet went through his right hand. The next day Hill quipped "The only thing that saved my life was the officer's inefficiency with firearms."

Otto Applequist disappeared, possibly suspecting he might be charged as the second man. He was never seen again. Police had Hill and his IWW Red Card and never looked for another suspect. (33)

Hill went through a preliminary hearing January 28, 1914 and then endured a trial that started June 17, 1914. He was sentenced to death July 8, 1914 for an execution to take place September 4, 1914. Execution was put off to hear a motion for a new trial, which was denied. Appeal was taken before the Utah Supreme Court, which unanimously affirmed the lower court on July 3, 1915. He was sentenced again August 2, 1915 when he was scheduled for execution October 1, 1915. He appeared before the Utah Board of Pardons September 18, 1915. They denied any relief: a new trial, pardon, commutation, or life in prison.

All during the trial and the months afterwards opposition to Hill's conviction and execution turned into a national campaign. Tens of thousands of letters poured into the governor of Utah. Labor newspapers and journals published opposition letters. Organized labor raised money and arranged his legal defense. As the October 1 date for execution approached the Swedish Ambassador asked for a stay pending an investigation, but Utah Governor William Spry brushed him off.

Hill's supporters were able to arrange a meeting with President Wilson who wrote a letter to Governor Spry requesting a stay. Under pressure from the President, Governor Spry agreed to delay. Another appearance before the same Board of Pardons October 16th changed nothing. He was sentenced to death again, but there would be another month of angry resistance and a second written appeal by President Wilson before Joe Hill's execution November 19, 1915. (34)

Hill did not have an attorney at his preliminary hearing but attorney Ernest MacDougall came by his jail cell and volunteered to represent him at the trial. "Seeing that the proposition was in perfect harmony with my bankroll, I accepted his offer." A co-counsel Frank Scott joined MacDougall.

The abuses at Hill's June trial started with jury selection when Judge Morris Ritchie got angry with Hill's defense counsel for taking too much time interviewing potential jurors. He intervened to place three jurors just released from a previous trial on Hill's jury. Hill complained to his counsel they "were never subpoenaed for the case but were just simply appointed by the court." One was a friend who served with the Judge on the board of a fraternal lodge known as the Utah Society of the Sons of the American Revolution. He was the

jury foreman. The judge and the prosecutor were also friends, serving on boards together and both members of the same social clubs.

Neither Merlin Morrison, nor any other state witness that testified said they saw Hill in the neighborhood, ever picked him out of a line up; the police did not bother with a line up. The district attorney put 13-year-old Merlin on the witness stand where his trial testimony differed from his testimony at the preliminary hearing and differed from what he told police the night of the shooting. He could only say that Hill was a similar build as the man he saw in the store since both attackers had their faces covered, and he admitted he ducked into the back room after he heard the call "We've got you now."

Hill was furious with his attorneys who did not pursue the discrepancies in Merlin's testimony. On the second day of the trial Hill stood up to say, "May I say a few words, your honor." After a brief exchange Hill said "I wish to announce that I have discharged my counsel, my two lawyers." A lengthy and hostile discussion with the judge took place in front of the jury. The judge finally decided Hill could question witnesses but declared Hill's attorneys would be "friends of the court" who would continue with the trial. On the third day the IWW agreed to pay a local Salt Lake City attorney, Soren Christensen, to join the defense team.

The defense expected to question the motive for the murder, starting with the Salt Lake Tribune headline: "Holdups Kill Father and Son for Revenge." Before Morrison was killed he told a newspaper reporter, Hardy Downing, and at least three others he believed his life in danger from revenge. When Downing took the stand for the defense he was asked to discuss his conversation with Mr. Morrison following the gunfight at his store four months before. Attorney Scott asked "Didn't Mr. Morrison state to you at the time that the purpose of the hold-up was not to rob him but to kill him?" The prosecutor objected to the question as immaterial and irrelevant and the Judge sustained the objection. No one was allowed to speak about revenge at the trial.

Hill's defense had the name and identity of the suspect released to Elko, Nevada and they were able to question four people who saw him in the area of the Morrison grocery one to two hours after the shooting. One saw him on the ground propped on one elbow. Another was a streetcar conductor who had the chance to look him over after he boarded his car. About 1:00 a.m. a cab pulled up near the Morrison store looking for a fare and the driver shouted to a police inspector and detective "Are you the one who called for this car?" After the cabby drove off the two officers arrested the suspect who was on foot near the store. He did not have a gun but they found a bloody handkerchief in his pocket.

The detective was put on the stand to testify the man arrested near the Morrison store did not look like Joe Hill, but the prosecutor objected to the question before it could be answered. In the ensuring argument the Judge cut off defense attorney MacDougall stating "The question here is whether [defendant Hill] is guilty, not what suspicions may have been directed against others, whether rightfully or wrongfully." The objection was sustained and the detective was not permitted to tell the jury the man he saw and arrested did not look like Joe Hill.

In testimony, Morrison's 13-year-old son Merlin told police he thought

he heard his brother get off a shot at the gunman with his father's Colt 38, but it could not be proved the Morrison Colt 38 was fired at the crime scene. One of the gun's six chambers was empty when police arrived on the scene shortly after 10:00 o'clock, as admitted in court. However, a Salt Lake City police officer testified during the trial it was police policy to load a gun with only five chambers allowing the hammer to sit on an empty chamber, a practice Morrison would have followed when he was a police officer. The "lost" bullet should have been enough to exonerate Hill if evidence counted in the verdict.

If Arling did get off a shot then the shell and the bullet had to be somewhere. All of the steel-coated bullets fired by the gunmen were recovered, but no lead bullets from the Morrison Colt 38: no bullet, no shell left in the chamber. If Arling fired a shot at the holdup men in the front of the store the lost bullet would be lodged there in the wall or have left holes in the walls or windows, or would be in someone else. It was not in Hill and there were no holes in the front walls of the store.

If Arling did not get off a shot as the defense suspected, then Hill's wound did not result from a shooting at the Morrison grocery. The prosecution case rested entirely on the coincidence of the Hill and Morrison gunfire. There was no motive for Joe Hill in a revenge murder and no direct evidence for a conviction where evidence in a Utah conviction "must be complete and unbroken and established beyond a reasonable doubt." Without a hint of motive it was necessary for the judge and prosecution to distort legal procedures and take testimony to portray Hill as a ghoulish monster and the IWW he belonged to as a band of violent murdering revolutionaries. Few episodes in America's past so clearly define class warfare as the case of Joe Hill.

Hill did not testify at his trial, nor would he agree to give the names of the roommate and friend who shot him or the name of the woman who was the source of their dispute. His lawyers were split over his decision, but they did tell the jury he was not obligated to prove his innocence: the state must prove him guilty. This refusal left many to decide Hill had to be guilty.

When Hill spoke toward the end of his first hearing before the Utah Board of Pardons, he asked for a new trial, which he said would show his innocence. Governor Spry, who also sat on the pardon board, asked "But why did you not bring forward this proof at your trial?"

Hill answered "I didn't think it was necessary to prove my innocence. I thought the state would have to prove a man guilty." He added "I never thought I was going to be convicted on such ridiculous evidence." When he could not get another trial he abruptly cut them off: "If I can't have a new trial, I don't want anything."

As the day of execution approached Utah Governor Spry replied to another telegram to President Wilson after the President's second letter of appeal had arrived. "Your interference in the case may have elevated it to an undue importance and the receipt of thousands of threatening letters demanding the release of Hillstrom regardless of his guilt or innocence may attach a peculiar importance to it, but the case is important in Utah only as establishing after a fair

and impartial trial the guilt of one of the perpetrators of one of the most atrocious murders ever committed in this State. . . . I am fully convinced that your request must be based on a misconception of the facts or that there is some reason of an international nature that you have not disclosed."

Judging from the newspaper opinions most of Utah agreed with the governor, but at the last moment Utah Supreme Court Justice William McCarty who ruled against Hill as part of the Supreme Court and twice more from the Utah State Board of Pardons offered a deal. "If you can show us any proof of circumstance that proves your innocence, we will grant you an immediate and unconditional pardon, and you will walk out of the door a free man."

By now Hill probably doubted they would believe anything he would say or do. He called the pardon offer humiliating and read his rights literally: he was innocent until proven guilty, not guilty until he proved his innocence. Justice McCarty apparently assumed his position and his class granted him the privilege to make the call either way, but Hill insisted constitutional rules apply to him. He may have decided his dreary life was worth more in death as a symbol of courage and resistance for the working class. (35)

Labor and the Clayton Act

The Colorado labor wars were ending when President Wilson and Congress renewed debate over anti-trust legislation. Congressman Henry Clayton introduced an anti-injunction bill into the U. S. House intended to exempt labor from Sherman Act enforcement and prevent the courts from issuing injunctions and restraining orders except under the limited conditions of irreparable harm to property. After some rewording President Wilson signaled he could support the anti-injunction phrasing as part of his campaign promises.

When labor pressed for additional legislation to guarantee their right to exist, Congress decided to include additional sections relevant to labor into the Clayton Anti-trust Act, primarily as Section 6 and Section 20, along with several other sections of procedural changes. The Section 6 wording resulted from previous attempts to withdraw labor unions from the restraint of trade banned by Sherman Act anti-trust legislation. Since the courts kept declaring labor unions in restraint of trade Congress agreed to wording they thought should remove labor union organizing from Sherman Act enforcement. Section 20 attempted to stop the federal courts from treating strikes, boycotts and picketing as an illegal conspiracy as a legacy of English Common law.

After lengthy wrangling, writing and rewriting all sides agreed to wording. Section 6 reads:

"That the labor of a human being is not a commodity or article of commerce. Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies

in restraint of trade, under the antitrust laws."

Section 20 reads:

"That no restraining order or injunction shall be granted by any court of the United States, or a judge or the judges thereof, in any case between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving, or growing out of, a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property, or to a property right, of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be described with particularity in the application, which must be in writing and sworn to by the applicant or by his agent or attorney."

Additional Section 20 wording to prevent an injunction to end a strike reads:

"And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do."

The Section 20 wording to ban an injunction to prevent organizing a sympathy strike or secondary boycott reads that no such restraining order or injunction shall prohibit any persons or persons

"from attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or to abstain from working; or from ceasing to patronize [boycott] or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do"

The Section 20 wording to prevent an injunction to end picketing reads that no such restraining order or injunction shall prohibit any persons or persons "from peaceably assembling in a lawful manner, and for lawful purposes."

Everyone in Congress knew exactly what organized labor wanted to accomplish, but Congress allowed qualifying words and terminology that courts and judges could exploit for their own purposes. The final wording meant one thing to labor and something quite different to President Wilson, former President Taft, some members of Congress, a selection of attorneys, law professors and ultimately the courts. To labor and labor supporters the right to exist meant exemption from Sherman Act enforcement that the courts were using to halt all of their collective action. To labor detractors the right to exist did not sanction specific actions and did not exempt labor from the Sherman Act.

Public interpretations following passage assumed an air of theatrical farce. Samuel Gompers turned all smiles calling the new law the "Magna Carta" of labor. Others concurred including a federal judge and two labor supporters in the House

who succeeded in adding the phrase to Section 6 "nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the antitrust laws".

That contrasted with the interpretation of administration leaders on the Judiciary Committee. One said, "We are doing what Mr. Gompers asked. We are taking them out of the ban of law that would make them liable to dissolution." Another said "Their existence is made lawful and they are given a legal status." President Wilson supported the committee members in public statements; labor had a legal right to organize but not exemption from the Sherman Act. The difference of interpretation turned into the enigma of the Clayton Act.

William Howard Taft, speaking as a Yale University law professor, offered his view of Section 6 and Section 20 speaking at a gathering of the American Bar Association just a few days after President Wilson signed the Clayton Act into law. Taft suggested the "careful language" in the final wording of the Act did not assure Congress intended to grant labor exemption from the Sherman Act. He cited Congressional language that included numerous qualifying words. He cited the phrase "lawfully carrying out the legitimate objects thereof" in Section 6. Since the Sherman Act defined restraint of trade as unlawful conspiracy, unions could not be lawfully carrying out legitimate objects thereof.

Taft labeled wording in the ban on injunctions in labor disputes from Section 20 as "ambiguous." He cited qualifying words such as "lawful purposes" "in a lawful manner" "peaceful means" and "peaceably assembling." He insisted injury to business from the loss of revenue from labor's collective actions caused irreparable harm in addition to the use of irreparable harm to "property or a property right" typically used to justify an injunction. He told the American Bar Association that Congress had the opportunity to include wording for injury to business from loss of revenue as part of the ban on injunctions in labor disputes, but did not. Then he declared the Clayton Act did nothing to change the common law ban on conspiracies. It did not matter than Congress wanted to ban injunctions, Taft predicted the federal courts would not go along; judges decide the law.

Taft knew, as did everyone else, the Supreme Court of the United States would have the final say. Felix Frankfurter and Nathan Greene reported on 13 injunction cases from 1916 to 1920 after the Clayton Act became law. They found federal courts issuing injunctions in 10 of the cases. They reviewed these cases and found the court judges determined to apply the common law of conspiracy while ignoring the law Congress passed. In other cases, judges found union members refusing to work on non-union products, to be a strike "for a whim," not relevant to the Clayton Act. Where employers were able to replace strikers, judges would enjoin picketing claiming picketers could no longer be employees defined in the Clayton Act. Federal judges in this era could not stand for working class picketing. They expected to enjoin picketing. The legal case the justices would hear that settled the matter and ended any speculation was already under way. It was known as **Duplex Printing v. Deering**. (36)

Duplex Printing Company of Battle Creek, Michigan was one of just four companies that manufactured newspaper printing presses, but the only company

that refused to accept union terms of employment including the closed shop. In August 1913 two of the other firms notified the International Machinists Union they would terminate their union agreement unless Duplex agreed to union terms. When they would not, the Machinist's union called a strike at Duplex. Only 11 of 200 Duplex machinists at the factory left work, but the union tried to increase economic pressure by organizing a boycott of Duplex presses by other unions and newspapers. In New York, especially, truckers refused to deliver presses, and other machinists refused to repair or install them.

Duplex petitioned a district court for an injunction charging the Machinists Union with attempting to monopolize the machinists trade in violation of the Sherman Act and to compel companies to accept the closed shop. The district court denied the petition, citing the ban on injunctions by the Clayton Act and noting the strike and boycott remained peaceful. Appeal was taken to the Second Circuit Court, which affirmed the decision. Their majority opinion argued the Clayton Act prevented an injunction in a labor dispute and made a secondary boycott legal.

Appeal was taken to the Supreme Court, which reversed the Second Circuit's decision. Justice Mahlon Pitney, who wrote for the majority, declared "manufacturing printing presses and disposing of them in commerce is a property right, entitled to protection against unlawful injury or interference." Further he wrote "that a widespread combination exists, to which defendants and the associations represented by them are parties, to hinder and obstruct complainant's interstate trade and commerce . . ."

Judge Pitney included a long comparison of the Machinist's conduct with Loewe v. Lawlor repeating the same points several times. He wrote efforts to organize a boycott "irrespective of compulsion or agreement" with "a list of unfair dealers manifestly intended to put the ban upon those whose names appear therein, among an important body of possible customers, combined with a view to joint action and in anticipation of such reports, is within the prohibitions of the Sherman Act if it is intended to restrain and restrains commerce among the states." . . . "Peaceable persuasion is as much within the prohibition as one accomplished by force or threat of force . . ."

The remainder of the opinion dismissed the new Clayton Act labor sections as nothing new. On Section 6 Justice Pitney wrote "by no fair or permissible construction can it be taken as authorizing any activity otherwise unlawful, or enabling a normally lawful organization to become a cloak for an illegal combination or conspiracy in restraint of trade as defined by the anti-trust laws." In other words the Sherman Act applies no matter what is in the Clayton Act.

On Section 20, Justice Pitney declared the first paragraph restates the common law conditions for an injunction and therefore adds nothing new. In the second paragraph he wrote "It is very clear that the restriction upon the use of the injunction is in favor only of those concerned as parties to such a dispute as is described." The circuit court "entertained the view" that the words "employers and employees" in Section 20 refers to all union members, which would permit "members of the Machinists' Union elsewhere, some 60,000 in number, although

standing in no relation of employment under complainant, past, present, or prospective, to make that dispute their own and proceed to instigate sympathetic strikes, picketing, and boycotting against employers wholly unconnected with complainant's factory," a view "altogether inadmissible."

Justice Pitney wrote on to scold the circuit court and the detrimental implication of their view. The Second Circuit Court did not understand their reading of Section 20 would "impose an exceptional and extraordinary restriction on the equity powers of the federal courts and upon the anti-trust laws, a restriction that amounted to special privilege or immunity to a particular class . . . The extensive construction adopted by the majority of the court below (Second Circuit) virtually ignores the effect of the qualifying words. Congress had in mind particular industrial controversies, not a general class war."

The majority opinion did not mention the First Amendment or how the right of free assembly protected there differed from picketing in a labor dispute. The majority made no attempt to justify their definition of irreparable harm as the loss of business revenue in a market economy or how the collective decision of the four printing press employers to resist labor organizing differed from the collective decision of organized labor to resist them. Then Professor Felix Frankfurter asked "How much of the life of a statute dealing with contentious social issues is determined by the general outlook with which judges view such legislation, lies on the very surface of the Duplex Case."

Three justices dissented; Justice Brandeis wrote their dissent, which argued the facts of the case applied to common law justified union actions as self-defense. Since Duplex refusal to deal with the machinists union threatened the interest of all machinists, common law allows them to co-operate in a common self defense. He accused the majority of being out of date by citing other cases from federal and state courts where the collective interests and actions of business created a "unity of interest throughout the union, and that, in refusing to work on materials which threatened it, the union was only refusing to aid in destroying itself."

The dissenters did not find qualifications in Section 20 of the Clayton Act, but described it as the result of "more than 20 years of unceasing agitation" that was "designed to equalize before the law the position of workingmen and employer as industrial combatants." Brandeis objected to the "social and economic ideas of judges" that "were prejudicial to a position of equality between workingman and employer." The advocates of legislation intended change by "expressly legalizing certain acts regardless of the effects produced by them upon other persons."

The dissenters argued Congress intended to legalize defined acts to substitute the opinion of an elected Congress for the opinion of class conscious judges and instead declare that "relations between employers of labor and workingmen were competitive relations, that organized competition was not harmful and that it justified injuries necessarily inflicted in its course." Undoubtedly Justice Brandeis noticed the majority opinion included words about "class warfare," a war the Supreme Court majority felt their upper class confreres should win.

The dispute in Duplex Printing v. Deering went on and on until January 3, 1921 when six justices of the Supreme Court settled the case and published

their majority opinion by writing Section 6 and Section 20 of the Clayton Act out of U.S. labor law. Some think Congress passes laws, but the Federal Judiciary changes or repeals them as they prefer. After Duplex Printing, Frankfurter and Greene cited 20 more cases of federal courts issuing injunctions in labor disputes.

In the meantime World War I intervened. The needs of war production demanded a truce between capital and labor, which President Wilson got from a begrudging business community and the ever cooperative Samuel Gompers. War production ended the 1913-14 recession; administration war needs brought more jobs, somewhat better wages and President Wilson's decision to require specific concessions to labor, which lasted until the day the fighting stopped, November 11, 1918. (37)

Chapter Six - Preparedness

Onward Christian Soldiers, duty's way is plain

Slay your Christian neighbors or by them be slain

Pulpiteers are spouting effervescent swill

God above is calling you to rob and rape and kill

All your acts are sanctified by the lamb on high

If you love the Holy Ghost, go murder, pray and die

---------- Lyrics by the Industrial Workers of the World, 1914

President Wilson declared American neutrality soon after the start of World War I. On August 18, 1914, he announced "The United States must be neutral in fact as well as in name during these times that try men's souls." Virtually all officials in organized labor announced their agreement. Some saw the war as a failure of the international labor movement that spent years promoting international solidarity, but labor solidarity was no match for nationalism. Once the war started the working classes of Europe were easily divided into mortal enemies ready to slaughter each other. The American working class would join them.

Neutrality at First

The American resolve for neutrality started eroding soon after lucrative war orders poured in from Europe and the President and business demanded safe passage for American shipping. In late December 1915 the president proposed a National Defense Act to get prepared should America be drawn into the European war. In speeches in early 1916 President Wilson pushed for preparedness as a necessary step to defend the national honor.

The war intensified existing divisions in organized labor. Many unions published comments in their news letters and journals like the Brotherhood of Locomotive Firemen: "It is not a coincidence that certain gentlemen prominently identified with the preparedness campaign are also connected with large industrial concerns that would profit hugely from preparedness?"

Samuel Gompers supported preparedness in direct contradiction to his pledge to keep labor out of politics. There was angry opposition among AFL affiliates but he argued to the AFL Executive Council and member unions that labor had to choose between casting its lot with the government and 'help guide it right' or withhold its cooperation and be whipped into line." His support for preparedness helped to get him access and influence with President Wilson.

Preparedness won out when the proposed National Defense Act passed June 3, 1916. It authorized expansion of the regular army, expansion of the National Guard, and a reserve army of 400,000 men. The Army Appropriations Act of August 24th also created a Council of National Defense and with it an Advisory

Commission to carry out the work of the Council. The Council was charged with "the coordination of the industries and resources for the national security and welfare" and "the creation of relations which will render possible in time of need the immediate concentration and utilization of the resources of the nation." The Council of National Defense and Advisory Commission members were appointed by President Wilson. He appointed Samuel Gompers to the Advisory Commission October 11, 1916 where he also chaired a Committee on Labor and selected its membership. (1)

Labor reacted to preparedness with demands for better wages, and an 8 hour day. Strikes increased from 979 in 1914 to 1,420 in 1915 and then 3,157 in 1916. There were also lockouts and high turnover to disrupt war preparations. Before the war started Henry Ford made his famous decision to pay $5.00 for an eight hour day in his Highland Park, Michigan auto plant, a big raise and concession at the time. It was a new strategy he hoped would calm labor relations and improve productivity following 1913 when Ford had to hire 52,000 people to keep 14,000 employed.

The Wall Street Journal called such a high wage an "economic crime." The N.Y. Times called it "distinctly utopian and against all experience." Labor was pleased and hoped other companies might adopt similar policies, but voluntary concessions seldom occurred on either side of the capital-labor divide. (2)

Getting prepared for war turned into a campaign with rallies and parades in nearly every big city and many small ones. In spite of appeals to patriotism and charges of treason organized labor refused to participate in many of the parades. The New York Central Federated Trades organized a counter-parade and labor councils in Minneapolis, Kansas City, Saint Louis and Seattle voted to stay out. The Chicago Federation of Labor opposed the parade there, but many unorganized workers were compelled to march or lose their jobs. In the Chicago parade a Spanish American War veteran hung a banner from the Lake View Building that read "Five million farmers and a half million mine workers are against what you and Wall Street are marching for." He was arrested for "disorderly conduct." The Chicago Tribune responded with the headline "Treason."

In San Francisco, the Bay Area labor councils opposed the parade and urged their members to boycott. Instead they organized a peace demonstration at Dreamland skating rink, which took place July 20 before a capacity crowd of 5,000. San Francisco labor relations were so bitter the San Francisco Building Trades Council adopted a resolution to warn labor their enemies might cause a violent disturbance in order to blame labor.

The resolution published in the San Francisco Bulletin of June 21, 1916 read in part ". . . an attempt may be made by the enemies of labor to cause a violent disturbance during . . . the parade and charge that disturbance to labor . . . Therefore, be it resolved: That in order to forestall any possible frame-up of this character . . . we hereby caution all union men and women . . . to be especially careful and make no other protest than their silent non-participation."

Organizers predicted 100,000 but the parade was much smaller when it started about 1:30 in the afternoon on July 22. The police estimated 22,400.

Spectators were mostly silent, neither applauding nor booing. At 2:06 in the afternoon a bomb exploded at the corner of Market and Steuart streets. After the smoke cleared, the sidewalk and street were littered with bodies. Blood trickled toward the gutters; 10 were killed, 40 wounded, some severely.

There was no panic and the parade continued with only the briefest interruption. Police were there but did not rope off the area. Spectators moved in and picked up souvenirs. The police officer in charge and his lieutenant left the area. When the lieutenant returned around 3:30 p.m., he ordered the area sprayed clean with a fire hose "to get rid of a terrible nauseating sight" and coincidentally washed away the evidence. District Attorney Charles Fickert and his friend the secretary of the California Bankers Association arrived shortly after 3:30 with a sledge hammer they used to pound through the sidewalk and the brick wall of the building, apparently without knowing there were no pictures of the bomb damage.

No one had the slightest idea who planted the bomb, but that did not keep elected officials and some of the newspapers from suggesting labor agitators as scapegoats. About 9:30 in the evening July 22 a detective named Martin Swanson met with D.A. Fickert to suggest Thomas Mooney, his wife Rena and Warren Billings. Swanson was employed as a detective by the Pacific Gas and Electric Company during a bitter strike just several years before. During the strike a bomb destroyed property at PG&E installations. As part of prosecution in this bombing, Warren Billings spent a year in prison for transporting dynamite without a permit; another, Thomas Mooney, was tried three times on suspicion of planting a bomb, but acquitted after two hung juries.

Swanson suggested Mooney and Billings as suspects even though he had them under detective surveillance from at least July 19 through the bombing on July 22. Fickert later admitted the surveillance made it quite possible Swanson knew they did not plant the bomb, but it made no difference for Billings and Mooney. Fickert went ahead and charged them with the preparedness day bombing and hired Swanson to be on his staff and assist him as a detective.

Fickert hauled his defendants before a Grand Jury August 1, 1916 but they were not permitted to bath, shave, or change clothes after a week in solitary confinement. Rena was locked in a toilet stall. They were disheveled and still without counsel and so refused to testify. A Grand Jury returned eight indictments for murder against Warren Billings, Thomas and Rena Mooney, and two others. Separate trials started first September 11, 1916. Warren Billings first and then Thomas Mooney beginning January 3, 1917; both were convicted. Mooney was sentenced to hang. It was the start of a political and legal conflict known as the Mooney-Billings frame-up that would go on in state and federal courts until January 1939, when both received pardons and released from prison by California Governor Culbert Olsen, a democrat. (3)

The Adamson Act

Railroads were a special problem during this period because they were vital to preparedness, but the four railroad brotherhoods were determined to cut the work day to eight hours in opposition to the rail carriers who were determined

they would not. President Wilson had already averted rail strikes several times when he wrote Senator William C. Adamson on April 7, 1916: "I am only too keenly aware of the trouble that is now impending in the railroad world and I have been casting about to see if there is anything I can do." By June, negotiations broke off and the four brotherhoods – brotherhood of locomotive engineers, brotherhood of railway trainmen, brotherhood of firemen and enginemen, order of railway conductors – voted by a 94 percent majority to strike for the eight hour day. A strike date was set for September 4, 1916.

President Wilson responded by holding a White House conference that began August 14. During the conference the President came out in favor of the 8 hour day in a public statement: "I made this recommendation because I believe the concession right. The eight-hour day now undoubtedly has the sanction of the judgment of society in its favor and should be adopted." He proposed that pay issues go to arbitration.

The carriers refused to go along and demanded arbitration of all issues and guarantees of a rate increase to cover any cost increase from the settlement. The brotherhoods signaled they would abandon the strike for the 8 hour day, but the carriers would not back down even though the president was publicly committed to the eight hour day.

As the strike date approached the President outlined the disruption of a national rail strike to the economy and preparedness and then proposed remedial legislation that included an 8 hour day on the railroads with time and a half for overtime. On September 2, 1916 Congress passed the proposed legislation as the Adamson Act. The carriers were outraged and announced a variety of plans to challenge the law while successfully stalling to avoid it, but ultimately the president had his way once the United States entered the war.

Some of the strikes of 1915 and 1916 were only a few days and some were small, but patriotism and preparedness did not prevent bitter and violent disputes in basic industries like mining and lumber. (4)

Clifton-Morenci Strike

In 1915 the copper mines near Clifton and Morenci in eastern Arizona employed 5,000 miners, more than 3,000 of them Mexicans or Mexican Americans. A strike started September 11, 1915 following a refusal of the three leading companies – Arizona Copper Company, Shannon Copper Company, and the Detroit Copper Company, a subsidiary of Phelps-Dodge Corporation - to meet with a committee of the Western Federation of Miners (WFM). All three companies announced they would only meet with employees directly but not a committee with any union representatives they regarded as outside agitators.

An employees only committee finally got a meeting on September 26. After the meeting started the mine manager announced the employees were obviously WFM members and instead of negotiating he closed the mines and issued a statement: "When . . . the community and their former employees is unanimously in favor of a resumption of operations on the basis of wages and conditions that have prevailed heretofore . . . the companies reserve the right … to decide whether

or not they will again start up their plants."

The miners had a variety of grievances. Prevailing wages at nearby mines were $3.50 a day, but on a scale as low as $1.62 a day at Clifton and Morenci, which allowed discrimination at half pay for Mexicans. Miners wanted an end to management schemes to loot their pay that included selling jobs, a hospital tax, forced participation in raffles of worthless junk and a refusal to hear grievance complaints.

Management established a free tent camp for scabs and non-strikers at nearby Duncan, Arizona claiming strikers made it too dangerous for them to stay and live in Clifton and Morenci. On October 2, 1915 three managers announced the dangers of violence compelled them to leave the state. They boarded a train for El Paso, Texas after telling Governor George P. Hunt they feared for their lives from the "lawless and desperate Mexican strikers" that required protection from the National Guard.

The Governor sent General John Harris to investigate. He reported strikers were orderly and only wanted a conference. The Greenlee County Sheriff J. C. Cash had only four deputies, but agreed to assist the governor in maintaining order. Sheriff Cash recruited strikers as deputies and made the operators pay. The Governor sent troops with orders to ban strikebreakers from the district and to assist in distributing supplies to strikers since most of the local merchants did not have the means to extend credit and had to close under the financial strain.

The three managers finally agreed to meet in El Paso with another negotiating committee after they were allowed to pick five striking miners from a list of fifteen. They met for three days beginning October 16, but again without a settlement because management was "so handicapped by Western Federation influences."

After four months the Governor lost patience with these "theatrical effects" and management stalling. He brought in two federal Commissioners of Conciliation, Hywel Davies and Joseph S. Myers, to draw up a settlement that included a monthly conference to mediate grievances. Management could not get rid of the governor on such short notice and so confronted with continued losses as copper prices increased they settled and the strike ended in January 1916.

The contrast of violence at Ludlow, Colorado and the Clifton-Morenci settlement did not escape notice by the journalists of the day. They prodded the governor to explain his actions; he did respond.

"Everyone concerned with the strike situation was allowed to understand that the importation of hired strike-breakers or gunmen would not be permitted. In taking this position, I found my justification in the firm conviction that under our present industrial system, controversies between employers and employees are virtually inevitable, and that when such unfortunate differences arise, the preservation of life and property acquires importance paramount to all other issues. It was, moreover, my honest belief, as it still is, that no intelligent body of workingmen will voluntarily initiate the certain hardships and risks of striking unless they are first convinced that their grievances are just and their cause is entitled to conscientious consideration by their employers." … "In brief, during a

strike, actualities rather than theoretical contentions for individual liberties, must be successfully dealt with, if violence and bloodshed are to be prevented."

Governor Hunt proved to be unique among governors, presidents and elected officials. Phelps-Dodge continued to mine copper in the Clifton-Morenci mines until another strike during the Reagan administration, which did not go so well as we shall see. (5)

Mesabi Range Strike

After 1901 U.S. Steel controlled the rich iron ore deposits of the Mesabi Range, an area of northeastern Minnesota about 75 miles long and 10 miles wide. Their subsidiary the Oliver Iron Mining Company bought out Lake Superior Mining, and then Federal Steel Company until it owned 41 mines and essential railroads and a fleet of lakes freighters.

Except for two brief periods of organizing miners in 1907 and again in 1916, United States Steel kept unions out of their mining operations until the great depression of the 1930's. The two brief organizing efforts started over the arbitrary use of piece wages paid to underground miners. Mine foreman had authority to assign the place for miners to excavate and to fix the price per ton based on the quality of ore. In practice the system was a hoax because foreman were allowed to change the piece wage at any time without notice. Miners were paid once a month, but they had no idea what they would receive. Many complained of bribery and kickbacks.

Miners left work at Saint James Mine June 2, 1916 outraged over short pay. Within three days most of the Mesabi Range was shut down in a spontaneous protest of Finns, Serbians, Italians and Montenegrins marching from town to town. The unorganized miners could barely communicate with each other much less present coherent strike demands, but the IWW responded to appeals for help.

The IWW sent five organizers including Sam Scarlett, Carlo Tresca and Frank Little to Virginia, Minnesota to set up strike committees and present demands. Demands included an eight hour day at wages of $2.75 a day for open pit miners and $3 to $3.50 for underground miners. They wanted pay twice a month, no Saturday night shift, and an end to the piece wage system. They did not press for union recognition.

The companies would not respond, but World War I made it impossible to import strike breakers as they did in 1907. Instead they recruited and paid over a thousand new guards and had the local police make them deputies. Early morning on June 22, Oliver plant guards acting as deputies ordered picketers marching on public property to leave. In the brawl and gunfire that followed three miners were shot and one was killed, John Alar. His fellow miners carried a banner during his funeral procession that read "Murdered by Oliver Guards."

Local authorities used the banner as a pretext to arrest Scarlett and Tresca for libel. The newspapers abandoned reporting for editorializing: "What is faced on the ranges and threatened in Duluth is revolution, just that and nothing less." Minnesota Governor Joseph Burnquist notified the county sheriff to "Arrest forthwith and take before magistrate, preferably in Duluth, all persons who have

participated and are participating in riots in your county and make complaints against them. Prevent further breaches of the peace, riots and unlawful assemblies."

On July 3, several of the recruited deputies invaded the home of Phillip Marsonovitch without a warrant but with guns drawn. A soft drink peddler, several other miners, Marsonovitch's wife and 9-month-old child were also present. Deputies expected to arrest Marsonovitch on a claim he was selling liquor licenses. In the brawl and shooting that followed, the miners, deputies and Mrs. Marsonovitch were wounded; the peddler and a deputy were killed.

The coroner's jury ruled the peddler's death an accident, but all the miners, and Mrs. Marsonovitch were charged with first-degree murder. Scarlett and Tresca, who were free on bail from the libel charge, along with other IWW organizers were arrested and ultimately eight IWW officials were also charged by a grand jury for the murder of the deputy.

The strike dragged on. There was sympathy for the strikers in the local communities and the mayors of Virginia, Hibbing, Eveleth and others tried to mediate a settlement. They condemned the governor who finally agreed to let the state's department of labor investigate. The IWW sent more organizers: Elisabeth Gurley Flynn and Joe Ettor. They counseled restraint and tried to avoid violence knowing the union would be blamed.

There was violence anyway, on both sides. Strikers made it dangerous to transport strikebreakers to the mines by shooting at cars and boardinghouses. A bomb blew up a house. The jails were full of picketers, which prompted wives to picket in their place. A local newspaper reported 150 deputies "armed with repeating rifles, revolvers, and riot sticks" attacking a group of women pickets, beating them to the ground, even when they "raised their infants as protection."

Neither side would give in, but the lack of money settled the strike. Some found other jobs in agriculture, but that ended by September when strikers were broke and strike funds exhausted. The men with families to support began returning to work until a majority voted to end the strike September 21, 1916.

IWW attorneys settled the criminal charges out of court. Charges against the IWW were dropped after three of the miners at the Marsonovitch house agreed to plead guilty even though they were not. Their twenty year sentences were commuted after a short time. It was a practical decision opposed by many of the IWW. Having state authorities cooperate to make false criminal charges was a scenario repeated in other places like Everett, Washington. (6)

Everett Massacre

The founders of Everett, Washington laid out streets and named them after themselves: John D. Rockefeller Jr., Rockefeller Avenue, Charles Colby, Colby Avenue, Henry Hewitt, Hewitt Avenue. Charles Colby was so enamored of Edward Everett he named his son and the new city after him.

Everett also had a nickname, the city of smokestacks, which fit well for a town built and operated to cut the timber from land north of Seattle on Puget Sound. The Everett Improvement Company controlled all utilities: water, power, street railways and harbor docks. The same people founded the town's two banks

and later founded the Everett Commercial Club; a private club for owners of property and business.

The Commercial Club demanded the open shop in opposition to the Shingle Weavers, a long established affiliate of the Timber Workers Union and member of the AFL. The Shingle Weavers dated from 1901 and consistently fought for an 8 hour day in place of a 10 hour day. It was dangerous work, which made a timber weaver easy to spot on the street. He was the one with "mutilated hands and the deadly gray pallor of his cheeks." In the spring of 1916 the price of cedar shingles soared from wartime production and the shingle weavers demanded wages be restored from the twenty percent cut of a year before. By May 1, 1916 other mills around Washington had restored wages, but not at the mills in Everett. (7)

The strike that followed started with 400 picketers, but police and county sheriff Donald McRae searched and harassed picketers until only 18 remained on August 19th when they were marched to a trestle bridge outside of town. The sheriff looked on as 70 or so of Jamison Mill guards poured in from both ends to beat up picketers.

James Rowan arrived in Everett from IWW headquarters in Chicago at the end of July. Given their successful organizing in the mid-west the IWW had funds to renew efforts to organize timber and lumber workers. Rowan could not rent a hall so he spoke at the corner of Hewitt and Wetmore Streets in what turned into a new contest over free speech, added to the already contentious strike by the AF of L.

Sheriff McRae arrested Rowan and hauled him to jail for handing out IWW literature and street speaking. He was released and arrested multiple times and finally sentenced to 30 days for peddling without a license. On August 22, another IWW organizer, James Thompson and a succession of others were arrested for speaking at the corner of Hewitt and Wetmore and marched to the county jail, followed by a jeering crowd of Everett objectors. Those who refused to leave town were robbed and forcibly deported to Seattle on August 23, 1916.

The contest stalled for several weeks after the Wilson Administration attempted to be the friend of labor by sending a Federal Mediator. Street speaking resumed without arrests, but the Everett Commercial Club was meeting, recruiting and planning their opposition to the IWW.

In the Everett conflict, business groups found County Sheriff Donald McRae the most willing among local officials to help them oppose union organizers. He agreed to deputize armed men recruited by the mills and the Everett Commercial Club; their number swelled to at least three hundred. A sub committee of the Commercial Club used club funds to purchase blackjacks, leaded clubs, guns and ammunition, and to employ detectives, labor spies, and "agents provocateur." Sheriff McRae and the Commercial Club did not bother to purchase deputy uniforms. (8)

The two sides were clearly drawn when the Federal Mediator left town on September 7th. In the period after September 7th until the deliberate slaughter at the Everett City docks on November 5, 1916 union resolve to speak and organize in Everett never wavered. In their determination to get rid of the IWW

the Commercial club made it more and more dangerous for union men to stay in the area and organize, but they kept coming.

Many of the 35,000 who lived in and around Everett opposed the conduct of the Commercial Club even if they did not support the IWW or unions. Some business owners wanted to stay out of the brewing violence. They put signs in their front windows: “We are not members of the Commercial Club.”

After September 7th, IWW offices were raided and closed with literature destroyed and IWW speakers dragged off the platform at the corner of Hewitt and Wetmore and hauled or marched to the county jail. On September 9th a boat, the Wanderer, was fired on from the tugboat “Edison” and boarded by Sheriff McRae and his deputies as it approached the dock in Everett. The crew and IWW men aboard were arrested and not released for nine days.

Speakers on September 11th drew a crowd of several thousand. A few minutes after speaking started, over a hundred deputies arrived at Hewitt and Wetmore, shoved through the crowds, and clubbed anyone who interfered. Accounts include reports of bleeding scalp wounds for wives and children as well as the men. Speakers were physically forced off the platform and driven to the county jail, robbed of pocket money, and forced through a gauntlet of club wielding deputies behind the jail and out of public view.

Thousands of the larger public supported free speech and blamed the violence on Sheriff McRae. Citizen committees organized more meetings and scheduled a docket of speakers. At a gathering in a city park at the end of September, a bigger crowd of thousands listened to union organizers, socialists and unaffiliated speakers, who described their injuries and outrage from the September 11th beatings.

Sheriff McRae acknowledged the public opposition with platitudes, but it got more and more dangerous for harvest or timber workers to be in Everett. Deputies were stationed at the train depot and on the roads and docks to waylay men and force them out of town by any means. Some of those robbed, roughed up and deported were not members of the IWW or any union.

On October 30, someone tipped off Sheriff McRae that a passenger boat would arrive in Everett with IWW men aboard. The sheriff and two hundred of his deputies met the boat and separated forty-one men as IWW. The forty-one were forced at gunpoint into a row of waiting cars and trucks and driven to a remote interurban station known as Beverly Park on the road to Seattle. In the evening dark and drizzle they were forced to run a gauntlet over a cattle guard. (A metal lattice of steel poles laid over the ground)

The commotion was audible a quarter mile away at the Ketchum house, home to Roy and Ruby Ketchum and his brother Lew. Roy and Lew walked over to witness the beatings. Deputies arrived to inspect the scene the next morning and two of them knocked at the Ketchum house to ask “if any IWW’s had been lying around there.” The beatings stopped short of murder as the deputies apparently wanted to check, but injuries were more severe than any before. Blood soaked hats and shoes were about and the cement pavement kept the blood in plain view.

News of the beatings infuriated Everett. Ministers discussed a response

knowing that captive newspapers would ignore the story. A consensus formed quickly to hold a bigger mass meeting on the corner of Hewitt and Wetmore Street at 2:00 p.m. Sunday, November 5 and the IWW agreed to come. Thousands of handbills were printed and circulated to publicize the meeting and IWW locals were notified all over the northwest. Plans were made to have supporters in Everett meet boats and trains arriving mid-day. In spite of the previous violence, the planners presumed there would be safety in numbers. (9)

On Sunday the fifth of November in Seattle, the limit of 250 boarded the steamship Verona scheduled to dock in Everett by 1:00 p.m.; a few minutes later 38 more boarded a second steamer, the Calista. Two stool pigeons, Reese and Smith, notified Sheriff McRae who was ready to direct a plan to meet the boat and keep the IWW out of Everett. He cordoned off the city dock and distributed militia rifles from a Commercial Club warehouse to several hundred deputies arriving in Commercial club automobiles. Sheriff McRae and some of his deputies waited along the dock. Others were behind them in warehouses on the dock where they waited, peeking through slats in the boards ready to shoot from behind piled sacks of potatoes. More deputies waited in the tugboat Edison moored behind them on the north side of city dock.

The English transport workers' song "Hold the Fort" wafted over the water as the boat approached the south side of city dock with Hugo Gerlot at the top of the steamer's flagpole. Several thousand looked on from the hillsides above the dock. Sheriff McRae waited until a spring line was secured to the bow. There was a brief exchange: "Who is your leader?" "We are all leaders." "You can't land here." "The hell we can't." When the Sheriff gestured with his left arm his men behind him opened fire on the boat.

The boat rocked to starboard as the men lunged to escape the hail of gunfire. It rocked enough that several men lost their footing and went overboard. Indiscriminate gunfire from the tugboat Edison and the warehouses went on for 10 minutes until the ship's engineer got the boat in reverse with enough power to snap the bowline. The deputies continued shooting as the boat headed back to Seattle; the Calista never landed.

Bullet wounds killed five on board the Verona including Hugo Gerlot, whose bullet riddled body fell to the deck; 31 more had gunshot wounds. The deputies boasted they killed twelve and it turned out that six men who boarded the steamer in Seattle were never accounted for in spite of reports of at least two bodies washed ashore. Sheriff McRae had superficial gunshot wounds to the back of his legs; seventeen of his sheriff's deputies reported gunshot wounds; two died, Charles O. Curtis and Jefferson Beard.

Police and Commercial Club vigilantes claimed the first shots came from the boat, no surprise there, but all of the two hundred or more police and vigilantes had rifles and side arms while it could not be proved anyone on the boat fired a shot; a search of victims uncovered only two side arms. A look at bullet holes in the warehouse siding showed splinters pointing out, not in. Wild police and vigilante gunfire coming from three locations from behind showed gunshots passing by, and over, and very likely through the groups of vigilantes.

Police had their guns drawn when the Verona and the Calista docked back in Seattle: there was no resistance to arrest. The dead were carted to the morgue and photographed; 31 were transported to city hospital; the remainder were marched to the Snohomish County jail. Back in Everett, where the crowds above the dock witnessed the shootings, hundreds of armed deputies hung around in small groups, justifiably worried about revenge and retaliation. The mayor of Everett, Dennis D. Merrill, appeared at the corner of Hewitt and California Streets to tell the crowds he was not responsible for the trouble as the Commercial Club had taken the power away from him and put it in the hands of Sheriff McRae. Governor Ernest Lister arrived to confer and then declared martial law.

The next day a Coroner's Jury determined the two deputies, Curtis and Beard, were killed from "gunshot wounds inflicted by a riotous mob on the Steamer Verona at the city dock." Eight days after that, 74 of the Snohomish County prisoners from the Verona and the Calista were charged with first degree murder; 38 more where charged with unlawful assembly; 128 were released in small groups. Those charged were moved to the Everett jail and held incommunicado while IWW attorney George Vanderveer attempted to defend them. Attorney Vanderveer succeeded in moving the murder trials to Seattle after a member of the Commercial Club was announced as the judge for the Everett court. His requests to the Wilson Administration to investigate the shootings were refused by Secretary of Labor William B. Wilson, who wrote back and claimed lack of authority and inadequate funds. (10)

Thomas Tracy was taken from the 74 for the first murder trial that started March 5, 1917 in Seattle. Judge James T. Ronald addressed the court: "It is plain, from both sides here, that we are making history. Let us see that the record that we make in this case, you and I, as a court, be a landmark based upon nothing in the world but the truth."

The Prosecution team went first. Lloyd Black made their opening statement: "You are at the outset of a murder trial, murder in the first degree. The defendant, Thomas H. Tracy, alias George Martin, is charged with murder in the first degree, in having assisted, counselled [sic], aided, abetted and encouraged some unknown person to kill Jefferson Beard on the 5th of November, 1916."

The defense opened April 2 when Attorney Vanderveer moved for a directed verdict of not guilty since the prosecution had no evidence or testimony to charge the defendants with murder, much less convict them. The judge refused and so the defense called 196 more witnesses. Testimony ended May 1. The jury voted not guilty on May 5. (11)

Charging the victims of a shooting ambush with premeditated murder was too much for a jury of twelve citizens. Two months of proceedings did expose much that was true as the judge hoped and also the condition of jurisprudence in the state of Washington.

The chief prosecutor Lloyd Black was the prosecutor of Snohomish County, but in spite of the change of venue he was appointed as a deputy prosecutor in King County to try the case in Seattle. He gave the first and longest closing statement.

He started by rephrasing the prosecution claims: "I repeat first that some

person on the boat unlawfully killed Jefferson Beard; secondly that this defendant, aided, incited and encouraged such shooting."

He apologized to the jury that "I am a young man without the experience that any man ought to have in the prosecuting of a case like this, . . . and in many ways an absolutely pioneer case in criminal trials the world over."

Next, Prosecutor Black turned to matters of class. "There are only two classes of people who know anything about the shooting. The people on the dock are one set, and the people on the boat are the other."

The witnesses on the dock "are men of Everett, men of family, men who are laborers, but with families; men who are clerks, with interests in Snohomish County; men who hold some important positions, as lawyers; people with families, people who by residence have established reputation for truth and veracity; men who have established themselves, have made themselves successful, sometimes in merely that they have established a small home, or who have lived in Everett and have made friends and acquaintances. That is the class of men that were on the dock."

The witnesses on the boat "are men who have established no reputation for truth and veracity, have been successful in the world in no way, even from the standpoint of stable friends, living here and there, unfortunately; perchance, with some of them it is due to unfortunate circumstances and environments, and they have been unlucky, but still they haven't established stable friends in any community."

He moved on to wrap up the charges of November 5. "Now, these men that come on the stand all confess they had a common design. Their common design they say, was that about two o'clock in Everett they were going to speak at the corner of Wetmore and Hewitt Avenues, that is their common design. The court tells you that the purpose that they admit was unlawful, so Tracy, by the testimony adduced in his favor, was one of the men having a common design for an unlawful purpose. Tracy, regardless of his location, regardless of whether he fired or not, is guilty."

After his statement about November 5, the prosecutor included attempts to justify the Sheriff's actions at Beverly Park. "Under the Court's instructions there were acts done at Beverly Park that were unlawful. There is no question about that. Instead of this being a weakness on the State's part, it seems to me that it is an added strength. Because the I. W. W. used Beverly Park for what purpose? They jumped on it with desire, deeming it a fortunate circumstance because they wanted to inflame men to invade Everett. They jumped on this, the men at the head of the conspiracy, they jumped on Beverly Park because they could use it to inflame their members."

Next, Prosecutor Black complained about the expense and the need for protection. "Snohomish County can ill afford the expense of this one trial; can ill afford the expense of two or three trials after this; would be overwhelmed with debt to convict all the men who are in this conspiracy, if there were a conspiracy it can't do it; most of them are safe from prosecution and they know it; and the only protection that Snohomish County has, and King County has, and the State

of Washington has, and the United States has, is that when something happens like this a conviction be secured against a man who is guilty, not because you are convicting all, because you can't, you are helpless--but because that at least is the voice of warning to the men that if you lead an attempt you may be the one of the great number that will be caught. It is important from the standpoint of citizens of the State of Washington to establish the principle that crimes cannot be committed by numbers with impunity, that while it is fairly safe, it won't be absolutely safe. We have no protection. That is the vital part of this case. We have no protection."

Next, the closing statement attempted to justify in sworn testimony for the Sheriff shooting at the Wanderer. "The Wanderer did not happen the way they said it happened. The sheriff did shoot after they refused to stop. The sheriff did hit some of them with the butt of his gun. The sheriff brought them into Everett because they constituted an unlawful assemblage. The sheriff did the only thing he could do. He filed charges against them and they were arraigned in court. Twenty-three men cannot be tried quickly when each one demands a separate trial by jury. Twenty-three trials would stop the judicial machinery for three months. They could not be tried and so the sheriff turned them loose. Maybe he did hit them harder than he should have. Policemen do that! Sheriff[s] do that! Lots of time they hit men when it is not necessary. Hit them too hard, sometimes. They don't always understand exactly what they are supposed to do. But the I. W. W. exaggerated the matter and used it to incite retaliation on the fifth. So the Beverly Park incident, and all other incidents, if true to the last syllable of the defense testimony, merely in this case extenuated the motive on November 5th." (12)

Southern plantation owners beat their slaves from time to time, but did not find it necessary to make excuses as for the sheriff above. In the America of 1917 that might be called progress on civil rights.

Chapter Seven - Declaration of War – April 6, 1917

"The present German submarine warfare against commerce is a warfare against mankind. ... There is one choice we cannot make, we are incapable of making: we will not choose the path of submission and suffer the most sacred rights of our Nation and our people to be ignored or violated. The wrongs against which we now array ourselves are no common wrongs; they cut to the very roots of human life. ... We are glad, now that we see the facts with no veil of false pretense about them to fight thus for the ultimate peace of the world and for the liberation of its peoples, the German peoples included: for the rights of nations great and small and the privilege of men everywhere to choose their way of life and of obedience. The world must be made safe for democracy."

----------President Woodrow Wilson, from his speech to Congress requesting a declaration of war against Germany, April 2, 1917

"For my own part I believe that this war, like nearly all others, originated in the selfish ambition and cruel greed of a comparatively few men in each government who saw in war an opportunity for profit and power for themselves, and who were wholly indifferent to the awful suffering they knew that war would bring to the masses."

----------Senator Robert LaFollette of Wisconsin from his anti war speech to Congress, April 4, 1917

"We are taking a step today that is fraught with untold danger. We are going into war upon the command of gold. We are going to run the risk of sacrificing millions of our countrymen's lives in order that other countrymen may coin their lifeblood into money."

----------Senator George Norris of Nebraska from his anti war speech to Congress April 4, 1917

"Is there any man here or women - let me say is there any child - who does not know the seeds of war are in industrial and commercial rivalry?"

----------from a post war speech of President Woodrow Wilson, September 5, 1918

President Wilson eked out a narrow victory over Republican Charles Evans Hughes in the November 1916 presidential election using the campaign slogan "He kept us out of war." There was strong support from organized labor to give him the additional votes to win. In spite of America's anti war sentiments the public favored the French and British over the Germans. When Germany resumed unrestricted submarine attacks on American shipping shortly after the election the president broke off diplomatic relations February 3, 1917 in response. Much of organized labor continued to speak against American entry into the war, but Congress declared war April 6, 1917 as the culmination of a public process to

accept the war.

The President was ready for action. The next week he appointed journalist George Creel to direct a new Committee on Pubic Information to promote the war in the media. The Selective Service Act of May 18, 1917 required all men between ages 21 and 30 to register for the draft. A War Industries Board was established to take control of war production as of July 28th. The Lever Act of August 10th created a wartime food administration and fuel administration. Wartime management of other industries followed including the railroads placed under management of the America Railway Administration and ship building managed through a government controlled Emergency Fleet Corporation. Telephone and Telegraph operations were eventually managed by the Post Master General.

The President asserted extraordinary powers to control free speech and silence opposition to the war. In an early address to Congress of December 7, 1915 the President declared

"There are citizens of the United States, I blush to admit, born under other flags but welcomed under our generous naturalization laws to the full freedom and opportunity of America, who have poured the poison of disloyalty into the arteries of our national life; … There number is not great … but it is great enough to have brought deep disgrace upon us and to have made it necessary that we would promptly make use of processes of law by which we may be purged of their corrupt distempers. … But the ugly and incredible thing has actually come about and we are without adequate federal laws to deal with it. I urge you to enact such laws at the earliest possible moment and feel that in doing so I am urging you to do nothing less than save the honor and self-respect of the nation. Such creatures of passion, disloyalty and anarchy must be crushed out."

The President's words encouraged intolerance and discrimination against dissenters in a period of growing nationalism and intolerance toward dissent. Congress eventually passed the Espionage Act June 15, 1917 making it a crime to interfere with the draft or the war effort. A Sabotage Act followed in April 1918 and a Sedition Act in May 1918 making it a crime to say, print, write or publish anything disloyal about the government, the constitution or the military. The Sedition act authorized the Post Master General to withhold mail delivery at his discretion. The new laws made it easy to characterize antiwar protest as interference with the war effort to be crushed out. Dissenters became pro-German agents of the Kaiser. Dissent turned into a crime as members of the IWW and the Socialist party would soon find out.

The war cut down immigration and the draft took over a million men out of the labor force shutting off the supply of cheap labor in combination with the increase in demand for labor necessary for war production. Business was ready to abandon all legal limits on hours of work and required safety regulations. Several state legislatures authorized their governor to suspend labor law. The Army announced a "work-or-fight" policy where draft age adult men must fight or have a job. States and cities passed compulsory work laws. A city ordinance in Georgia declared "it shall be unlawful for any person from the ages of 16 to 50 to reside in, or be upon the streets of Wrightsville, unless he is actively and assiduously

engaged in useful employment fifty hours or more per week." (1)

The Gompers Pledge

Neither threats nor calls for personal sacrifice to the war effort were enough to prevent a wave of new strikes in 1917, 4,233 of them, more than 1915 or 1916. The Wilson administration realized there was a practical need to offer some concessions to keep workers contented enough to work or labor unrest would seriously undermine the war effort. His effort to placate labor included attendance and a speech at the 1917 AFL convention in Buffalo, New York. He offered to build "instrumentalities" which would guarantee essential labor demands in exchange for a no strike pledge.

Wilson endorsed Gompers leadership, "his patriotic courage, his large vision, and his statesman like sense of what has to be done." Gompers met many times with President Wilson who allowed him to work toward a more moderate labor policy than business wanted so long as he put his role in the war effort ahead of his role as president of the AFL.

Gompers support of administration positions brought some conflict and divisions with AFL member unions and organized labor. Almost immediately after the declaration of war some in the labor movement joined with Socialist and other groups to advocate peace negotiations to end the war. A confederation of peace groups formed a People's Council to conduct a campaign for world peace. When some of the AFL affiliates supported the People's Council, Gompers and the AFL Executive Council sponsored an alternative Alliance for Labor and Democracy to work closely with George Creel in opposition to the peace efforts including efforts of AFL unions.

More disagreements resulted after Gompers released a policy statement from the Committee on Labor announcing that "neither employers nor employees shall endeavor to take advantage of the country's necessities to change existing standards." The newspapers assumed the phrase was a patriotic pledge by the AFL to end strikes during the war: "Gompers Promises Full Support of Government During Hostilities."

Objections rolled in from AFL affiliates who called it a sellout. Some reminded him he did not have authority to make pledges for the AFL without a majority vote of an AFL convention. Others saw a no strike pledge as an end to their only source of bargaining power over wages and hours in a time of inflation. Others demanded specific guarantees in exchange for a no strike pledge.

Gompers retreated some with a clarification that strikes or lockouts should only take place as a last resort following mediation or conciliation, but accelerating inflation worked against patriotism and the strikes kept coming in many places and in many war related industries. The president wanted war production to go forward without disruptions from strikes. While the rank and file of AFL affiliates could get just as angry over wages and hours as other unions like the IWW, Samuel Gompers had direct access to the president and the ability to smooth over AFL strikes.

In April 1917, Samuel Gompers wrote to his colleague Bernard Baruch

on the Advisory Commission of the Council of National Defense about efforts to organize Arizona copper miners. In his letter to Baruch he said "in some of the mining districts a feudalism prevails that has prevented the miners from organizing," causing "a condition of affairs that assisted the propaganda of the IWW. If you could bring some influence to bear upon the mine operators that would make them adopt a different policy toward the constructive trade union movement, you will render the greatest service in defeating the campaign and purpose of the IWW." Some of the miners in Jerome and Bisbee Arizona had previously voted to withdraw from the AFL after it failed to provide help in the Clifton-Morenci strike. Mr. Baruch and his colleagues in government would soon learn the mine operators would rather fight than negotiate. (2)

Faltering Labor Relations

The IWW membership declined after 1912, but revived beginning in 1915 after Frank Little convinced the IWW Executive Board to establish a Bureau of Migratory Workers. He set up the Agricultural Workers Organization (AWO) with a first meeting at Kansas City April 15, 1915. The plan for the summer harvest season included a minimum wage of $3 for not more than 10 hours a day. There would be no soapbox speeches on street corners, nor free speech fights. Members would recruit at harvest sites.

Agricultural Workers Associations (AWO)

At the end of the season one of the leaders declared success. "They cut the dawn to dusk working day into something resembling a civilized working period. They had taught the farmer wives how to cook and how to serve decent grub. They had more than doubled the going wages so that a harvest hand remaining in the field for the run from Texas to Montana had some hope of leaving the harvest with a few nickels in the poke." They had over 15,000 members after the 2015 harvest and over 20,000 after the 1916 harvest ended. (3)

By 1917 the IWW revived enough to expand their offices in Chicago, centralize administration under Bill Haywood and pay organizers to be out west and recruit new members in the mining and lumbering industries. The shortage of labor brought on by the war and the dismal labor relations outlined by Samuel Gompers made it easy to bring in new members by the thousand. The IWW succeeded beyond expectations, but the summer of 1917 would turn into another nightmare of violence and repression.

The Lumber Worker's Strikes

IWW success in mid-western agriculture spread to the northwest and into the lumber camps. The battle at Everett the summer before settled nothing. Lumber industry's bitter opposition to all organized labor included the AFL affiliate, the Brotherhood of Timber Workers, and the IWW. Lumber workers met at a convention in Spokane March 4--6 1917, which ended with a new IWW local union, the Lumber Workers Industrial Union-No. 500. Soon it had branches in

Duluth and Seattle. There were other union efforts to organize fruit pickers and farm workers and the Douglas fir forests in western Washington.

Lumber operators in the Pacific Northwest cut timber rapidly as part of rip and run practices and temporary development. The "lumberjacks," "bindle stiffs" and "river pigs" who did the work endured the contempt of the lumber operators along with dirty, crowded, rat-infested boarding houses doing dangerous work for long hours and low pay. They expected a better deal given the rush of wartime orders for timber. Demands started with an eight hour day and then decent room and board and a wage increase. Their demands brought a summer long strike. Employers conceded nothing and refused to meet or talk.

The lumber strikes of 1917 came as the federal government made plans to buy Douglas Fir for building army barracks and to buy large amounts of Sitka Spruce needed to build airplanes. The governors in the affected states saw the increase in lumber demand as a great opportunity to be spoiled by IWW strikes. Washington Governor Ernest Lister intervened as a mediator and pressed Washington lumber barons to accept the eight-hour day, but he also accepted the prevailing industry bias against the IWW. When agreements could not be negotiated quickly Lister ordered the forceful suppression of the IWW.

State law generally allowed local sheriffs to deputize citizens in times of unrest like a strike when it was cheap and convenient to deputize detectives and company guards with a severe conflict of interest. Business was theoretically responsible for the conduct of detectives, but arrests, beatings and forced confessions replaced the due process of law.

In 1917 the first of 20 state legislatures passed anti-Syndicalism laws aimed specifically at controlling the IWW. A criminal syndicalism law was introduced in the Idaho Legislature in February 1917 and passed in March just before American entry into WWI. The Idaho law was one of the earliest syndicalism laws which other states used as a model for more state legislation.

More than 200 men were tried under the Idaho statute and ultimately 31 served prison terms. In one of the early convictions the state proved the accused made a public speech "in behalf of the Industrial Workers of the World" and that he distributed "IWW literature" which "proves" he violated the Idaho Syndicalism law. He served time in the Idaho State Penitentiary for his "crime."

In Minnesota former Governor John Lind suggested the local immigration inspectors should arrest IWW aliens and take the necessary steps to deport them. The new Immigration Act of 1917 barred followers of anarchy or syndicalism, like members of the IWW, and made them subject to deportation proceedings, which Lind thought would be quicker than the slow and cumbersome pace of court proceedings.

Determined IWW resistance continued to cut lumber production through the summer of 1917. The use of repressive measures like aggressive sheriffs, company guards, hired detectives, Syndicalism laws, and finally martial law did nothing to relieve the underlying labor conditions or subdue the IWW. The lumber operators refused to concede the eight hour day and attacked conciliation or negotiation with the IWW. The Everett lumber operators described labor

concessions as “practicing philanthropy.” The more hostile of the lumber barons organized a cartel in a July 1917 Seattle meeting. They called it the Lumbermen’s Protective Association (LPA), which bullied and threatened members with a $5,000 per day fine if any accepted an eight hour day. It did not interest them that cartels use the identical collective action labor unions attempt in their efforts at collective bargaining.

Strikes that limited war production brought a quick response from the Wilson Administration. The President appointed a Presidents Mediation Commission with his Secretary of Labor, William Wilson as chair, and Felix Frankfurter as council. The Commission traveled to western lumber and mining regions with the hope it could settle summer labor disputes by holding hearings and drafting helpful mediation options.

Like state officials the Wilson Administration regarded the IWW as radical subversives working for the Bolsheviks. In the Pacific Northwest, National Guard troops and local sheriffs cooperated with federal officials to round up IWW as violators of the Espionage Act or possibly as draft dodgers. The Lumber Workers Industrial Union-No. 500 responded by returning to work, but used their favorite resistance: striking on the job. They dawdled, they loafed, they stood around waiting for “instructions,” they had “accidents” and they left work after 8 hours. Production continued to lag at barely a quarter of the War Department needs.

The Wilson Administration’s refusal to deal with the IWW left them with few options. The AFL Timber Workers Union represented a small and declining number of mill workers and the Lumbermen’s Protective Association demanded an open shop or nothing. It was a stalemate until October 1917 when the War Department sent Colonel Brice P. Disque to investigate the lack of spruce deliveries for the Division of Military Aeronautics. It did not take him long to realize labor relations needed change. He proposed to build a new labor organization around a theme of patriotism. His new organization, which he dubbed the Loyal Legion of Loggers and Lumbermen, a.k.a. the Four L’s, amounted to a company union. Operations evolved gradually over almost a year after Colonel Disque established his first local at Wheeler, Oregon, November 13, 1917.

Colonel Disque succeeded ending strikes and getting lumber production restored, but only because he had War Department clout and acted as an honest broker between labor and capital. He demanded strict discipline from the men but threatened and cajoled the lumber companies into accepting the eight hour day, a raise in minimum pay and significant improvements in the lumber camps. Some of the operators resented government interference, but Disque got Congress to threaten legislation to take over the lumber mills. By the end of the war loggers no longer had to carry blanket rolls, they got a bed with clean linen.

Colonel Disque or his facsimile could have ended strikes in the copper industry in Bisbee, Arizona and Butte, Montana. The IWW had a smaller presence in Bisbee than the Pacific Northwest, but the copper operators decided they could solve their labor disputes with mass arrests and deportations to New Mexico. President Wilson sent his Mediation Commission to Bisbee, but without success. Martial Law would rule in Butte. It took the wartime statutes with their police

state sanctions and finally Woodrow Wilson's decision to raid offices and arrest leaders in order to subdue the IWW. (4)

Bisbee Miners Strike

In Bisbee, Arizona the copper strike started June 26, 1917 after a Phelps-Dodge mine superintendent, Gerald Sherman, tore up a written list of negotiating demands and refused to respond. On July 2, President Wilson concerned for the war effort wrote to Arizona governor George P. Hunt. "I have been much concerned to hear of the possible serious misunderstanding between the miners and the operators in the copper mines and I would deem it a very great public service on your part if you would be generous enough to act as mediator and conciliator. I know how confidently I can appeal to your public spirit." Phelps-Dodge President Walter Douglas hated Governor Hunt after he offered support to strikers during mediation of the previous mining strike, the Clifton-Morenci strike. He was quoted in the Bisbee Daily Review: "It is up to the individual communities to drive these agitators out as has been done in other communities in the past."

Another strike in the Jerome, Arizona copper mines started July 5, 1917 after an IWW local demanded $6.00 for a six hour shift. On July 10, 1917 a group of 250 businessmen and a second group from a competitor union, the International Union of Mine, Mill and Smelter Workers (IUMMSW), rounded up the entire workforce, and with the aide of the union determined who was and who was not a member of the IWW. The 67 members of the IWW were forcibly deported to Needles, California. The strike ended in Jerome.

In Bisbee, the Citizens Protective League and the Workers Loyalty League met July 11, 1917 to decide how to end their strike. All in attendance preferred the Jerome solution and voted unanimously to deport the strikers. Cochise County Sheriff Harry Wheeler was called into the meeting and agreed to assist them. He formed a Sheriffs posse of 2,200 "loyal" Americans "for the purpose of arresting on the charges of vagrancy, treason, and of being disturbers of the peace of Cochise County all those strange men who have congregated here from other parts and sections for the purpose of harassing and intimidating all men who desire to pursue their daily toil."

Early in the morning of July 12 a sheriffs posse of 1,200 vigilantes broke into homes and businesses at gun point to round up an estimated 1,300 men and three women who were marched two miles to a park along a railroad siding. The El Paso and Southwestern Railroad agreed to have a freight train with cattle cars waiting. The sheriff and a local priest drove out in a car mounted with a Martin machine gun. After some of the abducted agreed to sever union ties and return to work, 1,186 men were ordered onto 24 cattle cars where they stood in the muck for the 193 mile trip to Columbus, New Mexico. The constable there refused to let them get off the train so they went back 17 miles to Hermanas, New Mexico where they were let off the train after 12 hours without food or water. They were threatened with beatings or death if they returned to Bisbee. (5)

After the men were abandoned in Hermanas the local sheriff wired the

New Mexico governor for instructions. He ordered humane treatment and wired Washington to request Federal intervention. President Wilson acted through his Secretary of War, Newton Baker, and Governor Hunt. U.S. troops moved the abducted to a tent colony at Columbus, New Mexico, where they were visited by ex-governor Hunt. He found the camp was not limited to IWW members or even striking miners but had a variety of Bisbee property and business owners. Most of the camp believed the President would clear their return to Bisbee fairly soon. They started to trickle back, but they were in for more surprises.

Sheriff Wheeler and his vigilantes established barricades into Bisbee and set up a kangaroo court in defiance of a sitting Arizona governor and President Wilson. Those who left the camp and returned to Bisbee were picked up at gun point and hauled before a kangaroo court judge for secret proceedings. The judge told them to leave town or be convicted and sent to prison.

This went on for months, but with a steady flow of press coverage and complaints to President Wilson. The President's Mediation Commission conducted hearings for five days in November and proposed procedures to address grievances. Phelps-Dodge and the other mining companies refused to hear grievances; the sheriff continued to arrest and waylay union men returning from the Columbus, New Mexico camps and arrest anyone they thought might be connected to the IWW. The mediation commissioners paused briefly before ordering the companies to follow commission directives, but to no avail. The companies repeated their demand for an open shop and refused to follow any grievance procedure or recognize a union.

The mediation commissioners wrote a final report that requested the United States Attorney General to consider violation of federal law. The report recommended making deportation a federal crime. Since the companies and Sheriff Wheeler got their way, the lingering anger they generated brought a variety of law suits.

One of the victims from Bisbee was an attorney who sued El Paso and Southwestern Railroad for their part in the kidnapping. The railroad paid a small damage amount in an out of court settlement. On May 15, 1918 the Department of Justice indicted 221 named persons including Sheriff Wheeler and Phelps-Dodge President, Walter Douglas. The accused were indicted for violating Section 19 of the United States criminal code by conspiring "to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States."

The federal district court dismissed the indictments December 2, 1918. First, the court defined the deportation as kidnapping, "an offense against the right and privilege of the persons conspired against," … where protection against kidnapping is … "provided for such persons under the police power of the state." Next, the court decided "the right of protection furnished by this police power of the state is a right reserved to the state under the Tenth Amendment." Next, the court decided federal statutes against kidnapping passed by Congress are "expressly limited to the constitutional authority of Congress to legislate against slavery, involuntary servitude, and peonage under the Thirteenth and Fourteenth

Amendments to the Constitution." The case moved to the U.S. Supreme Court on appeal. In **United States v. Wheeler** the justices voted 8 to 1 to affirm the district court after dawdling until December 13, 1920. Mention of the Fourteenth Amendment gives one more example of how the federal courts can exploit or ignore the requirements of it as it suits their purpose. If the justices wish to affirm corporate authority, the Fourteenth amendment has often figured in the excuse to do so.

With the Federal courts refusing to act the district attorney of Cochise County indicted 224 people for kidnapping. The Bisbee Daily Review reported "The warrant itself resembled a directory of the pioneer residents of the district, practically every man who has taken any active interest in the affairs of the district for the last twenty-five years being included in the charge." Phelps-Dodge posted bond for them all and hired attorneys to defend them.

The case was moved to another county court where Judge Samuel Pattee allowed the defense to claim the pioneer residents of Bisbee acted in self-defense. Defense attorneys claimed the right of "self defense is perfectly valid in behalf of the community as well as an individual" and that the law "justifies by virtue of necessity the invasion of another's rights."

Judge Pattee allowed extensive evidence and testimony to show that IWW members in Bisbee posed an immediate danger, a danger that justified the deportations even though many of those deported were not members of the IWW. The prosecutor's objections were to no avail. Since the strike remained peaceful and without violence and no evidence presented of any conspiracy, the defense attorneys decided they could use self defense to prove to a jury that IWW members were always violent and their mere presence in Bisbee was dangerous to the community.

It took six weeks to impanel a jury, but defense attorneys proved they knew how to exploit a divided community. After a long trial the court ignored the charge of kidnapping. It took just 16 minutes for their jury to acquit the accused and vindicate the deportations. The wealthy and well placed had their way, along with their eager, gun toting subordinates who carried out their wishes. Little mattered in the opposition of President Wilson, the friend of labor. (6)

Butte Miners Strike

By the summer of 1917 business interests and the western governors demanded troops to eliminate the radicals they claimed were the cause of strikes, but state National Guard troops were made part of the U.S. Army by that time. The call for troops was a call for federal troops, which created constitutional problems for the President. The constitution limits the use of federal troops in the states. Federal troops can be used to put down a rebellion against state authority since Article IV Section 4 of the constitution guarantees a republican form of government throughout the states. Established law allows the use of the U.S. army to suppress a rebellion or insurrection only after the legislature or the governor certifies their state cannot do so themselves. Even then the law requires the President to give advance notice with time for rebels to give up their fight.

Lumberjacks and miners were not working and were otherwise engaged in contemptuous and seditious talk, but there were no reports of rebellion or a declaration of martial law to justify troops. Western business interests convinced Secretary of War Newton Baker there was enough potential for violence to use troops. War Department authorization to local army officers directed them to "sternly repress acts committed with seditious intent" and protect "public utilities" essential to the war.

Woodrow Wilson approved the action, but urged Secretary Baker to warn army commanders to distinguish carefully between "ordinary offense against the law and against public order" and "acts committed under the provocation of the present excitement and with seditious or disloyal intent," which of course they did not.

The army took charge of domestic affairs to break strikes and overrule or ignore the civil courts. Military officials delegated their authority downward through the ranks and made soldiers available to the county sheriffs. Soldiers turned into a supplement for local law enforcement officers.

IWW attorneys attempted to get the courts to release members jailed without charges and without bail by filing for a writ of habeas corpus. Judges in the state courts were undoubtedly angry with the army and so they signed the writs to release the men, but the army decided "Persons arrested by the troops will be turned over to the sheriffs to hold, subject to release by the officer in command." . . . That way prisoners "will be subject to the order of the military commander so that if petitions are presented the prisoners can be held by military power."

Labor Secretary William Wilson warned the practice will not work. The Justice Department knew it was unconstitutional to use the army in this way and even the Judge Advocate General objected to the procedure, but it went forward as a useful expedient to war production, and lumbering and mining company profits. Army practices were especially abusive in Butte, Montana. (7)

At Butte a fire broke out in the Speculator mine, June 8, 1917. Solid cement bulkheads without required manhole covers blocked escape in violation of state law; 164 burned to death. For years the Western Federation of Miners union was able to maintain stable and peaceable relations in the Butte copper mines, but Butte unions were weak and divided by 1917. There were remnants of the Butte Miners Union, and the IWW had a small presence, but Butte copper mines were controlled by Anaconda Copper that hired armed guards and used spies to infiltrate union ranks. When Anaconda took over in 1903 management introduced the Rustling Card; no one could work in Butte mines without an Anaconda Rustling Card, which guaranteed an open shop.

The fires unified the men to walkout of the mines and organize a new and unaffiliated union, the Metal Mine Workers Union. On June 12 a poster circulated with a list of six demands: end the rustling card, enforce state mining law, hire a new mining inspector, recognize free speech and assembly, end the blacklist of union members and raise wages to cover the cost of living.

Anaconda management denounced the union and its demands: "It is well known that recently there has been a large influx into Butte of I.W.W.'s and other

unpatriotic and seditious persons, whose one aim is to paralyze our industries, and particularly those upon which the government is depending for its arms and ammunition." The new union was not affiliated with the IWW, although two of its leaders were former IWW members.

Mine operators refused to meet with a strike committee of miners, but the miners met in a public meeting June 14, 1917 and voted to continue their strike. They voted to have Federal District Attorney Burton Wheeler request a federal mediator from Washington. By June 18, at least 12,000 were out and skilled craft unions like the electrical workers joined the strike; by June 29, 15,000 were on strike.

Anaconda organized vigilantes to work with their company guards and supplied guns and cars to patrol streets while managing activities from Anaconda offices. Federal mediator William Rodgers arrived June 22, but striking miners called him the federal strike breaker. He told them to return to work pending a settlement he would arrange with federal authorities. Rodgers continued his discussion with the AFL affiliated skilled craft unions, especially the skilled electrical workers. Their walkout ended quickly after Rodgers convinced Anaconda to give the craft unions a wage increase, thereby dividing the unions.

The strike was still going July 17, 1917 when IWW organizer and Board member, Frank Little, arrived to speak at several public meetings where he incited his supporters and provoked the opposition. Anaconda published the local paper and condemned the federal government for allowing him to make treasonable and incendiary remarks. After a speech July 31, six men kicked in the door of his hotel room in the middle of the night, pulled him from the room to be dragged on a rope from the bumper of their car to a point out of town where he was beaten and hanged from a railroad bridge. A six by ten inch card with red lettering from a crayon pinned to his corpse read "Others take notice. First and last notice 3-7-77."

Frank Little was buried August 5, a Sunday. Thousands filled the streets of Butte to watch the procession in silence. The entire police force and 400 troops stood by. District Attorney Burton Wheeler maintained the murder was ordered by Anaconda but no one was ever arrested or held responsible.

The Federal Troops ordered to Butte August 10, 1917 stayed until January 1921, long after the war was over. The abuses in the use of federal troops reached extremes in Butte, although abuses were everywhere in western mining and lumbering. In Butte the chair of the Butte Council of Defense warned the army, "The minute the military here stop detaining men for seditious acts we have got to take it into our own hands and have a mob, and we don't want to start that. I can get a mob up here in 24 hours and hang half a dozen men." W. A. Clark of the Clark mining interests spoke for his fellow businessmen when he predicted that riots and bloodshed would follow the withdrawal of troops. "I don't believe in lynching or violence of that kind unless it is necessary."

The strike continued to cut copper production into September 1917. Montana Representative Jeanette Rankin, the only house member to vote against entry into WWI, and District Attorney Burton Wheeler wanted the President's Mediation Commission to investigate the lynching. Gradually Anaconda was

able to restore production with scab replacements by enough that Gompers advised labor secretary Wilson not to bother with an investigation. The remaining members of the Metal Miners voted to end the strike December 20, 1917. Wheeler was forced to resign under attack from the Montana Council of Defense. Jeanette Rankin lost her house seat in the next election. (8)

The Raids and Trials of the IWW

The IWW predicted World War I would bring the "bloodiest slaughter in history" but they did little more than publish their opposition to war by calling it a capitalist plot "to further the chains of slavery on our necks, and render still more secure the power of the few to control the destinies of the many." While their opinions were well known they avoided active steps to oppose the war. After Congress required registration for a draft the IWW Executive Board split with some who wanted to declare conscientious objection and actively oppose a draft. Bill Haywood convinced the executive board to recognize the danger of doing that and prevailed with a policy of accepting conscription without endorsing it. The rank and file was left to make their own decision; over 95 percent registered and many members were drafted and served in the army.

The IWW Executive Board kept a low profile and decided to use the war as an opportunity to organize, but they had few friends in organized labor. Samuel Gompers always opposed the IWW, and with more obvious differences over time. Where the AFL organized the skilled workforce by craft, the IWW worked for One Big Union. While Gompers lobbied to limit immigration the IWW organizers met immigrants at the dock and accepted any race or nationality in any number.

Where the AFL abandoned all efforts to organize seasonal or migratory farm workers, the IWW trusted the rank and file to sign them up on freight trains, at the farms and the mines and lumber camps. Immigrant and migratory workers found acceptance in the IWW with low fees and dues, immediate rank and file participation, and direct action on wages and working conditions. The IWW rejected dues check off as a conflict of interest for leaders who might compromise member interests for a steady income.

Where Gompers promoted legislation and urged members to reward political friends and punish enemies at the ballot box, the rank and file of the IWW were foreign nationals, blacks, women and children who could not vote. The IWW wanted negotiations at the work place, not legislation, seldom enforced.

Where Gompers worked to avoid strikes and use grievance procedures, the IWW considered strikes as a necessary test of their economic power. Strike early and strike often; use mass picketing, parades and demonstrations as a show of solidarity for themselves and others. The IWW had no use for grievance procedures that replaced rank and file action with private negotiations between employers and labor leaders. Everyone was a leader in the IWW.

Where Gompers thought the key to victory required accumulating funds to support strikers, the IWW relied on solidarity. The AFL prepared for long strikes they hoped to avoid, but when the IWW could not negotiate better wages and working conditions they persisted in a wearing down process of taking the strike

to the job as masters of the slowdown.

Where Gompers wanted union recognition and a signed labor contract, the IWW rejected both. The IWW expected employers to repudiate contracts unless the union had the economic power to enforce them. No terms with an employer were ever settled or final; the IWW regarded every battle as a continuing part of a class struggle they lived with day to day.

The IWW had no political friends. The liberal alternatives to the Republican and Democratic parties also opposed the IWW. The Progressive Party supported political reforms to defuse the power of concentrated wealth, but they would not tolerate attacks on capitalism, which they interpreted as a personal attack on their ethical and moral code.

Likewise the Socialist Party disagreements with the IWW got worse overtime. The Socialist party started winning some elections for local and state offices around 1910, but they had to broaden their appeal to the professional classes to do that. Bill Haywood continued to serve on the executive committee of the Socialist party. He was at the party convention of 1912, but came under attack for his IWW role and support of direct action in labor disputes. Socialists did not like his efforts to make the Socialist party a "fighting organization" in the class struggle. In 1913 the party membership voted to expel Haywood; even Eugene Debs opposed the IWW.

The practical and philosophical isolation of the IWW turned into at a serious disadvantage in politics and public relations, and frequently for their personal safety. Newspapers could embellish or falsify any story they wanted and find public support for action to repress the IWW. Officials ignored vigilante groups allowed to run wild. It is ironic the political outsider expected to rely on the economic power solidarity could bring, but ended up destroyed by political power, and by the president who proposed to be the friend of labor. (9)

The mining companies blamed all their problems on the radical IWW, but they did not like the proposals of the President's Mediation Commission, which offered moderate solutions through mediation. They preferred federal prosecution of agitators and they complained enough for Attorney General Thomas Gregory to make an internal call for Justice Department agents to conduct a thorough investigation of the IWW. Beginning July 11, 1917 Justice Department agents started gathering IWW writing and published materials, infiltrating union leadership, and requesting information obtained by corporate detectives. Attorney General Gregory thought the IWW must be "financed by some hostile organization."

State governors discussed how to handle the IWW problem. They did not like Bisbee style deportations, which they argued only moved the problem somewhere else. A panel of western governors proposed setting up internment camps and holding agitators at least during the war. They decided "This plan would effectively mystify them and frighten them; would avoid making heroes of them; and would deprive them of their best material for propaganda besides avoiding rash action by citizens." They wrote to Attorney General Gregory "surely there would be no more illegality involved than there was in the action of

Arizona citizens."

The Justice Department did not recommend internment to President Wilson, but former Governor Lind of Minnesota pressed forward with his IWW solution in a conference with Justice Department officials in Chicago. He claimed IWW organizing would paralyze the agriculture and lumber industries if something was not done: the states could not suppress the IWW. He argued for Federal prosecution of the Chicago leaders and offered his own evidence "to proceed with charges of criminal conspiracy and the wartime Espionage and Selective Service Acts.

The President made up his mind to authorize the Department of Justice to go forward with the Lind proposal. At the IWW Chicago offices they could see their troubles brewing: "We were already being shadowed night and day by federal and city gumshoes." Stool pigeons and spies attended IWW meetings. On September 5, 1917 federal agents raided IWW headquarters in Chicago and 63 other offices around the country. They took everything from the Chicago offices including private letters and effects, often cited as 5 tons of papers, pamphlets, leaflets, books and supplies.

Many of the leaders committed to the IWW were writers and contributors to the labor and political journals of the day. Their writing reflected their reading of Marx and other European syndicalist and political philosophers as well as their personal experience. They lived the class struggle that Marx described and so adopted his terms in their personal efforts as labor organizers. To the lawyers and investigators at the Justice Department the writing and materials they found were proof of an unpatriotic conspiracy to overthrow the U.S. government through revolution. To the IWW their opinions and writing was dissent protected by the constitution as free speech.

The Department of Justice pressed Federal indictments against 166 in Chicago beginning September 26, 1917. They made two charges of conspiracy: 1) conspiracy to prevent the production and transportation of war materials, 2) conspiracy to injure, oppress, threaten, and intimidate business by strikes and sabotage to end their privileges secured under the Constitution and laws of the United States. They made two charges under the wartime statutes: 1) conspiracy to violate the Espionage Act, 2) conspiracy to violate the Selective Service Act.

The men believed in their right of free speech enough that they did not flee or resist arrest; several turned themselves in. Among the 166 originally indicted some were dead, including Frank Little, some were not members of the IWW, and some were serving in the military. A few more were released until 101 were brought to trial in Chicago. One of the accused, Executive Board member Richard Brazier, quipped. "How we one hundred and one defendants had conspired together to arrange such a conspiracy we never knew. For most of us had never met prior to our arrests."

Veteran attorney George Vanderveer took over the legal defense and established a defense headquarters in Chicago. He was more optimistic than most of those indicted who had the will to fight but a knowing doom. The Justice Department conducted more raids on attorney Vanderveer's offices in December 1917, further disrupting defense efforts. The Post Office confiscated IWW

publications and mail, which including financial contributions needed to support a legal defense. J. Edgar Hoover and his assistants at the Justice Department went through the records line by line looking for evidence there were anarchists leading the IWW. It was never brought up at their trial suggesting they found nothing about anarchism or anarchists.

Jury selection began April fool's day 1918; the one size fits all trial got underway on May Day in the Federal Court of Judge Kenesaw Mountain Landis. Demanding separate trials for all 101 did not get serious consideration because the IWW lacked the funds and the majority of the accused valued their solidarity more than legal maneuvering. There was no evidence of a crime against them and they all believed they were indicted for their political beliefs, which they intended to defend as a matter of free speech.

The trial went on four months, but it was a boring grind with nothing added to the material the government had already released to the press. There was no evidence of crimes, which left the prosecution to argue strikes were a conspiracy to interfere with the war effort rather than raise wages and shorten hours. The defense countered by having the accused discuss their miserable life in the lumber camps and copper mines and the low wages they got for it. One who testified, John Foss, a little known member from Seattle, was in Butte at the time of the Speculator mine fire. He described the horrors to the jury as part of defense testimony.

Prosecution claims that the IWW interfered with the draft were hard to support with so many IWW members in the military. One of the accused came to court in his army uniform. Otherwise prosecutors read from IWW tracts and described IWW philosophy as subversive, atheistic and dangerous. Neither the prosecutor nor the judge could accept the rank and file joined the IWW as homeless and impoverished immigrants who found help and friendship, or that the IWW owned or rented union halls where members could go, which no other union or the government would provide. The court and the public made their solidarity and economic protest equal to an organized effort to bring down the government.

It took only an hour for the jury to find them all guilty on all counts. The men did not have bail money and expected to return to their jail cells before sentencing, but Judge Landis allowed them out with the promise to return for sentencing. Some thought it was trick to see if they would flee, but none did. They knew they would be sentenced anyway and hunted as fugitives. Most were surprised at ten and twenty year sentences. (10)

Once the Chicago trial ended the Justice Department allowed their regional offices to go ahead with more trials. The September 5th raids included raids in Fresno, California. Some arrested there were shipped to Chicago, but some were left over for another trial. After a bomb exploded at the Governors mansion in Sacramento December 17, 1917 the IWW was blamed, which brought another round up and arrest of IWW members. Some died in a flu epidemic during more than a year in jail, but apparently 46 were left for a trial that started in December 1918.

One of the California defendants was a wealthy heiress named Theodora Pollock. She was arrested as an IWW sympathizer when she showed up to post bail for her IWW friends. Ms. Pollock hired herself a defense attorney along with two others, but the rest refused to dignify the charges with a defense. All were convicted in a few minutes of jury deliberations; prison terms were one to ten years.

In Omaha, AWO members arrived in town on November 13, 1917 to attend a union convention, but Federal agents arrested them. District Attorney Thomas Allen wired Attorney General Gregory for instructions. He wanted the men held on charges like those in Chicago until after the Chicago trial. In June 1918 Allen offered to release them all for time served if they would plead guilty; all refused. Finally he released them in April 1919 without ever appearing before a grand jury.

In Kansas and Oklahoma IWW efforts to organize oil field workers justified raids and arrests on November 17, 1917 at IWW halls in Augusta, Kansas and Drumright, Oklahoma. A grand jury indicted 28 in March 1918 on charges of conspiracy but Justice Department attorneys were dissatisfied with the work of local District Attorney Fred Robinson, which brought more delays redrafting and resubmitting indictments. The last and final indictment came June 7, 1919. The first of four counts charged the IWW with "the forcible resistance to the execution of all the laws of the United States, and finally the revolutionary overthrow of all existing governmental authority of the United States." Three other counts were similar to the Chicago indictments charging conspiracy to violate the Espionage Act, the Lever Act and the Selective Service Act. The last charge ignored that all of the men charged had registered for the draft.

More than two years passed after the arrests until the trial finally started December 1, 1919. The delay allowed plenty of time for the Tulsa World to editorialize: "The first step in the whipping of Germany is to strangle the IWW's. Kill 'em dead. It is no time to waste money on trials and a continuance and things like that. All that is necessary is the evidence and the firing squad."

The prosecution mostly read from the IWW founding preamble, literature, letters and lyrics of Joe Hill's songs in the little red songbook. The accused decided against presenting a defense, although they had a defense attorney to make a closing argument. The judge instructed the jury that "the IWW, during the period of this war, was, in and of itself, a disloyal organization, the members conspiring to violate these several laws." The jury found them all guilty and the judge set prison terms of three to nine years. (11)

In August 1919 after two years in prison 46 of those convicted were released from Leavenworth on bail pending appeal. There was not enough bail money to release them all. One convicted in the Kansas trials decided that "With the living high and jobs scarce on the outside perhaps we are just as well off where we are. Personally I've been a bit worried facing the prospect of a 'cruel world' in the middle of a cold winter. Now I can settle down until spring." None of the officials in the government could acknowledge that wages were so low the men decided they could live as well in Leavenworth as out.

On October 1920 the U.S. appeals court threw out some of the counts of

convictions, but their rulings essentially confirmed the trial courts and the prison sentences. On April 11, 1921 the Supreme Court refused to review the lower court. Only 37 of the 46 out on bail showed up to serve their sentences; nine jumped bail and left the country including Bill Haywood who left for Russia. Later he agreed to return to trial if Justice Department officials agreed to refund his bail; they refused. Haywood wrote his biography, but in poor health he died May 28, 1928, but his departure accelerated the decline of the IWW.

The IWW did not disappear after the federal repression, but the frenzy of threats and hatred lingered on, making current or former connections to the IWW a personal and potentially dangerous liability into the 1920's. Woodrow Wilson angrily rejected any claims his Justice Department prosecuted the IWW for political reasons. He scorned clemency or pardons, but after Warren Harding took office as President he decided to consider individual requests for clemency. He commuted eleven of the seventy-one remaining in Leavenworth, but fifty-two signed a letter demanding a pardon for all or none; solidarity or bust. In June 1923 Harding commuted the rest except for the Sacramento defendants, but their troubles were not over. Now that the Wobblies were out of prison, Attorney General A. Mitchell Palmer, his Justice Department and the Immigration Bureau moved to deport them. (12)

Division and Discrimination

The wartime expansion of organized labor aggravated the long standing divisions over craft jurisdiction and what to do about the growing share of semi-skilled and unskilled industrial workers. After 1910 the Amalgamated Iron and Steel workers recognized the need for industry unions by allowing unskilled steelworkers to join, but the national craft affiliates in the AFL refused to allow any changes in craft jurisdiction. A machinist in the steel industry must be in the machinist's union and not a machinist in a union of steelworkers. Industrial unions could only organize the leftovers not already organized in AFL craft affiliates. Even Samuel Gompers recognized the need for industrial labor organizing to counter the growing trend of corporate merger and domination, but the AFL constitution did not give him the power to require the changes and the accommodations were not made.

Labor divided in other ways and forfeited other opportunities during the war to make long term gains in membership. The great migration of the black population from the rural south to wartime jobs in the industrial cities of the north was one of those lost organizing opportunities.

The black community was barely two generations out of slavery when America entered World War I. The nature of race relations had not changed. The hostilities between black and white working classes had their origin from long before the civil war. The white tradesman, artisan and laborer had to compete with Negro slaves hired out to do the same work. Plantation masters knew skilled slaves could be hired out as a profitable source of income forcing white labor to compete with the plantation owner whose cheap slave labor, deep financial pockets and political power lowered the wages and employment opportunities for

white labor.

Slave masters maintained their slaves as an investment at a higher living standard than poor whites were able to make as surplus labor. Whites hated blacks for taking their jobs. Blacks wanted freedom but when the emancipation came after the civil war they entered labor markets looking for any work they could find. Trade unions dominated the skilled crafts soon after the civil war ended and they tended to deny membership to blacks. The jobs they could find were mostly in agriculture or low paid domestic service, which helped promote the idea that blacks would do certain jobs and whites do others in a divided labor force.

Industry needed replacement workers to relieve the shortage of labor caused by American entry into World War I. The military draft and the halt to immigration cut the supply of labor everywhere and especially where it was needed the most in the industrial north. The first migration of black people from the rural south to the industrial north started during preparedness in late 1915. Agricultural flooding in 1916 and the advance of the Boll Weevil turned southern poverty into desperation helping to accelerate the south to north migration.

Labor agents added to the northward flow by recruiting southern labor to fill jobs in northern factories and on the railroads. Agents would provide transportation and moving subsidies in addition to promises of higher wages. Southern agriculture did not appreciate the loss of their cheap labor, but did nothing to raise wages. Instead they resorted to taxing and threatening the labor agents, hoping to drive them out of the south. A southern official wrote "Conditions recently became so alarming - that is, so many Negroes were leaving that the state began making anyone caught enticing blacks away - labor agents they were called - pay an annual license fee of $750 in every county in which he operates or solicits emigrants or be fined as much as $500 and sentenced to a year's hard labor." When that violation of individual rights had limited success authorities employed brut force, abducting people off trains and making arrests on depot platforms. Still the tide of migrants continued with surges after yet another lynching; desperate people will migrate and no threat can stop it. (13)

Nearly all of black population that migrated north ended up in northern cities. In the medium sized cities the percentage increase of blacks from 1910 to 1920 was high like Detroit where it was over 600 percent and Cleveland were it was over 300 percent. Even in the biggest cities like New York the black population increased 66 percent and in Chicago the increase was 148 percent.

A large majority of migrants found jobs in industry, but most were in unskilled jobs. Typically less than 10 percent of skilled occupations like carpentry, masonry or plasterer were black workers. Race made it hard for blacks to get into skilled occupations. White employers often would not hire them, but when they tried employers would complain "I have no objection to hiring colored labor but my employees would quit if I did."

The competition for cheap labor helped highlight the divisions in organized labor caused by racial discrimination. As organized labor advanced back in the 19th century the Knights of Labor and American Federation of Labor saw the dangers racism could bring to wages and working conditions. Both took official

positions against racial bias and discrimination. By 1893 the AFL convention resolved that "We here and now re-affirm as one of the cardinal principles of the labor movement that the working people must unite and organize irrespective of creed, color, sex, nationality or politics." New members were asked to take a pledge: "I promise never to discriminate against a fellow worker on account of color, creed or nationality."

Soon though there would be AFL affiliated unions to test whether organized labor could keep to its ideals and avoid divisions, or compromise for the opportunity to have more members. The National Machinists Union inserted a whites only clause and the AFL Executive Board did not force them to take it out. Instead they decided to allow separate charters for white and black unions with the same craft jurisdiction, except the black charters would come directly from the American Federation after blacks were denied membership in existing affiliates. While the by-laws of the AFL allowed the Executive Board to expel an affiliate who did not obey the rules, they needed the majority vote at a convention that they did not have.

Unions such as the Brotherhood of Railway Carmen, the Switchmen of North America, the Brotherhood of Railway and Steamship Clerks and Freight Handlers, the Order of Sleeping Car Conductors and quite a few more had whites only clauses in the constitution and by-laws. At least eleven of them were affiliates of the AFL.

Unions without membership restrictions did not necessarily admit blacks. License laws and competency exams had the same effect where licensing boards would receive exams but not issue a license. Conditions for unlicensed plumbers in Philadelphia illustrate the problem. "If a Negro is in some way able to set himself up as a plumber, when he goes to buy fixtures from the plumber's outfitter they refuse to sell to him. When certain plumber's outfitters have sold fixtures to Negro plumbers the plumbers organizations have boycotted these firms."

A member of the Brotherhood of Railway Carmen spoke to his membership. "I do not think there is a member in this room that believes in taking the Negro in with him on social equality. I believe that God in his infinite mercy made the Negro but he never made him to be a car worker."

The attitudes and practices of labor unions toward blacks assured low black participation that divided labor and hurt whites and blacks alike. The biggest harm occurred when blacks were used as strikebreakers or on occasion decided to be strikebreakers. Booker T. Washington explained the problems in the employment of black at the beginning of the great migration.

"The average Negro laborer in the country districts has rarely had the experience of looking for work; work has always looked for him." … "The average Negro is more accustomed to work for persons than for wages" … and "he has found in the past that the friendship and confidence of a good white man, who stands well in the community, are a valuable asset in time of trouble. For this reason he does not always understand, and does not like, an organization, which seems to be founded on a sort of impersonal enmity to the man by whom he is employed." …

"Aside from this natural disposition of the Negro there is unquestionably a very widespread prejudice and distrust of labor unions among Negroes generally." … "It is another illustration of the way in which prejudice works, also, that the strikers seemed to consider it a much greater crime for a Negro, who had been denied an opportunity to work at his trade, to take the place of a striking employee than it was for a white man to do the same thing. Not only have Negro strikebreakers been savagely beaten and even murdered by strikers or their sympathizers, but in some instances every Negro, no matter what his occupation, who lived in the vicinity of the strike has found himself in danger."

Other important leaders in the black community were hostile to unions and favored employers. Marcus Garvey directed a back to Africa movement and did not hesitate to offer his opinion of unions. "It seems strange and a paradox, but the only convenient friend the Negro worker or laborer has in America at the present time is the white capitalist. The capitalist being selfish - seeking only the largest profit out of labor - is willing and glad to use Negro labor wherever possible on a scale reasonably below the standard union wage . . . but if the Negro unionizes himself to the level of the white worker, the choice and preference of employment is given to the white worker."

Garvey went on. "If the Negro takes my advice he will organize by himself and always keep his scale of wage a little lower than the whites until he is able to become, through proper leadership, his own employer; by doing so he will keep the good will of the white employer and live a little longer under the present scheme for things."

A white railroad fireman working on a southern railroad complained about the competition of unorganized black labor. "Every time the firemen ask for an increase in wages or for overtime due them they are told by the superintendent, 'Why I can get a Negro in your place for one dollar, while I am paying you $1.50 a day.' "

At the time of a Georgia Railroad strike black firemen received $1.75 a day for the same work a white firemen received $2.77 a day. A company spokesman explained the simple economics of a divided work force: "If we can get what we want cheap is it a crime to take it?" Still too many whites preferred discrimination to keep wages from falling. Low wages and poverty was one effect of discrimination. In the south blacks were subject to individual violence in false arrests and lynching. In the north blacks were subject to group violence that erupted into urban riots. (14)

During his 1912 presidential campaign Woodrow Wilson told the black community "Should I become president of the United States they [black people] may count on me for absolute fair dealing and everything by which I could assist in advancing their race in the United States." At the time Democrats were the party of the racist south and Republicans the party of Lincoln, the emancipator. Booker T. Washington supported Wilson: "Mr Wilson is in favor of the things which tend toward the uplift, and improvement and uplift of my people." W.E.B. Du Bois, speaking for the recently founded National Association of Colored People (NAACP) decided Democrat Wilson could be trusted to keep his word

and advised a vote for him. Both Republican Presidents Roosevelt and Taft made around fifty patronage appointments to black people, appointments black leaders thought would be a starting point for additional appointments under Woodrow Wilson.

However, Wilson stalled before making his first move on black patronage in late spring of 1913, he fired two blacks from the Justice Department and replaced them with white men. During the summer Wilson withdrew other black nominations after southern members of Congress protested. Wilson appointed white men instead and told his cabinet he did not promise anything specific, only justice, but he wished to avoid "friction." After vocal protest by black leaders Wilson appointed a white to be minister to Haiti, a post previously reserved for a black. Wilson retained only 8 black appointees and replaced 24 appointments with whites. He made only one new appointment to a black.

Worse for the black community Wilson refused to oppose his southern cabinet officers in their determination to have segregation in the federal government. Post Master General Albert Burleson declared it "intolerable" on the Railway Mail Service "where whites not only had to work with blacks, but were forced to use the same glasses, towels and washrooms." Secretary of the Treasury, William McAdoo and Secretary of the Navy, Josephus Daniels supported segregation. A new National Democratic Fair Play Association pledged to fight for the segregation of blacks from whites for all federal workers. They used petitions, handed out leaflets and wrote personal letters to government officials to describe whites working with blacks as "Un-Democratic, Un-American and Un-Christian." These letters were passed to President Wilson who did nothing as segregation moved forward.

Wilson ignored the vigorous protest, but Oscar Garrison Villard, grandson of William Lloyd Garrison, and also an active Wilson campaign worker and newspaper editor, made it difficult for Wilson to hide. Villard confronted Wilson personally and by letter. Wilson made excuses but admitted the policy of federal segregation on "the initiative and suggestion of the department heads." Wilson justified the policy "with the idea that the friction, or rather the discontent or uneasiness which had prevailed in many departments would thereby be removed." Wilson told Villard he had misjudged his action intended to make Negro federal workers "more safe in their possession of office and less likely to be discriminated against."

In late 1913 President Wilson agreed to take a year to investigate segregation after meeting with a delegation led by William Monroe Trotter, the editor of the African American Boston Guardian and also a founding member of the NAACP. Trotter presented him with a petition signed by blacks in 38 states protesting federal segregation. A year later they returned to hear Mr. Wilson's report.

He told them "his cabinet officers investigated as promised, and [they] told him the segregation was caused by friction between colored and white clerks, and not done to injure or humiliate the colored clerks, but to avoid friction. … The white people of the country, as well as I, wish to see the colored people progress, and admire the progress they have already made, and want to see them continue

along independent lines. There is, however, a great prejudice against colored people, . . . but I mean those of African descent. It will take one hundred years to eradicate this prejudice and we must deal with it as practical men. Segregation is not humiliating but a benefit, and ought to be so regarded by you gentlemen. … The only harm that will come will be if you cause [colored people] to think it is a humiliation."

Dozens of comments in the press from across the country followed reports of the meeting. Many questioned his character. One example said, "President Wilson has had an opportunity to show himself a great man - and he failed. That man of such promise … with an opportunity to write himself down as a President a thousand times greater than the petty party that he came from, fell down. … Without the party he feels that he cannot advance politically, and he dares not do right when that party is wrong." Wilson was a southerner in a southern party; he could have stood up to violent racists like South Carolina's "Pitchfork" Ben Tillman. In a two party system Tillman had no where else to go. It leaves the impression the earnest and sanctimonious Wilson believed what he said about segregation, but he appeared more than a racist, he appeared as a coward. (15)

East St. Louis Race Riot

East St. Louis, Illinois already had a black community about 10 percent of the population when trainloads more started arriving from the south in 1916 and 1917 at the beginning of the great migration. Many came as part of an organized recruitment by local employers like the Illinois Central Railroad, the Aluminum Ore Company, Armour & Company, Swift & Company, and the American Steel Company. An official of the Illinois Central explained "We took Negro labor out of the South until it hurt." Estimates range from 5,000 up to as many as 10,000 blacks migrated into East St. Louis with the promise of jobs and a better life. (16)

The new arrivals filled every shed and shack in town and some walked the streets and slept in vacant lots. They were poor, unprepared for winter, desperate for work, and without the slightest knowledge or experience with unions. The white community resented the new arrivals from the beginning, but tensions got worse after a number of local companies used blacks as strikebreakers, replacing white employees. After strikes ended in summer and fall of 1916, the Swift and Armour Companies announced they would not recognize any union at their plants. Anyone rehired had to abandon all union activity. Many did renounce their union membership and returned to work, but management gradually replaced them anyway, drawing from their surplus of imported black labor.

East St. Louis race troubles intensified in the spring of 1917 as the Aluminum Ore Company had another round of layoffs just as the United States entered World War I and war orders generated more demand for aluminum. The layoffs of mostly white workers came during a renewed national rush of migration from the south into northern cities. Robert Abbott's black newspaper the Chicago Defender ran repeated stories of jobs and a better life in the north working in war production plants. Southern blacks answered the call and came north by the thousands and some of them ended up in already over crowded East St. Louis.

While it and St. Clair County were known as the "Pittsburgh of the West" for manufacturing, East St. Louis was also known for gambling, vice, crime and corruption. The incumbent mayor Fred Mollman survived his April 3, 1917 reelection bid by closing down gambling, bars and brothels, but they all reopened after the election.

In a city of contrasts in wealth and poverty, crime and virtue, black and white, the mayor was able to get elected and ignore the brewing anger and white hostility about to degenerate into race riots. The first riot started the evening of May 28, but it was a mild riot compared to the one of July 2, 1917. The United States has had many race riots. Some like the ones in New York, Philadelphia, Springfield and Cairo, Illinois came before July 2; some like the ones in Chicago, Washington, Houston, Tulsa and Detroit came after, but for savage brutality and deliberate cruelty of whites none can match the race riot of East St. Louis, Illinois. (17)

At a meeting May 23 the Central Trades Union of East St. Louis distributed a public letter to union delegates, which encouraged them to attend an upcoming City Council meeting to discuss the troubles caused by the migration of southern Negroes. The letter read in part "The immigration of the southern Negro into our city for the past eight months has reached the point where drastic action must be taken if we intend to work and live peaceably in this community. Since this influx of undesirable Negroes has started no less than ten thousand have come into this locality. These men are being used to the detriment of our white citizens by some of the capitalists and a few of the real estate owners. On next Monday evening the entire body of delegates to the Central Trades and Labor Unions will call upon the Mayor and City Council and demand that they take some action to retard this growing menace and also devise a way to get rid of a certain portion of those who are already here."

The Monday meeting convened at 7:00 p.m. May 28 to a standing room only crowd that left several hundred more outside in the street. Mayor Mollman spoke first to assure the crowd the city council wanted to stop the northward migration and promised to investigate ways to do that. Speakers from the floor followed with complaints about crowding and black crime while others warned against violence. Toward the end of the meeting a former city treasurer and attorney, Alexander Flannigen, rose to make some rambling comments, finally suggesting whites could physically block blacks from housing. He finished with "As far as I know, there is no law against mob violence." Many in the room jumped up to cheer. When the cheering died down the meeting emptied onto Collinsville Avenue where several groups assembled near to, and in front of, the East St. Louis police station.

Rumors a black robber shot a white man circulated until a paddy wagon pulled up with a young black man in handcuffs. It took only a few minutes to make up and exaggerate more crimes to turn an agitated white crowd of several thousand into a mob ranging south, setting fires and beating and attacking black pedestrians on the streets. The mob invaded downtown and black neighborhoods south of downtown invading restaurants, bars and a barbershop to attack and beat black

customers and owners. The mob disabled streetcars at Broadway and Collinsville Avenue beating riders and tossing blacks into the streets. Outnumbered police did very little, although there were two exceptions: plain clothes detectives, Samuel Coppedge and Frank Wodley. They brandished guns to limit arson on one of the black streets. They would try to help again in the July 2 riots, but with disastrous results.

Mayor Mollman phoned for help to the commanding officer of a National Guard Unit in East St. Louis, Major Ralph Cavanaugh. His troops were stationed there during the Aluminum Ore Company strike but he would not agree to leave his assigned post. The governor was unavailable to order other guard units. Little else was done to counter the rioting, which petered out around midnight. The next morning the mayor ordered bars, theaters, and schools closed, and gun sales to blacks halted. Police were ordered to arrest anyone who sold guns to blacks. The mayor was able to contact the Governor who authorized troops, which started arriving by the afternoon of May 29 just as the rioting picked up again. Whites tossed bricks and paving stones through windows in black neighborhoods and gangs of black and whites exchanged sporadic gunfire. A National Guard Colonel, E. P. Clayton, restored order with several hundred troops. No one was killed, but some blacks were severely beaten and at least two had gun shot wounds.

The East St. Louis Journal blamed "the foreign and lawless Negro element," but not the long established law-abiding black community. The Black Newspaper, the Argus, ran a headline: Union Leaders Start Race Riot. Their article noted blacks were pleasing the Aluminum Ore Company managers by working as low paid replacements for whites. The St. Louis Post Dispatch warned of further troubles.

Sporadic attacks of blacks in the streets continued into June, and at the Aluminum Ore Company, where pickets attacked black strikebreakers. National Guard and police stationed at the bridges spanning the Mississippi River to St. Louis routinely stopped and frisked blacks looking for guns, but not whites that were allowed to pass without a search. Black dentist and business owner, Dr. Leroy Bundy, and a committee of very worried blacks met with Mayor Mollman asking for help, but the mayor could not believe East St. Louis was nearly as dangerous as they believed. (18)

On the hot evening of July 1 in the neighborhoods around an African American Methodist church at Tenth Street and Bond Avenue, a black Ford Model T wandered through the pot-holed streets with a gang of white joy riders hanging out the windows shooting into black homes. As the shooting continued blacks returned fire until the black Ford Model T sped away and the shooting stopped.

After midnight on the morning of July 2, a grocery store owner phoned to night police chief, Cornelius Hickey, to assert armed blacks were assembling for a planned rebellion to start in response to a signal he claimed was a church bell ringing outside as he spoke. Hickey ordered plainclothes detectives Coppedge and Wodley to "get out there and see what's going on."

Coppedge, Wodley, two uniformed officers, a police driver, and a young St. Louis newspaper reporter, Roy Albertson, piled into a black Model T and set off

intending to investigate shooting in the Bond Avenue neighborhood. When they arrived in the unmarked black Model T it was mistaken for the identical car of the joy riders; the crowd opened fire. Bullets and shotgun pellets hit Coppedge, Wodley and one of the uniformed officers. Coppedge died in the car; Wodley would die later.

Albertson testified that their car stopped and that Coppedge exchanged words with the crowd before ordering his driver to pull away. As the car moved Albertson claimed to hear a pop like a tire blowing, or a gun shot. He was not sure which it was, but it was that pop he testified that brought a hail of gunfire from the crowd that blew out all the tires in addition to hitting Coppedge and Wodley.

As the Model T sped away, Albertson, who was on the running board, jumped off the car and phoned police. Night chief Hickey decided he should protect the police station against possible attack and so decided to wait for instructions from police chief Ransom Payne. Police Chief Payne had a police force of seventy men, six of them black. When he arrived later, he decided "it is not safe to attempt to go down in there now with the little handful of men we have." Mayor Mollman was in his office making calls for National Guard units. However, Roy Albertson and other reporters from the city's five newspapers were on the streets and turned in stories for their morning editions. Before dawn on the morning of July 2, the St. Louis Republic ran a front-page story with the headline, "Policeman Killed, 5 Shot in E. St. Louis Riot."

That morning there were two bullet riddled black Model T cars parked near each other on East St. Louis streets. One was bullet riddled with all four tires shot out. It was parked across the street from the police station; the second sat a block away in front of the Commercial Hotel. It was just bullet riddled. It turned out a cook named Gus Masserang who worked at the hotel had shotgun pellet wounds to his legs, back and neck.

By 8:00 a.m. an angry crowd of white men surrounded the car in front of the Commercial Hotel with an especially boisterous objector named Richard Brockway encouraging revenge for the shooting of a white police officer. The crowd grew quickly and in little time gangs of men broke away roaming the downtown to chase and attack unwary blacks, some at work such as a repair crew working on streetcar tracks. Word spread until by 10:00 a.m. frightened blacks started stuffing into south and west bound streetcars hoping to make it across the river to St. Louis. Those who couldn't jam onto streetcars walked or ran for the bridges, but at least three were already dead from beatings or bullet wounds. Later in the day some would escape going east.

Many did not escape in what turned out to be a well documented slaughter where news reporters were out in force, but police and National Guard troops were not. Reporters of the St. Louis Post-Dispatch and St. Louis Globe-Democrat described mobs of whites smashing their way onto streetcars and dragging victims to the ground where they were kicked to a bloody pulp, beaten and shot to death in front of crowds of white spectators.

Colonel Stephen Oliver Tripp arrived in East St. Louis by train and streetcar about 8:00 a.m. to command National Guard Troops. Robert Boylan

of the St. Louis Globe-Democrat was surprised that "Colonel Tripp was not in Uniform." He wore a gray summer suit with a hat: a banded straw boater. He tried to find Mayor Mollman "for the purpose of cooperating with him in the matter of enforcing law." The mayor did not want to go into the open he said because he courted blacks during his campaign and feared white rioters would shoot him. He designated the city attorney Thomas Fekete as his representative.

Illinois guardsmen started arriving around 9:00 a.m., but they did not look much like soldiers either. Roy Albertson reported they were mostly in overalls. "They weren't organized in any way, they were just raw recruits, farmer's boys." George Popkess, a reporter for the East St Louis Daily Journal, spoke with one of the guard troops who told him "We have no orders."

About 10:30 a.m. the mayor and the colonel met with fifty or sixty business men in the Chamber of Commerce offices near city hall where they argued over martial law. The businessmen wanted the mayor to declare martial law and the mayor was inclined to go along, but Colonel Tripp insisted his soldiers would halt the rioting. Both argued their case in a phone call to Governor Frank Lowden as the riot spread in the streets around them, but the Governor remained noncommittal in the confusion.

By 11:00 a.m. rioting had spread to the southern parts of downtown and north to the border with National City. Robert Boylan of the St. Louis Globe-Democrat watched white men running after blacks "like boys chasing rabbits." Blacks could not be safe hiding at home because rioters set fires and then gunned down men, women and children attempting to escape.

Governor Lowden stalled and put Colonel Tripp in charge of Troops, but he never did declare martial law in East St. Louis. Tripp left orders for troops to shoot if and only if they came under attack, and then drove north from the riot area to have lunch at a restaurant with city attorney Fekete. When they emerged from the restaurant about 1:30 p.m. the mob was outside raiding a pawnshop and stealing guns. He convened another meeting in mid afternoon with Mayor Mollman and the Chamber of Commerce.

As the afternoon dragged on thousands stood about as spectators to watch small gangs of attackers range through the streets attacking, beating and shooting blacks. Editor James Kirk of the East St. Louis Journal watched the slaughter from his office window on Collinsville Avenue. He noticed that men and women "stood around there and you wouldn't know they were agitated at all, and that's what made it even more heinous." . . . "As quick as a Negro would show up, maybe a young man or a boy, they would say, 'there's a nigger,' and immediately they would all start for him, to perform their execution, let him lie there, and then go and stand on the corner again and hobnob with the police and militiamen."

Paul Anderson of the St. Louis Post-Dispatch reported just one effort by militiaman to save a riot victim. He put up his hand and said "Now, boys, you've done enough to this man. Leave him alone. He's all in now." But militia troops stood by as a rioter leaned over and executed the prostrate black man with a shot in the back of the head.

By 5:00 p.m. a conflagration burned black homes near the East St. Louis

rail yards and burned warehouses and stores adjacent to downtown. Fires burned the Southern Railway warehouse and between 100 to 150 cars loaded with merchandise and the Hill-Thomas Lime and Cement Company buildings. Light west winds carried the blaze into the business district and destroyed the Broadway Theatre and other buildings. Roy Albertson was witness when half a dozen black men tried to escape their burning houses but rioters fired on them. The wounded men were picked up by their arms and legs and thrown back into the burning buildings. The soldiers present did nothing. Albertson described them as "overwhelmed" and "like lost babes in the woods." (19)

Hugh Wood of the St. Louis Post-Dispatch reported "No amount of suffering awakened pity in the hearts of rioters." Instead "A few Negroes, caught on the street, were kicked and shot to death. As flies settled on their terrible wounds, the gaping-mouthed mobsmen forbade the dying blacks to brush them off. Girls with blood on their stockings helped to kick in what had been black faces of the corpses on the street."

As Woods continued to walk the streets he saw "A Negro lay a block east of Broadway with his face beaten in. He was not dead. An ambulance, driven by white men, dashed up. 'If you pick up that skunk we'll kill you too,' cried the crowd. When the fire had eaten its way that far the body was tossed into the flames."

Carlos Hurd of the St. Louis Post-Dispatch arrived at the corner of Broadway and Collinsville Avenue about 6:30 p.m. where fires burned through a row of frame and brick store fronts with upper floor apartments. He called it a "massacre," "a man hunt," where "a black skin was a death warrant."

He would write "Get a nigger" was the slogan, and it was varied by the recurrent cry, "Get another!" It was like nothing so much as the holiday crowd, with thumbs turned down in the Roman Coliseum, except that here the shouters were their own gladiators, and their own wild beasts."

Hurd wrote the most about what he saw as a white man present in the riot. "A Negro, his head laid open by a great stone-cut, had been dragged to the mouth of the alley on Fourth Street and a small rope was being put about his neck." The rope would break but they got another. "Right here I saw the most sickening incident of the evening. To put the rope around the Negro's neck, one of the lynchers stuck his fingers inside the gaping scalp and lifted the Negro's head by it, literally bathing his hand in the man's blood. 'Get hold, and pull for East St. Louis' called a man with a black coat and a new straw hat, as he seized the other end of the rope. The rope was long, but not too long for the number of hands that grasped it, and this time the Negro was lifted to a height of about seven feet from the ground. The body was left hanging there."

Hurd would eventually publish a 3,000 word article in the St. Louis Post-Dispatch where he would give his opinion. "I have read of St. Bartholomew's night. I have heard stories of the latter day crimes of the Turks in Armenia, and I have learned to loathe the German army for its barbarity in Belgium. But I do not believe that Moslem fanaticism or Prussian frightfulness could perpetrate murders of more deliberate brutality than those which I saw committed in daylight, by

citizens of the State of Abraham Lincoln."

About 7:00 p.m. another load of 63 Illinois National Guard troops arrived by train bringing the militia count to 263. Colonel Tripp put the same Colonel Clayton who ended the May 28 rioting in personal command of the new troops and ordered them to Broadway and Fourth Street. Reporter Paul Anderson noticed the change after all day on the streets. It was "the first time that day I had seen any adequate effort by soldiers. By that time, most of the killings had already occurred." He later testified "That was the turning point of the riot."" (20)

Rioting slowly petered out in the late evening of July 2. At midnight of July 3, Adjutant General Frank S. Dickson of the Illinois National Guard arrived wearing his military uniform to take charge of militia forces. After General Dickson arrived he learned the mayor was home in bed. When Dickson called him, the mayor said "take charge" and he "would be down" in the morning. The General's tour of the riot area took him through smoldering ruins of a square mile with bodies scattered in ditches, gutters, alleys, vacant lots and Cahokia Creek; three more black men would die from police shootings in the early morning dawn.

The death toll count rested at forty-eight, including Coppedge and Wodley; thirty-nine were black men, women and children. Few would agree, or believe, the death toll was that low and higher estimates would come later. As many as 1,200 refugees huddled at city hall; the Red Cross showed up to help them. Thousands more were across the river in St. Louis. Governor Frank Lowden came from Springfield to take a look. He said "I tell you that I know of no outrages that have been perpetrated in the South that surpass the conditions I found in East St. Louis, in our beloved state."

There were immediate calls for a federal investigation and anti-lynching legislation. Ida Wells-Barnett, already a veteran in the anti-lynching fight, came from Chicago on July 4 to tour the riot areas and lead that fight. In a letter to President Wilson, the governor of Kansas, Arthur Capper, called for "a most searching investigation into conditions at East St. Louis." W.E.B. Du Bois came July 8 to investigate the riot on behalf of the NAACP. He brought Martha Gruening, a white suffragette and social worker, and a staff of two dozen with him. On July 9, Congressman Leonidas Carstarphen Dyer introduced Resolution 118 into the House to create a joint committee from the House and Senate to "investigate the causes that led to the murdering, the lynching, the burning and the drowning of innocent citizens of the United States in East St. Louis on July 2, 1917."

In a July 7 memo to Attorney General Thomas Watt Gregory President Wilson asked "Do you think we could exercise any jurisdiction in this tragical matter? Then on July 10 the president received a memo from his secretary Joseph Tumulty advising him that Senator Joseph France of Maryland requested that he meet with him and "a delegation of negroes to discuss the east St. Louis situation."

Tumulty decided to offer his personal advice: "Now that the effect of this terrible thing is slowly passing away. I am afraid that if you see this delegation the fire will be re-kindled and that a greater impetus will be given to an agitation which is contagious in its effects. I would suggest that you personally reply to Senator Franz (sic), telling him that I communicated his wish to you and that

you regret because of the press of matters having to do with the international situation you are so tied down that it will be impossible for you to see him and the delegation at this time, although you will be glad to take it up at a later date;"

The president again wrote to his Attorney General. In a memo of July 23 he wanted to know "Will I not be right in saying to Mr. Dyer that this is a matter to which we cannot under the existing law extend our jurisdiction, much as we should like to do so?" The Attorney General finally answered in a memo of July 27: "Up to this time no facts have been presented to us which would justify Federal action, though it is conceivable that a condition which would justify it may develop later on. … In replying to the letter of Representative Dyer which is here with returned, I suggest that you do not state flatly that under existing laws the federal government has no jurisdiction, but rather follow the lines of this letter, bearing in mind that it is still barely possible that something may develop which would authorize Federal action."

In a memo of August 1, 1917 Tumulty advised the president that the "East St. Louis affair" has not disappeared and that now the delegation of negroes has returned wanting to meet with him to present a petition for him to sign asking him to condemn lynching. The petition advised among other things that over the "previous 31 years 2,867 Negroes had been lynched by mobs without trial or punishment." The president replied to Tumulty the same day in a memo: "I wish very much that you would think this over and tell me just what form and occasion you think such a statement ought to take. I want to make it if it can be made naturally and with the likelihood that it will be effective."

After President Wilson refused to meet the delegation of black leaders, the NAACP organized a Negro silent parade on Fifth Avenue in New York that took place July 28. It would be the first of many more civil rights marches. Shortly President Wilson would repeat the conclusion of his Attorney General that no federal laws were violated to justify an investigation, but the Dyer committee did investigate the East St. Louis Race Riots. Testimony got underway October 18, 1917 (21)

An all white grand jury interviewed 390 witnesses before drawing conclusions and assessing blame. The grand jury estimated close to 100 people were killed and 245 buildings destroyed. They cited the use of blacks as strikebreakers by East St. Louis industry as "the intent of employers to place the workers of one race at a disadvantage by notoriously favoring workers of another must draw down condemnation. The natural result was to precipitate a new form of aversion to the Negro."

The Grand Jury concluded two cars of white gunman made numerous trips through black neighborhoods firing into black homes. "Engendered by false fears, Negroes wantonly murdered policemen bent on aiding them. A rival flame of passion and unreasoning violence - all introduced into the community by intriguing ringleaders - caused white men to draw guns and clubs and shoot and beat to death some of the oldest and most respected Negro citizens of East St. Louis - Negroes who had lived and worked in the community for a long time preceding the period of emigration of which the community has heard so much.

We further believe that the hand of a strong and fearless public official could have restrained these atrocities." … "There is a grave suspicion that a shrewd, criminal, invisible hand directed all the moves from weeks prior to July 2, to effect the results obtained."

The grand jury handed down 144 indictments, which included seven policemen, two white women, twenty-three black men, two fourteen year old white boys, forty-six year old Richard Brockway, and a forty-three year old black physician. Charges included conspiracy to riot, assault with intent to kill, arson, malicious mischief and thirty-two charges of murder.

In mid August a white stockyard worker charged with brutally beating a white man who came to the aid of a black co-worker decided to plea bargain hoping for a lighter sentence. He confessed to assault with intent to murder and conspiracy to riot, but he was sentenced to fifteen years, which all but ended further plea bargaining.

The first trial opened October 1, 1917 with thirteen blacks charged with murder in the death of officer Coppedge. Judge George Crow allowed the prosecution to claim that Dr. Leroy Bundy organized the crowd that assembled on the corner of Tenth and Bond avenue as part of a conspiracy of blacks seeking revenge against whites. Dr. Bundy was a black dentist, entrepreneur and politician who was not present at this first trial; he was in Cleveland fighting extradition but he would be the defendant in a later trial.

Prosecution witnesses included one black man named Edward Wilson. He was arrested after the riot as one of the crowd that shot officer Coppedge, but he agreed to testify that he saw the others armed and in the neighborhood of Tenth and Bond Avenue. Other prosecution witnesses testified they saw groups of three or four blacks walking on the streets near Tenth and Bond Avenue.

Defense attorneys claimed that whites driving through black neighborhoods and shooting into homes were part of a conspiracy of whites against blacks; whites intending to drive blacks out of East St. Louis. Judge Crow denied the defense request to introduce testimony of blacks who saw carloads of white joy riders shooting into homes in the neighborhoods around Tenth and Bond Avenue. He cited legal procedure to deny the request; the defense could defend against prosecution charges, but new charges could not be used as a defense in a criminal trial. The all white jury responded by convicting ten of the thirteen and the judge sentenced them to a minimum of 14 years in state prison. To those in the black community the outcome of the trial denied blacks the right of self-defense.

There were four trials of whites. Two white men were charged and convicted of murdering a black man based on testimony of Colonel Clayton and the widow of the victim, Scott Clark. Colonel Clayton and Mrs. Scott watched as the accused dragged the injured Mr. Clark through the street by a rope around his neck and tried to hoist him up light pole. He survived the ordeal, but died later of neck injuries. The all white jury convicted the two men who were sentenced to 14 years in state prison.

Three more whites were convicted in the murder of a black man, his stepson and a bystander, a white hardware storeowner, Charles Keyser. The murdered

black man and his stepson were part of the Cook family returning home on the streetcar after a day fishing on a nearby lake. The three accused beat and shot Mr. Cook and then their stepson in front of Mrs. Cook, who survived a severe beating to testify at trial. After shooting Mr. Cook the stepson tried to flee, but he was shot in the back as he ran toward Keyer's hardware store. The bullet passed through the stepson and killed Charles Keyser standing at the front of his store. Other witnesses saw the accused rob a pawnshop where they smashed out windows and took thirty-six revolvers and twelve boxes of ammunition. The jury found two guilty of murder and they got fifteen year sentences; the third pleaded guilty of conspiracy to riot and got a five year sentence.

In a third trial Richard Brockway and two co-defendants were sentenced to five years prison for conspiracy to incite rioting. Prosecutors did have witnesses to testify to a murder in spite of his telling police "We're going to kill every Nigger in East St. Louis in a minute" Three more white rioters were convicted of conspiracy to riot in a fourth trial because a witness came forward who saw them shooting into black homes. They were fined $500.

The trials of white rioters ended with nine convictions from four trials even though police made at least a hundred arrests. About half of those were out on bond; some left to join the army or just disappeared. Many indictments were dismissed or ended in plea bargains after forty-one agreed to plead guilty to a misdemeanor even though some committed murder; 27 paid small fines and 14 went to prison for short sentences. The Grand jury originally indicted seven police officers three for murder, four for rioting. The Attorney General's office arranged to dismiss charges against all seven if three selected by chance draw from a hat would plead guilty to the crime of rioting. The three selected at random paid $50 fines. In the black community it was the price for a black murder.

Dr. Leroy Bundy was eventually extradited from Cleveland and charged with inciting to riot. He spent time in jail in Belleville, Illinois before supporters raised the necessary funds to pay his bond. Dr. Bundy was a dentist and businessman with a gas station, garage, and car dealership, and a politician who served a term on the St. Clair County Board of Supervisors. White politicians courted him because he could deliver votes in local elections. National attention made him such a celebrity he traveled and lectured to raise defense funds for his trial, which finally came up in Waterloo, Illinois in March 1919.

The People v. Bundy had special significance to the national black community beyond the criminal charges because Dr. Bundy counseled East St. Louis blacks to get prepared for self-defense. Several whites testified they saw blacks take guns to be stored in Dr. Bundy's garage and that blacks came to hang out at Bundy's home. To the prosecution the men and their guns were a conspiracy to riot by blacks seeking revenge against whites; the defense claimed the guns were for self-defense.

Most of the witnesses admitted they did not see Bundy at Tenth and Bond Avenue on the night Coppedge and Wodley were shot, but several suggested he might have been there because they saw a car like Bundy's and they saw blacks walking in the area with guns. The defense was prepared when the prosecution

had Edward Wilson back to testify he saw Bundy in the crowd at Tenth and Bond Avenue. This time though defense witnesses testified that Wilson admitted police beat him while in jail until he agreed to testify against Bundy.

The prosecution also had the previously mentioned hotel cook, Gus Masserang, tell the court he saw Leroy Bundy at Tenth and Bond Avenue, but it was here defense attorney's produced the hospital records showing he was treated for shotgun wounds on the night of July 1. That allowed the defense to suggest he was wounded while driving around shooting in black neighborhoods, and that his testimony was part of a deal with police to avoid prosecution. Defense attorneys also proved that Bundy was not in East St. Louis on the night of the riot. None of that mattered to the all white jury that convicted him. He was sentenced to life in prison. His appeal ended up at the Illinois Supreme Court that overturned the conviction on the grounds the prosecution had proved nothing. He was released from prison after serving a year. (22)

Hearings for the Congressional Investigation got underway October 18, 1917 in East St. Louis before a committee of five Congressmen: two from Illinois and one each from California, Wisconsin and Kentucky. Their final report described the events of the riot such as the carloads of whites shooting in black neighborhoods, the shooting at Tenth and Bond Avenue, the bullet riddled cars, the wanton broad daylight attacks on men, women and children in the streets of East St. Louis. Their report estimated 312 buildings destroyed by fire, but declared "It is not possible to give accurately the number dead." Instead they suggested at least 39 Negroes and 8 whites and hundreds wounded and maimed.

Committee conclusions primarily derived from testimony during the hearings, which helped highlight a broad range of corruption and self-serving excuses from business and labor as well as political and military officials. Testimony helped to highlight public corruption in East St. Louis where there were "politicians of both parties who found East St. Louis respected and prosperous, and in a few years robbed its treasury, gave away valuable franchises, sank it into the mire of pollution and brought upon it national censure and disgrace."

The committee described Mayor Mollman as weak, feeble and under the control of political bosses who embezzled city money into their personal slush funds and acted as slumlords while running saloons, brothels and gambling parlors. The city derived its largest share of funds from fees for a liquor license, which helps explain dozens of nickel-a-shot saloons full of drunken crooks and crackpots ready to join a riot.

The committee concluded the "great majority" of police did nothing to stop savage attacks on blacks, but they were also cited for threatening to arrest newspaper reporters and destroying their cameras and film. They described Colonel Tripp as a "hopeless incompetent."

The committee criticized the East St. Louis Chamber of Commerce and its members that refused responsibility for the riot, or to change employment practices. Chamber witnesses admitted they were actively recruiting and importing more southern Negroes during the hearings. The industrial employers were absentee owners, mostly in New York, which made it easy to have hired

managers ignore the misery and squalor in East St. Louis.

Few, if any, union members joined the rioting, but organized labor absolutely refused to admit their active resentment toward black migrants and their demand to get "rid of a certain portion already here" contributed to the violence. Union officials made no move to unify labor with plans to admit blacks on an equal basis. Ida Wells-Barnett efforts to make lynching a crime failed again; an anti-lynching law would not pass Congress for another fifty years. Corporate America expected to continue their efforts to flood job markets with cheap labor. May the dead rest in peace? (23)

Labor Under the National War Labor Board

The flood of strikes in vital war industries brought calls to take a more constructive role in labor relations. As the war dragged on the Presidential Mediation Commission suggested a new National War Labor Board(NWLB) to centralize authority and decision making in labor disputes, excluding IWW labor disputes. The new Board took over the mediation and conciliation of labor relations April 6, 1918.

Published War Labor Board principles included a specific no strike no lockout policy during the war. Other principles required management to form and bargain with shop committees, similar to the Rockefeller Plan, but guaranteed the right of workers to organize into trade unions. The policy allowed the open shop and did not require employers to recognize unions, but employees were to be protected from employer interference if they did join a union.

The NWLB was asked to mediate wage and hour disputes 896 times in order to avoid disruptions of war production. President Wilson supported the Board's recommendations and decisions during the war and in general expected both business and good labor unions to do the same. Samuel Gompers was available to smooth things over; disputes did not stop.

One of the early disputes for the Board came at Bethlehem Steel from a strike threat after management refused to meet with their elected shop committee or even explain their bonus system, suspected of lowering wages. Eugene R. Grace of Bethlehem told Board examiners ". . . that while he was always ready to meet individual employees and adjust grievances . . . he would not deal with a committee who came to him representing men or if the committee in its formation in any way savored of organization then most assuredly the company would not deal with it."

The Board ruled against Bethlehem on July 31, 1918. They could not figure out the bonus system, as the men could not, and ordered it dissolved. Otherwise it set wages and hours and ordered the company to recognize the shop committees. Bethlehem stalled into September and then complained publicly that refusing to recognize unions makes no difference if unions control the shop committees. To the Board the shop committees were not the equivalent of a union because there were no representatives from the international offices to show up and provide support: the hated outside agitators. Shop committees were made up solely of non-union or union rank and file company employees who had to negotiate for

themselves. Bethlehem never conceded the point, but finally conceded the ruling on October 1, 1918.

In other rulings Western Union Telegraph dismissed 300 employees for their union membership in an AFL affiliate, the Commercial Telegraphers Union. The union appealed for mediation citing their member's right to join a union under Board rules. The Board proposed a compromise within its published principles that called for reinstatement of those dismissed and an end to future dismissals, but the company did not have to recognize or bargain with any union as long as it maintained shop committees as part of Board policy. The company refused the settlement. Company president, Newcomb Carlton, said "If I have to choose between allowing the unionization of essential employees or government control I would choose the latter." The railroads were already operating under government control so Mr. Carlton could not have been too surprised when the President ordered the takeover of communications and Congress concurred.

The machinists union went on strike at Smith and Wesson Arms Company after the company refused to confer with shop committees organized under NWLB policy. The company justified firing committee members because they maintained an open shop that required all employees to pledge they would not join a union. The NWLB ordered the men reinstated with back pay. When Smith and Wesson refused the order the President ordered the Secretary of War to commandeer their arms plant.

The NWLB made another settlement order between machinists and Remington Arms Company, but the machinists were unhappy with the settlement and remained on strike. In this case President Wilson threatened to revoke draft exemptions for those who refused the Board settlement, which ended the strike.

The National War Labor Board protected labor rights as never before. Membership in AFL affiliates increased from 2 million in 1914 to 3.2 million in 1919 and just over 4 million in 1920. Membership in all unions was up from 2.6 million to 4 million in 1919 and to 5 million in 1920. Most of the increase in membership came after the Board established and then protected bargaining rights. Some of the wage gains occurred, or would have occurred, without the National War Labor Board, but there were other benefits that came directly from Board intervention.

The NWLB kept busy but their findings and awards did not change any minds. Business detested the NWLB decision to authorize elected shop committees because they "almost unfailingly open the door to and deliberately encourage the unionization of plants that have peacefully operated open shops for long periods." Business mostly went along with the Board's decisions during the war, but after the war organized and unorganized labor would pay a stiff price for the added resentment the policy caused. (24)

Chapter Eight - 1919

"It is a case pure and simple of the absolute sway of property rights over human rights. A handful of social parasites hidden away in Wall street, with no other interest in the steel industry than to exploit it, settle arbitrarily the vital questions of wages, hours and working conditions, while the enormous mass of the workers, actual producers whose very lives are involved, have no say whatsoever."

--------- William Z. Foster on the Great Steel Strike and its Lessons, 1919.

In November 1918 the armistice of World War I brought a renewal of industry and labor conflict that plagued the conversion to a peacetime economy. Just three days after the armistice the New York Times covered a speech of the President of the American Founders Association, William H. Barr: "There is no one who will seriously contend that with the return of peace we can operate our mines and factories and compete in the world of trade if we are to operate on an eight-hour day and pay the wages which have been imposed under the stress of political opportunity." He called for the liquidation of labor.

Labor had their own ideas after working long hours turning out war materials to make the world safe for democracy. If it was their patriotic duty to support a war fought for democracy, freedom and equality, then they expected a say in working conditions at home. They wanted respect in an industrial democracy where management should be required to represent the interest of labor and the public, not just capital.

Meanwhile President Wilson spent much of 1919 preoccupied with peace treaty negotiations in Paris and then a debilitating stroke October 2, 1919 limited his role in post war reconstruction. The uncertainty after the armistice renewed the class conflicts that turned 1919 into a series of vicious strikes and battles. The first strike began in January 1919 in Seattle; June brought bombs; followed by summer riots and a fall season with the Boston Police strike; the U.S. Steel strike; the United Mine Workers strike, an organized lynching at Centralia, Washington, and other strikes and violence. (1)

Seattle Strike

The day after WWI started in Europe Hulet M. Wells introduced a resolution to the Seattle Central Labor Council opposing American entry in the war. His resolution had three whereas clauses before getting to "Therefore, as representatives of the organized working class, we declare the European war to be an international crime and a horror for which there is no parallel in savagery, and we denounce the church, which claims to be founded on the principle of peace and good will, for having failed to interpose its opposition to this orgy of blood; …" Mr. Wells would soon become president of the Central Labor Council where he continued to fund and promote opposition to the war. He would eventually spend two years in prison for his efforts.

Many others in Seattle joined Mr. Wells in promoting resistance to WWI, especially in counseling resistance to the draft. During the early years of war in Europe and the preparedness campaign Seattle earned its reputation as home to America's largest concentration of outspoken opponents of the war and proponents of labor rights and socialist reform. The mainstream press billed them as a radical threat to America.

Anna Louise Strong was one of the radicals. She wrote for the Seattle Daily Call and later the Seattle Union Record and spoke for the local chapter of the American Union Against Militarism, later known as the People's Council. Louise Olivereau could not accept sending men off to a brutal war. She posted resist conscription appeals on walls, on sidewalks, and distributed several thousand printed resist conscription leaflets through the mail or by handout. Bruce Rogers published the "Red Feather," which he called a counter irritant instead of a newspaper. He drafted and distributed a leaflet entitled "No Conscription! No Involuntary Servitude!" Its first line read "Resist. Refuse. Don't yield the first step toward conscription."

War protest in Seattle brought more than its share of nationwide arrests, trials and prison terms. Those who expressed any socialist views or demands for labor reform were presumed to oppose the war. Those who delayed, dawdled or deliberated before registering for the draft risked indictment, as many would soon find out. Authorities arrested Hulet Wells May 28, 1917 only ten days after Congress passed the Selective Service Act. A Grand Jury indicted Wells and three other socialists for conspiracy to obstruct the draft. Attorney George Vanderveer defended them arguing Americans have a free speech right to oppose any legislation. The trial ended in a hung jury, 7 to 5, but the government would not accept defeat and indicted them again for a new trial that began February 19, 1918. Louise Olivereau made no attempt to conceal her efforts to oppose the draft after authorities rifled her desk in the September IWW raids. She was arrested, could not make bail, and so spent two months in the Pierce County Jail near Tacoma, Washington before her trial for violating the Espionage Act began November 30, 1917. (2)

Before America entered the war German torpedoes sank enough ships to make shipbuilding a lucrative enterprise for preparedness, especially in the Seattle shipyards. Domestic shipbuilding was depressed anyway but the risks of submarine attacks made it necessary for the federal government to fund and subsidize construction. In September 1916 Congress passed legislation creating the United States Shipping Board with authority to build shipyards and ships. The Shipping Board created an Emergency Fleet Corporation (EFC), to manage the effort that began in April 1917. Congress provided an unlimited budget. Even though the EFC contracted construction to private corporations that built the ships and employed the men, the Board's appointed general manager, Charles Piez, had influence over wages and working conditions because he could withhold steel allotments.

Seattle boomed during WWI. Seattle shipyards built 96 ships during 1918 including 61 steel hull freighters. To build the ships the shipyards had to recruit

men to come from elsewhere to live in Seattle. Not everyone welcomed the influx or the rise in rents and prices that went with it. Many of the new arrivals already had union connections; union membership increased to 60,000 by 1918. Much of the increase resulted from war related shipbuilding, but Seattle was already a union town with 110 AFL affiliates, other IWW locals in addition to the Central Labor Council. The shipyards were 99+ percent organized.

In normal times an employer makes wage rate decisions, but during WWI the federal government had EFC director Charles Piez to manage and protect government interests. Mr. Piez decided shipyard wages rates should not be so high. Arguments over wage rates in Seattle and elsewhere generated enough trouble for the Shipping Board to create a three person Shipbuilding Labor Adjustment Board (SLAB) to settle labor disputes. SLAB's three member board included a Presidential appointee, banker Everit Macy to be chair, a second EFC appointee, a Chicago businessman, and a third labor appointee, secretary of the AFL metal trades; business had two votes, labor one. SLAB would soon be known as the Macy Board.

The biggest Seattle shipyard, Skinner & Eddy, recognized war related shipbuilding for the gravy train it was and so paid their men well in order to avoid strikes and keep skid road busy. In July 1917 the Metal Trades Council representing all the shipyard unions negotiated $8 pay for an 8 hour day for the skilled crafts and somewhat lower increases for the unskilled. Skinner & Eddy agreed but other shipbuilders would not. A strike was threatened but calmer heads prevailed that arranged for three Metal Trades representatives to present their case to the Macy Board. Disputes, illness and delays dragged on until a hearing finally got started October 8, 1917. When hearings began in Seattle some of the unions were already out on strike. However, the Macy Board did not hurry. They held five days of hearings in Seattle and moved to shipyards in Portland and San Francisco before making a decision.

The Board used a formula based on pay two years before and came up with a wage of $5.25 pay for an 8 hour day. The men were not happy with a pay cut. The Metal Trades Council made an appeal to the EFC Board, which agreed to appoint another mediation board, but mediation failed again in a split vote. Even though wages would normally be a dispute between unions and management, Mr. Piez ruled the men worked for the EFC and not the companies. It was a ruling favored by the companies through their shipbuilders association because they did not want to pay the higher Skinner & Eddy wages.

The matter dragged on for months without resolution until the unions decided to authorize a strike in a vote counted December 10, 1918. Even though the metal trades could not reach agreement with the shipyards everyone remained calm until Charles Piez reentered the fray with a letter sent to Shipyard owners telling them to remain firm on wages or he would end their steel allotment. There was speculation Piez conspired with the smaller shipyards to prevent Skinner and Eddy from taking control of post war construction by offering higher wages than the other shipyards or that he was hostile to labor radicals in Seattle. Whatever his reason the unions were incensed to learn Mr. Piez would intervene and tell

the shipyards to stand firm on wages. The strike threat moved into January 1919.

By then, the end of the war, many in Seattle's middle class pined to restore patriotic order and calm, a hope in stark contrast to the Seattle labor movement ready and willing to try any variety of socialist or anarchist politics including the new Bolshevik "experiment." Union newspapers openly discussed socialist arrangements for workers to control and manage the shipyards while business and the mainstream press called for the open shop with a plan for returning war veterans to take over the shipyard jobs.

On January 12 Seattle supporters of the Russian experiment held an open air rally where as many as 3,000 arrived to oppose the U.S. sending arms to Russia to fight against the Bolshevik revolution. Police and army troops arrived to break it up; thirteen were arrested in the rioting that followed. A second meeting took place the evening of January 16, again in a vacant lot. The second meeting attracted a much bigger crowd, as many as 10,000. Speakers promoted the worker takeover of shipyards and factories. Police broke it up again, although this time without arrests.

That was the setting by January 18, 1919 when the Metal Trades Council served notice to the shipyard employers a strike would begin January 21, 1919. With the war over and the government likely to end their subsidies for shipbuilding, it appeared like a bad time to strike. Shortly Charles Piez and Everit Macy publicized their views opposing labor's position claiming labor violated their agreement to abide by Macy Board rulings.

The shipyard strike went ahead as announced. After one day officials from the Metal Trades Council suggested an additional citywide sympathy strike. It got an enthusiastic response in spite of the risks. It would be known as the Seattle General Strike. (3)

Once the shipyard workers went out Mr. Piez refused further negotiations and threatened to halt government shipbuilding in Seattle. Almost immediately the many diverse elements of the Seattle labor movement turned to discussing a general strike. In a January 22, 1919 meeting of delegates from 110 local unions, all but one voted to hold a referendum. More meetings followed until a final meeting February 2 where three delegates from each union voted to have a general strike beginning February 6, 1919. The meeting organized a large General Strike Committee of 300 that organized an Executive Committee of 15 to "manage" the strike. Some in the Seattle Labor movement relished an opportunity to organize and manage a general strike and got most of the rest to go along.

The Executive Committee of 15 did not intend to negotiate a settlement of grievances, it only planned procedures to administer the shut down. The Committee discussed the hardships of cutting off electricity, hospital services, garbage collection, public transit, and grocery stores. They discussed the amount of milk for babies. Committee members wrangled over the appropriate exemptions that ought to go with a general strike, but not what they could accomplish by having it, or how or why it would end. Not everyone on the Committee felt comfortable having an undefined general strike, but they could agree on nothing more than "Together we win."

During strike deliberations Harvey O'Connor authored and passed out a handbill in Seattle on February 3rd titled "Russia Did It." Many in Seattle thought it was an official strike document. Then on February 4th Anna Louise Strong published her editorial titled "No One Knows Where." Both got national attention, none of it good for organized labor.

The handbill "Russia did it" started by telling shipyard workers "You left the shipyards to enforce your demand for higher wages. Without you your employer is helpless. Without you they cannot make one cent of profit - their whole system of robbery has collapsed." It went on to urge workers to get busy and defend themselves before it ended a few hundred words later with "The Russians have shown you the way out. What are you going to do about it? You are doomed to wage slavery till you die unless you wake up, realize that you and the boss have not one thing in common, that the employing class must be overthrown, and that you, the workers, must take over the control of your jobs, and through them, the control over your lives instead of offering yourself up to the masters as a sacrifice six days a week, so that they may coin profits out of your sweat and toil."

The next day "No One Knows Where" appeared in the Seattle Union Record. The Anna Strong editorial reads in a meter like verse in which Ms. Strong urged the public to remain calm even though the general strike will be the most "tremendous move made by Labor in this country - a move which will lead – No one knows where!" She goes on to reassure readers Labor will feed the people, take care of the sick and preserve order.

Then she finished in similar fashion as Mr. O'Connor with

> "Labor will not only shut down the industries, but Labor will reopen, under the management of the appropriate trades, such activities as are needed to preserve public health and public peace. If the strike continues, Labor may feel led to avoid public suffering by reopening more and more activities.
>
> Under its own management.
>
> And that is why we say that we are starting on a road that leads-No One Knows Where!"

On February 5th store shelves emptied, families stayed home, cleaned their guns, locked their doors, filled bath tubs with water and prepared for the worst. The well-to-do departed for a safer domain, certain mobs of IWW would destroy the city. Requests for exemptions continued to pour in to the Committee. Some still wanted to shut down public and private power plants, but the Committee of 15 decided against it.

On February 6th 65,000 did not show up for work, right on schedule. Seattle fell completely, utterly silent. An estimated 40,000 of those not at work stayed home because there would be no customers to bother opening shops or businesses. Seattle mayor Ole Hanson recruited 600 extra police and equipped them all with clubs. He announced 1,500 troops at nearby Camp Lewis would protect Seattle if necessary, which it was not. Essential services operated as

planned. Hospitals opened; electricity flowed; 21 meal stations served thirty-five cent meals for the hungry, twenty-five cents with a union card; babies got milk; all remained calm and peaceful. Strikers felt pleased with their managerial expertise; others though were not impressed. (4)

The failure to have published aims for the strike proved a fatal flaw, fully recognized by Seattle business interests and Mayor Hanson. On the third day of the strike, February 9, Hanson told the United Press the Seattle strike was the start of a revolution. "Russia Did It" and "No One knows Where," republished around the country, made it easy to bolster that claim. Hanson told the Seattle Central Labor Council and the Committee of 15 to call off the strike or face martial law.

The pressure forced the Central Labor Council to end the strike February 11, 1919 with barely a whimper. The labor movement showed the world they could manage and administrate, but no one cared outside the labor movement. The national publicity surrounding the strike made it easy to connect organized labor with radicals, Bolsheviks and revolution. The national press made Mayor Hanson a hero in the fight against radicals. The New York Times and the Outlook among others, published his opposition to radicals. He quit his mayor's job for a lucrative speaking tour and pitched himself as a presidential candidate, but he would have to contend with another press made hero: Calvin Coolidge. The remnants of Seattle would plague labor for a long time and especially for the rest of 1919. (5)

Bombs and Politics

On April 28, 1919 the Post Office delivered a 7" by 3" by 2" box wrapped with brown paper to Ole Hanson's office. It had a return address of Kimbel Brothers store in New York. The label read "novelty," a euphemistic way of describing a box with a bomb ready to detonate when opened, which it failed to do. The next day April 29 an identical package blew up at the home of former Senator Thomas Hardwick of Georgia, severely injuring the Senator's maid who opened the package.

After hearing about the bomb a postal clerk in New York remembered stacking brown packages with insufficient postage. Postal inspectors found 16 identical packages, all with the same bomb. More searches at Post Offices around the country turned up more bombs, thirty in all. They were addressed to senators, congressmen, judges, cabinet officials, governors, and mayors. Charles M. Fickert and Edward Cunha from the Mooney Billings case in San Francisco had bombs delivered. All were successfully foiled and did not detonate, but the news created a national panic.

The hullabaloo had barely settled when a second round of bombs started Monday evening June 2, 1919; bombs exploded in seven cities. These bombs were not mailed but delivered in person and generally made from twenty pounds of dynamite. One exploded at the front door of Attorney General A. Mitchell Palmer at 2132 R Street NW in Washington, blasting the bomber into tiny bits, demolishing the front of the house, damaging nearby houses and scattering debris over the neighborhood. Palmer lived next door to Franklin D Roosevelt, who

called police.

Authorities spent two days picking up evidence in the neighborhood. They found two revolvers, a .32 Smith & Wesson and a .32 colt automatic, remnants of a black suit case, parts of clothing including part of a derby hat, an Italian-English dictionary and a supply of anarchist leaflets.

The other cities targeted with bombs were Boston, New York, Paterson, Philadelphia, Pittsburgh, and Cleveland. In Boston, there were two explosions one just before midnight at the home of Judge Albert Hayden and the second at 12:02 at the home of state representative Samuel Powers. At 12.55 a bomb exploded in the basement of the New York home of Judge Charles Nott Jr. doing extensive damage to the house and surrounding neighborhood. No Nott family members were home but the blast killed a caretaker. Another bomb exploded in Paterson at 12:20 in the home of the president of the Suanhna Silk Company. In Philadelphia, a bomb exploded at a Church at 11.15 p.m. A bomb in Cleveland wrecked the home of Mayor Harry L. Davis about 11:30, but no one was hurt. (6)

Continuing fear of bombs and foreigners with the search for bombing suspects justified a series of raids known far and wide as the Red Scare. Red Scare suspects tended to be aliens recognized for their public efforts to organize and empower the working class. In 1919 the Bureau of Immigration in the Department of Labor had the sole responsibility to arrest aliens using authority from the often amended Immigration Acts passed by Congress, and then deport them following an internal hearing using procedures resembling due process in U.S. civil law. The Bureau of Investigation in the Justice department enforced criminal law but did not conduct deportation hearings or deportations. The separate departments developed “very pleasant relations” especially between J. Edgar Hoover, head of the Alien Radical Division at Justice, and Anthony Caminetti, Commissioner General at the Immigration Bureau in the Department of Labor.

Caminetti and Hoover decided the quickest solution to end bombings would be for Hoover to round up foreign anarchists and have Caminetti deport them. Until March 1919 they had a high success rate, meaning almost everyone arrested got deported. However, the success rate depended on Rule 22, which “did not allow legal counsel until after government interests were protected.” Aliens without counsel and limited English skills would end up telling hearing examiners they believed anarchist philosophy, which after the Immigration Act of 1903 was a deportable offense.

Secretary of Labor William B. Wilson and his Assistant Secretary Louis Post declared Rule 22 created unfair deception and changed the wording to allow arrested aliens legal counsel for the full hearing. Deportations dropped significantly for the next nine months as anarchists arrived at hearings with legal counsel. The change of wording infuriated Hoover, Caminetti and Attorney General A. Mitchell Palmer, which they took upon themselves to reverse. In late 1919 collaboration between the two departments changed abruptly into a strike force of unannounced dragnet raids followed by seizure of documents, correspondence, membership lists and membership cards, secret testimony of undercover informants, interrogation of aliens without legal counsel, and detention in isolation cells without bail, or

with impossibly high bail. (7)

The first raid of the Red Scare came November 7, 1919 with the arrest of 250 members of a Russian workers union in a dozen cities; another raid December 21, 1919 targeted aliens to be arrested and deported but not charged with bombing or crimes. Bigger raids came on January 2 and January 6, 1920 when as many as 10,000 were raided and arrested in 33 cities.

The crude abuses generated a furious and raucous opposition, but Attorney General Palmer and J. Edgar Hoover had plenty of defenders. Their need to arrest bombers and put an end to crimes of violence overlapped with their determination to suppress free speech and display their power. Anarchists, Socialists, and Communists wrote and talked with different terms and terminology, but all were working class movements and philosophies intended to empower labor and address working class poverty and income inequality. More than a few in the labor movement were also active in these groups, which made it easy for nervous Americans to believe violent revolutionaries ran the labor movement.

Many years later it would be Walter Reuther of the United Auto Workers who would understand the class war could be fought within America's Capitalist terminology, but as of 1919 many in the labor movement were apt to apply anarchist and communist terms to their aims and intentions when it was unnecessary. (8)

The Espionage Act of June 15, 1917 added another justification to deport aliens, but President Wilson also intended to silence U.S. citizens opposed to the war. Almost 1,300 were prosecuted under the Espionage Act for speaking against American entry into the war including Emma Goldman, and Alexander Berkman who were convicted and deported.

Emma Goldman continued to be a public figure after Alexander Berkman went to jail in the Frick shooting. She remained non-violent taking no part in bombings. The press gave her the title "Queen of the Anarchists." She was speaking in Cleveland at Memorial Hall on the "Modern Phrases of Anarchism" when Leon Czolgosz assassinated President William McKinley September 5, 1901. Czolgosz denied any accomplice and told police "I don't believe in a Republican form of government and I don't believe we should have any rulers." … "I had the idea to kill the president. I read something in Free Society suggested the idea. I thought it would be a good thing for the country to kill the president. I don't believe in voting; it is against my principles; I am an anarchist." The press blamed Goldman and published a story titled "Czolgosz confesses to having been incited by Emma Goldman." Goldman returned to Chicago to find her apartment ransacked and to be arrested and questioned for hours. Police held her until September 24, but released her for lack of criminal evidence.

Alexander Berkman left jail in 1905 after serving 13 years for the Frick shooting. He joined Emma and Mary Eleanor Fitzgerald, another activist known as "Fitzi," to found the No-Conscription League on May 9, 1917. Emma called preparedness "the road to universal slaughter," which theme they printed in a 100,000 copies of an anti-conscription manifesto.

On June 15, 1917 President Wilson signed the Espionage Act into law; Emma was arrested the same day at her office, 20 East 125th Street, New York

and charged with violating the Espionage Act by "conspiracy to interfere with the draft." She and Alexander Berkman were two of four arrested and taken to the Tombs. After a brief hearing, bail was set at $25,000. One of the four was arrested without a warrant but he did not have a draft registration card.

At their trial that started June 27, 1917 they all spoke, but Emma knew the outcome and so resorted to sarcasm. "The methods employed by Marshal McCarthy and his hosts of heroic warriors were sensational enough to satisfy the famous circus men, Barnum & Bailey. A dozen or more heroes dashing up two flights of stairs … only to discover the two dangerous disturbers and trouble-makers, Alexander Berkman and Emma Goldman, in their separate offices, quietly at work at their desks, wielding not a sword, nor a gun or a bomb, but merely their pens! Verily, it required courage to catch such big fish."

The jury took 39 minutes to find Goldman and Berkman guilty. Judge Julius M. Mayer put in the maximum sentence, two years and a $10,000 fine. The Judge sent them to prison immediately. Emma was discharged from her Missouri prison September 27, 1919. Berkman was released from his Atlanta prison October 1, 1919. Both were deported December 5, 1919. Berkman never returned; Francis Perkins, FDR's Secretary of Labor, allowed Goldman to visit on a 9 month visa in 1931. She died in Canada in 1940. (9)

Eugene Debs, Kate Richards O'Hare, Hulet Wells, Louise Olivereau, Victor Berger, Charles T. Schenck and others went to prison for violating the Espionage Act. Debs spoke several times in the first weeks of June 1918 without attracting attention. On June 16, 1918 he addressed a crowd of a thousand socialist supporters in Canton, Ohio after visiting three friends in jail charged with obstructing the draft. "Three of our most loyal comrades are paying the penalty for their devotion to the cause of the working class." … "They tell us that we lie in a great free republic; that our institutions are democratic; that we are a free and self governing people. That is too much even for a joke. But is not a subject for levity."

The U.S. Attorney for northern Ohio, E. S. Wert, had stenographers recording his speech and even though Debs talked almost entirely about socialism and not the war, the U.S. Attorney wanted to prosecute. He sent a copy of the speech to Attorney General Gregory who advised against prosecution, but on June 29 Wertz convinced a Grand Jury to charge Debs with ten counts of violating the Espionage Act. He was arrested the next day. After posting a $10,000 bond; trial was set for September 9.

At the trial there was no evidence in dispute; Debs admitted making the speech but he spoke on his own behalf. He did object to the prosecution calling him a revolutionary when he was socialist, but he spoke of American patriots - Washington, Paine, Adams – and rights of free speech and freedom. He told them American institutions are on trial but the jury did not care to philosophize and found him guilty the next day September 12. On Saturday, September 14, during remarks at sentencing Debs made his often quoted statement: "While there is a lower class, I am in it; while there is a criminal element, I am of it; while there is a soul in prison, I am not free." Judge Westenhaver sentenced him to 10 years in

federal prison.

Kate Richards O'Hare traveled thousands of miles delivering hundreds upon hundreds of lectures as the "first lady" of American Socialism. She served on the national executive committee of the Socialist Party, wrote commentary for its newspaper, the National Rip-Saw, and ran for the House and Senate on the Socialist ticket; she spoke for political and economic equality for women. As a doctrinaire pacifist, she agreed to lead a Socialist Party Committee on War and Militarism and helped draft a report, which condemned American entry into World War I and supported international working-class solidarity.

When WWI got started O'Hare spoke further declaring men as puppets of the male-created capitalist system. She was arrested on a lecture tour at Devils Lake, North Dakota July 29, 1917, convicted for violating the Espionage Act in December 1917 and sentenced to a five-year prison term. After all legal appeals ended in April 1919 she joined Emma Goldman at the Missouri State Penitentiary at Jefferson City, Missouri. (10)

Hulet M. Wells second trial of February 19, 1918 went on without IWW attorney George Vanderveer, preoccupied defending the IWW in Chicago. The government appointed a special prosecutor, but no random jury selection from Seattle would support federal convictions under the Espionage Act. It was necessary to hand pick a jury from the federal courts for authorities to get their way in a political verdict. After conviction Wells went to the McNiel Island prison run by an especially sadistic warden named Halligan who assigned him to cut island timber as a lumberjack. Over work on a prison diet reduced his health. He asked for a different job; when no response followed he quit work. For that he ended up in a solitary "black hole" on bread and water with the chain of his handcuffs looped through the window bars above his head for eight hours a day. News leaked out, which brought outraged protest, some of it directed at President Wilson. Wilson, the friend of labor, pledged "to study the situation" which eventually brought Wells a transfer to Leavenworth Prison. There he stayed refusing to petition for parole, but demanding an apology from Wilson. Eventually prison officials released him in December 1920 after serving more than two years for publicly opposing the war.

Louise Olivereau spoke with a defense attorney about her "espionage" trial. He advised her to plead not guilty and argue she never meant to break the law. Avoiding prison, he counseled, would allow her to do so much more for the cause. She dismissed him and wrote a friend "that specious argument" … "rots the backbone of so many of us." … "What would freedom be worth gained in such a way?"

Olivereau spoke directly to the jury to justify handing out leaflets opposing the draft. She reminded the jury President Wilson was elected for a pledge to keep us out of war. She paraphrased from Wilson's writing in the New Freedom for Americans to take counsel together and form opinions and make these opinions known: "The jails of this country today are full of people who have attempted to act on President Wilson's advice." The prosecutor told the jury it was not necessary to find the defendant advocated force; if her action tended to cause

disloyalty or refusal to duty that was enough." The jury took thirty minutes to find her guilty. She got a ten year sentence. (11)

Victor L. Berger, Socialist party founding member, did not support American entry into WWI. The Wilson Administration indicted Berger and four others of the Socialist party in February 1918 using the Espionage Act; a trial followed on December 9, 1918. On February 20, 1919, Berger was convicted and sentenced to 20 years in federal prison by Judge Kenessaw Mountain Landis. Appeal was taken and the conviction overturned by the Supreme Court on January 31, 1921. The Supreme Court majority ruled in his favor as a result of procedural errors by Judge Landis. In the mean time Berger ran for the U.S. House of Representatives in November 1918 while under indictment. He won the election but the House voted on November 10, 1919 to remove him from Congress by claiming his opposition to the war put him in insurrection and rebellion against the United States as prohibited in Section 3 of the 14th Amendment to the constitution. In a special election December 9, 1919 he won a second time, but the House voted again to deny him his seat, January 20, 1920.

Charles T. Schenck, general secretary of the U.S. Socialist Party, opposed the implementation of a military draft in the country. He took part in the printing and distribution of thousands of leaflets that called for men who were drafted to resist military service. Federal authorities arrested Schenck for having violated the Espionage Act; conviction on three counts brought him a 10 year prison sentence on each count.

Appeal was taken and ultimately resulted in the famous Supreme Court opinion of Oliver Wendell Holmes in **Schenck v. United States**. Schenck's attorneys argued the first amendment to the U.S. Constitution protects free speech and the thirteenth amendment abolishes slavery and involuntary servitude: conscripts equal convicts. Justice Holmes wrote that free speech depends on the circumstances: "free speech would not protect a man in falsely shouting fire in a theatre and causing a panic." . . . "The question in every case is whether the words" . . . "create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent." Justice Holmes did not live until the Viet Nam War, but maybe he would have agreed constitutional opinions need to change. (12)

Red Summer

James Weldon Johnson, founding member and executive secretary of the NAACP, named the six months from April to October 1919 the Red Summer as a way to describe twenty five race riots around the country that left lots of very red blood on their streets. The Chicago race riot of 1919 was the more prolonged and deadly of red summer race riots that took place in Charleston, South Carolina, Longview, Texas, Washington D.C., Knoxville, Tennessee, Omaha, Nebraska, and Elaine, Arkansas among other places. In Omaha, Mayor Edwin Smith stood before a howling mob refusing to turn over William Brown, accused of raping a white girl; they lynched the mayor first. Police cut the rope off a trolley pole and rescued him before he choked to death, but the mob set fire to the courthouse

and got to Brown anyway. His burned and bullet riddled remains ended up as a mutilated corpse swinging from a lamppost.

The Washington DC rioting brought an unsigned letter to the editor of "The Crisis." It was published as the feelings of a "A Southern Colored Women." She said in part

"We know how many insults we have borne silently, for we have hidden many of them from our men because we do not want them to die needlessly in our defense; we know the sorrow of seeing our boys and girls grow up, the swift stab of the heart at night to the sound of a strange footstep, the feel of a tigress to spring and claw the white man with his lustful look at our comely daughters, the deep humiliation of sitting in the Jim Crow part of a street car and hear the white men laugh and discuss us, point out the good and bad points of our bodies. God along knows the many things colored women have borne here in the South in silence."

The Black population of Chicago more than doubled from 1910 to 1920 from 44,000 to 109,000 as part of the great migration. Letters to the Chicago Defender, Broad Ax, the Chicago Urban League and to pastors at black churches have preserved their motives for moving north. Writer journalist Carl Sandberg reported on the letters, one from New Orleans. "I wish very much to come north. Anywhere in Illinois will do if I am away from the lynchmen's noose and the torchmen's fire. We are firemen, machinist helpers, practical painters and general laborers. And most of all, ministers of the gospel who are not afraid of labor, for it put us where we are." Arnold Hill, secretary of the Chicago Urban League, followed southern events and reported "whenever we read newspaper dispatches of a public hanging or burning in Texas or a Mississippi town, we get ready to extend greetings to people from the immediate vicinity of the scene of the Lynching."

There were strong economic motives, often expressed in letters back to the south, especially to black pastors. "The colored people are making good. They are best workers. I have made a great many white friends. The church is crowded with Baptists from Alabama and Georgia. Ten and twelve join every Sunday." Another wrote to his pastor in Union Springs, Alabama. "It is true the colored men are making good. Pay is never less than $3 per day for ten hours – this not promise. … Remember this ($3) is the very lowest wage. Piece work men can make from $6 to $8 a day." And "I witnessed Decoration Day on May 30, the line of march was four miles, eight brass bands. I tell you people here are patriotic. … People are coming here every day and find employment. Nothing here but money, and it is not hard to get."

The implicit borders of the black belt bulged into areas unofficially claimed by whites. Housing was in short supply with no new housing built during the war. Between July 1, 1917 and July 27, 1919, the day the Chicago riot started, bombs exploded in 24 homes of black families; police did not make an arrest in these bombings. Many of the black men living in the black belt volunteered their service in WWI. A black unit, the 8th Illinois, fought the battles at the Argonne Forest and on the Meuse, returning to parades and celebrations as a decorated unit. These men refused to passively accept a second class status imposed by

white men and youth, often themselves from the south. They would fight back on the streets of Chicago.

Sunday--------The Chicago riot started on the hot Sunday afternoon of July 27 when blacks tried to use a Lake Michigan beach at 29th Street, unofficially reserved for whites. Several black couples entered the beach off 29th Street, but whites there objected and demanded they leave. The blacks left briefly but came back, which started rock throwing back and forth. About the same time five black teenagers launched a home made 9' by 14' raft made of railroad ties. They launched the raft in an isolated industrial part of the beach well down from 29th street beach; a place known to the teenagers who used it as the "Hot and Cold." The cold was water dumped in the lake by an ice cream company; the hot was water dumped in the lake by a beer brewery. It was a place where polluted water from the brewery could bleach black skin white, as some later described it. The raft was well away from the altercation up the beach when the five black teenagers shoved off aiming to tie up at a post several hundred yards in the lake. As the raft drifted by a breakwater off 26th street a white man started throwing rocks at their raft. A stone hit 17 year old Eugene Williams in the forehead; dazed and bleeding he slipped into the water and drown.

Both white and black youth dived in the area to save Williams, but without success. Several of the black teenagers wanted a black policeman to go with them and arrest the white, George Stauber, who had stoned Eugene Williams. Instead a white police officer, Daniel Callaghan, intervened to prevent the arrest. The two officers argued but officer Callahan arrested a black man instead. The blacks present were incensed and attacked and beat George Stauber. Officer Callahan left the scene to telephone for help, but the crowds already present were spoiling for a fight. Rumors of violence spread quickly before a patrol car and a group of police showed up at the 29th street beach. A black man shot into the cars and hit officer John O'Brien in the arm. O'Brien and a black police officer returned fire killing the shooter, James Crawford, and wounding two others. More shooting followed, the riot was on.

For the remainder of the afternoon of July 27 the predominantly white crowd deserted the beach and scattered onto south side streets where there was more brawling, rock throwing, stabbing and shooting. News of the beach incident and the growing mayhem attracted more people ready to retaliate and fight. White youth gangs entered the riot areas to attack blacks at intersections along Cottage Grove Avenue in their south side black belt. Blacks regarded the rioters as invaders and fought back. Efforts by police on horseback to disperse the fighting and stem the violence mostly failed until after midnight into Monday morning when the fighting temporarily petered out. The toll on Sunday came to four white men beaten, five stabbed and one shot along with 27 blacks beaten, seven stabbed and four shot. (13)

Monday----------The Mayor was out of town Sunday, but arrived by train Monday morning July 28 to confront press questions about the previous day's rioting and a threatened transit strike. Whether to call out the militia turned into

a controversial question. Mayor William H. Thompson and Police Chief John Garrity announced against it in opposition to Governor Frank O. Lowden who was in favor.

Hope the rioting was over ended when white gangs waited to attack blacks leaving their jobs in the stockyards district after their Monday shift ended at 3 p.m. Gangs of white youth chased blacks on foot and blocked street car tracks and then boarded street cars to drag blacks onto the street and attack and beat them. The toll for the afternoon was four black men killed and thirty injured; one white was killed in the streetcar fighting.

The rioting turned into a territorial fight as blacks organized to protect their south side black belt neighborhood and attack whites that entered. An Italian peddler, Casmero Lazeroni, and a laundry man were stabbed to death. Someone blamed a white tenant from the Angeles Apartments for shooting a black youth from a fourth story window. Whites called the police after a throng of blacks entered the building searching for the shooter. As many as a hundred police showed up but they found themselves confronting a mass of over a thousand angry blacks. The police fired into the crowd and killed four and injured more.

Many blacks were armed and reports circulated that police were arresting blacks but not whites; that police did not act when whites attacked blacks. By evening car loads of whites drove through the black belt shooting at random with blacks on roof tops and fire escapes shooting back. Police cars were hit with rifle fire.

In the early evening a crowd estimated as several thousand massed at the intersection of 35th Street and Wabash Avenue to battle with as many as a hundred police on foot and horseback. Rock throwing erupted into shooting that went on an estimated 10 minutes; four died in the skirmish that left the streets littered with wounded. White gangs still roamed through the area where warlike conditions continued past midnight.

Mayor Thompson refused to request National Guard troops or give up local control in spite of calls to do so from the press and the city council. Mayor Thompson and Governor Lowden developed a determined hatred over entry into WWI. Mayor Thompson came out for neutrality in opposition to preparedness, which Governor Lowden regarded as treason. After Thompson allowed a peace conference to meet in Chicago Governor Lowden accused Thompson of sponsoring draft riots and ordered the Chicago police to break it up. Furious, Thompson restarted the conference under police protection. Governor Lowden ordered the National Guard to Chicago to break it up again, but the troops did not arrive in time; the peaceniks had come and gone. Now that a riot raged in Chicago Lowden would not call out the National Guard without permission from Thompson, which he refused to give: political hatred over life and death. Troops would not be called until the third day of the rioting. The toll for Monday was 18 dead, 229 wounded. There were few arrests. (14)

Tuesday------Tuesday opened with the long feared transit strike after transit workers rejected a compromise worked out by Governor Lowden. The strike

nearly paralyzed the city and some businesses and factories closed for lack of help, but staying home was also the safest thing to do; Tuesday morning two black men were killed walking to work, others injured. Police presence in the south side black belt did not deter white gangs from shifting north into downtown. As many as 5,000 from white gangs along with white soldiers and sailors in uniform and more idlers and sympathizers roamed about the downtown "loop" where they killed two more blacks and robbed others. Gangs invaded white owned hotels and restaurants to loot, vandalize and attack the black help. A black biker on the West Side was attacked and killed by a white gang ranging through the area. The potential for marauding violence made it necessary to surround city hall with police.

Mayor Thompson held a Tuesday afternoon press conference where he offered more excuses against the use of troops. Even though not as many people were killed on Tuesday as Monday, rioting continued unabated with a shootout at segregated black Provident Hospital where three police were wounded. Snipers shooting from dark second floor windows and fire escapes in the black belt left thirty people dead or wounded up and down the streets. Arson fires raged through the black belt. White gangs attacked fire trucks and blocked the streets. The death toll reached 33 by the end of Tuesday. (15)

Carl Sandburg writing for the Chicago Daily News penned a poem entitled, hoodlums, that captured his anger and disgust at the useless violence going on through a third night of rioting. By Wednesday Governor Lowden and Mayor Thompson were still uncommitted while Carl Sandburg, and notables like Clarence Darrow, black activist Ida Wells-Barnett and a majority of the city council were calling for troops to end the rioting.

Wednesday turned into a day of looting and arson with white gangs setting fires through out the south side and shooting at residents trying to flee as occurred in St. Louis. Rioters set bonfires of looted furniture and belongings and dragged a stolen player piano into the streets to party during drinking and shooting sprees.

Calling out the National Guard stalled again because the governor refused to overrule the mayor amid accusations they wanted to blame each other for political advantage. Finally at 9:00 p.m. Wednesday the Mayor announced he had knowledge of some unspecified plan of new violence that compelled him to act. He had 6,200 troops available when he notified Adjutant General Frank Dickson about 9:15 p.m. (16)

Wednesday-------Rain Wednesday night into Thursday made it easier to deploy troops on the streets and intersections where they stopped and searched everyone. Weapons and alcohol were seized. Some shooting continued when snipers fired on troops. Soldiers escorted blacks to work in the stockyards, but some of the white stockyard workers tried to stop them and battles broke out. Four blacks were beaten and one of the four died. He was the last victim in the rioting.

The End------Rioting significantly diminished by late Thursday afternoon. Reports of sporadic shooting continued into Friday but without further injury or death. Arson on Saturday burned and destroyed an ethnic white neighborhood

near the stock yards district, but rioting and the riot ended. It was Saturday August 1, 1919. The Chicago riot left 38 dead, 23 black and 15 white, with a count of 537 injured along with arson and looting that destroyed over 1,000 homes in south Chicago neighborhoods, primarily in the black belt. All who fought the Chicago race riot were primarily small town immigrants from poor rural areas. The blacks were virtually all from the south and came as part of the great migration just like East St. Louis. The whites came from more varied places but they too came looking for jobs in the WWI munitions plants. They identified themselves by race, but they were all the same in America's industrial economy; low paid members of the working class. (17)

The Chicago riot did not arrive without warning. The strain of decline in the post war economy and the end of war munitions jobs only added to long-standing tension over jobs going as far back as the Chicago strikes of 1894 when meat packing workers left work in sympathy with the Pullman strikers and the American Railway Union. In response the meat packers imported strikebreakers from the south and they did so again in a 1904 strike of the Amalgamated Meat Cutters and Butcher Workers. Ogden Armour employed trainloads of blacks imported from the south. A Teamsters strike in 1905 got started when the employers brought trainloads of black men from the south to replace striking delivery drivers. During the 100 days of the strike 20 died along with 400 injured from assaults and beatings; the need for deliveries all over Chicago served to spread racial antagonisms into more districts.

During WWI the Wilson administration had former Judge Samuel Alschuler settle labor disputes in the packing industry. That stopped in the post war while southern black men continued coming to Chicago, which only added to a surplus from returning service men and those laid off from war munitions jobs. William Foster and John Fitzpatrick's attempt to organize the packing industry in Chicago needed to include the growing number of blacks, but continued racial prejudice made that difficult. Black men were especially concentrated in Chicago's packing industry where they increased from 6 percent in 1910 to 32 percent in 1920. Just before the rioting broke out in July barely one in four of these blacks had joined a union. Many black men had experience with racist unions in the south. Some accepted the white ploy to become members during strikes only to be discharged after the strike was over. The use, and seeming willingness, of blacks to act as scabs in the post war inflamed already hostile Chicago labor relations. It was the grim death from drowning that set off the Chicago riot, but it was only a catalyst for long established racial animosities fueled by competition over jobs, and a severe shortage of leadership from the captains of industry. (18)

The Boston Police Strike

Massachusetts Governor Calvin Coolidge differed from Ole Hanson of Seattle. Calvin Coolidge did not boast or exult and sometimes had to be coaxed hard even to speak. He once told a friend "I notice what I don't say gets me in less trouble than what you do say." He could not be hurried; he made caution a virtue. In the 1919 Boston police strike he waited for the longest time to make a decision.

He let others do the talking and take the risks, but the canny Coolidge kept his eye on the main chance. When it came he had the instinct to write a pithy slogan to stir the masses, who cheered him right into the White House. (19)

In the summer of 1919 the Boston police founded their own union despite the long history of using police to break strikes. Police already had the Boston Social Club, a police group that discussed employment grievances among themselves. Worn down by the city's police commissioner Edwin Curtis, who ignored their grievances, they sought affiliation with the American Federation of Labor.

In 1918 newly recruited policemen started at $2.00 a day, the same wage as 1854, the first year of the Boston police department. That was $730 a year for working seven days a week. On their day off, every fifteen days, they had "house day" at the stationhouse where they were on call from 8 a.m. until 6 p.m. Deflation through much of the late 19th century made fixed wages reasonable until the government's price index shot up 53 percent from 1913 to 1918 during World War I.

The police wanted a raise of $200 a year and demanded an end to unpaid overnight stays sharing beds in dilapidated, vermin invested station houses, pay deductions for uniforms and equipment, the limitation to off duty travel from the city, and a day off that was a day off in addition to the raise. (20)

Boston mayor Andrew Peters told them to be patient and wait for the new budget. When the new budget came out December 7, 1918, pay went up $100, but only for those at the maximum pay scale. About a quarter of the police force would get nothing. The Boston Social Club voted unanimously to reject the offer.

In the Massachusetts of 1919 the Governor appointed and supervised the Police Commissioner of Boston. Then governor Samuel McCall appointed Edwin Curtis police commissioner December 14, 1918, after the death of three term commissioner Stephen O'Meara. The 57 year old Curtis dressed himself in double breasted coats, which passed for dignity. He was in poor health with "pink pouches under his eyes and a pallid skin" and no previous experience with police work, although he had a "profound faith in the divine right of the propertied classes ultimately to rule."

Curtis agreed to a $200 raise on May 10, 1919, but a committee of the Boston Social Club wanted to meet with Commissioner Curtis to discuss their list of grievances. He refused, which served to encourage discussions with the AFL. Police Commissioner Curtis took a tough stance against AFL affiliation for the police force and both Governor Coolidge and Mayor Peters concurred.

In July, Curtis suspended eleven officers for promoting union organizing and reassigned others. On July 29 he published his views. "I desire to say to the members of the force that I am firmly of the opinion that a police officer cannot consistently belong to a union and perform his sworn duty. … Policemen are public officers. … The laws they carry out are laws made by the representatives of the people assembled in the Legislature. Therefore it should be apparent that the men to whom the carrying out of these laws is entrusted should not be subject to the orders or the dictation of part of the general public. … As Police

Commissioner for the City of Boston, I feel it is my duty to say to the police force that I disapprove of the movement on foot; that in my opinion it is not for the best interests of the men themselves; and that beyond question it is not for the best interests of the general public, which this department is required to serve."

On August 1, the Boston Social Club responded with a vote to affiliate with the AFL in a new union: 940 votes yes, zero votes no, some abstained. Commissioner Curtis countered with Rule 35 that banned the Boston Police from affiliating with the AFL or any organization outside the department. Curtis declared the police were not employees but state officers. August 17 the Boston Central Labor Union staged an area wide labor union meeting to discuss and pass a resolution opposing Rule 35 as "a tyrannical assumption of autocratic authority … foreign to the principle of government under which we live, …"

Boston newspapers sought comments and opinions from the factions lining up on one side or the other. Labor had support from fireman, motormen and public service employees, building trades, the Teamsters and the Boston City Council, especially Michael Moriarity from the Boston Council, himself a union member. Governor Coolidge supported his Police Commissioner. "I am thoroughly in sympathy with the attitude to the commissioner as I understand it."

August 20 eight hundred members of the policeman's union met to vote officers. After the meeting Frank McCarthy of the AFL tried to placate the police commissioner and his supporters by announcing the union would not interfere with the executive direction of the police department. It would only "lend assistance within legal lines in protecting the economic condition of the Boston Police and establishing within the department the principle of collective bargaining …"

After this back and forth of public comments Commissioner Curtis announced "charges have been preferred against eight men for violation of Rule 35 and that a hearing will be held Tuesday next." Then he appointed former Police Superintendent William Pierce to organize and equip a volunteer police force. Recruiting advertisements appeared on the front pages of Boston newspapers, which Councilor Moriarity opposed. He called it part of a class struggle after the Chamber of Commerce offered its building as "a recruiting station for strike-breaking police." (21)

In the meantime Mayor Peters appointed a citizen's committee of thirty-four to review the union question and make recommendations. Investment banker James Storrow chaired the committee and had the most influence over decisions. Storrow lived on Beacon Street where he grew up, graduated from Harvard College and generally fit the description of a Boston Brahmin. Much of the rest of the committee had similar pedigree: Charles Choate, Lincoln Filene, and Charles Bancroft the best known among them.

The Storrow committee came out against AFL affiliation, but expressed dismay that "day" men worked 73 hours a week, "night" men worked 83 hours a week and "wagon men" worked 98 hours a week. "Night" men earned $.25 an hour; "wagon" men earned $.21 an hour.

After much back and forth between the Storrow committee, Union President John H. McInnes, two union attorneys, James Vahey and John Feeney,

and committee chair Storrow warned there could be no resolution without giving up AFL affiliation. Vahey and Feeney worked out a compromise. They agreed to abandon AFL affiliation to form an independent organization with a grievance procedure safe from commissioner interference. In addition to leaving the AFL, the union agreed to submit wages, hours and working conditions to a citizen's mediation committee of three people. The remaining parts of the compromise protected police from firing or reprimand by the Police Commissioner for previous union activities in violation of his order. Already a total of nineteen patrol officers were dismissed or threatened with dismissal.

McInnes and the other union officers agreed to the plan. The Storrow Committee and Mayor Peters supported the plan. The Chamber of Commerce, the editor of the Boston Post, individual members of the Storrow Committee and others prominent in Boston announced in favor of the compromise. However, Commissioner Curtis objected to any interference with his authority to suspend or dismiss police officers for union activities in violation of his Rule 35.

Mayor Peters tried to get Governor Coolidge to intervene. Coolidge had the authority to accept or reject the agreement and overrule an appointed Police Commissioner, but he maintained he had "no direct responsibility for the conduct of police matters in Boston." On Saturday September 6 he disappeared for a drive on Cape Cod. The next day he left for his home in North Hampton. Members of the Storrow Committee finally prevailed on an Amherst College friend of Coolidge to approach the governor and urge him to have Curtis accept the agreement that would prevent a police strike. He refused and called the agreement not worth the paper it was printed on.

On Monday, September 8 Commissioner Curtis sent his refusal to accept the Storrow committee recommendations to Mayor Peters. In it he denied the Mayor's request had anything to do with his duty to discipline police officers. He also claimed it was his exclusive duty to set wages and so he objected to the agreement for arbitration by an appointed panel. Later in the afternoon of September 8, 1919 he suspended the eight additional patrol officers for their labor union activities as a violation of his Rule 35. The police voted 1,134 to 2 to leave work at 5:45 p.m. the next day, Tuesday, September 9, 1919. (22)

Commissioner Curtis expected two thirds of his 1,544 officers would continue to show for work. He did not think a strike would amount to much; Governor Coolidge accepted his judgement and refused to act in spite of more pleas from Mayor Peters that he do so. Coolidge told reporters "Understand that I do not approve of any strike. But can you blame the police for feeling as they do when they get less than a street car conductor?" Still he did not act or take a position on the compromise.

Only 24 of 700 officers would serve their regular evening assignments on September 9. At Charles City Square station only one of seventy-seven made roll call. The idle and the curious arrived at stationhouses around the city as patrolmen were packing gear and leaving work. Crowds looked on and opportunist groups ranged about the streets talking, whispering, ready to exploit whatever possibilities a police strike could offer. They played craps and gambled under the streetlights in

Boston Common, but gradually the crowds got bigger and turned into an aimless drunken mob.

Someone tossed a paving brick through a store window that set off a furious rampage of looting. Looters were in such a hurry they marked themselves with bloodstains getting cut on broken glass. Nothing was spared in rioting up and down the streets of downtown Boston; clothing and shoe stores, cigar stores, jewelry stores, sporting goods with guns and ammunition fell victim to the bedlam; stores lost everything. The crowds eventually turned to gratuitous vandalism, tipping over cars, smashing streetcar windows and setting fire to debris piled in the streets. A few token police not on strike did their best against a mob that grew to an estimated ten thousand. There were some arrests and five rioters suffered bullet wounds.

Wednesday morning it was time to assess blame. The Police Commissioner and the governor had the official legislated power to direct the Boston Police force. Mayor Peters wavered Tuesday evening in the hope the police commissioner or the governor would take control of the riot. All three waited.

Wednesday morning Commissioner Curtis turned the riot over to Mayor Peters in a written statement to him that "tumult, riot or mob is threatened and that the usual police provisions are inadequate to preserve order and to afford protection to persons and property." His words paraphrased a state law that allowed him to let the mayor direct the police when "tumult, riot, and violent disturbances of public order have occurred within the limits of the City of Boston."

Wednesday morning Governor Coolidge walked to the capital from his two-room apartment at the Adams house, a hotel used by state politicians. He passed through riot areas without comment. At a press conference later he declined to take any action on his own. Instead he told the press that Mayor Peters had authority to call out those units of the state guard with men residing in Boston but he would call out additional units if requested: "I stand ready to continue fully to support the mayor and the commissioner as I already have done."

Mayor Peters decided to take charge. He called the tenth regiment of Boston guardsman and took over direction of the police department while William Pierce continued his efforts to signup volunteers at the Chamber of Commerce. Recruits turned out to be a varied lot of veterans and students, many from upper class Boston. Harvard University President Abbott Lawrence Lowell thought Harvard Undergraduates should volunteer: "In accordance with the traditions of public service the University desires in time of crisis to help in any way it can to maintain order and support the laws of the commonwealth. I therefore urge all students who can do so to prepare themselves for such service as the governor of the commonwealth may call upon them to render." Around fifty did volunteer.

Later Wednesday Mayor Peters asked for three thousand additional National Guard troops. Governor Coolidge ordered the eleventh, twelfth, fourteenth, fifteenth and twentieth regiments of the Massachusetts Guard to Boston. Active looting had all but ended, but roving bands of troublemakers continued to fight with volunteer students and veterans and a small cadre of non striking police on most of Wednesday. Idlers and loafers ranged about Scollay Square blocking

traffic, hooting, howling and throwing debris at patrolling volunteers.

Guard units from around the state started arriving late Wednesday afternoon. Crowds remained angry and confrontational, but Guard troops in riot formation started charging at the crowds, estimated at five thousand. More and more troops equipped with riot guns and machine guns gradually dispersed crowds. Several shooting incidents Wednesday killed at least three rioters and wounded four more, but the Guard controlled the streets by Thursday.

As order returned, Police Commissioner Curtis and Governor Coolidge worried that Mayor Peters would make a settlement with the police union. They had wanted Mayor Peters to restore order but now he directed police and National Guard with emergency authority. It worried them more when he met with the Boston Central Labor Union and there were rumors of a general strike of sympathetic unions.

Both especially disliked the Thursday headline on the Boston Herald, which read "Riots and Bloodshed in City as State Guard Quells Mob: Mayor assumes command, calls out state guard – brushes Curtis aside – asserts authority conferred on him by old statute." The story that followed described six regiments of infantry, a troop of cavalry, the motor corps, two machine gun companies and an ambulance company reinforcing the police. "Mayor Peters is in control of the entire machinery of law enforcement."

In a press release Mayor Peters blamed the riot on Commissioner Curtis where he wrote "Until riot, tumult or disturbance actually takes place, the only person who has authority to police the city is the Police Commissioner and he is appointed by the Governor. … Furthermore in a recent communication from the Governor, he states so plainly that no one has any authority to interfere with the Police Commissioner, that I should have hesitated to take control of a situation which the Commissioner assured me was under control, … The disorders of last night have demonstrated that he misjudged it."

The Boston Herald story and mayor's statement was enough to bring a decision from Governor Coolidge. He moved to cut off the mayor's temporary authority. After discussion with Commissioner Curtis, the Attorney General and a political friend Murray Crane the Governor acted by Executive Order to direct Commissioner Curtis to obey only the orders of the governor as he may issue and direct. Friday morning Curtis promptly fired the police officers he had previously suspended and announced no strikers would ever return to the police force.

Governor Coolidge met with the press late Friday to tell them he would support the commissioner "in any action he may take." That included firing strikers, except that he would not agree they were strikers; "This is not a strike, but desertion of duty." His comments also affirmed a ban on AFL affiliation or affiliation with any "outside organization."

Volunteers continued to arrive Friday and Saturday; so many they had to be turned away. Ultimately there were estimated 7,567 National Guard and volunteers, roughly six times the police that patrolled the city before the strike. These amateur soldiers killed one and wounded four in shootings Saturday after active rioting had ceased; one of the so-called soldiers shot himself in the leg.

Sunday passed without further mishap, although the volunteers stayed on in reserve and the last Guard units were not removed until December 21. Ultimately eight died from the Boston Police strike with twenty-one wounded amid many other miner injuries. (23)

The newspapers agreed police could not be members of a union and do their duty and it was the newspapers that packaged the strike for the country when they quoted Calvin Coolidge from his response to Samuel Gompers. Gompers effort to defend the AFL position and organized labor in a letter to the governor allowed Coolidge to write a quotable response. In his second letter to Coolidge, Gompers objected to Commissioner Curtis' refusal to accept the Storrow Committee compromise and then firing an entire police department without negotiation. Gompers defended the policeman's right to organize and suggested attacking labor would cost the governor the labor vote.

Calvin Coolidge would have been ignored as an ex-governor of Massachusetts like his predecessor Governor Samuel McCall, and his successor, Governor Channing Cox, but he made himself famous in his often quoted reply to Gompers. He wrote, in part, that Commissioner Curtis "can assume no position which the Courts would uphold except what the people have by the authority of their law vested in him. He speaks only with their voice. … Your assertion that the Commissioner was wrong cannot justify the wrong of leaving the city unguarded. That furnished the opportunity; the criminal element furnished the action. There is no right to strike against the public safety by anybody, anywhere, anytime."

It was "no right to strike against the public safety by anybody, anywhere, anytime" that caught the nation's fancy. Coolidge became a folk hero eulogized in the press and deluged with 70,000 letters of congratulation. His picture appeared in a thousand daily newspapers. The press wore out the lexicon of denunciation attacking Gompers. "[F]or the first time in the history of the United States an American community was called upon to accept or resist the beginnings of soviet government. Do Americans wish to preserve their traditional democratic form of government, or is the United States ready for Bolshevism?"

Then there was "Bolshevism in the United States is no longer a specter. Boston in chaos reveals its sinister substance" and "We cannot maintain the constitution without insisting upon its being followed. … Most noticeably it is challenged by the police strike in Boston now." A simple but blunt sentence, carefully crafted by the canny Coolidge, got him the vice presidential nomination under Warren Harding and eventually to the White House from 1923 to 1929. No one ever got more from a strike than Calvin Coolidge.

It was necessary for Commissioner Curtis to double starting wages to $1,400 a year and furnish uniforms for free in order to recruit a new police force. None of the dismissed police would ever return to the Boston police force. Commissioner Curtis had his way, which makes the Boston Police strike the same ol'thing. Authority refused to respect or bargain with labor; they announce "the law" does not permit it and the National Guard takes over to end a strike using brute force. (24)

United States Steel Strike

World War I ended with the steelworkers determined to turn the National War Labor Board shop committees into a steelworkers union. Steel companies prospered during the war while steelworkers spent compulsory 12 hour days, 7 days a week in the mills with twice a month shifts of 24 hours. The companies resisted the Wilson Administration wartime labor policies, but the War Labor Board did successfully coerce concessions during the war. As soon as the war ended steel company management ignored War Labor Board rulings and returned to their prewar practices.

Judge Elbert Gary of U.S. Steel was the decisive influence in the steel industry. Whatever Judge Gary decided, the rest of the industry ultimately followed. Shortly after the armistice Judge Gary chaired a New York meeting of steel makers to discuss ways to keep unions out of their industry. He counseled them, "Take care of your men," meaning pay them well enough for their families to live adequately as he defined it. His supporters and detractors called his advice paternalism, but paternalism did not mean he would recognize or negotiate with a union or pay his labor force a living wage. (25)

Plans for the steel industry organizing drive started before the war ended. After John Fitzpatrick and William Z. Foster successfully organized the Chicago packing industry for the AFL, they pressed the Chicago Federation of Labor to allow them to organize the steel industry. A resolution adopted by the AFL national convention in St. Paul, and supported by Samuel Gompers, authorized the formation of the National Committee for Organizing Iron and Steel Workers, a.k.a. the "National Committee."

Established steel unions sent representatives to an August 1, 1918 meeting where they worked out the details of an organizing campaign. All but 2 of the 24 unions in the National Committee were craft unions; the Amalgamated Association of Iron, Steel and Tin Workers and the Mine, Mill and Smelter Workers had the unskilled workers left out of craft unions.

The National Committee had "full charge of the organizing work." The men who organized the Chicago Packing House workers were voted the officers to administer the work of the National Committee: John Fitzpatrick, Chair, William Z. Foster, Secretary-Treasurer. Foster was a skilled and experienced organizer who would become a controversial figure through the 1920's and long after.

As the organizing got started the companies employed a network of spies and stool pigeons to identify union members to discharge and blacklist. Organizers could not rent a meeting hall, local police broke up outdoor meetings, and ministers and priests attacked labor 'agitators'." Later on a few churches would support the strikers but many church officials did not want to jeopardize their steel company donations. The National Committee did not waste funds on court challenges to misconduct, but pushed ahead trying to establish free speech and free assembly.

Just prior to the start of the strike the New York World published their opinion: "In anticipation of the steel strike, what do we see? In the Pittsburgh

district thousands of deputy sheriffs have been recruited at several of the larger plants. The Pennsylvania State Constabulary has been concentrated at commanding points. At other places the authorities have organized bodies of war veterans as special officers. At McKeesport alone 3,000 citizens have been sworn in as special police deputies subject to instant call. It is as though preparations were made for actual war."

At Homestead Mother Jones spoke where she wanted to know if Pennsylvania belonged to the Kaiser or Uncle Sam. "Our Kaisers sit up and smoke seventy-five cent cigars and have lackeys with knee pants bring them champagne while you starve, while you grow old at forty, stoking their furnaces. You pull in your belts while they banquet. They have stomachs two miles long and two miles wide and you fill them." Homestead police abducted her and placed her in a jail.

In spite of industry harassment, between a hundred and a hundred twenty-five National Committee organizers succeeded in signing up 156,702 new members between August 1, 1918 and the end of the strike. The new rank and file clamored for action. The leadership doubted they were ready to get the steel industry to the bargaining table, but they were compelled to act to hold the rank and file together and maintain national solidarity. (26)

Early efforts to negotiate started with a letter to Judge Gary of May 15, 1919. President Tighe of the Amalgamated Association of Iron, Steel and Tin Workers asked for a meeting, but Gary refused. He wrote "As you know, we do not confer, negotiate with, or combat labor unions as such. We stand for the open shop, which permits a man to engage in the different lines of employment, whether he belongs to a labor union or not."

In a letter to Gary of June 20, 1919, Samuel Gompers wrote in part "A campaign of organization was begun in June, 1918, and within that period we have secured the organization of more than 100,000 of the employees in the iron and steel industry." . . . "At the Atlantic City convention of the American Federation of Labor just closed, the [National] Committee reported upon the progress made, and I am instructed and authorized to suggest to you whether you will consent to hold a conference with a committee representing not only the iron and steel workers who are organized, but representing the best interests of the unorganized men in the employ of your Corporation." Judge Gary did not reply.

Under pressure to do something the National Committee finished drafting a list of strike demands by July 20, 1919. The men wanted an eight hour day with one day off in seven, and an end to the 24 hour shift as their chief demand. Labor troubles over long hours in the steel industry had a history that included a violent strike of skilled workers at Bethlehem steel in 1909. Other demands included the right to collective bargaining, reinstatement of men discharged for union activities, wages sufficient to guarantee an American standard of living, a standard wage scale in all trades, double pay for overtime over 8 hours, dues check off, seniority in layoff and hiring, an end to the company union, and an end to physical examinations. Their vocal and determined rank and file pressured union leaders to hold a strike vote.

When the strike vote was finally counted and reported August 20, 1919, 98

percent voted to strike. Following the strike vote a conference committee of five from the National Committee visited Judge Gary at his New York headquarters. He refused to see them, but his secretary informed them they could address Mr. Gary by letter. On August 26 they again requested to meet as representatives of thousands of steel workers.

Judge Gary replied August 27 to make four points. He wrote "We do not think you are authorized to represent the sentiment of a majority of the employees of the United States Steel Corporation and its subsidiaries." . . . "As heretofore publicly stated and repeated, our Corporation and subsidiaries, although they do not combat labor unions as such, decline to discuss business with them. The Corporation and subsidiaries are opposed to the 'closed shop.' They stand for the 'open shop,' which permits one to engage in any line of employment whether one does or does not belong to a labor union. This best promotes the welfare of both employees and employers. In view of the well-known attitude as above expressed, the officers of the Corporation respectfully decline to discuss with you, as representatives of a labor union, any matter relating to employees." . . . "In all decisions and acts of the Corporation and subsidiaries pertaining to employees and employment their interests are of highest importance."

The committee objected when he denied his company policy and practices, which they addressed in a second letter August 27. They objected when he denied the union represented a majority of his employees, which could only be proved with a strike. They objected when he denied combating labor unions when U.S. Steel dismissed union members by the thousand. They objected when he claimed the interests of his employees are his highest importance. In response they wrote "We read with great care your statement as to the interest the Corporation takes in the lives and welfare of the employees and their families, and if that were true even in a minor degree, we would not be pressing consideration, through a conference, of the terrible conditions that exist. The conditions of employment, the home life, the misery in the hovels of the steelworkers is beyond description. You may not be aware that the standard of life of the average steel worker is below the pauper line, which means that charitable institutions furnish to the pauper a better home, more food, clothing, light and heat than many steel workers can bring into their lives upon the compensation received for putting forth their very best efforts in the steel industry. Surely this is a matter which might well be discussed in conference." Judge Gary did not reply.

The National Committee still hoped to get the Wilson Administration to intervene and mediate a compromise solution. President Wilson met with union leadership from the AFL and the National Committee on August 29, where he agreed to request for Judge Gary to meet with union leaders. On September 5 the President's Secretary Joe Tumulty notified the National Committee that the president was not successful in arranging a meeting. President Wilson's War Industries Board Director Bernard Baruch tried several times over the course of more than a week to persuade Judge Gary to meet with the union but Gary refused. In September 10, 1919 correspondence Baruch reported Gary told him "He regrets more than he can say that he is unable to change his position and he

regrets even more because the request comes from a man for whom he has such great respect."

The union set a strike date of September 22, 1919. After the strike date announcement President Wilson made a public request for the union to postpone the strike until he could arrange an Industrial Conference of Labor, Management and Public Representatives to begin October 6. The steel industry had already refused to compromise but the steel industry refusal was made in a private meeting without publicity while the union refusal to accept the Gary terms was made as a public announcement.

Gompers recognized the public relations disadvantage the President's request made for the union and he already doubted the union could hold out against the economic power of the steel industry, which seemed to welcome the strike. He advised accepting the President's plan, rather than defending their refusal of the President's proposal to a hostile press.

National Committee Chair Fitzpatrick wrote to Gompers: "It would be a thousand times better for the entire labor movement that we lose the strike and suffer complete defeat, than to attempt postponement now, . . ." The National Committee met and drafted a letter to President Wilson. "Mr. President delay is no longer possible. … delay here means the surrender of all hope. This strike is not at the call of the leaders, but that of the men involved. Win or lose, the strike is inevitable and will continue until industrial despotism will recede from the untenable position now occupied by Mr. Gary." (27)

At least half of the 500,000 steelworkers left their jobs when the strike started right on schedule. Strikers expected some respect after their long hours and personal sacrifices during the war. They intended to elect representatives of their own choosing in an industrial democracy; management would not give up a single one of their pre-war prerogatives.

More joined the union and the strike after it started; the union claimed 365,600 were on strike around the country at its peak on September 30. Pennsylvania had 109,000 on strike, 25,000 at Pittsburgh; Ohio had 122,000 out at Wheeling, Youngstown, Cleveland and Steubenville. The Chicago District had 90,000 out including the Gary works and Indiana Harbor; Buffalo had 12,000; the Pueblo District had 6,000. The strike at Pittsburgh was 75 to 85 percent, but at Chicago and some of the outlying areas the strike was close to 100 percent with mills forced to shut down. It was a national strike.

The initial success surprised leaders on both sides. Out in Colorado Jesse Wellborn doubted many would leave work at his Colorado Fuel and Iron Company, home of the Rockefeller Representation Plan. Barely 300 showed up for work September 22 out of a work force of 6,500. Judge Gary predicted 85 percent of his men opposed the strike, but U.S. Steel plants in Gary, Indiana and elsewhere shut down for lack of help.

President Wilson's National Industrial Conference went on as planned with fifty-seven conferees divided into three separate groups: labor, management and public, but the conference went on without the President who suffered a stroke October 2. He intended the conference to debate national labor relations while the

National Committee expected to have the conference settle the strike. The labor group introduced a resolution to allow six conference leaders, two each from the three groups, to mediate or arbitrate the steel strike. Since the conference was called in apparent response to the approaching steel strike, labor leaders wanted the conference to address the issues in the strike. Judge Gary protested. “I am of the fixed opinion that the pending strike against the steel industry of this country should not be arbitrated or compromised, nor any action taken by the conference, which bears upon that subject.”

The conference abandoned efforts to settle the steel strike, but the labor conferees agreed to accept the open shop if the conference would agree to a statement recognizing a union’s right to bargain collectively with freely elected representatives. The public representatives joined management to defeat the proposal. After the vote Samuel Gompers addressed the conference: “Gentlemen, I have sung my swan song in this conference. You have, by your action--the action of the employers’ group--legislated us out of this conference.”

In addition to the President’s Conference a Senate resolution of September 23 instructed the Senate Committee on Education and Labor to investigate the steel strike and make a report to the full Senate. Also the Interchurch World Movement voted to set up an independent Commission of Inquiry to investigate the steel industry. The Interchurch World Movement represented millions of Protestants in the United States. The Commission of Inquiry consisted of Bishop Francis O’Connell from the Methodist church and five others from the Presbyterian, Evangelical, Congregational, and Baptist churches. The Commission employed the Bureau of Industrial Research, New York to do the research and write a report.

The Senate Committee hearings took place during the strike and their report was finished November 8, 1919. While Samuel Gompers and John Fitzpatrick testified for labor and local government officials and other businessmen also testified, Judge Gary was allowed to dominate the testimony and spoke as the voice of the steel industry. He maintained a calm and respectful demeanor while misrepresenting the steel industry as benevolent companies. In a studied voice he denied anyone was ever discharged for being a union member or attending a union meeting, even though hundreds and hundreds of discharged employees were describing the details of their dismissals to the Interchurch Commission of Inquiry.

He was also determined to exonerate the steel industry of any part in the brutal murder of labor organizer Fannie Sellins. Ms. Sellins, 49, recruited thousands of steelworkers as a capable and successful organizer, especially in U.S. Steel mills at Vandergrift, Leechburg and New Kensington Pennsylvania. On August 26, she was with a group picketing at the Allegheny Steel Company at Natrona, Pennsylvania. Picketers were on public property close to the mill when twelve deputy sheriffs on strike duty rushed the picketers and opened fire. Joseph Strzelecki fell to the ground with multiple gunshot wounds.

There were hundreds of witnesses who saw the shooting and the violent aftermath. The deputy sheriffs beat the wounded Strzelecki with Billie clubs when Sellins tried to intervene. She was beaten to the ground and shot three times and

shot a fourth time while prostrate on the ground. Her body was dragged by the heels and tossed into the back of a truck. As the crowd watched a deputy battered and crushed her skull. Another put on her hat, announcing "I am Mrs. Sellins now." Several of the deputies were arrested later, but none went to trial. They were employed and paid by the steel industry.

The Interchurch Commission of Inquiry preferred to mediate for striking and non-striking steelworkers in order to establish new labor relations with the steel industry. Judge Gary agreed to meet a delegation from the Commission that included Bishop O'Connell, but Gary lectured them and rejected mediation for the sixth time. During his long monologue Mr. Gary accused his Catholic guests of being Bolsheviks, Anarchists and "Reds."

The Commissioners wrote to National Committee Chair John Fitzpatrick, December 6, 1919. "Members of the Commission informally conversed with Mr. Gary for two hours, proposing to plan a new basis of relations in the steel industry . . . Mr. Gary refused to confer with these representatives of the churches as mediators in behalf of any interests represented by you in the strike, on the ground that the men still out were Bolshevist radicals who were not wanted in the mills and who would not be taken back. And as to mediating in behalf of any other interests, Mr. Gary said that the men were contented and "there is no issue." The steel companies had wartime profits to weather the strike; they were confident the federal government would not intervene; they expected continued war hysteria and anti-union sentiment would allow them to challenge rights of free speech and assembly that strikers thought they should have. (28)

As the Interchurch Inquiry, the Senate Committee hearings and the President's conference went forward an onslaught of anti-union news stories turned their settlement efforts into a useless aside. Many newspapers quoted Judge Gary's interpretation of the strike as an effort to establish the "closed shop" and an attempt at revolution with the forcible redistribution of property. The New York Times mimicked Judge Gary when it ridiculed the strike as industrial war conducted by radicals and revolutionaries. Attorney General Palmer characterized union leaders as revolutionaries to help justify his red scare round ups and arrests in the post war hysteria. Press accounts referred to strikers as "red plotters." The steel companies reprinted a copy of a pamphlet on syndicalism written by William Foster and Earl Ford in 1911 and then openly distributed it to the press and to pastors and ministers. The first head line was "Steel strike leader is called an advocate of anarchist ideas." (29)

The Pennsylvania legislature created the Pennsylvania State Constabulary following the steel strikes of 1901. The law made them a full-time mounted police force to patrol under served rural areas, but they ended up clearing the streets at one Pennsylvania town after another. Interchurch Commission carefully documented their abuses, transcribing interviews. Testimony recounts mounted constabulary routinely galloping down sidewalks running down or clubbing pedestrians; they rode their horses into stores and homes.

One episode at Braddock, Pennsylvania occurred during a funeral procession for a former striker. The constabulary waited until the procession was

in the heart of town to gallop into the procession. Father Adelbert Kazincy wrote to Pennsylvania Governor William C. Sproul in protest. “The pyramidal impudence of the State Constabulary in denying charges of brutal assaults perpetrated by them upon the peaceful citizens of the borough of Braddock prompts me to send a telegram to the Governor of Pennsylvania, in which I have offered to bring forth two specific cases of bestial transgression of their ‘calling’.” There is no record the governor answered.

In Allegheny County, Sheriff William Haddock deputized 5,000 people as company guards, recruited, paid and armed by the steel companies. He directed all officers to break up congregations of three or more people to prevent the customary troubles of an ugly strike. Deputies showed up at homes without warrants, but pressed in and demanded strikers return to work. Refusals brought arrests as suspicious persons, overnights in jails subject to threats and beatings, and magistrate fines of $100 if they would not return to work as scabs.

The strikers maintained solidarity until mid November, but the majority of unskilled workers needed the skilled workforce to keep striking. Since employers recruited immigrants for the unskilled jobs before World War I and southern blacks after the war, it was not a surprise when the Senate Committee hearings found two-thirds of steelworkers were foreigners and 30 to 40,000 were black men. Since the majority of skilled workers were Americans, the companies hoped to encourage prejudice and dissension toward the predominately unskilled blacks and foreigners. They promoted the strike as a ‘hunky’ strike using the slogan “Don’t let the ‘hunkies’ rule the mills.” By November the Amalgamated Association of Iron, Steel and Tin Workers justified allowing skilled workers back into selected Youngstown area mills. Then on November 22, the Youngstown area union secretary and two organizers were arrested on charges of criminal syndicalism.

The failures in Youngstown spread elsewhere until unskilled strikers returned to the mills rather than let scabs take their jobs since they could see the mill owners had enough skilled workers and scabs to expand production. The National Committee met in December to assess the strike, but only 109,300 were still out. In Youngstown only 12,800 were still on strike from a total of 70,000 strikers in September.

By early January the National Committee estimated steel production was 60 to 70 percent of pre-strike totals with the steel industry workforce back to 70 to 80 percent of normal. Even though estimates suggested 100,000 were still on strike, the National Committee voted January 4 to call off the strike, which ended January 7, 1920. (30)

The Commission of Inquiry of the Interchurch World Movement published its report and sent a copy to the White House July 27, 1920. The opening sentences tell readers the strike is not over in the sense that the main issues were not settled and still remain. Instead the industry remains in “a state of latent war.” The report predicted the same wage, hours and working conditions that caused the strike would be the cause of another strike. The Commissioner’s recommendation to establish a continuing steel commission by presidential order or congressional

resolution went no where.

The forty page Chapter Three of the report, entitled the Twelve Hour Day in a No Conference Industry, got enough attention for the public to understand the dismal working conditions in the industry. A twelve hour day seven days a week comes to 84 hours. The Commission of Inquiry relied on multiple sources of data on hours. One was the Bureau of Labor Statistics published surveys. There they found an average of 82.1 hours per week in blast furnaces in 1919, up from 78.7 hours in 1910. They found an average of 76.4 hours per week in Open Hearth furnaces in 1919, up from 75.3 hours in 1910. They found an average of 71.1 hours per week in Plate Mills in 1919, up from 67.3 hours in 1910.

Efforts to end the twelve hour day and the seven day week started as far back as 1907, but even with public pressure twelve hours remained a compulsory workday in the steel industry. A U.S. Steel stockholder named Charles Cabot funded research by University of Wisconsin professor John A. Fitch, which concluded long hours were unnecessary for economic reasons and harmful for social reasons. To pressure Judge Gary Cabot sent copies of his research to U.S. Steel stockholders, but to no effect. During WWI the eight hour day imposed on the steel industry had nothing to do with hours worked. It was merely a method of payment where the industry conceded to pay time and a half after eight hours. It was "take it or leave it" workday in the no bargain opinion of Gary and his colleagues.

At the Senate hearings Mr. Gary excused the twelve hours with "The Chairman of the Committee will bear in mind that we have been reducing these hours from year to year, going back many years, as rapidly as we could." By the time of the hearings the war was over and there were no production needs that required a twelve hour day so Gary and his confreres developed other excuses.

In spite of a post war recession and high unemployment steel executives complained of a labor shortage and a lack of housing for new hires if they went to three eight hour shifts. Mr. Gary told the Interchurch Inquiry "It is not an admitted fact that more than twelve hours is too much for a man to labor in a day. … I had my own experience [on his family's farm]; and all our officers worked up from the ranks. They came up from day laborers. They were all perfectly satisfied with their terms of service; they all desired to work longer hours. …The employees generally do not want eight hours. … I do not want you to think that for a moment."

Three more years of Gary stalling followed release of the Interchurch Report. The American Iron and Steel Institute responded to public pressure by appointing a committee to study the eight hour day. Nothing happened until June 1923 when President Harding announced his disappointment at Mr. Gary's failure to end the twelve hour day. The always polite Gary announced he would do so when the labor supply permitted.

William Foster wrote about the strike in The Great Steel Strike and its Lessens, published in 1920. Foster blamed organized labor for contributing to strike failures. The National Committee did not give the strike the financial backing and moral support it needed after thirty years of failed attempts to organize the

steel industry. The strike needed the full support of the Amalgamated Association of Iron, Steel and Tin Workers that had jurisdiction over 50 percent of the men in the mills. Instead its officers pursued separate settlements like Youngstown, which Foster called "a save what we can" strategy. The twenty-four steel unions needed the coal miners and the railroad brotherhoods to boycott the steel industry, which they did not do. Foster charged that organized labor had too many leaders who did not respect the solidarity of the rank and file to stand up against the formidable resources of the steel industry. Too many labor officials were looking out for themselves. It would not be the last time labor failed itself as we shall see. (31)

United Mine Workers Strike

In the spring and summer 1919 angry coal miners staged scattered and spontaneous "wildcat" strikes in spite of terms imposed by the government in a 1917 "Washington Agreement." Terms of the agreement obligated mine workers to observe their wartime labor contract until April 20, 1920, or until the war officially ended. Even though fighting was over November 11, 1918 the peace treaty was not signed. Delays during a period of high inflation confronted union officials with opposition from their rank and file and threats from mine owners who expected the government to break any strike.

By now John L. Lewis was in charge of the United Mine Workers (UMW). He worked his way up through union ranks after starting a union career in late 1910 when he became President of Local 1475 at Panama, Illinois. He moved from that to a job as an AFL organizer and maneuvered his way into other roles. He took an active part at UMW conventions and accepted appointments to be UMW statistician and business manager of the UMW journal.

When UMW president John P. White resigned in September 1917 to work on the Wartime Fuels Board, Frank Hayes became UMW president with Lewis appointed as Vice President. Hayes was such a hopeless alcoholic that Lewis did his job until Hayes was forced to resign. Lewis became president and appointed Philip Murray to be VP on January 1, 1920, although he was acting as the leader of the union during the fall 1919 negotiations and UMW strike. (32)

A strike date was set in September for November 1, 1919. The mine operators refused to bargain since they expected the government to enforce the Washington Agreement but Lewis could not call off the strike and expect to deal with his angry membership. The standoff brought action by the federal government to repress the strike.

On October 25, 1919 President Wilson labeled the impending walkout as "not only unjustifiable but illegal." On October 31, 1919 the U.S. Attorney General A. Mitchell Palmer filed for a federal court injunction against the strike and ordered Federal troops to the coal mines. The injunction banned all collective action including picketing and the strike.

President Wilson had Lewis notified that he would appoint a five member commission to adjust the dispute and render an award retroactive to November 1, but the strike started right on schedule when 400,000 miners walked out of the mines. The union demanded a 60 percent pay raise to make up for the war related

inflation, a six hour day and a five day week.

By November 8, 1919 Judge A. B. Anderson threatened jail for 84 officials of the UMW if the strike continued and the miners were not back at work within 72 hours. Lewis did not resist the injunction or declare terms of settlement, but agreed to call off the strike. At 4:00 p.m. November 11 Lewis announced "We are Americans. We cannot fight our government." He ordered the men back to work.

Many of the rank and file stayed out anyway. Labor Secretary William B Wilson offered 31 percent wage increase that barely covered cost of living between 1914 to 1919. Negotiations dragged into December until a compromise agreement set a cost of living increase of $.14 an hour with other terms to be settled later by the President's appointed commission.

Many were unhappy with the terms and called Lewis "the apologist for the beneficiaries of a capitalist system that is now in crisis." Lewis got a settlement by finding a compromise with a cost of living adjustment in wages while representing himself to business as a conservative limit to the radical elements in organized labor. He would spend lots of his time in the 1920's fighting internal battles for control of the United Mine Workers. He won those battles, but his first strike as leader of the UMW would turn out to be a lull before the next strike of a union and an industry in decline. (33)

Centralia, Washington

The IWW was decimated by the fall of 1919; its many halls raided with all but two in the state of Washington forcibly closed and furnishings demolished; its treasury empty, its leadership in jail along with hundreds of members. In Centralia, Washington, a small lumbering town between Portland and Seattle, the remains of an IWW local rented rooms adjoining Roderick's hotel for a union hall. It was a provocative and dangerous thing to do. Barely a year before another Centralia hall there was raided during a Red Cross parade. Union members were beaten, forcibly trucked out of town, and ordered never to return to Centralia; their offices were ransacked and contents burned in the street.

The previous June those in Centralia who objected to the sale of union newspapers by a blind vender named Tom Lassiter broke into his newsstand, hauled the contents to a vacant lot and burned them. They left a message on a pole stuck in the ashes: Leave town in 24 hours. When he reopened his newsstand he was forced into a car and trucked out of town, dumped in a ditch and warned never to return.

Like many IWW members the IWW loggers of Centralia took their right of free speech and free assembly seriously. After the new hall opened as a gathering place for loggers and IWW members, business and property owners met as a local Citizens Protective League to discuss "the need for a special organization to protect rights of property and protect from the encroachments of foes of the government."

Reports in the local newspaper, the Centralia Hub, had headlines and captions like "Employers called to discuss handling of 'Wobbly' problem." Plans to raid the union hall during the Armistice Day parade circulated as common

discussion. After the Chamber of Commerce and American Legion post published the parade route in the Centralia Hub the wife of the owner of Roderick's hotel, Mrs. McAllister, appealed to the Centralia police to protect her property. The chief answered "We'll do the best we can for you but as far as the wobblies are concerned the wobblies wouldn't last fifteen minutes if the businessmen start after them. The business men don't want any wobblies in this town."

The union put up posters to the "Citizens of Centralia: We Must Appeal!" The local AFL central trades council appealed directly to the local commander of the American Legion, Warren O. Grimm, to give up the planned attack. As Armistice Day approached local attorney Elmer Smith advised the union they had a right to self defense. (34)

On November 11, 1919 veterans of Centralia and Chehalis, Washington and a few others assembled in the city park in preparation for the Armistice parade. At 2:00 p.m. the march started and shortly passed the IWW hall, but once passed it stopped and reversed direction to pass the hall again. The second pass put the Centralia legionnaires at the back of the march. Fourteen determined IWW defenders watched from multiple locations: Wesley Everest and six others were in the hall, three looked on from Seminary Hill, two from the Arnold Hotel, one from Avalon house and one more from Rodericks Hotel.

When the parade was in front of the hall, one of the Centralia legionnaires on horseback gave a shrill whistle and direction to "Let's go. At'em boys." Legionnaires broke ranks and surged to the front door of the hall, smashing glass and breaking down the door. Shots rang out from inside and from Seminary hill and the Avalon Hotel. The crowd of legionnaires at the door scattered; four took bullets. One of those wounded was carried a few steps and dropped in front of the hall "his feet on the curb and his head in the gutter." Another, Warren Grimm, was able to walk off the front porch and make it to a hospital, but died later.

Police arrived quickly to make arrests. Bert Faulkner left the hall from the back door but not fast enough to avoid arrest; the other five tried to hid in an abandoned refrigerator after the more numerous legionnaires covered the exits. Wesley Everest did not take refuge in the refrigerator, but defended the hall with a 44 automatic and a "pocket full of cartridges" until he could defend no more. He piled out the back door, raced through the crush of legionnaires, and over a fence. He stopped to confront them: "Don't' follow me and I won't shoot."

A foot race ensued down allies, through gates, past side yards with quick stops to exchange gunfire. Unable to get away Everest found himself backed up against the Chehalis River. He was ordered to surrender by the nephew of the president of the Citizens Protective League, David Hubbard. "Stand back! If there are bulls in the crowd, I'll submit to arrest. Otherwise lay off me."

Hubbard rushed him anyway, possibly thinking he was out of bullets, but Everest got off four shots, killing young Hubbard. Out of ammunition the mob kicked him, beat him with rifle butts, and started to lynch him with a coil of rope, which legionnaires had with them at the parade. Instead he was dragged to the front of the jail, beaten further when someone put the rope around his neck. Accounts report Everest taunted them: "You haven't got the guts to lynch a man

in daylight." Possibly they agreed because he was dumped into a jail cell next to the others already arrested.

That evening all electricity was shut off putting Centralia in the dark, for fifteen minutes, long enough to allow jail guards to deliver Wesley Everest to a mob that filled three cars. On the way out of town one of the mob castrated the bound Everest with a razor before reaching the Chehalis River where he was lynched from the side of a railroad bridge on a length of rope; he was pulled up and dropped three times. The mob used their rifles before departing leaving his bullet-riddled body dangling over the water. Everest's corpse dropped into the river in the night after someone, never identified, cut the rope. Some legionnaires decided to recover Everest's body the next day, which police allowed them to dump in the jail with the prisoners arrested from the night before. Prosecutors questioned prisoners in isolation and without counsel for days while police ignored a nighttime routine of terrorizing the jail cells. After dark the mob arrived to howl crude threats and point guns and throw debris through barred jail cell windows.

A manhunt ensued for the IWW's outside the hall, on Seminary Hill and the hotels. The legionnaires around Centralia took over the search with an armed posse that swept through the hills, patrolled roads, and bashed down doors, all with the passive connivance of police and the employers. They managed to shoot and kill one of their own, but ultimately caught four others from the Armistice day confrontation; two escaped, were never caught. The lumber mill operators dominated the Washington Employers Association, which used Centralia and the state's anti syndicalism statute as an excuse and a means to make a thousand arrests in a statewide roundup of IWW's or suspected IWW's. (35)

The Prosecutor indicted eleven men for the murder, or conspiracy to commit the murder, of Warren Grimm. The eleven included their legal advisor, attorney Elmer Smith. The accused retained attorney George Vanderveer who arrived from Chicago to death threats. Vanderveer took a hotel room 13 miles away. The Legionnaires and the IWW sat in on the trial as partisans. The prosecution moved the trial to the smaller town of Montesano in the adjoining Grays Harbor County, which had no organized labor. The prosecutor made a simple claim: the IWW deliberately shot into the marchers. Vanderveer argued the IWW acted in self defense.

Attorney Vanderveer tried to get a second change of venue to Tacoma, which Judge George Abel agreed to do. The prosecutor retained the judge's brother to be assistant prosecutor, which disqualified Abel. The governor named Judge John Wilson in his place except Wilson gave the eulogy for Warren Grimm and denounced the IWW; no disqualification followed the new pick.

Prosecution witnesses saw Warren Grimm fall in the street 100 feet from the union hall; defense witnesses saw him shot breaking down the union hall door. Prosecution witnesses saw Eugene Barnett shooting at marchers from the front window of the Avalon Hotel; defense witnesses saw him unarmed sitting in Roderick's hotel. Three witnesses that testified against Grimm as the attacker were promptly arrested from the witness stand.

As the trial ended Bert Faulkner was released for lack of evidence, but verdicts were returned for the rest. The initial verdict declared two not guilty, five others guilty of second degree murder and two more guilty of third degree murder. The jury declared 19 year old defendant Loren Roberts insane. Since no third degree murder existed in Washington law, a conflicted and contentious jury took two more hours to convert all the convicted to second degree murder. As an apparent compromise, the jury made a written request for leniency.

The Legionnaires blew up in a siege of rage at the verdicts; all must hang. They declared the verdict "an impossible, monstrous miscarriage of justice." Prosecutors ignored the lynching of Wesley Everest. All convicted were sentenced to 25 to 40 years; none were released before 1933.

National newspapers sent reporters to Centralia and Montesano to cover the story and there were business and labor papers determined to offer their views. Some of the newspapers portrayed the Legionnaires as innocent bystanders. As the Montesano trial ended one of the labor reporters wrote of the money gained by brute force from the work of others: "I am convinced that nothing, not even arson, rape and murder, would deter these lumber barons if they thought it would bring the desired financial ends." The IWW disappeared from Washington in the aftermath. The Employers Association had their way but no sign in the record suggests the Legionnaires enlisted to do the dirty work ever doubted lynching was their patriotic right. (36)

Part III – The Republicans Takeover – 1921-1933

Worship of money was an old world trait; a healthy appetite worthy of the gods, or to worship of power of any concrete shape; but the American waste money more recklessly than any other ever did before; he spent more to less purpose than any extravagant court aristocracy; he had no sense of value, and knew not what to do with his money once he got it, except use it to make more, or throw it away.

----------Henry Adams, from the Education of Henry Adams, 1907

The Russian Revolution of March 1917 began with mass strikes in Petrograd. When the army refused to put down the strikes Tsar Nicholas II abdicated. A provisional government, the Alexander Kerensky government, took over. Nearly everyone hated the Tsar whether they were Russian or not, which made it easy to feel optimistic. In the United States, labor responded with messages of support. On April 2, 1917 the AFL Executive Council sent

"fraternal greetings to all who have aided in establishing liberty in Russia. We know that liberty means opportunity for the masses especially the workers. The best thought, hopes and support of America's workers are with your efforts to form a government that shall insure the perpetuity of freedom and protect your rights and new found liberty against the insidious forces and agents of reaction and despotism. May we not urge you to build practically and constructively." (1)

The Kerensky government continued to fight with the allies in WWI, but chaos reigned as the will and the means to continue disappeared. Bolshevik Party leader Nikolai Lenin returned from exile in Germany to organize political opposition. Kerensky released Leon Trotsky, Joseph Stalin and others in exile in a conciliatory move, but it was not enough. In November 1917 Lenin replaced the Kerensky government and opened peace negotiations with Germany. After the Russian withdrawal from WWI in March 1918, Lenin set to work organizing a communist state along Socialist-Marxist lines. Capitalism would be abandoned in plans for collective ownership and centralized management.

AFL support for the Russian revolution ended with the overthrow of the Kerensky government, but not for those in the Socialist Party and others in the European and U.S. Labor movement. Establishment dogma lost appeal after the brutal slaughter of WWI; something new must be worth a try. American journalist John Reed was in Russia in 1917 and explained the workings of the new society in glowing terms in his Ten Days that Shook the World. "The extraordinary and immense power of the Bolsheviks lies in the fact that the Kerensky government absolutely ignored the desires of the masses as expressed in the Bolsheviks program of peace, land and workers' control of industry." Eugene Debs had nothing but praise and high hopes for Russian communism. (2)

Lenin died in 1924 and a power struggle of potential Bolshevik Party successors went on until Joseph Stalin took control as dictator of Russia in 1928. After Stalin took over in Moscow American communists ignored the growing evidence that Russia was not living up to the ideals they admired, but the

Bolshevik ideal of a proletarian working class with a significant and respected role in government had too much appeal to abandon for America's socialists and left wing labor movement organizers.

The American Communist Party(CP) originated from these ideals. It started from a split in the Socialist Party of Eugene Debs in early 1919 after a left wing faction of Socialists pulled out to debate and then found the Communist Party of America at a convention in Chicago in September 1919. These "founding fathers" were Americans not Russians. They tended to be dreamy-eyed intellectuals in dissent, or left-wingers from the labor movement, but they were not agents from Russia.

Even though American Communists attended Commintern meetings in Moscow and did their best to follow directives from the Kremlin, they had to persuade Americans to join the Party. The need to persuade forced American communists to work organizing demonstrations and rallies, to make speeches, to publish newspapers, to run candidates for office, to raise money and to recruit new members. American communists during the great depression would become the ultimate do-gooders and labor organizers.

Remember Marx was a man of the 19th century who saw the poverty and income inequality generated by capitalism in the early era of industrialization. He saw the mass of proletarian working class living in squalor, earning a pittance, working endless hours in dangerous and deadly mining and manufacturing jobs. Since the proletariat suffered the most from capitalism and made up the majority in one country after another he expected the proletariat could be organized to replace capitalism with socialism. For Marx the best time to organize would be during economic depressions and labor strikes; they often went together. The best place to find leaders ready for change would be unions and the existing labor movement.

Marxian doctrine has a scientific sounding economic and political scenario leading to the inevitable collapse of capitalism, but really Marx wanted to end capitalism because he hated capitalists. He hated their greed and indifference to the miseries around them. Marx and Engels wanted respect and a better deal for the working class.

Chapter Nine - The Post War Losses

"It tires me to talk with rich men. You expect a man of millions, the head of a great industry, to be man worth hearing; but as a rule they don't know anything outside of their own business."

----------Theodore Roosevelt from the New York Times, January 12, 1919

World War I made dissent dangerous. By the early 1920's the pressure to conform continued in new ways. Some of the pressure came from the uniformity inherent in mass produced goods and improved communications. It was Henry Ford who suggested his labor force should earn enough to buy his cars and participate in a consumer obsessed society, an idea known as "Fordism."

Some pressures to conform advanced from deliberate strategies. Americanization campaigns in the 1920's praised the founding fathers and the ideals of democracy, liberty and freedom, and touted American abundance and economic growth as patriotic symbols for all to accept. Just before this period the Women's Christian Temperance Union and the Anti-Saloon League utilized the power of one issue politics to organize a successful campaign of authoritarian conformity: producing, distributing and drinking alcoholic beverages became a crime for all. It was an era known far a wide as Prohibition. Teetotalers imposed their will on drinkers; many of them immigrants settled in cities where alcohol combined with socializing and the city life of the working class.

America has periodic episodes of aggressive authoritarian conformity imposed in apparent defiance of the popular will, or a democratic majority. The working class, the proletariat if you please, could tear a page from the book of Prohibition; they are after all a majority; but so far they have not.

American Plan

The wartime restraints imposed by the Wilson administration made business eager to restore the open shop in the post war and to resume crushing unions. Steel industry officials, Elbert Gary and Henry Clay Frick, took the lead as aggressive union opponents as did William Wallace Atterbury of the Pennsylvania Railroad. The Commission on Industrial Relations wrote in 1914 "The most important setbacks encountered by collective bargaining on a national scale in the past fifteen years are directly traceable to the United States Steel Corporation."

In the early 1920's Gary continued to take the lead for the business community that adopted some version of the open shop in bitter opposition to the union demand for a closed shop. Because the public campaign against unions treated them as an un-American interference with competition and the rights of private property, anti union policies were soon known as the American Plan.

American Plan advocates refused to recognize or bargain with any union and always insisted they were protecting the rights of free choice for employees who did not want to join a union. In practice free choice equaled one choice because union members could expect to be summarily fired and put on a blacklist

for their union membership or union organizing. Anti-union companies hired spies to infiltrate unions to get advance notice of union plans and provoke dissension, or fire leaders. As the companies got richer they equipped and maintained private armies rather than hire detective agencies as outside contractors.

American Plan Associations published open shop principles and pooled blacklists, spy reports and espionage activities and threatened association members that negotiated with unions or violated open shop rules. These cartel practices could be construed as a restraint of trade and an antitrust violation since companies collaborated in their management decisions, but nothing happened to restrict them.

Business in the 1920's had the economic and political power to break unions and operate with an open shop, but a few moderate voices in industry took a more conciliatory tone to advocate for the Rockefeller Employee-Representation Plan or the company union. The company union advanced during the 1920's as a safe and less confrontational management alternative to subvert outside union organizers.

No company unions ever turned into independent unions. Most were like the Rockefeller representation plan, but they varied somewhat among the companies that used them, mostly larger companies. Members were always restricted to employees so that outsiders or experienced union personnel could be kept out. Management drafted by-laws that did open labor-management conversation over grievances, safety and productivity issues, but typically management retained veto power over changes or amendments.

In effect companies expropriated collective bargaining because management could avoid bargaining over wages and hours by stalling. Members could resort to persuading or nagging, but they could not accumulate funds to support strikes; employees had no independent power to press their demands. The company union amounted to a closed shop with open shop rules. (1)

Post War Coal Strikes

The John L. Lewis solution to the 1919 coal strike did not end economic trouble for coal miners after WWI. Lewis recognized a uniform national contract would be ideal but the widely scattered coal operators would not go along. The coal operators in the Central Competitive Field - Illinois, Indiana, Ohio and Pennsylvania – worried about competition from other regions like Alabama, Colorado, Utah, Kentucky and West Virginia. West Virginia had high quality and easy to mine coal, but terrible labor relations. West Virginia coal operators were tough competitors in a super competitive market, which in their minds justified their demand for cheap and docile labor. The miners were armed and ready to fight.

The Matewan, Blair Mountain and the 1921 Coal Strikes

During World War I Woodrow Wilson ordered draft exemptions for West Virginia miners because "Scarcity of coal is the most serious danger that confronts

us." Non-union miners produced record amounts of West Virginia coal with a modest wage increase thanks to the federal government's wartime administration. Even though West Virginia coal operators benefited from the war generated increase in coal demand, they expected to be non-union to maintain low wages with a price advantage over coal mined in the central competitive field.

Governor John Cornwell conceded private coal companies controlled pubic officials: "Logan County is a political unit, self-governed, electing its own officers, who are not responsible to me for their official acts and over whom I have no direct control." The operators assessed themselves to pay the salaries of the sheriff and all the deputies. The operators made no attempt to disguise the system, but admitted it freely. Don Chafin's deputies met the trains and greeted union organizers with "Don't let your feet touch the dirt in Logan County."

In spite of repeated failures to organize West Virginia miners and constant danger from armed detectives of the Baldwin-Felts detective agency, Lewis decided to send UMW organizers into southern West Virginia. Unlike Logan County just to the north, Mingo County had elected officials and law enforcement officers willing to challenge some decisions of the coal operators.

When Mingo County miners joined the UMW, the Williamson Coal Company fired them and set plans to carry out forcible evictions from company housing. On the morning of May 19, 1920 Albert Felts and twelve more well armed Baldwin Felts detectives arrived by train in the village of Matewan to evict union members.

Evictions can be difficult and unhappy affairs, then as now. To avoid trouble state laws establish procedures that require notice and a court order to be carried out by a local sheriff or law enforcement officer. Albert Felts offered a $1,000 to Mayor Cabell Testerman to look the other way, but he refused. After lunch the Baldwin-Felts delegation went up to the Stone Mountain mine to evict miners, but Mayor Testerman and police Chief Sid Hatfield showed up to see their court order. Instead Albert Felts handed Hatfield a letter from his brother Tom Felts offering Hatfield $200 a month; Hatfield ignored the bribe and they both left.

Back in Matewan, Testerman put a phone call through to the county prosecutor who declared the evictions illegal and arranged for warrants to arrest Felts and his entourage of detectives. One of the evicted miners traveled to the courthouse in Williamson and returned with the court order. The telephone operators, who were also stool pigeons for the coal companies and the Baldwin-Felts Detective agency, informed the Felts brothers of the call. Expecting trouble, Hatfield appointed a dozen miners as deputies to help serve the warrant.

About 5:00 p.m. the Baldwin-Felts men were back in Matewan preparing to leave on the evening train, when Sid Hatfield and Mayor Testerman confronted Albert Felts. After a brief verbal standoff Albert Felts drew his gun and fired into Testerman who went down and ultimately died from the wounds. By the time the shooting stopped, Albert Felts, his brother Lee Felts, and five more Baldwin-Felts detectives were dead: Troy Higgins, A.J. Boohrer, C. B. Cunningham, E.O. Powell, and J.W. Ferguson. Two of the Matewan deputies were killed in addition to Testerman, bringing the death toll to ten. Remaining Baldwin-Felts men

successfully scrambled out of town. (2)

Mingo County Judge James Damron convened a grand jury after doing his own Matewan investigation. The grand jury indicted Sid Hatfield and the miners who served as deputies for conspiring to murder detectives; four of the surviving Baldwin-Felts detectives were indicted for the murder of mayor Testerman. Just before the Hatfield trial opened on January 26, 1921, Judge Damron resigned and joined the prosecution team against Sid Hatfield and the indicted miners.

That was one irregularity in a trial full of irregularity. One of the prosecution witnesses, owner of the Urias Hotel in Matewan and friend to Baldwin-Felts detectives, was murdered just before the trial. One of the indicted miners accepted $1,000 in payment from the prosecution to have charges dropped and testify against the others. Another prosecution witness admitted he was a paid informant of the Baldwin-Felts detective agency. For $225 a month Charles Lively was willing to testify against miners he had successfully deceived to be friends. The trial dragged on until acquittal that came March 21, 1921, which everyone expected given the hostility toward the operators and the Baldwin-Felts detectives. (3)

The Matewan Massacre and trial settled nothing, but setoff a lengthy and violent struggle. Before the trial 6,000 walked out in a strike at twenty mines. After the trial a new and more anti-union governor was able to double the state police force, but state police was the best he could get. There were still no funds allocated for a National Guard. The operators imported strikebreakers by train. Striking miners convinced some of the scabs to leave, especially with an offer of free train tickets, but there was shooting and skirmishing.

On May 12, 1921 union and non-union miners took positions in the hills above Matewan to shoot a hail of bullets into the town. The “Three Days Battle” shut down Matewan, but also spread to other towns along the Tug River and into Kentucky. Only one was killed in the village of Matewan, but several strikebreakers were either killed or wounded, counts and accounts vary.

Governor Ephraim F. Morgan wanted Federal troops. His predecessor Governor John Cornwell convinced the Wilson Administration to deploy federal troops, but the new Governor had to convince the more reluctant Warren Harding administration. While Harding stalled the governor determined “West Virginia to be in a state war, insurrection and riot” and declared martial law on May 19, 1921. He banned firearms, public assemblies, meetings, or processions, and the publication of anything to influence the public mind against West Virginia or the United States.

He appointed Major Thomas Davis to organize vigilantes and enforce martial law; Davis had experience from the Paint Creek and Cabin Creek strikes almost 10 years before. In addition to state police Major Davis armed 780 vigilante volunteers, all from “a better class of people.” Miners and strikers where arrested and held without charges. Union offices and newspapers were raided and destroyed, but the shooting and skirmishing continued.

On May 25, after snipers fired into the Big Splint mine area, 40 men were arrested from a nearby tent camp established after the Matewan evictions. On

June 5, more shots were fired at an automobile and 47 were arrested and marched to the county seat at Williamson; the tent camp was completely destroyed with women and children left in the woods to fend for themselves. (4)

In the meantime, boss Tom Felts conspired with sympathetic officials in nearby McDowell County to indict Sid Hatfield and others for conspiracy to dynamite a coal mine tipple almost a year before. No one doubted Tom Felts expected revenge for the Matewan shoot out. Assurances of safety were sought and received from the McDowell County sheriff and the presiding judge of the district court. Suspicions remained and other safeguards were taken, but suspicions were not enough. When Hatfield, a friend, their wives and a body guard walked up the steps of the courthouse Baldwin-Felts detectives hiding behind a stone wall in front of the court house jumped out and assassinated the unarmed Hatfield and his friend. The body guard escaped; the wives were ignored.

Miners in and out of the UMW were furious and it did not help that stool pigeon Charles Lively, who was on hand to witness the assassination, called it "self defense plain and simple." On Sunday August 7, 1921, hundreds of miners assembled on the state capital grounds to demonstrate. Governor Morgan decided to meet with UMW District 17, President Frank Keeney and Secretary-Treasurer Fred Mooney, but he stalled and eventually declared "There is no fight in West Virginia between the operator and the union miners since the union had no status under the law, and thus might as well not exist. . . . "All the trouble that has arisen is the result of some agitators and organizers representing the United Mine Workers not resident in the unorganized fields, desiring to organize same."

The governor underestimated the growing anger of rank and file miners. Armed miners began to patrol the roads and disarm state police and block their movements. Word circulated of a march on Mingo County to free union organizers held without charges under martial law. Hundreds of miners assembled and camped well north of Mingo County near the village of Marmet. Gradually their numbers grew, eventually to nine thousand; many of them brought funds voted by their local unions to buy guns, ammunition and supplies to support the cause.

Getting to Mingo County from Marmet required a march through Logan County where Sheriff Don Chafin vowed "No armed mob will cross the Logan County Line." Sheriff Chafin had his deputies and constables, who were paid by the coal operators based on their production tonnage, but started recruiting a larger force to fight the miners. He called for volunteers and the strikebreakers working at the mines were told they would fight or be fired.

On August 24, Mother Jones saw the battle shaping up and arrived with a telegram from President Harding that promised to end the mine guard system if the miners would end the strike. The telegram was a fake. On August 26, the New York Times reported an "army of malcontents, among whom were union miners, radical organizers and not a few ex servicemen," were marching on Mingo County, which helped Governor Morgan press again for federal troops. President Harding finally decided he would have to do something. On August 27, WWI veteran Brigadier General Harry Bandholtz arrived in Charleston with Harding's vague instructions to make the miners go home.

Governor Morgan insisted to General Bandholtz he had done all that could be done to halt the miner's revolt, after which General Bandholtz informed Frank Keeney and Fred Mooney "I am going to give you a chance to save them, and if you cannot turn them back we are going to snuff this out just like that."

Under threat, Keeney and Mooney succeeded in convincing enough of the miners it was hopeless to fight the federal government that many headed home, often on foot, some by train. General Bandholtz left for Washington satisfied the troops he had ready at nearby Camp Sherman would not be necessary.

Calling off the planned march to Mingo was not enough for Logan County Sheriff Don Chafin. He had hundreds of armed deputies and state police patrolling the roads ready to arrest miners. Near the village of Clothier in northern Logan County sheriffs' deputies confronted armed miners; after verbal taunts both sides started shooting. The news of the fighting spread; miners were furious. The battle was on. (5)

Estimates suggest 5,000 made it south to Logan County by various modes including a hijacked train. On the way they stole guns, ammunition and a machine gun from coal company stores. The governor was again frantic, demanding federal troops: "Danger of attack on Logan County by armed insurrections is so imminent that legislature cannot be assembled in time to eliminate probability of clash and bloodshed."

That was on August 30, but again President Harding dawdled. Late in the afternoon he made a statement ordering "all persons engaged in said unlawful and insurrectionary proceedings to disperse and retire peaceably." He gave them two days to comply.

Governor Morgan appointed Colonel William Eubanks to take charge of Sheriff Chafin's forces. They had plenty of supplies and ammunition, two machine guns and three airplanes; they were able to get high ground on the north slope of Blair Mountain and shoot downward. Pilots of the airplanes heaved pipe bombs on the miners, but apparently to no effect. The miners lacked a designated commander but they had numerous veterans of WWI who devised a scheme of flanking movements for attack.

The shooting and fighting took place on and about Blair Mountain in Logan County. Visibility was poor on the forested slopes, but there was lots of shooting as the noise made clear. There were several assaults reported and one of the state's machine guns jammed but the battling was a standoff. General Bandholtz, back in West Virginia after the September 1 deadline, wired Washington: "The invaders have not obeyed the President's proclamation and there is no apparent intention to do so. It is therefore recommended that the troops now held in readiness be sent to West Virginia without delay."

U.S. army soldiers from three infantry units arrived and moved into position to end the Battle of Blair Mountain. Gradually the miners gave up although shooting continued from some positions for another day. About a thousand actually surrendered, but the rest drifted away, just disappeared. General Bandholtz demanded firearms, but unarmed miners were fodder for Chafin's warriors or Baldwin-Felts detectives. Only about 400 of miner guns were ever

collected. At least three on the Chafin side were killed early in the fighting, but casualty counts were guesses. The search for bodies turned up speculation.

The tough and stubborn miners showed they could fight, but gained nothing. The federal government was not impartial as some of them hoped. The 1921 recession and declining coal demand cut coal wages everywhere. It would only get worse through the 1920's while the coal operators continued with business as usual. (6)

The Coal Strikes of 1922

Union contracts for both bituminous coal and anthracite coal companies ended March 31, 1922 across coal mining states. The union adopted a policy of "No backward step" while the coal companies demanded to reduce wages as much as 20 percent. Jobs were already declining and many worked part time. As April 1, 1922 approached the Ohio and Pennsylvania operators announced forty percent pay cuts to eliminate state pay differentials. UMW president John L. Lewis proposed a joint conference with coal operators, but they refused. Companies demanded annual state by state wage negotiations with arbitration to resolve an impasse. The unions demanded a Federal Trade Commission investigation into company claims they were losing money, which the companies refused to consider.

A combination of large inventories, falling rail traffic and the warm summer season let the company's attempt to starve the miners into submission. On April 1, 1922 close to 600,000 walked out from bituminous and anthracite mines. Thousands were non-union miners who joined the nationwide strike.

Company ideas of an easy strike encountered fierce and unified resistance. The strike crippled production. Solidarity continued with minimal dissension for four months even though strikers had to ignore injunctions, and confront armed guards and National Guard troops escorting scabs to the mines. Company guards evicted miners from company housing.

Coal stocks diminished, but the Harding Administration adopted a "let them work it out" policy. Coal strikes often bring violence and this one did as well. At Southern Illinois Coal Company, a strip mine near Herrin, Illinois in Williamson County, UMW officials agreed to keep working during the nationwide strike after mine owner William Lester offered to stock pile coal, but not ship it or sell it. Lister reneged and when his 50 UMW workers objected Lester fired them and replaced them with 50 strikebreakers and armed guards invited down from Chicago. Beginning June 16, Lester started shipping coal. The strikers could not believe an outsider would come to Williamson County and expect to bust their union.

On the afternoon of June 21 armed strikers surrounded Lester's strip mine. Gunfire erupted between mine guards and strikers with three of the attacking strikers hit and two killed. News of the killings brought hundreds more strikers and sympathizers to the mine. The siege continued through the night. Strikers used dynamite to destroy mine installations and equipment and every rail car was burning by first light of day. The attacking strikers would not permit strikebreakers

or mine guards to surrender, but took revenge by killing twenty in what amounted to brutal assassinations.

At Cliftonville, West Virginia the Richland Coal Company imported strikebreakers, and then evicted miners. The United Mine Workers provided tents for a tent camp, but news of mine guards shooting into the camp brought an overnight march of hundreds of miners who showed up early the morning of July 16, 1922. They encountered strikebreakers and picketers and soon there were gunshots. A picketer fell and a gun battle ensued which killed seven miners, the sheriff and twelve mine guards. (7)

The violence brought pressure for President Harding to authorize settlement plans devised by his Secretary of Commerce Herbert Hoover. The Hoover plan had miners return to work at terms of the previous agreement until outstanding disputes could be arbitrated by an appointed commission. Arbitrators would set a wage to be used until March 1, 1923. Secretary Hoover also suggested creating a new Federal Coal Commission to investigate the coal industry. After the companies accepted and the unions refused the offer, President Harding wrote to the governors in coal producing states telling them he had instructed the War Department to keep their forces ready, suggesting the companies could safely hire strikebreakers to end the strike.

After biding his time for four months UMW President Lewis took steps to settle the strike, but mostly without the desire or need to consult his membership. He avoided the immediate wage cuts by getting the companies to accept his offer to return to the 1920 wage scale until April 1, 1923, but for union miners only and with no agreement to include or organize non-union mines, or miners. On August 16, 1922 he ordered the union back to work. By early September 1922 most of bituminous and anthracite miners were on the job. In the fall 1923 Congress debated and eventually passed the Borah-Winslow Coal Act creating the United States Coal Commission. The first appointed commissioners did not include anyone from organized labor.

The Lewis settlement angered many local union officials and others in the UMW rank and file. He got a modest, short-term concession from the coal industry on wages, but abandoned other demands to organize or recognize all UMW affiliates. The President of UMW District 2 in Pennsylvania, John Brophy, and William Foster both opposed the Lewis settlement. They saw the effect of ruthless competition among coal operators, which generated a surplus of coal and a surplus of labor. They wanted the union to press for a policy to nationalize the coal industry, organize unorganized miners and to end appointments of district officers and organizers among other things. Efforts were made to debate union administration and vote on representation at UMW conventions, but Lewis controlled the agenda and the podium. Convention rules allowed votes on motions, but the democracy that remained in the UMW only existed in theory. As the Lewis power increased, the prospects of miners declined and John L. Lewis became a growing symbol of an autocratic labor union.

The coal market continued its mordant mournful decline through the 1920's. The agreement after the 1922 strike included a date for another conference

to take place in Jacksonville, Florida in February 1924. UMW president John L. Lewis had authorization to "secure the best agreement obtainable from the operators in the Central Competitive Field on the basis of no reduction in wages." Secretary of Commerce Herbert Hoover helped mediate the agreement signed February 19, 1924. Coal operators and the UMW pledged no strikes and no decrease in the $7.50 a day wage until March 31, 1927 in what would be known as the Jacksonville Agreement.

Coal prices continued to fall and it was only eight months before operators in the central competitive field demanded lower wages in violation of their pledge. As more non-union coal replaced union coal from the central competitive field, the operators transferred more work to non-union districts also in violation of the Jacksonville Agreement.

Lewis pressed to hold the $7.50 wage and accused railroads, utilities and coal companies of a conspiracy to break the agreement, but it was hard to bargain with anthracite production going down from 90 million tons in 1926 to 68 million tons by 1930. The Pittsburgh Coal Company shut down and then offered a $6.00 wage when it reopened in August 1925.

By 1926 estimates put 65 percent of soft coal production from non-union mines and 61 percent of all miners worked without a union contract. Meetings to renegotiate the Jacksonville Agreement got started in Miami in early 1927 with the same slogan "no backward step" but this time the operators would not talk about anything but a wage cut. The meeting broke up with no plan to resume talks and so yet another strike started April 1, 1927.

The strike failed miserably. Efforts to provide strike benefits emptied the union treasury. Members virtually disappeared in every state but Illinois. Lewis pressed hard to have President Coolidge sponsor a joint conference and help with negotiations, but he left the decision to his Secretary of Labor, James Davis. Davis tried to organize a conference but few of the coal operators would even respond, and the few that did claimed the UMW did not represent any of their miners. It would get worse. (8)

The Plumb Plan, Transportation Act, Shop Craft Strike and Railway Labor Act

The railroad shop crafts strike started July 1, 1922, but the disputes and troubles that brought the strike started immediately after WWI. As the war ended the Railroad unions worried their improved pay and working conditions supported by the Wilson Administration during the war would be lost if the railroads returned to private ownership. Just after the war in 1919 the Chicago attorney for the railroad unions named Glenn Plumb made a detailed proposal to nationalize the railroads.

The Plumb Plan---------The Plumb Plan called for the government to issue United States bonds to buy the railroad property, which would be leased to the National Railways Operating Corporation created to operate the railroads. A fifteen member board would have five members appointed by the President, five

members elected by employees and five members elected by management.

The Corporation would lease the railroads from the government and pay rental fees from its operating revenue. The revenue would pay expenses, maintenance charges, renewals, "fixed charges" or interest and sinking fund payments. Labor unions would be allowed and labor disputes would be settled after review by a separate wage board.

The Interstate Commerce Commission would set rates. If net earnings exceeded five percent of operating revenues the Interstate Commerce Commission would reduce rates enough to eliminate the excess profits.

The plan called for net earnings to be divided equally between the Government and the Operating Corporation in a specific formula. The Corporation's half of the profits would be a dividend paid to employees with individual dividends equal to each employee's percent of total compensation multiplied by the Corporation's half of net earnings. Those in management would get twice that rate of dividend of employees. The dividend feature in the plan gives the incentive for management to hold wages down because higher wages for employees reduce dividend distributions for all.

Advocates organized a Plumb Plan League to promote nationalization and highlight the disappointments of the private railroads. The railroad's persistent demands for higher rates to generate monopoly profits on constantly increasing capitalization were one of the disappointments. Plan advocates reviewed railroad ownership and operations in other countries where they found it common to have public ownership of railroads, usually mixed with some private ownership. However, the United States ranked 15th among developed countries in ton miles moved per ton of car capacity with virtually no public ownership of rail service. (9)

The Transportation Act--------The railroads opposed the Plumb Plan. No surprise there, but they got better than they hoped for from Congress with the Transportation Act of February 23, 1920, a.k.a. the Esch-Cummins Act. The Transportation Act returned the railroads to private ownership and established a nine member board to be known as the Railway Labor Board to oversee railroad operations and guarantee a 5.5 percent return for five years. The law included a section directing labor and management to settle disputes before the Railway Labor Board. Adjustment boards were set up to settle grievances. However, Board decisions were not legally binding, but only carried the force of public opinion.

President Wilson appointed the first Board, which did recommend a cost of living wage increase to help cover the post war inflation, but Warren Harding was elected President in November 1920. After his inauguration he appointed former Tennessee Governor Ben W. Hooper to serve as chair of the National Railway Board in April 1921. He regarded labor unions as alien to America; strikes as the work of outlaws.

Management at the Pennsylvania Railroad pushed their schemes to neutralize railway unions. They used a series of layoffs and especially layoffs of shopmen in order to contract maintenance work to non-union employees. Layoffs

on other roads followed even though freight traffic was up and there were more trains hauling more loaded cars.

At hearings before the Railway Labor Board April 18, 1921 the railroads demanded wage cuts, which the Board approved on June 1: cuts were 12.5 percent. The Shopmen's union set plans for a strike vote in response, while the Railway Labor Board continued to make anti labor rulings. August 11 they eliminated overtime and then restored piecework pay rules in the maintenance shops on October 8, 1921.

The railway unions set a tentative strike date for October 30. Board Chair Hooper and another member of the Railway Labor Board responded by arranging a meeting with the four operating unions – brotherhood of locomotive engineers, brotherhood of railway trainmen, brotherhood of firemen and enginemen, order of railway conductors – where they appealed to their greed and vanity and offered them separate treatment from the other railway unions.

The four operating brotherhoods functioned as separate craft unions outside the AFL. Previous efforts by William Foster and others to get the separate rail unions to combine as an amalgamated union failed. However, the more perceptive people in the shopmen's crafts did persuade some of their unions to combine. The 1909 AFL convention accepted their request to form a Railway Employees Department as an affiliate of the AFL. The eligible skilled shop crafts included machinists, boilermakers, blacksmiths, sheet-metal workers, electrical workers and railway carmen.

However, the Hooper ploy created enough uncertainty that the October 30 strike date passed. The delay allowed the railroads more time to expand contracting work to outside firms who rehired the shopmen at lower wages. The Railway Employees Department met at a convention April 10, 1922 where they argued that contracting out violated stipulations in the Transportation Act. Their attorney Frank Walsh got the Railway Labor Board to admit violation after a hearing over practices at the Indiana Harbor Belt Railroad.

While the ruling favored the union position what followed turned out to be the final events that set off the strike. The Indiana Harbor Belt Railroad ignored the Railway Labor Board order to stop contracting since they knew the Board did not have power to enforce the order, but the operating railroads expected to carry out Board rulings in their favor. (10)

The Shop Craft Strike--------- On June 6 the Railway Labor Board announced their approval of another cut in wages of 7 cents an hour effective July 1, 1922. Management targeted cuts to shopmen, but not engineers, firemen, conductors, or trainmen. The strike started July 1, 1922, but only seven of the sixteen railroad unions left work, effectively dividing labor.

The New York Times reported 400,000 shopmen on strike, although the numbers later reported by the Railway Employees Department were somewhat lower. President Harding wrote his opinion to board chair Hooper where he argued the strike should be avoided "because any other course is going to bring on a crucial test of whether the government may be sustained or openly defied by

an organization of men whose members are ill-advised."

On the initiative of Ben Hooper the Railway Labor Board voted July 3 on a resolution condemning strikers. The resolution had phrasing that strikebreakers have a "moral as well as legal right to engage in such service." The "outlaw resolution," as it came to be called, granted Railway Board permission to the railroads to hire strikebreakers and wave seniority rights of strikers guaranteed in the Transportation Act.

In the 1920's all the motive train power was steam locomotives, which required regular maintenance by people with know-how and experience in the skilled trades. Shopmen worked in 1,754 shops scattered in towns and cities all over the country where they built, repaired and maintained locomotives and rolling stock. At first the strike had little effect because the engineers, firemen, trainmen and conductors kept working, but the lack of maintenance and the coal strike brought a gradual shortage of locomotives. The railroads started canceling trains beginning July 9.

Management advertised for strikebreakers they housed in shop facilities or in converted railroad cars and then hired thousands more guards to protect them. Many of the railroads went to extremes with more guards. The Pennsylvania Railroad hired 16,215 guards, which was two guards for every three strikers. New guard hires on just 28 railroads totaled 50,025.

No previous national strikes took place in so many shops scattered all over the country: Roseville, California, Roseburg, Oregon, Clovis, New Mexico, Slater, Missouri and so on. In some of these small towns and villages nearly everyone worked in the shops and community support was high. Local businesses put signs in their windows: "We support the strikers." Some local police helped maintain picket lines and in some places sympathetic police recruited strikers as deputies who escorted strikebreakers out of town. Local solidarity infuriated the railroad management who leveraged their financial clout to boycott hotels and local businesses and making threats to close up and leave town without active support from local business.

In other places picketing strikers did their best to keep strikebreakers out of the shops in confrontations with armed guards employed to get them in. Guards fired into picketers in several widely separated incidents around the country beginning with a shooting in Cleveland July 8 that killed a striker. More shootings followed; 10 were killed in strike related shootings including three children picketing with their parents. Strikers contributed to the violence. Some groups of hundreds of strikers and sympathizers invaded shops to shut down operations, others ripped up tracks, stoned trains, and used threats or force to protect their communities against outside control. (11)

The railroads and some state governments found it easy to get federal district courts to write injunctions to eliminate "illegal" picketing. As the strike continued Attorney General Harry Daughterty supplied 3,195 U.S. Marshals and pressed for the use of state National Guards, which were used rather than Federal troops. U.S. Marshals had authority to appoint deputy Marshals. Many were appointed from the local communities without apparent concern for their training

or competence.

Strikers and their local communities resented outsiders, but reaction varied from one place to another. An Iowa sheriff complained that "railroad officials had overemphasized the seriousness" of their local conditions when U.S. Marshal "services were not needed." A United States Marshal in Missouri admitted "Many rumors reach us but investigation prove them groundless." In other places there were reports of drive by shootings, beatings, tar and feathers, acts of vandalism ripping up or greasing tracks, cutting air hoses, threatening letters to strikers that sometimes included undertaker business cards and so on.

Union solidarity remained strong as the strike dragged into August. The railroads could not replace the shopmen but had to recruit students, farm boys and imposters. Repairs lagged. Car loadings were reported at 31,460 in Railway Age for June 24, but down to 16,271 by July 29. (12)

President Harding stalled, but released a statement July 11 that replacement workers had "the same indisputable right to work as others have to decline to work." On July 14 he ordered Hooper to negotiate a settlement between railroad executives and union officials. Hooper took the position that the railroads could make separate settlements if they wished, but the Harding cabinet divided between the militant Attorney General Harry Daugherty and the more conciliatory department secretaries: Herbert Hoover at Commerce and John Davis at Labor.

Commerce Secretary Hoover worked out a Harding plan to have strikers return to work and that both sides recognize decisions of the Railway Labor Board; that carriers would withdraw all lawsuits growing out of the strike; that the employees would return to work with pre-strike seniority rights, and end discrimination against strikers. Even though the plan ignored contracting out and piecework wages the shopmen's unions accepted the plan on August 2, but the Railroads refused to restore seniority rights.

Hoover was furious and threatened to take over the railroads to eliminate coal shortages, but President Harding proposed a second plan instead. He made another concession to the railroads by asking the shopmen to return to work and then submit seniority to the Railway Labor Board. Rank and file opposition poured in from all over the country and the Railway Employees Department officials turned it down. By now the rank and file had no trust for the Railway Labor Board.

The railroads could not guarantee the delivery of essential coal supplies. Fruit rotted on railroad sidings. Grain sat in silos. The number of trains kept declining with safety becoming a question for the trains that did run. The Brotherhood of Locomotive Engineers threatened to join the strike if something was not done to assure safer standards on the trains. Some engineers did walk off trains; one, a California passenger train, stranded passengers. Sporadic violence and vandalism continued. A striker and a railway guard were killed August 5. (13)

As the strike dragged on the ability of the shop crafts to cut significantly into national transportation put enormous pressure on President Harding to do something. He met with key senators and cabinet members in several days of meetings beginning August 26. He no longer had faith in the Railway Labor

Board and he rejected Hoover's suggestion to seize the railroads. He responded to his failed settlement offers by turning negotiations over to his Attorney General, Harry M. Daugherty, no friend of labor. Daugherty called the strike a conspiracy to violate the Sherman Act and the Transportation Act. He immediately filed for a federal injunction before Judge James Wilkinson, a Daugherty appointee.

On September third Judge Wilkerson declared the strike a conspiracy to disobey the Railway Labor Board and prevent the employment of strikebreakers by intimidation and interference with interstate commerce. He wrote a draconian injunction prohibiting picketing, loitering, speaking, writing, giving news or interviews in public statements, or using union funds for strike benefits to strikers or funds to support or aide the strike. They were enjoined from persuading others to stop work "in any manner by letters, printed or other circulars, telegrams, telephones, word of mouth, oral persuasion, or suggestion." Attorney General Daugherty watched for the slightest infraction to enforce it. (14)

The more active role of Attorney General Daugherty and the blunt wording of the Wilkerson injunction further worried the already worried and divided union leadership. Negotiations got more complicated because the railroads were also divided. Pennsylvania Railroad vice-president William Atterbury and President Samuel Rea refused to recognize a union or make any concessions to their open shop demands. They aggressively attacked the president of the Baltimore and Ohio Railroad, Daniel Willard, who accepted unions and looked for a compromise. They ridiculed him because he started out as a locomotive engineer and worked his way up to President of the Baltimore and Ohio Railroad.

President Willard took the lead to offer a separate settlement for the Baltimore and Ohio and any other roads he could persuade to join him. The Railway Employee Department leaders met to consider his offer on September 11, 1922, but they did so with the insistent opposition of thousands of their rank and file who wrote in to demand a single national settlement.

The terms of the Willard agreement guaranteed strikers could return to work with seniority at their June 30 positions and the railroads would drop their outstanding lawsuits. The acting President of the Railway Employee Department Bert Jewell argued the union's exhausted finances did not permit them to carry on a national strike any longer. His view finally prevailed to the leadership and the negotiating committee that voted to accept the Willard terms. At the time of the September vote B&O president Willard had 14 railroads that had signed onto the agreement or a slight variation of it. (15)

The strike did not end so much as it petered out, slowly but surely like a dripping faucet. By October 1, 1922, 67 railroads out of 180 Class I railroads agreed to settlements. Separate settlements, road by road, went on for more than a year and in a few cases into 1924, but some of the railroads would not make a union settlement; they waited to hire strikebreakers or train new recruits. Remote areas had few other employment opportunities outside the shops, which allowed management to hold out until the men were broke and drifted back to work. Some broke and unemployed strikers abandoned their local unions and moved to another part of the country looking for work on other roads as strikebreakers.

A striking union local at maintenance shops in Harrison, Arkansas ended in a unique settlement. When members of the union found themselves at odds with a local merchants group, 336 armed Ku Klux Klan showed up in two trains. That was in January 1923, six months into the strike. After an armed objector refused to submit to Klan authority they overpowered him and lynched their captive from a railroad bridge. Remaining strikers left town in a hurry.

In addition to his strike settlement Daniel Willard promoted and negotiated a cooperative agreement for internal management at his Baltimore and Ohio maintenance shops. The B&O plan had similar characteristics of the Rockefeller plan and amounted to a company union. As the shopmen trickled back to work around the country it was common for railroad management to replace Railway Employee Department union locals with company unions. Otherwise the more aggressive anti-union roads like the Pennsylvania Railroad demanded and got an open shop. Ultimately separate settlements destroyed the shopmen's union.

The fortune of financial loss for the railroads to oppose the unions hints at their managerial motives: they wanted to bust the unions. Financial reports of the Interstate Commerce Commission establish that losses resulted from extra cost and the failure of seasonal revenue to increase in the summer and fall. Class I railroads paid an average $.72 an hour for shopmen before the strike, but in spite of the July 1 wage cuts the wages paid after the strike jumped to an average $.76 an hour in July, $.79 in August and $.80 in September. Management had to pay more to inexperienced shopmen to replace experienced shopmen. They paid millions for overtime because inexperienced shopmen took longer to complete maintenance and repairs than experienced ones. They had more overtime expense for train crews because of train delays caused by the strike. They paid millions for room and board for strikebreakers and guards. They paid bonus allotments to loyal employees who stayed on the job. The public also subsidized some of the costs of the strike. The State and federal government paid for U.S. Marshals and state guard troops. Losses to shippers and the traveling public added to the economic loss.

Part of the failure of labor was self-inflicted; the four operating brotherhoods refused to join the strike. It did not help either when Bert Jewell and Railway Employees Department leadership abandoned a national settlement. The financial willingness and ability of the railroads to stall prevailed over the surprising solidarity of the shopmen, but management had the help of Attorney General Harry Daugherty and the acquiescence of President Warren Harding to bust the unions. Had the unions been unified they could have used their economic power to control inter-city transportation and win the strike, but they had that power before when they lost the Chicago strike of 1894. The economic power solidarity creates does not always prevail in a world of class warfare.

In spite of their financial loss management successfully destroyed the unions as they intended to do. Company unions or the open shop prevailed in the craft shops after 1922; the Railway Employees Department melted away to almost nothing. A skeleton group of leaders hung on looking for ways to accommodate or placate management and collect some dues, but a former member expressed

the sentiment of the rank and file when he said he would never again pay dues to a shop craft union.

The Congress guaranteed a 5.5 percent return to the railroads for five years as part of the Transportation Act of 1920. There is no sign in the record anyone in business or the Congress thought they should guarantee wages or a cost of living adjustment to labor. Guarantees applied to capital but not the working class. (16)

The Railway Labor Act----------The disruption from the Shopman's strike did bring bipartisan calls for amendments to the Transportation Act. Railway labor union attorney Donald Richberg drafted legislation that was introduced and debated in Congress. Debate went on for several years until President Calvin Coolidge pressured both sides to agree on a bill, which finally passed May 20, 1926 as the Railway Labor Act, still part of U.S. labor law.

The Railway Labor Act works to create bargaining, mediation and arbitration in railroad labor disputes to avoid strikes. The law specifies negotiation and mediation in labor disputes before there can be a strike and made it a duty for both management and labor to bargain in good faith to make and keep labor agreements. Procedures call for management and labor to appoint representatives of their own choosing to meet and negotiate an agreement.

The law requires the President to appoint and the federal government to maintain a five member National Board of Mediation (NMB) to be a backup if the two sides cannot agree to settle their differences. The National Board conducts representation elections and mediates disputes, or arbitrates if both sides agree to it. Strikes are permitted but they can be enjoined for failure to follow and exhaust administrative procedures. Strikes were also limited to disputes over the terms in a collective bargaining agreement, but not permitted over the administration of the agreement or delays in settling grievances.

The president has authority to conduct an independent investigation after calling for a thirty day delay if a national strike threatens interstate commerce. The carrier must maintain employment conditions during this period and the union cannot strike for sixty days.

The law applied only to railroads until it was amended during the 1930's to include airlines. It ended the company union and established collective bargaining rights for labor but only for railroads and then airlines. The anti-union powers in the 1926 Congress decided inter city rail transportation was important enough to allow a special case, but the rest of industry and commerce would not get collective bargaining rights until five years into the great depression when the 1935 National Labor Relations Act would establish collective bargaining rights in all but a few industries. The new law would be different from the Railway Labor Act. (17)

The Trade Union Educational League and the A F of L

Labor found new ways to divide in the 1920's. The AFL favored union-management cooperation with Samuel Gompers leading the way. Gompers tried to convince business that collective bargaining and cooperation would bring

higher productivity and profits if he could organize the unorganized.

The IWW faded after the decimating trials and deportations, but the more liberal parts of the labor movement hated the collaboration with industry that Gompers proposed. After the steel strike William Z. Foster adapted progressive causes in an effort to transform the AFL and unite labor. Rather than have two union movements like the AFL and the IWW Foster hoped to bring industry wide organizing into the AFL and unify the labor movement from the inside, a practice known as "boring from within."

To promote "boring from within" Foster and eleven other members of the Chicago Federation of Labor(CFL) agreed on a philosophy and operational guidelines for a Trade Union Educational League (TUEL) in November 1920. Foster wanted an "evolutionary process to industrial unionism." The founding guidelines limited TUEL members to people already dues paying members of a trade union. TUEL began as "purely an educational body, not a union representing members" but TUEL principles and practices evolved over the next several years.

Foster studied the works of Lenin and in July 1921 attended meetings in Moscow of the Red International of Labor Unions (Profintern) with a delegation including Earl Browder and Ella Reeve Bloor. Lenin condemned efforts "to create an absolutely brand new, immaculate workers union" and opposed leaving the established mass membership unions to form "revolutionary" new unions with insignificant memberships. He criticized the IWW for dividing the labor movement and keeping its members out of the AFL where they could work for change within a single union. Staying out of the AFL abandoned labor organizing to conservative forces and "bourgeoisified" workers. The Profintern conference agreed "The question of creating revolutionary cells and groups within the American Federation of Labor and independent unions is of vital importance. There is no other way by which one could gain the working mass in America than by leading a systematic struggle in the trade unions." Lenin favored union involvement in the political process and participation in elections, a definite expansion from the more limited role of the AFL.

In March 1922, TUEL published its first newsletter, its own Labor Herald, which reflected the influence of Lenin and the decision to affiliate with the Red International of Labor Unions. It started with 10,000 subscribers. Red International officials in Moscow intended to be a central body instructing Communist inspired labor organizing in many countries not just the United States. With Foster starting out as the United States leader, the Trade Union Educational League(TUEL) invited delegates to periodic conferences and tried to spread TUEL philosophy through speaking and writing. (18)

Foster spoke in favor of industrial organizing at a meeting of the Chicago Federation of Labor(CFL) March 19, 1922. At his suggestion the meeting adopted his plan for combining AFL unions. The AFL Executive Council was outraged and sent Gompers to Chicago where he spoke and charged them all with an attitude that "breeds dissension, conflict of views, conflict of plans and of action…"

Gompers and the AFL claimed that Foster had funds from Russia to undermine the American labor movement and turn it over to Lenin and the Red

International. Gompers challenged Foster to debate and then backed out when he accepted. They exchanged letters instead. Foster paraphrased the Lenin arguments: "My contention is that craft unionism is obsolete. The old type of organization based upon trade lines can no longer cope successfully with organized capital. To fit modern conditions, our unions must be based upon the lines of industry rather than upon those of craft, the necessary industrial unionism will be arrived at, not through the founding of ideal dual unions, but by amalgamating the old organizations into one.

Gompers answered by claiming Foster was a one man operation serving the political ends of Moscow. TUEL he described as an "utterly unnecessary and treasonable" effort to "disrupt the American labor movement on the question of industrial unionism."

To many in organized labor the early years after the Bolshevik revolution looked like the industrial democracy they had always dreamed they could have. To the conservative forces in a divided labor movement and the business community, especially the National Civic Federation, events in Russia would be useful in their fight to maintain the status quo. The National Civic Federation paid the Burns Detective Agency to infiltrate the TUEL and report to J. Edgar Hoover. As Marx had already predicted, business combined with government to oppose the working class.

A dozen police raided the Trade Union Educational League offices in Chicago in 1922. They took a truckload of books and papers and sent the list of journal subscribers to the AFL to expel members involved with TUEL. They found nothing to prosecute, but a short time later Foster attended a Communist Workers Party meeting at Bridgeman, Michigan. The Justice Department raided the meeting based on information provided by an informer. Foster escaped the raid, but was arrested in his Chicago office for violating Michigan Syndicalism laws. No one questioned if Syndicalism was the equivalent of Communism. He was released on $5,000 bail pending trial.

The American Civil Liberties Union provided counsel to Foster. His trial began March 12, 1923, but prosecution under state Syndicalism laws always turned on rights of free speech and who said what. The prosecutor claimed Foster promoted the aims of Moscow with a "program of world revolution and the dictatorship of the proletariat." He appealed to the jurors' patriotism and to "keep faith with our war dead." Foster testified in his own defense. He admitted he was a Communist but he believed in political action rather than direct action. In closing arguments to the jury his defense counsel argued "He is being railroaded to jail solely because he is a militant leader of the working class, and as such is dangerous to the employing class." The jury dead locked 6 to 6 after 38 ballots. The case was dismissed but the disagreements continued with the bigger and more powerful AFL aggressively defending its craft union principles while attacking TUEL as communist inspired and controlled. (19)

Samuel Gompers died December 13, 1924. Except for one year, 1894, he was the President of the AFL from its beginning in 1881. The AFL Executive Board took just six days to name his successor, William Green, who served until

his death in 1952.

Gompers never resisted the demands of the international craft union presidents to define the skills for separate craft unions. All AFL charters for new unions included a job title with a written definition of the craft skill describing the work the new union could organize. Craft union affiliates were expected to honor their charter as an inviolate craft jurisdiction that no other union could take over.

Organized labor called their organizing principles Voluntarism because the unions had to voluntarily agree to define and maintain craft jurisdictions. Since any affiliate could withdraw from the AFL at any time, enforcement efforts would not work; it had to be "voluntary" agreement. Gompers and the Executive Board leadership treated Voluntarism as a symbol of unity in the labor movement that allowed them to ignore conflicts between union leaders and their membership. Voluntarism helped make the AFL a conservative force resistant to change as well as one that ignored divisions in the labor movement. Their failure would become more apparent in the great depression.

In practice, Voluntarism created internal labor disputes because craft skills did overlap, but the power to make final decisions in the AFL lodged with the majority of the Executive Board made up of craft union presidents. Gompers never challenged their power in a way that jeopardized his job. He acted as the national voice of labor and sometimes as its conscience. He would speak against racial discrimination in the AFL on ethical and practical grounds, but did not act against it when some craft union affiliates ignored him. He would speak on occasion in favor of industrial unionism, but did not challenge the craft union Presidents when they would not go along.

The AFL Executive Board chose William Green, a man they expected to be a bland and innocuous version of Samuel Gompers. As AFL president, Green would become a dignified and respectable spokesman for labor without challenging the executive board. John L. Lewis described Green in his own caustic way: "I have done a lot of exploring in Bill's mind and I can tell you there is nothing there."

While that is much too harsh, Green did soften AFL positions and promoted getting along with business during the 1920's. Green tried to have the AFL be an essential auxiliary to business. He said "More and more organized labor is coming to believe that its best interests are promoted through concord rather than conflict." He worked for union cooperation with management, known as collaboration by his opposition. He argued cooperation would raise productivity and tried to get business to link wages to the growth in productivity. Efforts were made to cozy up to the American Legion and Department of Defense. Some on the AFL executive council hoped to promote organized labor and the AFL as a loyal and patriotic organization ready to support national defense. It turned into a hard sell with enough of the AFL affiliates against it to divide the labor movement and enough of the military leadership against it that it failed there as well. (20)

Textile Strikes

Business remained hostile through the 1920's and there was no help from

government. Income inequality got much worse while economic conditions for many in the working class declined, sometimes to appalling levels like in agriculture, textiles and mining. AFL cooperation and collaboration turned into the companion of decline. Opposition to the communists forced Foster to avoid overt reference to communism and the communists started calling themselves the Workers Party, but he was able to persuade supporters from the rank and file to work for industrial unionism. He appointed organizing committees to show up and assist with strikes much as the IWW did before him. There were three celebrated strikes of the communists: the Passaic, New Jersey Textile Strike of January 26, 1926, the New Bedford, Massachusetts Textile Strike of April 16, 1928 and the Gastonia Textile Strike of April 1, 1929. There were also lessor efforts.

Passaic, New Jersey

Northern textile mills turned to a year of wage cuts in 1925 in response to expansion of mills in the low wage south. TUEL officials had plans to organize United Front Committees(UFC) at mills in New England and New Jersey to resist wage cuts. The AFL had affiliates of the United Textile Workers(UTW) organized by craft in some of the northern mills. They protested wage cuts, but UTW ignored the mass of textile workers who remained unorganized.

A ten percent cut at the Botany Worsted Mills mill in Passaic, New Jersey set off a round of wage cuts from already low wages. The Botany Worsted Mills employed 6,400, Forstmann & Huffman Mills 4,000, with the next four mills averaging 825; there were other smaller mills. Pay for men before the wage cuts could not support a family. Wives and mothers had to work, but always at lower pay than men. Mill managers employed husbands on the day shift on condition their wives worked the night shift in spite of state law prohibiting night work for women. Anyone caught discussing unions would lose their job and find their name on a blacklist.

TUEL had the well educated son of a Brooklyn Garment manufacturer named Albert Weisbord promoting efforts to organize a United Front Committee in Passaic. Weisbord did not share his father's views and gave up a law practice to promote organizing to New England textile workers. The V-P of the Botany Worsted Mills, Colonel F.H. Johnson, responded by firing one of Weisbord's recruits, fired three more who tried to speak with him and then threatened to fire everyone connected to the United Front Committees. A larger group met to draw up a list of demands and they too were fired. The last firing on January 25, 1926 set off a strike at the Botany Mills; initially 4,000 left work.

Others joined the strike from more of the Passaic mills until 8,000 strikers walked the picket lines by the end of the first week; eventually 16,000 would leave work in a strike of nearly a year. Strikers demanded an end to the wage cuts with back pay, a forty hour week with time and a half for overtime and union recognition. Management refused and immediately the companies and authorities challenged marches and picket lines. On February 9, police assaulted a march heading to a Forstman & Huffman Company mill. Police charged marchers clubbing men, women and children and halting the march.

Picketers renewed their marching the next day and many days after that, very much in IWW fashion. On February 25, the Passaic City Council announced they would enforce a Civil War era riot act prohibiting meetings and picketing. Weisbord announced his intention to continue mass meetings and picketing as part free speech and part free assembly. On March 2, Passaic Police Chief Richard Zober with a force of 80 mounted police and foot patrols assaulted 2,000 picketers, which the New York Times described in their March 3 edition. The headline read "Passaic Strikers Routed by Fire Hose After Gas Bombs Fail."

After three tear gas grenades failed "to disperse a crowd of 2,000 hooting, jeering textile strikers near the Botany Worsted Mills … five fire companies were summoned and the crowd was broken up with six streams of water playing from powerful nozzles . . . As the strikers fled in all directions they were followed by patrolmen with brandished clubs, who beat those who attempted to realign small ranks of picketers. Men, women and children were knocked down in the melee."

The March third reporting suggested "Department of Justice agents are in Passaic attending strike meetings, and it is rumored they may take action against some of the strike leaders soon. They are investigating the Communist Party alleged relation to the movement. Victory for the strikers, it is said, would make Weisbord an outstanding figure in Communist leadership in the United States." The mill owners were characterized as "crediting the young Harvard Law School strike leader with exceptional ability in fanning the flames of discontent" but "they will not confer with the United Front Committee, which they hold to be a Communist Organization."

The strike attracted national news coverage, which police suppressed by attacking news photographers and destroying their cameras. The attacks continued through March, although not everyday. On March 19, the New York Times reported "A Clash between textile strikers and policemen in the vicinity of the Gera Mills today resulted in a riot in the course of which nine men and five women were arrested, police were stoned by strikers, and sympathizers and five reporters and newspaper photographers and two news reel motion picture men were clubbed by police and their cameras destroyed."

Weisbord asked the AFL to support the strike, but William Green opposed a "Communist dominated United Front Committee." Colonel Johnson, chimed in that while the owners would not speak with communists "Had they [the strikers] been in an American Federation of Labor union we would have conferred with the strike committee."

Several groups and other officials including Governor Harry Moore offered to mediate; one proposal had the strikers abandon the communists and join the AFL. On August 12, 1926 Weisbord agreed to step aside and turned the strike over to the AFL. The United Textile Workers chartered a new UTW Local 1603, but neither Moore nor UTW international president Thomas McMahon could move the mill owners to settle and so the strike dragged on.

On October 11, 1926 Rabbi Steven S. Wise of the Free Synagogue in New York addressed the AFL convention in Detroit to urge delegates to declare for all possible aid to the Passaic strikers. Rabbi Wise declared Passaic workers do not

know what communism means, but he charged, "They do know what injustice is, for they have been its long suffering and for the most part, uncomplaining victims" but the AFL would have nothing to do with anything labeled communism. Fund raising went well enough to keep the strike going longer than expected. A major source of revenue came from producing and distributing a seven reel film – The Passaic Textile Strike - showing the strikers under attack from police clubs, shot guns and fire hoses during freezing weather. Several of the strikers wrote a prologue to introduce and begin the film.

The beginning of the end came November 12, 1926 when the Passaic Worsted Mills agreed to recognize the UTW and rehire strikers without discrimination and to arbitrate future disputes. Strikers voted to accept the agreement as members of the AFL affiliated UTW and gradually other mills settled. The Botany Worsted mill settled December 13, 1926 and the rest followed although not always with identical agreements. Even the Communist Daily Worker from November 13, 1926 called it a victory: "Ranks of Mill Workers Broken as Big Mill Gave In."

In the aftermath of the strike the AFL showed little effort to enforce the agreements, which the companies mostly ignored. Apparently Rabbi Wise was right, Passaic workers cared about justice not communism. Strikers had short term goals: better wages, shorter hours, while the AFL and the Communist Party had doctrinaire advice with their own long term formulas. Albert Weisbord left TUEL after he was forced out of the strike. His efforts created a spurt of members in his United Front Committee but did not create a new industrial union in Passaic. TUEL organizers spread out through New England in this period, which brought more textile strikes, another in New Bedford, Massachusetts. (21)

New Bedford, Massachusetts

The New Bedford Cotton Manufacturers Association, a textile cartel of 27 companies, paid average weekly earnings of $19.00 in the first three months of 1928, about half the earnings necessary for a living wage for a family of five as reported by the Massachusetts Department of Labor. Cartel members voted to cut wages 10 percent beginning April 16, 1928. The American Federation of Textile Operatives (AFTO) left work the same day.

AFTO was an independent union organized by the skilled British craftsman in New Bedford and Fall River. They had only 6,000 dues paying members of nearly 27,000 New Bedford textile workers. After the strike started, the AFTO decided to affiliate their local with the AFL's United Textile Workers(UTW), which they voted to do May 7. The new union called itself the New Bedford Textile Workers Union. TUEL also sent a Textile Mills Committee to New Bedford hoping to build a new union. The Textile Mills Committee organized daily demonstrations and mass picketing, using the same mass participation methods as the IWW.

The New Republic reported 27,000 joined the strike until every New Bedford loom and spindle ground to a halt. The New Bedford community supported the strikers more than Passaic, but mill owners and police took the same belligerent position as in Passaic. Thousands of Portuguese women and their children made up the bulk of the strikers and picketers. The mill owners called

it a crime to exploit children. The women called it the "family's strike." Police arrested picketers – two one day, then three, four another – and charged them with loitering and disorderly conduct. Speedy trials brought speedy convictions with fines and frequent thirty day to six month sentences.

As the strike dragged into July the mill owners announced they would reopen the mills. They had police and National Guard Protection ready for strikebreakers to cross picket lines, but only a handful showed up; the mills remained closed and the strike dragged on.

During the strike the communists made calls for an organizing convention for a national union of textile workers. Delegates from New England and the Mid-Atlantic states met in New York on September 22 and 23, 1928 and succeeded in writing by-laws for a National Textile Workers Union, which would be regarded as a communist union. New Bedford delegates arrived back in New Bedford and convinced the rank and file to change affiliation by leaving the AFL's UTW to affiliate with the new National Textile Workers Union (NTWU).

During the summer the state Board of Mediation and Conciliation proposed a settlement with a 5 percent wage cut in lieu of the 10 percent cut. The vote for NTWU did not deter UTW from interfering; they accepted the offer and organized a vote of strikers as a show of their authenticity. The first vote turned it down, but there was a second vote after complaints of an incorrect count by UTW. A local reporter charged the second vote totals were announced before voting ended, but the UTW declared the second vote would be the deciding count. Only two thousand bothered to vote, but the count had enough authenticity to be the settlement. The strike ended October 12, 1928 after 25 weeks.

The National Textile Workers Union (NTWU) hoped to organize more of the mostly unorganized textile industry. One of the men who worked on the New Bedford strike was a man named Fred E. Beal. In 1929 he would travel south to Gastonia, North Carolina as a first try at organizing the mostly women textile workers of the south. (22)

Labor and the Supreme Court of William Howard Taft, 1921-1930

Retirements and new appointments to the Supreme Court in the 1920's brought new faces, but nothing new in direction toward organized labor. Former President William Taft took over as chief justice October 3, 1921. Over the next three days he heard arguments for two labor union cases known as American Steel Foundries v. Tri-City Central Trades Council and Truax v. Corrigan. Chief Justice Taft wrote the majority opinion for both: the first decided December 5 and then on December 19, 1921.

The case of **American Steel Foundries v. Tri-City Central Trades Council** started after the foundry at Granite City, Illinois reopened as an open shop with a cut in wages and the Tri-City Trades Council, a federation of local craft unions, called a strike. Pickets were stationed at a plant gate with instructions to persuade entrants not to be low paid replacement workers. A federal district court in Southern Illinois granted the company request for an injunction to eliminate picketing and pickets as a conspiracy to disrupt their business. The court decree

"perpetually restrained" the union "from picketing or maintaining at or near the premises of the complainant, or on the streets leading to the premises of said complainant, any picket or pickets, and from doing any acts or things whatever in furtherance of any conspiracy or combination among them . . ."

Appeal was taken and the Seventh Circuit Court of Appeals changed the ruling citing Section 20 of the Clayton Act and concluding the company was not entitled to an injunction prohibiting union members from assembling near the plant to persuade strike breakers from taking their jobs. The case moved to the Supreme Court where Chief Justice Taft wrote for the majority that reversed the circuit court.

Like Justice Pitney in Duplex Printing Taft brushed aside Section 20 of the Clayton Act as nothing new and declared that picketing inevitably leads to "intimidation and obstruction" that makes it "the court's duty which the terms of Section 20 do not modify, so to limit what the propagandists do as to time, manner and place . . ."

In the paragraphs that follow Taft wrote Americans are a "sociable people" where "accosting of one by another" to "discuss information with a view to influencing the other's action" are "not a violation of another's rights." However, if "the offer is declined, as it may rightfully be, then persistence, importunity, following and dogging become unjustifiable annoyance and obstruction which is likely soon to savor of intimidation." . . . Taft declared "the name 'picket' indicated a militant purpose, inconsistent with peaceable persuasion."

Near the end of close to a 1,000 words of deliberations, Justice Taft wrote that "strikers and sympathizers in the economic struggle should be limited to one representative at each point of ingress and egress . . ." No mention was made of first amendment rights to free speech or freedom of assembly or that one picket cannot assemble. (23)

The case of **Truax v. Corrigan** resulted from a strike of employees at a restaurant in Bisbee, Arizona. Strikers picketed, displayed banners and passed out brochures condemning the restaurant as unfair to unions and encouraging customers to boycott. Revenues dropped 50 percent as a result of union resistance. The restaurant filed for an injunction to end picketing as a cause of irreparable harm to the restaurant. Restaurant attorneys claimed the union could not rely on the recently enacted Arizona law that forbid restraining orders and injunctions in a labor dispute. They claimed the Arizona law violated 14th Amendment rights against the taking of property without due process of law and denied them equal protection of the law.

The state court dismissed the case and the Arizona Supreme Court concurred citing the state law. The case moved to the U.S. Supreme Court, where the majority opinion written by Chief Justice Taft reversed the Arizona courts.

The Taft opinion declared "plaintiff's business is a property right" protected from injury caused by the striker's picketing. Pickets induced willing patrons to leave "by having agents of the union walk forward and back in front of plaintiff's restaurant . . ." and by having agents at the restaurant "during all business hours" to "continuously announce in a loud voice, audible for a great distance, that the

restaurant was unfair to the labor union." Willing and would-be patrons were asked "Can you patronize such a place and look the world in the face?" and told "All ye who enter here leave all hope behind" and "Don't be a traitor to humanity."

Justice Taft characterized the picketing as a "campaign" of "unlawful annoyance and a hurtful nuisance in respect of the free access to the plaintiffs' place of business" that "was compelling every customer or would be customer to run the gauntlet of most uncomfortable publicity, aggressive and annoying importunity, libelous attacks, and fear of injurious consequences, illegally inflicted, to his reputation and standing in the community."

After declaring union picketing an unlawful conspiracy, Justice Taft and the majority declared the Arizona law forbidding injunctions in labor disputes to be an unconstitutional "subordination of fundamental principles of right and justice." If "a wrongful and highly injurious invasion of property rights," allowed by the Arizona Supreme Court is "practically sanctioned" by the U.S. Supreme Court, then the owner will be "stripped of all real remedy," which is "wholly at variance" with the principle against taking property without due process of law in the 14th Amendment.

Further, the majority declared the Arizona law denied the restaurant owner the 14th Amendment guarantee of equal protection of the law. Instead the majority declared the law created class privilege for unions because a violation of property rights from picketing would be subject to injunction under Arizona law, "except when committed by ex-employees of the injured person."

Justice Holmes wrote a blunt dissent for the court minority who recognized the majority opinion depended entirely from defining business as a "thing" with property rights. "By calling a business 'property' you make it seem like land, and lead up to the conclusion that a statute cannot substantially cut down the advantages of ownership existing before the statute was passed." . . . Business "is a course of conduct and like other conduct is subject to substantial modification according to time and circumstances both in itself and in regard to what shall justify doing it harm." Justice Holmes added "There is nothing that I more deprecate than the use of the Fourteenth Amendment beyond the absolute compulsion of its words to prevent the making of social experiments that an important part of the community desires . . ." (24)

By the end of 1921, unions could expect the U.S. Supreme Court to treat their collective action as a restraint of trade under federal anti-trust laws or declared an unconstitutional violation of the 14th Amendment rights under a state law. It is important to remind of the role of the injunction as a fast way to end collective action by unions. Court cases drag on for years, but a court injunction shuts down a strike and justifies police arrests or calling out the National Guard. Business needs the injunction to halt strikes, picketing, and boycotts, then as now.

Through the 1920's a majority of the U.S. Supreme Court, often six, could find restraint of trade as a way to justify an injunction for Sherman Act enforcement. However, some federal district court Judges and Circuit Court panels refused to see restraint of trade and irreparable harm every time business wanted to get rid of a union. Some cases that went before the Supreme Court

got there because a district court judge dismissed a company suit and an circuit court of appeal affirmed the opinion. Some cases before the Supreme Court were decided by a majority of the nine Supreme Court justices but a minority of all thirteen federal judges ruling in the case.

Supreme Court opinions stopped short of declaring unions unlawful. Justice Taft expressed his views of lawful unions as part of his opinion in American Steel Foundries v. Tri City Trade Council: "Labor unions are recognized by the Clayton Act as legal when instituted for mutual help and lawfully carrying out their legitimate objects." He declared unions "essential to give laborers opportunity to deal on equality with their employer" and a strike is a "lawful instrument in a lawful economic struggle." Despite words of conciliation neither Taft nor the Supreme Court majorities defined the "elements essential to sustain actions for persuading employees to leave an employer." Justice Taft cited examples and cases of illegal strikes, but had yet to define a legal one.

In cases ending before January 3,1921, when the Supreme Court declared a boycott in restraint of trade in the case of Duplex Printing v. Deering, Department of Justice records show 27 complaints in district courts with a union as defendant because of Sherman Act claims against them. These cases included Loewe v. Lawlor and Hitchman Coke and Coal v. Mitchell. In cases ending after 1921 through the 1920's DOJ records show 58 cases making a union the defendant in a Sherman Act claim with six of the cases ending at the Supreme Court. (25)

In a Sherman Act case that started in 1914 the Bache-Denman Coal Company denounced the United Mine Workers at its Coronado Coal Mine in Arkansas, dismissed the miners, ordered them out of company housing and later resumed mining as an open shop. As a precaution the company hired a detail of armed guards to protect the mines. Local UMW representatives did speak with company officials hoping they might change their minds, but then armed miners attacked the mines driving out the armed guards while dynamiting and burning facilities, leaving them a total ruins. That set off eleven years of litigation starting with a Bache-Denman lawsuit alleging the United Mine Workers destruction of property was part of a conspiracy to restrain trade and monopolize interstate commerce in coal under the Sherman Act.

Trials and appeals finally ended June 5, 1922 with a ruling and a Taft opinion, in what turned out to be the first Coronado case, a.k.a. **United Mine Workers v. Coronado Coal Co.** Taft wrote "coal mining is not interstate commerce and obstruction of coal mining, though it may prevent coal from going into interestate commerce, is not a restraint of that commerce unless the obstruction to mining is intended to restrain commerce in it, or has necessarily such a direct, material and substantial effect to restrain it that intent reasonably must be inferred."

Taft did not find intent or substantial effect in the 1922 ruling but did reserve for the court the right to do so, which he did after new evidence resulted in a second trial and more appeals. The second Cornado case ended May 25, 1925 with another Taft opinion in **Coronado Coal Co. v. United Mine Workers**. He wrote "We think there was substantial evidence at the second trial in this case tending to show that the purpose of the destruction of the mines was to stop the

production of nonunion coal and prevent its shipment to markets of other states than Arkansas, where it would in competition tend to reduce the price of the commodity and affect injuriously the maintenance of wages for union labor in competing mines." In other words, unions with enough economic power to hold up wages do so as a restraint of trade in violation of the Sherman Act. (26)

In another antitrust case **United States v. Brims** that started in 1921, Chicago area millwork manufacturers and building contracters made a collective bargaining agreement with a carpenters trade union that area manufacturers and contractors would only employ union labor at a union wage scale to manufacture and install mill work, excluding sales to non-union building contractors who employed non-union carpenters. The federal government charged all three groups with a conspiracy in restraint of trade and a jury in a district court proceeding found them guilty. Appeal was taken and the circuit court reversed the ruling. In their opinion the agreement could not be a restraint of trade because Chicago millwork could be supplied by competitors all over the country.

Nothing about collective bargaining that raised wages could be an advantage in competition with low wage manufacturers, but the Supreme Court took the case on a writ of certiorari and reversed the circuit court. Justice McReynolds wrote the opinion. He insisted the higher union wage hurt the lower wage mill work manufacturers outside Chicago in restraint of trade, which view coincidently busted a union contract. (27)

In yet another Taft era antitrust case of **Bedford Cut Stone Company v. Journeyman Stone Cutters' Association of North America** the Bedford Cut Stone Company and 23 others that cut and fabricated Indiana limestone brought suit against Journeymen Stone Cutters Association requesting an injunction to end a conspiracy to restrain trade under the Sherman Antitrust act. The stone cutters union was a national union of 150 locals with a total of 5,000 members that included members who cut stone at quarries and fit and installed stone at construction sites. After Bedford Stone and the other companies refused to renew their union agreement, the union called a strike.

The companies were able to find replacement workers for their Indiana quarries but the union constitution and rules did not allow members to handle stone "cut by men working in opposition" such as men who cut stone sold by Bedford Stone. Around the country union members quit work at building sites rather than work on stone cut by scabs undercutting their wage scale.

The district court dismissed the case. Appeal was taken and the circuit court affirmed the dismissal. As often happened the Supreme Court majority reversed the circuit court declaring the Stone Cutters union in violation of the Sherman Antitrust Act. The union maintained a thorough and complete solidarity and did so without breach of contract, threats, violence, trespass, picketing or boycotts. Union members followed the rules of their union as written and as they pledged to do as members: they quit work. The union admitted the strike would accomplish nothing without the economic pressure of lost sales of "unfair stone" sold in interstate commerce.

The majority opinion did not dispute the facts but cited them in excruciating

detail and then disapproved. The majority wrote "the present combination deliberately adopted a course of conduct which directly and substantially curtailed, or threatened thus to curtail, the natural flow in interstate commerce of a very large proportion of the building limestone production of the entire country, to the gravely probable disadvantage of producers, purchasers, and the public; . . ."

Justice Brandeis provided another blunt dessent. "If, on the undisputed facts of this case, refusal to work can be enjoined, Congress created by the Sherman Law and the Clayton Act an instrument for imposing restraints upon labor which reminds one of involuntary servitude." Justice Brandeis viewed the strike as an economic struggle between particular employers and employees. He accused the court majority of distorting the law to protect business priviledges when "the propriety of the unions' conduct can hardly be doubted by one who believes in the organization of labor." (28)

Justice Taft's previous career as a state judge, solicitor general of the United States, federal court judge, commissioner of the Philippines, Secretary of War, President of the United States, Yale law professor, and War Labor Board appointee did not include any involvement in, or connection to, corporate America. Still there was no reason to think he would be impartial toward labor or decide cases without regard to persons as federal judges take an oath to do.

Justice Taft wrote his brother Horace in a letter dated May 7, 1922, when he explained "The only class which is distinctly arrayed against the Court is a class that does not like the courts at any rate, and that is organized labor. That faction we have to hit every little while, because they are continually violating the law and depending on threats and violence to accomplish their purpose." (29)

Taft presided over justices that appeared to believe judges, not Congress or a legislature, should have the last say over law governing labor agreements. Justice Joseph McKenna was the only one left from the majority in the Lochner case back in 1905 but the three Wilson replacements and four Harding appointments had the same or similar views. Aside from rulings against labor with the Sherman Act, the majority used Lochner and liberty of contract as precedent to strike down legislation to protect the abuses of child labor, to strike down a minimum wage law for women and children in the District of Columbia; to strike down a Kansas law limiting hours of labor; and all in the name of liberty of contract. (30)

Justice Oliver Wendell Holmes and Justice Louis Brandeis often wrote dissents of wit and perception, but to no avail. Taft retired in January 1930; Holmes in 1932, but the hard core majority and their rigid views remained to collide head on with the great depression. In the mean time unions could be legal as long as they did not picket, boycott or strike.

Trade Union Unity League (TUUL) and the "Third Period"

After Lenin's death in 1924 the Soviet Bolshevik Party bogged down in disputes and split into factions: the Joseph Stalin faction, the Nicolai Bukharin faction. Stalin emerged as dictator after the Sixth Congress of the Communist Party - 6th Comintern - in mid 1928. During the Sixth Comintern in Moscow the Stalin faction discussed the growing depression in capitalist countries around the

world including the United States. They identified these economic and political failures as a turning point when they thought depressed capitalist countries would be most prone to change for adopting the socialist-communist system. In Communist parlance the turning point brought on the "Third Period," an era with hope of revolutionary change to a dictatorship of the proletariat. As a result of these discussions Communist party officials in Moscow ordered American Communists, and hence TUEL, to abandon "boring from within" in order to organize separate and independent industrial unions. With Stalin in charge the change was not a suggestion but an order.

American Communist Party Secretary Jay Lovestone did not believe American capitalists could be dislodged by the popular support of the American working class. When he argued against the Stalin directive, he was summarily removed by Moscow decree. Stalin doctrine and decisions were not made for debate. The CPUSA differed from other American political parties before it; it accepted the worldwide political and administrative apparatus of the Soviet Union.

At meetings in Cleveland on September 1, 1929 William Z. Foster followed Moscow directive and changed the name of the Trade Union Educational League(TUEL) to the Trade Union Unity League(TUUL). TUUL intended to be a federation of industrial unions offering an alternative to the AFL. "Boring from within" came to an end, although temporarily. TUUL had a core of committed and well-trained organizers who were also communists, although they avoided publicizing that. The Communists now worked to have dual unions in contradiction to the AF of L obsession with strict craft jurisdiction. This would cause some confusion later on when United Mine Workers President John L. Lewis decided America's severe economic depression justified forming a new Committee of Industrial Organization (CIO) to organize new industrial unions in nearly identical form to the Communist Party directive. (31)

Chapter Ten - The Depression Arrives

"The Mexican is a quiet, inoffensive necessity in that he performs the big majority of our rough work, agricultural, building, and street labor. They have no effect upon the American standard of living because they are not much more than a group of fairly intelligent collie dogs."

----------from testimony before the House Committee on Immigration and Naturalization, 71st Congress, 2nd session, 1930

Economic depressions do not begin on a specific date, but tend to phase in over several months. While that applies to the depression of the 1930's, it is common to give the stock market crash of October 29, 1929 as the start date for the severe decline in national product, income and employment known and cited as the great depression.

The years from 1923 to the crash were six years of relative prosperity based on published data for the era. Both Gross Domestic Product and employment were up and employment was up 39 percent in the decade 1919 to 1929. Higher productivity from advancing technology, the rapid increases in automobile production along with a variety of new consumer products like radios, refrigerators and other home appliances characterize the era. Wages were up more than prices in many industries. Real hourly wages in manufacturing were reported up from 1914-1929: by 41.4 percent, from 1919 to 1929 by 12.2 percent, from 1923 to 1929 by 5.8 percent.

The Depression and Labor

However, prosperity bypassed impoverished southern textile workers, and the nation's coal miners and farmers, both before and after October 29, 1929. Farm prices never recovered from their 1921 recession lows. Depressed farm prices accelerated the migration from the farm to the city, and the black migration from the south to the north. After Congress cut off immigration in the 1920's desperate farmers took the place of desperate immigrants as the new source of cheap surplus labor. Real wages in the textile industry declined 16 percent. Real annual wages for anthracite and bituminous coal miners dropped 14 to 30 percent from 1923 to 1929 as a result of lower wages and fewer hours.

The widely different experience among the working class with layoffs, unemployment, sickness and old age generated a wide variation in income. Prices in 1929 suggest a minimum income of $1,500 to $1,600 to keep a family out of poverty. Estimates of poverty levels put 44.9 percent of all U.S. families below the minimum; 37.3 percent of non-farm families under the minimum.

Automobile registrations in the United States totaled 6.7 million in 1919 but 29.6 million in 1929. The vast expansion of the consumer economy made it easy for business and the politicians to celebrate the American economy as an engine of prosperity, but auto registrations reflected inequality as much as prosperity. The plight of the millions working in the agriculture, textile or coal

industry makes good examples of the perils of prosperity. (1)

Agriculture

Following the end of the Wheatland hop field rioting California Governor Hiram Johnson authorized a Commission of Immigration and Housing to investigate migrant labor camps at the state's industrial farms. The commission hired Carleton Parker to do the investigating. He functioned with a mandate to relieve the destitute poor but avoid empowering them in labor unions. Neither the AFL nor IWW succeeded organizing agricultural workers although the IWW had all but disappeared by now. Parker, a man of good will and many talents, warned "There will be neither permanent peace nor prosperity in our country till the revolt-basics of the I.W.W. are removed, and till that is done the I.W.W. remains an unfortunately valuable symptom of a diseased industrialism."

As large scale corporate agriculture expanded in the 1920's the need for lots of cheap labor grew many times over. Until the late 1920's Mexican and Filipino immigrants provided the labor in unorganized silence. In the spring of 1928, a few of the more assertive Mexicans organized a Mexican Mutual Aid Society. They tried to negotiate better conditions around Brawley, Calexico and El Centro in the Imperial Valley, but without success. In January 1930, when 5,000 lettuce pickers left work near Brawley, the growers had County Sheriff Charles Gillett break up strike meetings and arrest "troublemakers." TUUL officials read about the strike in the Los Angeles Times and sent three organizers hoping to establish a local of their Agricultural Workers Industrial League (AWIL). They worked in secret for several days before ending up in jail, guests of Charles Gillett.

The protests and strikes angered growers who demanded Imperial County District Attorney, Elmer Heald, prosecute labor organizers using the state's anti syndicalism law. Growers had spies from the Los Angeles police "Red Squad" infiltrate union meetings to collect "evidence." On April 14, 1930 authorities raided meetings and made arrests. Indictments of sixteen followed with a trial in El Centro beginning May 26, 1930. The prosecution argued they were communists and therefore guilty. The International Labor Defense attorney's argued the indictments were deliberate union busting. A jury of farmers and merchants took less than an hour to find them all guilty. Sentences ranged from 3 to 42 years, which appellate courts confirmed on appeal. Eight defendants served significant time in San Quentin prison. (2)

TUUL's determined communists decided organizing California's agricultural workers should start before the strikes rather than after. They sent Sam Darcy, a graduate of the Lenin Institute in Moscow, described as an "adroit tactician, quick and sure." Darcy got started in San Jose with a July 1932 meeting of a new union, the Cannery and Agricultural Workers Industrial Union (CAWIU). Their first negotiations came near Vacaville in November where Frank Buck promised tree pruners $1.40 an hour for an eight hour day. After crews arrived Buck, a democratic Congressman no less, cut wages to $1.25 an hour for a nine hour day.

A strike of 400 started with financial support from the Communist Workers

International Relief. Strikers filled the streets of Vacaville November 21 to block truckloads of scabs. Mass picketing, including women and children, kept the number of replacement workers down for a short time, but the mayor of Vacaville owned an orchard. He helped organize local opposition including vigilante groups. The employers instructed local newspapers to make anti-Communist appeals and add claims the CAWIU promoted sabotage. An anti-Communist rally of local farmers, businessmen and the American Legion made threats and discussed lynching to combat the "reds."

In early December, a masked mob abducted six strike leaders and hauled them twenty miles out of town where they were flogged, had their heads shaved and red paint dumped over them. The Reverend Fruhling of the Vacaville, Presbyterian Church wanted his congregation to drive the strikers out of town. In his "sermon" he taunted them with "There isn't a red blooded man in this church: You're all yellow." The local A.F.L. labor federation refused to support strikers; many left the area. By January 20, 1933 funds had dried up; hunger turned the tide of resistance for those left. The strike ended with nothing except the understanding agricultural strikes should be at harvest time. (3)

More than three years of depression generated more resistance to historically low wages for the rest of 1933 along with renewed grower harassment aided by local government officials and the courts. The Judge from the El Centro trial advised police and growers to stop the agitation at its inception. "If it is your desire to stop this agitation and organizational work at its inception, would suggest you don't delay getting [the organizer] out of the valley too long as he is of the persistent and aggressive type, a typical soap-box orator and active at all times." Local authorities and federal immigration officials made sweeps through farm towns destroying union literature, confiscating membership books and checking immigration status as a general process of threats and disruption.

Through 1933 strikes engulfed much of central and southern California where despairing pickers conducted varied strikes in the Santa Clara valley, El Monte, Watsonville, the Tagus ranch in Tulare County, and the San Joaquin valley. Strikes disrupted the sugar beet harvest in Ventura County near Oxnard. September brought strikes to grape growers near Fresno and later at Lodi.

A CAWIU strike of two to three thousand pea pickers near Hayward in Alameda County started April 14. Pickers wanted $.35 per hour; growers offered $.12. The growers recruited scabs in collaboration with welfare authorities who agreed to force the unemployed off relief rolls with orders to pick peas. Growers had police break up picket lines with tear gas bombs and clubs, raid labor camps and flog and arrest resisters. An eyewitness described a strike colony living in broken down cars and a few tents surviving on a mysterious stew simmered in a giant cauldron. At least ten lay prostrate from beatings. Deputy sheriffs had orders to shoot anyone speaking to a scab, but there were not enough scabs to pick the harvest. Strikers remained resolute and the prospect of losing a harvest brought the piece wage up to $.20 an hour; the strike ended.

CAWIU had strong support from their mostly Mexican members for a strike of cherry pickers in Santa Clara that began June 14, 1933. The growers

had local sheriffs, deputies and state highway patrols attack picket lines using pickaxe handles and tear gas. Police beat the principal leader and arrested him and 33 others. They lived on cement jail floors for six weeks; the sheriff called them "bums" and "reds" deserving "pickaxe handle" justice.

In Tulare County the giant Tagus ranch offered peach pickers $.15 an hour and so their 750 pickers left work in a strike beginning August 14, 1933. The Tagus manager found a state judge to write an injunction ordering an end to picketing and commanding strikers to leave company housing. Police evicted strikers, but failed to end the strike. Another CAWIU strike started the same day in nearby Merced County when 2,000 pickers walked away from two massive corporate orchards owned by the California Packing Company, a.k.a. Cal-Pak. The State Director of Industrial Relations agreed to mediate, but the prospect of losing an entire harvest made wage concessions more important than a mediators effort. Once the Tagus Ranch and Cal-Pak agreed to pay $.25 an hour their crews went back to work, but the news spread and more strikes followed.

For the fall grape harvest the growers near Fresno and Lodi would not go along with a higher wage. State agriculture officials warned CAWIU would call a strike for wages less than $.25 an hour, which they did at Fresno on September 6. This time state officials offered to mediate, but growers had local officials ready to break the strike. The sheriff and deputized growers assaulted picket lines and arrested strike leaders as vagrants or criminal syndicalism. Growers refused to accept state mediation and state officials made no attempt to restrict the use of force by "deputized" growers; CAWIU called off the strike rather than confront brute force.

It would be the same at Lodi. Pickers demanded $.50 an hour; the growers announced a wage of $.20 an hour. Growers deigned to negotiate, but without agreement; more than 3,000 pickers left work at 150 vineyards. The Lodi strike came after the Fresno strike, which gave Lodi growers time to get worked up and make plans. In the time honored fashion of generations of employers, they decided pickers could not accept the economic facts of life with so many "outside agitators" to stir them up. Growers, local business and American Legionnaires joined in a collective plan to use force.

When pickers would not return to work in spite of arrests, CAWIU opponents organized vigilantes to drive strikers out of town and take over pickers quarters to make room for scabs. On October 3, vigilantes charged and assaulted strikers gathered in front of their strike headquarters. They drove about a hundred to the edge of town. Police did not intervene except to arrest the few who resisted. Later the same day authorities used fire hoses and tear gas to drive remaining strikers out of town. CAWIU protested to Governor James Rolph, who did not reply; the strike ended.

Government authority intervened in all the strikes, but only once in a constructive way without force, when mediation established a $.25 an hour wage for Cal-Pak and the Tagus Ranch. Otherwise the solidarity of despair and the threat of a whole harvest rotting in the fields brought an end to many of the strikes with modest wage gains. By mid 1933, a new President, Franklin Roosevelt, made

plans to revive the economy. Congress would pass an Agricultural Adjustment Act (AAA) and a National Industrial Relief Act (NRA) shortly after FDR took office. The new Roosevelt Administration did not want agriculture in the NRA. The benefits of the AAA went to farmers but the new Roosevelt Administration had the idea farm relief would trickle down to farm workers. California agricultural workers would endure a long and impoverishing cotton strike and more Imperial Valley torments for the rest of 1933 and into 1934. The cotton strike would give the first chance for New Dealers to apply their notions of national planning and mediation to labor relations. These New Dealers would be nicknamed the "Brain Trust." (4)

Southern Textiles

Long before the 1929 stock market crash southern Appalachia had hundreds of textile mills operating in the towns and cities along the Southern Railroad from Virginia to Atlanta. While mill owners had to cope with cutthroat competition from hundreds of southern mills, from New England mills and from abroad, they had control of local bank finance and the cooperation of state politicians. The local rural areas provided a limitless surplus of white subsistence farmers to work at low wages.

Southern textile mills paid wages 40 percent below northern mills, which made them a constant threat to erode national wages. New England mills favored unions as a way to invoke national standards and keep small operators from undercutting prices with low wages, but southern mills remained white, non-union and low wage.

Southern mills kept wages so low it was impossible to support a family on one wage or even two so that whole families worked in the mills: fathers, mothers and their children. Work in the years up to the mid-1920's had sixty and seventy hour weeks in dusty, hot, noisy mills. Even though some southern mill managers would listen to a delegation from their mills and respond to grievances, labor was always vulnerable to arbitrary cost cutting. By the late 1920's cost cutting mill owners switched from hourly pay to a piecework rate and then expected everyone to keep up with an ever faster pace of work if they wanted to keep their job. Complainers were easily replaced. Workers called it the "Stretch Out."

As the decade of the 1920's moved into its last five years wage cuts at southern textile mills generated spontaneous strikes by unorganized mill workers usually at a scattering of small town mills. The deplorable life in the mills attracted union organizers mostly from the AFL, but a few others including some of the self styled communists. By 1929 the stretch out and low wages set off a series of over 300 strikes at non-unionized mills in Tennessee, North Carolina, South Carolina and Virginia. (5)

Elizabethton--At Elizabethton, Tennessee unorganized girls filled 40 percent of the 3,200 jobs at the town's two rayon mills. The locals would say they had two ages, their real age and their "mill age" but they looked "shockingly young" to Sherwood Anderson who paid a visit there after the strike started. Complaints mounted over a $10.00 a week wage for women and girls until they

refused to work and started leaving the mills at mid day March 12, 1929.

The president of both mills refused to speak with his striking women. In quick succession the company's president, Dr. Arthur Mothwurf, obtained an injunction, granted ex parte: without notice or a hearing. The injunction prohibited picketing or speaking to those seeking employment, among other restrictions, but the unorganized strikers emptied both plants in Elizabethton by March 18.

A federal conciliator Charles Wood showed up to arrange a meeting at a local hotel that took place the night of March 21 into the morning of March 22. The meeting included President Mothwurf and his assistant, a captain from the National Guard, the local sheriff, and two union organizers who arrived to help and organize new locals for the United Textile Workers (UTW). One was Alfred Hoffman of the UTW and the other from the Tennessee Federation of Labor. Apparently negotiators reached a verbal agreement because terms of agreement were published in a local newspaper: take back strikers, recognize the union and set a uniform wage scale for both of the town's two mills.

After strikers started returning to work President Mothwurf denied he attended any meeting or reached an agreement of any kind. By April 1, the employment agent for the mills, Harry Schultz, made another agreement with another negotiator, this one from the AFL: Edward McGrady. The mills would take back 300 strikers at the wage scale previously negotiated.

Shortly after reaching this agreement vigilante groups raided homes of union leaders. On the night of April 4 vigilantes forced Alfred Hoffman of the UTW into a car at gunpoint, drove him to the North Carolina border and threatened death if he returned to Elizabethton. Next vigilantes raided and ransacked Edward McGrady's hotel room, forced him into a car and drove him to Virginia. Hoffman, McGrady and several others identified Elizabethton merchants, bank presidents, off duty police, and a Presbyterian Church elder among the vigilantes, who made no effort to disguise their identity.

Both Hoffman and McGrady returned to Elizabethton and called another strike of Local 1630 that shut down mills beginning April 15. Governor Henry Hollis Horton responded by sending the state militia to break the strike after accepting an offer by President Mothwurf to pay the daily militia expenses. Troops got free meals in the company cafeteria. Strikers ignored the injunction and picketed anyway amid scattered rioting and vandalism; police arrested over a thousand and charged them with contempt of court. Strikers remained defiant until Herbert Lehman of Lehman Brothers agreed to mediate the strike. Lehman was a banker and board member for the mills, who took a more moderate position toward organized labor.

Another agreement May 25, 1929 included rehiring strikers, accepting them as union members without discrimination, and a grievance process. The agreement did not allow for mediation or arbitration, but voluntary acceptance by the company. By fall the plant's personal director ignored the third agreement and the strike failed again. (6)

Gastonia-------- In the spring of 1929, while the AFL affiliated United Textile Workers (UTW) organized in Elizabethton, Fred Beal arrived in Gastonia,

North Carolina to organize the Loray Mill for the National Textile Workers(NTW). The Loray Mill was the largest mill among hundreds of textile mills in surrounding Gaston County. The NTW had no locals or members in the south. They hoped to convince mill workers they could rise up and throw off the poverty and oppression in their lives as a united working class. They used Marxian communist terms and even though they promoted an agenda using peaceful methods, they insisted on calling their efforts a revolution. The previous revolution in the south protected the planter class in a fight with the north; the south did not accept this new revolution any easier than the last.

Fred Beal built a following by speaking privately with mill families, but a company stool pigeon reported his every move. On March 25, 1929 the Loray Mill managers fired five men for union activities. Mill workers were enraged and demanded a strike during a union gathering March 29. Monday morning, April 1, the mills had to shut down when close to a 100 percent of mill workers refused to work.

The union wanted an end to piecework and the stretch out, union recognition with a minimum $20 a week wage for a five day forty hour week with equal pay for women and children. They wanted screens in the windows of their company housing and a 50 percent reduction in rent. Management immediately rejected all demands.

The AFL Executive Council refused to support a communist union and even federal conciliator Charles Wood wanted strikers to "divorce themselves from their communist leaders." Governor Max Gardner ordered the National Guard to the scene and the Gastonia papers claimed the strike was for "the purpose of overthrowing this government and destroying property and to kill, kill, kill. The time is at hand for every American to do his duty."

The communists wanted a forum to circulate their political views as much as they wanted labor negotiations. After two weeks strikers were out of money, strikebreakers were crossing picket lines and the strike dwindled. National Guard troops remained on duty the evening of April 18 but ignored an armed mob that destroyed union offices and their commissary. No one was arrested as a result of the attack and the governor recalled troops two days later, April 20.

Then on May 6 mill owners evicted 62 families from company housing. NTW responded by helping evicted families set up a tent colony on vacant property nearby, which they made into union headquarters. They set up an armed guard to protect themselves and continued promoting communist philosophy, which coincidentally included racial equality for the south.

Fred Beal remained in Gastonia and organized a demonstration during a shift change at the Loray Mill in the evening of June 7, 1929. A fight broke out which turned into a violent and deadly confrontation. Police arrived after a call and entered the tent camp without a warrant. An armed union guard confronted police, but police arrested him and then moved on to the union office tent. Armed guards confronted police again, which resulted in a shouting match. A shotgun discharged followed by a gunfight with as many as twenty more shots. When the shooting ended one on the union side had a bullet wound, but four police had

shotgun wounds from no. 4 or no. 6 shells; one was the police chief who would die from his wounds. Number 4 shells were found in the union tent.

A mob arrived at the tent colony and destroyed it. Some in the tent colony escaped; others were lucky to end up in jail. Fred Beal and his bodyguard feared lynching but made it out of town. Police eventually picked them up in South Carolina and returned them to Gastonia where Beal and his bodyguard were charged with conspiracy and murder, along with fourteen others taken from the tent camp.

Their trial got started August 26, 1929 in a Charlotte, North Carolina courtroom, after the Judge agreed Gastonia newspaper coverage prevented a fair trial. The prosecution wheeled in a life sized mannequin under a shroud and then dramatically pulled it off to reveal the dead sheriff in his battered and blood stained glory. That was too much for the judge who declared a mistrial, September 9.

News of the mistrial in partisan Gastonia set off rioting with hundreds of armed men roaming about kidnapping and beating union members or sympathizers. Sporadic rioting went on for several days resulting in the cold blooded murder of union minstrel Ella May Wiggins. The five charged in her murder were acquitted in spite of dozens who witnessed the shooting.

A second trial started September 30, but with only Fred Beal and six others as defendants. Defense attorneys intended to stick with factual testimony but one witness condemned religion and called for revolution, which did not sit well with the jury who found them guilty of second-degree murder. Beal and three others got seventeen to twenty year sentences. The convicted were out on a bond pending an appeal when they all left for Russia. The strike failed. (7)

Marion---------The southern labor revolts of 1929 spread to Marion, North Carolina after twenty-two mill workers were fired following a public meeting to organize a union in the Baldwin Mills in Marion. Alfred Hoffman of the UTW was in Elizabethton at the time, but arrived in Marion July 10 to assist making requests to mill owner R.W. Baldwin. Mill workers wanted Baldwin to reduce the workday to ten hours without a reduction in wages; wanted him to take back the twenty-two he fired and to have him meet with a committee of his workers to discuss grievances. He declined all requests.

The union responded with a strike July 11 when 650 left work and shut down the Baldwin mills. Then on July 27 management at the nearby Clinchfield Mills fired 100 and shut down their mills in a lockout. Angry mill workers picketed there until the governor ordered the militia to Marion.

The Clinchfield Mills reopened with one shift on August 19 but without a settlement except that management promised not to import strikebreakers. When they did anyway it provoked a confrontation. On August 28 a gang of strikers confronted a strikebreaker moving into company housing and tossed his furniture into the street. Police arrested many and charged 53 strikers with “rebellion against the state of North Carolina.” Ultimately four went to trial in the “furniture rebellion” including Alfred Hoffman. All were convicted, fined and sentenced to short terms in jail.

There was much worse to come in the "Marion massacre" of October 2. More trouble started after the governor's friend, Judge Townsend, was able to mediate the strike, which ended when strikers returned to the mills beginning September 11. The agreement they reached for both the Marion and Clinchfield Mills cut the workweek from sixty to fifty-five hours with a proportional cut in pay; again the mill owners agreed to rehire all but 14 strikers without discrimination. The mill workers accepted the defeat and started returning to work, but soon both mill owners started turning away union members and refused to rehire strikers.

After union organizers announced plans to resume the strike, Baldwin asked Sheriff Adkins to bring his deputies and come to the Baldwin mill, which they did, arriving about 7:00 in the evening of October 1. The sheriff and his fifteen deputies were heavily armed and supported by the plant superintendent, a foreman and other non-union men. As the evening progressed the sheriff and his deputies taunted workers and dared them to strike.

About 1:00 a.m., right at shift change on the morning of October 2, an angry worker defied police and shut off power to the plant. More than 200 workers from the two shifts stayed to picket through the night until the morning shift showed up about 7:30 a.m. Eyewitness accounts report the Sheriff lost his temper and set off a tear gas bomb, probably to disperse the crowd. One of those standing close-by, a lame man named John Jonas, whacked the sheriff with his cane. The sheriff and a deputy clobbered Jonas and shoved him to the ground and got him handcuffed. Then a deputy sheriff shot him; he would die a short time later still in handcuffs. The crowd panicked and started to run when the sheriff and his deputies opened fire. Three were killed; twenty-five had gunshot wounds and three more would die later.

The next day the sheriff, ten of his deputies, and the four plant employees were arrested and charged with murder. They were released when Mr. Baldwin paid their bail. Seven denied any shooting, but the other eight claimed self-defense at their trail, a tough claim to make since strikers were unarmed and shot in the back. All were acquitted on December 22. The Marion strike failed. (8)

South Carolina--South Carolina had more than a dozen textile strikes, all of them by unorganized mill workers. Weavers in the mills averaged $14 a week, but it was the stretch out that caused the strikes. "They lifted us to forty-eight looms at first, then they shoved it to ninety-six. When they saw we couldn't make it, they dropped us back to eighty but they kept the same pay for each pound they had when we were running ninety-six, and it cut our pay three or four dollars a week." Strikers had one demand, abolish the stretch out.

Labor organizers arrived to help, but the strikers decided outsiders would challenge their philosophy of getting along in South Carolina. Without a union, strikers had broader public support and pried a few concessions out of the operators since they were not concessions to outside labor organizers. (9)

Danville--The last big strike of the piedmont revolt came at Danville, Virginia. The Riverside and Dan River Mills Company operated two mills with 4,000 employees, all in a company union named "Industrial Democracy." The

company combined layoffs with an increase in looms per worker for a year before demanding a cut in pay starting January 1930. The company union voted against the pay cut, but company president Harry R. Fitzgerald over ruled the vote and cut wages and overtime pay.

UTW organizer Francis Gorman arrived in town where he found support for a new local in Danville, but Mr. Fitzgerald dismissed union members for months until he provoked a strike that started September 29, 1930. A hundred percent left the two plants in a show of solidarity.

Fitzgerald had company attorneys draft an injunction to end picketing. It was signed without notice in an ex parte action by a judge who owned stock in the Riverside and Dan River Mills. Fitzgerald refused negotiations and the governors offer to mediate so the strike dragged on until the company had enough strikebreakers to reopen the mill, November 24. Thousands turned out to picket in spite of the injunction but enough vandalism and disruption followed for the governor to call out a thousand militia troops. By mid December Fitzgerald ordered evictions from company housing and the strike and the union failed.

Southern textile mill owners blamed the northern mills for sending union organizers into the south. The southern mills had a competitive advantage they gained with the stretch out and a lower wage, which they believed the northern mills wanted to eliminate through union organizing. That belief was general throughout the south: Elizabethton, Gastonia, Marion, Danville, everywhere. If a union got established in one mill town they were sure others would follow in a domino effect; the southern economy would be ruined. (10)

Over eighty years later Tennessee Senator Bob Corker denounced the United Auto Workers (UAW) attempt to organize the Volkswagen plant in Chattanooga, Tennessee. He was quoted in the Washington Post February 12, 2014. He said, “If Volkswagen turns then its BMW, then it’s Mercedes, then it’s Nissan, hurting the entire South-East if they get the momentum.”

Coal Again

Soft coal production dropped from 535 million tons in 1929 to 310 million in 1932. Many miners worked for as little as $2.50 a day, which made it impossible to hold a union wage of $7.50 a day. Weekly wages did not always make it to $5.00 given the limited hours the miners worked and the tendency of operators to under weigh coal and hence pay a pittance to miners. Starvation stalked the coal fields where welfare workers found miners working barefoot amid hunger, depression and desperation everywhere.

The United Mine Workers continued to exist at the barest level through the determination and ingenuity of John L. Lewis, but with nothing to support unemployed miners or even the funds to hold a convention, which had to be suspended beginning in 1929. Bickering and battling broke out between Lewis and several District officials, especially Illinois. (11)

Illinois---------District 12 in Illinois was the only UMW district with enough members to push coal operators to negotiate, but Lewis would not agree

to allow district negotiations without consulting him and the UMW Executive Board in Indianapolis. When District 12 officials refused to go along Lewis revoked their charter October 15, 1929 and replaced district officials with his own appointments. The Illinois dissidents set March 10, 1930 for a convention to re-organize into another coal miners union; Lewis responded by calling a District 12 convention on the same day.

For almost a year two unions, the UMW and the Reorganized UMW, attempted to organize or re-organize coal mines in Illinois. UMW organizers could not speak without their rivals showing up to heckle, interfere or specifically to break up meetings. Fights, shooting and injuries ensued until finally in February 1931 a circuit court judge sifted through the union charters and decided to legally kill the new union and restore the UMW to what it was on October 15, 1929.

Still Illinois coal mining did not improve, or become tranquil. The coal operators association demanded to cut the $6.10 a day wage by 30 percent to $4.22 a day beginning April 1, 1932. The union went on strike but District 12 president John Walker negotiated a $5.00 a day wage, which the rank and file voted down by a four to one margin.

John L. Lewis ordered them to accept a slightly revised contract including the $5.00 a day wage in another referendum set for August 8. The miners stationed poll watchers and demanded to help count the ballots, but the ballots could not be counted; they disappeared in transit. Lewis claimed authority to sign the contract anyway and ordered the rank and file back to work, except that protesters staged mass marches and picketed mines all over the state. Picketer attempts to block access to some mines were met with armed deputies in apparent alliance with the UMW. Some of the embittered miners organized yet another union: The Progressive Miners Union. The Progressive Miners persuaded some of the small operators to negotiate but could not negotiate a wage above $5.00 a day.

Lewis stepped in to negotiate a union shop in a two-year contract signed by the Illinois Coal Operators Association on December 22. 1932. When the operators agreed that all employees must join the UMW after a brief grace period, organizing possibilities for other unions ended for all practical purposes. Finally, John L. Lewis established his complete control of Illinois coal miners and the UMW, but his critics noted he had to collaborate with business to get it, and there was not much left of the United Mine Workers for him to control in a depression now almost three years old. (12)

Kentucky---Illinois coal miners fared better than the miners of Kentucky, West Virginia or Pennsylvania. In Kentucky the coal mines around Harlan County were effectively unorganized in February 1931 when mine operators cut wages 10 percent, except that it was really another cut as part of continuing cuts in wages and hours through the 1920's. The UMW returned to stage a rally in Pineville, Kentucky March 1, 1931 in a new effort to revive their union. Several thousand signed up, but the coal operators retaliated with the first round of firings and evictions from company housing. Thousands of miners walked out of the mines in protest. Sheriff J. H. Blair employed mine guards as his deputies to patrol Harlan

County in armed cars. The miners continued to picket in spite of the danger.

On April 17, 1931 deputies fired on strikers as they sat along a railroad embankment; the miners returned fire. One miner was wounded and a deputy killed. On April 27, the Black Mountain Coal Company locked out and evicted its remaining miners to make way for strikebreakers. Evicted miners met at the village of Evarts to set up a picket line to keep strikebreakers out of the mines. Jim Daniels, head mine guard and deputy, drove armed cars through the village and threatened to "clean up the whole damned town."

The next day on May 5th Daniels returned in three carloads of "deputies" armed with machine guns, sawed-off shot guns and rifles, but the miners were ready in positions on the hill sides above the roadway. When the shooting stopped Daniels, two other deputies, and a miner lay dead in the road.

The mines closed immediately after the Battle of Evarts, many miner families packed up and left the area before deputies could retaliate. Court Judge D. C. Jones with family members in the Coal Operators Association requested over 100 grand jury indictments of miners. On May 7, Governor Flem Sampson sent in well-armed National Guard troops. Lt. Col. Sidney Smith in command of the troops announced "Those damned miners thought we came here to help them." Instead he arrested twenty-nine of the miners indicted by Judge Jones who charged them with "banding and confederating" and for murder of the three deputies; no one was indicted in the murder of the miner. One of the indicted was the police chief of Evarts, another had run for Sheriff against Sheriff Blair and two others were local UMW officials.

The UMW pulled out of Harlan County soon after the Battle of Evarts; just disappeared. By mid June the National Miners Union (NMU) showed up to organize Harlan County. The NMU provided much needed food and support for miners while they handed out communist literature. Preaching communism allowed Judge Jones, the sheriff and the mine guards to use the state's criminal syndicalism law to justify any coercion or violence; it was "Gun-Rule in Kentucky."

Judge Jones' sister and brother in law were owners of the Three Point Coal Company, but defense attorneys who questioned a conflict of interest ended up in jail from contempt of court. Judge Jones openly cursed the union and its supporters from the bench, ordered opponents out of the county and instructed jurors if they "haven't enough backbone to enforce the law, he'll get someone who will."

News of the fight in Harlan County attracted national attention. Pastors, reporters, writers, lawyers, students, a delegation from the American Civil Liberties Union and another from the International Labor Defense Fund arrived with relief supplies and to help defend the miners. It was dangerous work in a county where opponents of the mine companies were safer in jail than almost anywhere else. Outsiders preaching civil rights and free speech learned that Judge Jones does not "need anyone from Russia or any warped, twisted individuals from New York to tell us how to run our government."

Sheriff Blair advised Arnold Johnson of the ACLU he should leave the county "damned quick" or some little difficulty might arise. It was good advice in

a county full of coal company gunmen imported to "shoot, kill and slay the 'reds' in Harlan County."

And so it went through the summer. A National Miners Union soup kitchen was "Blown to bits." Jason Alford was arrested on a charge of criminal syndicalism after his home was dynamited. He was released on a $500 bond but re-arrested and held on a $5,000 bond. Sheriff Blair made it hard to arrange bail since he arrested and held any friends or family who showed up at the courthouse. Sheriff Blair dumped Jessie Wakefield of the International Legal Defense Fund in his jail to "keep her there until she rots."

Mrs. Wakefield described her arrival in Harlan County. "When an investigator or reporter or organizer comes to town, he is told at once to clear out and stay out. At first you think they are just joking. Then they begin to shoot – and they shoot straight. The jailer told me 'As long as you're a member of your organization and in Kentucky, you'll be in jail. What's more we're going to put every member of your organization we can find in jail.' I told him the International Legal Defense Fund was legal everywhere in the United States. He answered: 'Well, I'm the law here, and it ain't legal in Kentucky.' "

Murder trials of miners charged in the Battle of Evarts opened August 17, 1931. Judge Jones said, "No one belonging to a 'Red' organization had any right to look to this court or to any other court in the country for justice." The Harlan County trial was stopped and moved to a court in Montgomery County, but it was the defense that protested. The judge and the prosecutor expected the farmers of Montgomery County to be hostile to the coal miners.

The new murder trials opened November 18 where the prosecution claimed those charged with murder were part of a conspiracy to murder deputy Daniels. The prosecution admitted "We don't know who killed Daniels. We don't have to show this. It is only necessary to show that it was done as part of a conspiracy." Two were convicted and sentenced to life in prison; remaining trials were delayed.

The fight continued when the National Minors Union decided to hold its annual convention at Pineville in nearby Bell County on December 13, 1931. They called for a strike January 1 for all of southeast Kentucky and Tennessee. Bell county authorities arrested and jailed strike leaders and the sheriff and his deputies patrolled the roads armed with rifles and machine guns. The strike like all strikes in Harlan and Bell counties ended quickly. Later in April of 1932 the ACLU sent attorney Arthur Garfield Hayes and a delegation to file an injunction in federal court in eastern Kentucky. Hayes hoped to restrain local officials who denied civil rights. The hearing in London, Kentucky lasted two days. The Judge made no attempt to refute charges, but the judge held these county officials should be "protected from free speech."

A short while later Hayes reflected on his effort. He told of meeting a woman near London, Kentucky who said to him "Mr. Hayes don't go – don't try to go. I'm prayin' for ye, but they'll get ye." Hayes survived, but back in New York he decided civil rights in Kentucky are "The Right to Get Shot." (13)

West Virginia--West Virginia coal miners and their union did not

recover after the strike failures and the Battle of Blair Mountain in the fall of 1921. The depression left tens of thousands destitute and unemployed. In 1930 the former leader of the West Virginia UMW district Frank Keeney returned to labor organizing after a stint running a business. He organized a new independent union, the West Virginia Mine Workers Union. He had little trouble finding miners who would join, but the mine operators remained opposed and ready to fight the same way they did in 1921.

The miners were especially angry the operators deliberately under weighed coal that lowered their gross pay. Many of the mines did not have scales but just guessed the weight even though state law required scales and provided for an independent checkweighmen.

Under weight coal was only one way to cheat miners. The coal operators deducted for supplies at the company store, rent for company housing, fees for a company doctor, hospital and burial fund. One miner's pay check for the two weeks ending June 30, 1931 was $38.25 for 102 hours work minus $22 for work supplies, $4 for rent, $2.15 fees for the doctor, hospital and burial fund, and $2.40 for gas. Deductions left $7.70, except that it was company script convertible at about $.75 on the dollar.

Union meetings brought automatic arrests. The secretary of a local union near Mahan, explained why. "Oh. Trespassin'. You see, the comp'ny, hit owns all the land and I reckon the air too, so if hit don't like you. You is trespassin'." Company knowledge of union membership or a strike brought automatic dismissal and eviction from company housing; West Virginia courts ruled landlord-tenant law did not apply to company housing.

Keeney called a strike in the Kanawha coalfields in central West Virginia for July 6, 1931. He had funds to support strikers but the operators knew they would run out with enough delay, which they did. Miners decided "We'd sooner starve a-strikin' than starve a-workin'." Given the solidarity of strikers, starvation was the only way a West Virginia miner could lose a strike, but it was enough. (14)

Central Competitive Field--Indiana, Ohio and Pennsylvania had their own coal strikes in depression era 1931. Operators cut wages and refused to bargain and a variety of violence resulted. At mines in Indiana and Ohio strikes slowed or shut down production, but eventually there would be confrontations and shooting when armed strikers confronted strikebreakers and the governors would send the state police or the National Guard. In Ohio, the U.S. Secretary of Labor offered to mediate, but the operators refused. Ohio Governor White brokered a settlement for the UMW that called for checkweighmen, payment in currency for the miners, a nearly 25 percent wage cut but no union recognition. It was an easy settlement to offer since state law called for checkweighmen and pay in U.S. currency, but several operators refused it. Two died in the fighting.

Worse came in Pennsylvania where there were multiple strikes and both the United Mine Workers and the National Miners Union tried to negotiate for desperate miners. At Canonsburg over a hundred were injured when a union meeting broke up in a riot. The worst of it took place at Wildwood on June 21

in a contest with the Butler Consolidated Coal Company. The company got an injunction to prevent picketing but angry miners defied the order. At least seventy or eighty picketers stood in mass along the road on the hill above the mine entrance and another seventy or eighty were behind a nearby building.

Deputy Herbert Reel drove a sheriff's van up the hill and then backed the van out of an alleyway between two houses and started firing into a crowd of thirty to forty men and women. The crowd from behind the building started charging in the direction of Reel. A reporter with a photographer wrote an eyewitness account.

"The other deputies began emptying their guns into the throng and several in the front ranks were mowed down like Wheat. … The deputies let go fusillade after fusillade of shots from pump guns and revolvers as the mob scattered and fled from the hail of bullets. In the midst of the melee one striker emerged from the throng and hurled a brick right into the muzzle of a deputy's gun. He was hit by a slug from a shotgun, spun three times, and fell to the road."

Some of the panicked strikers took refuge in a nearby house. Reels reloaded his gun after getting hit with the brick and "rushed back to the house into which most of the rioters had fled screaming "I'll kill every son of a [bitch] in that house," and emptied his gun at the house. Several of the wounded tried to crawl to cover but another rain of bullets halted them. Two men lay in pools of blood in front of a Ford sedan on the side of the road opposite the deputies. I counted thirteen bullets in it after the fighting subsided." (15)

After the shooting subsided the deputies hunted down and herded survivors into police vans. The wounded, too wounded to walk, were left to suffer or die while deputies went through private houses looking for strikers. They found 24 in one house and 14 in a cellar of another. State police arrived to roust out a few more. Forty-one went to jail in Pittsburgh to face some type of criminal charge. At least twenty were aliens subject to deportation. Reporter Frank Butler's account mentioned "I did not see a shot fired by the strikers." And so on.

Herbert Hoover

Herbert Hoover had a well earned reputation as a great humanitarian from his time as chairman of the World War I American Relief Commission. His leadership saved thousands from starvation in Europe, but as president he would oppose and veto efforts to relieve American suffering during the great depression. "No president, not even Grover Cleveland, has ever been seduced by his convictions into blunter defiance of majority opinion." He believed in capitalism and self help as a doctrine he would maintain no matter how many were unemployed, or who was hungry.

Soon after the late October stock market crash on November 21, 1929 President Hoover convened two separate White House meetings. In the first meeting he talked with business executives, presidents or owners like Henry Ford and Pierre Du Pont to persuade them not to cut wages. In the second meeting he met with AFL-CIO president William Green and other labor leaders to persuade them to oppose wage cuts.

Talk was not enough to support production, spending and employment. At

Ford Motor Company in Detroit 100,500 were still on the payroll in December 1929. By April 1931 employment was down to 84,500 and by August 1931 it was down to 37,000. Non farm national employment totaled just over 31 million in 1929, but dropped to 29.1 million by 1930, to 26.4 million by 1931 and 23.4 million by 1932. The unemployed were 1.5 million in 1929, but just over 12 million in 1932 with an unemployment rate of 23.6 percent. The unemployment rate would creep a little higher the next year, 24.9 percent. (16)

In January 1930 Senator Robert Wagner of New York responded with a series of bills to authorize direct action to relieve unemployment. He proposed a public works program and he wanted the federal government to create an active federal employment service, to produce consistent monthly unemployment data, and to create a Federal Employment Stabilization Board. Hoover vetoed the public works and the employment service. The other bills passed with veto proof majorities so the President signed them, but they needed executive branch administration to work, which Hoover refused to provide.

The continuing decline into 1932 brought more proposals for relief. Senator Robert La Follette of Wisconsin and Senator Edward Costigan of Colorado took up the cause with a bill to fund relief with federal grants to the states, but Hoover successfully opposed their efforts with doctrinaire objections. He convinced the Senate to reject several versions of their bill in votes on February 11th and 12th 1932. Hoover worried relief would compromise the "character" of Americans and destroy the "roots of self-government."

The private and local relief Hoover supported did little to relieve widespread hunger and rising unemployment and so Senator Wagner partnered with Representative "Cactus Jack" Garner of Texas to make more public works proposals in their Wagner-Garner Relief Bill. Hoover blasted their efforts: "Never before has so dangerous a suggestion been seriously made to our country."

The Federal Reserve Bank Chair got Hoover to agree to support a Reconstruction Finance Corporation (RFC) to make loans to banks and insurance companies. After Representative Garner learned that more than half of RFC loans went to three large banks, he and Senator Wagner drafted another Wagner–Garner Relief Bill to expand RFC lending authority to make loans to the states for local relief. Hoover vetoed again, but the relief conditions were reintroduced in another bill that passed Congress with veto proof majorities. Hoover finally signed it and then announced "These loans are to be based upon absolute need and evidence of financial exhaustion. I do not expect any state to resort to it except as a last extremity."

While the RFC made a few loans his acquiescence did not change his mind; relief he demanded must be a local responsibility. Meanwhile the economy continued to fail with a steep drop in wages amid the growing army of unemployed. Union membership dropped from 3.63 million in 1929 to 2.86 million by 1933, a loss of 770,000 members. The loss of membership hardly reflects the decline in dues revenue or the layoffs of union staff, the cancellation of union conventions and the end of their newspapers and publications. The White House refused requests to confer with labor officials, even John L. Lewis. (17)

The abject failure of the President and the government forced the hungry, the desperate and the unemployed to fend for themselves, which they tried to do in a variety of ways. The failure of monetary authorities to assure an adequate money supply so limited the flow of economic transactions that cities resorted to barter. By early 1933 organized bartering took place in at least 159 barter societies in 127 cities in 29 states. Seattle had one of the biggest bartering societies when the idle unemployed got disgusted enough with bread lines to organize the Unemployment Citizens League(UCL), primarily to be self help depression relief. It grew rapidly to 13,000 families and 41,000 members with elected officers and a six member executive board.

The Unemployment Citizens League set up twenty–two local commissaries staffed entirely with volunteers. Vacant lots were turned into truck gardens so that fresh and canned produce could be traded for things produced, donated, scrounged or repaired, or for the services of doctors, dentists, lawyers, barbers, tailors, wood cutters and so on. A farmer from Yakima explained the process to a gathering of the urban unemployed. “We farmers are broke, but we still have land. We’ll grow food and trade it for shoes, clothes, and other things you people can make in the city. Since we can’t earn money, we’ll do without it. We’ll return to the age old method of primitive people, barter, and make commodities our medium of exchange.” Other creative variations of the Seattle league operated in California around Los Angeles, Colorado, Utah, New York and Yellow Springs and Dayton Ohio. (18)

For the desperate it was a short leap from bartering to looting, especially when relief supplies ran out, which they often did. Food stores confronted customers who would not pay, and children who would grab and run. Many learned about life in “Hooverville” and relief lines.

“If you happened to be one of the first ones in line you didn’t get anything but water that was on top. So we’d ask the guy that was ladling out soup into buckets … to please dip down to get some meat and potatoes that was on the bottom of the kettle. But he wouldn’t do it. So we learned to cuss. … Then we’d cross the street. One place had bread, large loaves of bread. Down the road just a little piece was a big shed, and they gave milk. My sister and me[sic] would take two buckets each. And that’s what we would lived off for the longest time.”

Hooverville. “Here were all these people living in old, rusted-out car bodies. I mean that was their home. There were plenty of people living in shacks made of orange crates. One family with a whole lot of kids was living in a piano box. This wasn’t just a little section this was maybe ten miles wide and ten miles long. People living in whatever they could junk together.” (19)

Various groups supported relief for the unemployed: Socialist Party, Socialist Labor Party, Proletarian Party, I.W.W, International Brotherhood Welfare Association. Many had middle class thinkers and talkers, who fell short of doing anything. The American Communist Party(CP) was the exception.

The communists organized Councils of the Unemployed through their Trade Union Unity League(TUUL). They used the slogan “Fight – Don’t Starve” to get publicity and speak to the idle unemployed on breadlines, soup kitchens and

flop houses. Energetic Communists attracted large groups to demonstrate, demand relief and public works. Their efforts in the South in cities like Birmingham, Alabama always insisted on racial equality.

The American Communist Party(CP) planned rallies for March 6, 1930 in cities across the U.S. as part of an International Day for Struggle Against Worldwide Unemployment sponsored and promoted by the Communist International (Comintern). The many Unemployment Councils turned out thousands in Chicago, Detroit, Cleveland, Milwaukee, Washington, Boston, San Francisco, Denver, Seattle and a few more.

In New York William Z. Foster addressed a crowd of 35,000 in Union Square. As his speech ended he wanted the crowd to march to city hall, but the Police Commissioner refused permission. Instead he offered to take Foster to the mayor in a police car. Foster refused and the aborted march turned into a nasty riot.

The many local Unemployment Councils met in Chicago July 4, 1930 to establish a National Council for the Unemployed. They pushed for unemployment insurance and planned methods to resist evictions. A lawyer for the International Labor Defense explained the process. "They were a bunch of Robin Hoods. They would wait until the bailiff put the furniture out in the street and put it right back where it came from. If there was a padlock in the way, well, then it was removed, you see. The people were placed back in to the despair of the landlord." … "Naturally warrants were issued … It was my practice in those days, trusting very few judges, to always demand a jury trial. … The jury found my clients not guilty."

It was the American Communist Party that planned and staged the National Hunger March on Washington December 7, 1931, which the Washington Post called "a conspiracy against the United States." The nervous Hoover Administration had 1,400 cops on hand when the marchers drove into Washington, but there were only 1,570 that paraded down Pennsylvania Ave to capital hill. Hoover would not meet with them and they were denied entrance to the capital but they got more publicity than they could have hoped for given their small numbers. (20)

The Detroit area Unemployment Councils and the Trade Union Unity League organized the Ford Hunger March. Detroit had little funds for relief to assist the 91,000 laid off from Ford. There was hunger when organizer Albert Goetz addressed 3,000 assembled inside the city limits of Detroit on cold and windy March 7, 1932. "We don't want any violence. Remember all we are going to do is walk to the Ford Employment office. No trouble, no fighting. Stay in line. Be orderly." They intended to march to Gate 3 of the Ford Motor Company plant in Dearborn to present a list of demands at the employment office. Demands included abolition of graft in hiring, an end to discrimination against Negroes, an end to the Ford private police force, and the right to organize among other economic desires.

When marchers reached the Dearborn city limit thirty to forty Dearborn police ordered an end to the march. Police, apparently anticipating defiance, set off tear gas canisters. With tear gas in the air the crowd forgot their instructions

and started tossing rocks or whatever they could pick up at the retreating police.

The march continued to Gate 3, but getting to the gate required crossing an elevated bridge over the road. Ford's private police added to the Dearborn police, armed with revolvers, a machine gun, and a new supply of tear gas. The Dearborn fire department had connected fire hoses and blasted the marchers with freezing water.

Albert Goetz mounted his truck and attempted to end the plan to cross the bridge and present demands, but a Ford private police car drove through the crowd. A newspaper reporter wrote later "Suddenly through the mob raced a Ford car containing two men, one of whom, I later learned, was Harry Bennett, chief of Ford's private police." The crowd stoned the car and in the process hit Harry Bennett in the head, opening what turned out to be a modest head wound that did lots of bleeding. Ford and Dearborn police opened fire with their guns, a machine gun and tear gas in response to the injury.

Those in the front of the crowd started falling in the onslaught while others scattered and some stopped passing cars to get away. In the aftermath four were dead and two dozen of those wounded were taken into police custody. Police raided offices of local groups they decided were radical and arrested and jailed thirty-five. Mayor Murphy of Detroit claimed no Detroit police helped in the round up. William Foster and four others were tracked down across the country and arrested as communists who helped organize the march.

The International Labor Defense and the ACLU stepped forward to defend the prisoners and to speak of the danger of putting a public police force under corporate control. The ACLU believed it was "the only demonstration in the country, so far as we can learn, which resulted in shooting and killing demonstrators."

Prosecutor Harry Toy announced a grand jury investigation. "The investigation may involve all communist activities in Detroit, but it will primarily be concerned with fixing the responsibility for the riot and for the shooting." The grand jury concluded the riot was the "result of an instigation by a few agitators who go about the nation taking advantage of the times of industrial depression and other misfortune for the purpose of influencing those who are unable to find employment to take care of themselves and family."

The grand jury "cleared the Ford Motor Company of any involvement in quelling the riot." Dearborn police and city officials "acted within the law and were justified in taking the action they did to protect life and property." There were no indictments. (21)

The Ford Hunger March attracted national attention, but not as much as the Bonus March. By spring 1932 the hungry and the desperate were descending on Washington to confront a miserly Congress and a hand wringing President, who feared the ragged and the hungry at his doorstep had the makings of a revolution.

Veterans who survived the World War I slaughter in Europe received a certificate from Congress for their war service that paid them a modest sum in twenty years: a bonus in 1945. President Coolidge vetoed the bill but it passed

over his veto. In 1932 Representative Wright Patman of Texas introduced a bill to make early payment to needy veterans.

It did not take long for the penniless, unemployed veterans of Portland, Oregon to convince each other they deserved their bonus. They elected Walter Waters their leader, boarded freight trains and set off for Washington to pressure Congress. They called themselves the Bonus Expeditionary Force.

They arrived at the rail yards in East St. Louis May 21 where railroad officials tried to get them off the trains. Their tussle attracted national news and new recruits until they arrived in Washington with a thousand veterans. The Hoover administration and city officials were none too happy to have them, but they found a benevolent benefactor in the superintendent of the Metropolitan Police, Pelham Glassford. Glassford was a retired military officer who got the Bonus Marchers set up in camps at three locations on Federal property and successfully got donations to buy food and supplies. As veterans they governed themselves with military discipline.

News of the Bonus Expeditionary Force attracted thousands more veterans who streamed into Washington by any means they could. The camps ballooned to at least 20,000 veterans and family. Glassford got the U.S. Treasury Department to let them use four buildings near Pennsylvania Avenue that were scheduled for demolition. The largest number of the bonus marchers set up Hooverville camps in Anacostia.

The House passed the bonus bill June 15 by a vote of 209 to 176; thousands of veterans sat on the capital grounds when the Senate debated the bill June 17. The Senate voted 62 to 18 against. Walter Waters replied “It would cry to high heaven that, while there were billions for the bankers, there was nothing for the poor. It would tell the world that the vaunted democracy of America had become a sordid scheme of special privilege.”

Some in the camps left, but thousands lingered, probably with no where to go. Some picketed the White House and crowded capital hill the day Congress Adjourned, but otherwise they survived in idle squalor.

Pelham Glassford remained their advocate to the end hoping to delay, or to move them to the country where they might try subsistence farming, but President Hoover and his Administration decided they must go. Assistant Secretary of the Treasury Ferry Heath instructed the District Commissioners to order Glassford to evacuate about 1,500 veterans in and around Federal buildings at Pennsylvania Avenue between Third and Fourth Streets. Glassford objected to evictions on such notice, but he went ahead as ordered.

Glassford got one building emptied but a veteran holding an American flag and about a hundred followers started to march across the block when a policeman grabbed the flag. A fight between the officer and the man with the flag turned into a brawl when other police and marchers joined their fight. Glassford intervened and got the fighting stopped, but two hours later there was more trouble when two veterans from the camp tried to enter one of the buildings. After the police objected and the men resisted the order to leave, there was shooting. Two police opened fire wounding three veterans and a bystander, two of the veterans would

die from the shooting.

Again Glassford intervened and stopped the shooting, but this time two District Commissioners notified the White House that civil authorities were "unable to maintain order." In minutes President Hoover had Secretary of War Patrick Hurley call out troops, which were ready for immediate action across the Potomac River at Fort Myer. Douglas MacArthur commanded four companies of infantry, four troops of cavalry, a mounted machine gun squadron and six small tanks.

Reporter Paul Anderson was on the sidewalk at Third and C Streets in a mass of police, reporters and spectators when the troops arrived. "Infantrymen with fixed bayonets and trench helmets deployed along the south curb, forcing the veterans back into the contested block. Cavalry deployed along the north side, riding their horses on the sidewalk and compelling policemen, reporters and photographers to climb on automobiles to escape being trampled." … "A command was given and the cavalry charged the crowd with drawn sabers. Men, women and children fled shrieking across the broken ground, falling into excavations as they strove to avoid the rearing hoofs and saber points. Meantime, the infantry on the south side had adjusted gas masks and were hurling tear gas bombs into the block into which they had just driven the veterans."

After a short delay the infantry crossed the Anacostia River and set fires in two buildings used as barracks and then set fire to the shacks and shanties of the Anacostia camps. Most of the veterans and their families had already moved to higher ground on an embankment above the camp to mingle with thousands of Anacostia spectators as they all watched the camp burn in the glow of evening darkness. General MacArthur left for the White House, but returned in a little over an hour.

"Promptly at midnight a long shadowy line of infantry and cavalry advanced across the fiery plain toward the embankment, Sabers and bayonets gleamed in the red light cast by the flames. Virtually everyone had deserted the camp; it seemed incredible that the offensive would be pushed still further. It seemed so to the veterans and the residents of Anacostia – but an officer had told me earlier in the evening that the strategy was to drive all the campers "into the open country of Maryland." … For many blocks along the embankment … the troops tossed scores of gas bombs into the vast crowds lining the hillside, driving them back to the main thoroughfare of Anacostia." (22)

Only smoke and tear gas remained by morning. Pelham Glassford resigned his post as head of the DC Metropolitan Police. In less than a year Herbert Hoover would lose his reelection bid and leave office, a Republican replaced by Democrat Franklin Roosevelt. The new administration moved quickly to pass a Federal Emergency Relief Act. It provided grants to the states for relief to "all needy unemployed persons and their dependents" and those employed with resources or income "inadequate to provide the necessities of life." The new administration had liberals who were certain people need to eat everyday.

The Norris-LaGuardia Act

Discussion for a new bill to protect organized labor from court injunctions started soon after the Bedford Stone Supreme Court decision. Senator George Norris of Nebraska was chair of the Senate Judiciary Committee. He sponsored hearings beginning February 7, 1928 on a bill submitted by Henrik Shipstead of Minnesota. The Shipstead Bill limited irreparable harm to tangible property as a basis for a court injunction. William Green from the AFL and others from organized labor could not agree to support the Shipstead Bill when hearings ended in March 22, 1928.

Later in May 1928 Senator Norris assembled three law professors, Felix Frankfurter, Herman Oliphant, and Francis B. Sayre, along with labor attorney Donald Richberg, and economist Edwin Witte and set them to work drafting a different bill. They settled on a law that would limit the Federal Court's authority to rule on injunctions; they intended to limit the jurisdiction of Federal Courts in labor disputes. Debate and discussion went on for several years until finally in the last year of the Herbert Hoover Administration with the economy in ruins a bill to limit labor injunctions known as the Norris-LaGuardia Anti-Injunction Act passed Congress with veto proof majorities. Herbert Hoover made the practical choice and signed it into law March 23, 1932.

The new law included a statement of public policy for employment and unions. The policy rephrased slightly the wording of policy statements in the National War Labor Board legislation from World War I and the Railway Labor Act.

The policy statement reads "Whereas … the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, therefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor …"

The Norris-LaGuardia Act made union recognition and collective bargaining an economic contest between private parties; generally Corporate America in competition with labor unions. At the time the law passed unions had to strike and picket for a chance to gain recognition. Injunctions brought delay to the union cause, but also the implicit or explicit authority for local police and deputies, hired guards, or National Guard troops to intervene to intimidate and arrest picketers and union leaders and break a strike by force. Corporate America was still free to fire anyone they caught organizing or joining a union, and to hire scabs if available, but with the Norris-LaGuardia Act union organizers could expect to strike and picket to close down a business if they had the unity and solidarity to limit the labor supply and prevent a surplus of labor from bidding down wages.

Article III, Section 2 of the Federal Constitution gives Congress the power to determine "appellate jurisdiction, both as to law and fact, with such Exceptions and such Regulations as Congress shall make," which gives Congress the power

to rewrite or deny jurisdiction as it did with the wording "no court of the United States, as herein defined shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this Act; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this Act."

Additional sections define terms and detail specific conditions that limit jurisdiction of federal courts and prevent hearing a complaint or petition growing out of a labor dispute. Section 3 made yet another attempt to dispose of the "yellow dog" contract after three previous tries were overruled in Supreme Court cases previously mentioned: Adair v. United States, Coppage v. Kansas, Hitchman Coal and Coke Co. v. Mitchell. Norris-LaGuardia declared employment contracts requiring an anti-union pledge "contrary to the public policy" that "shall not be enforceable in any court of the United States …"

Section 4 through Section 12 provide clarification of actions growing out of a labor dispute that no court of the United States shall have jurisdiction to enjoin. In section 4 no person acting singly or in concert in a labor dispute can be enjoined from quitting work, becoming or remaining a union member, paying or withholding strike benefits, providing counsel in a lawsuit, or for peaceable assembly such as picketing, speaking or advising.

Section 5 denies jurisdiction to any U.S. Court to issue an injunction in a labor dispute that alleges a union or union members constitute an unlawful combination or conspiracy to violate the Sherman Act.

Section 7 has the exception to the general denial of jurisdiction mentioned in the first section of the law. An exception can only come "after hearing the testimony of witnesses in open court in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after findings of fact by the court…"

The Norris-LaGuardia Act specifies the findings of fact the court must determine to take jurisdiction in a labor dispute. A management complaint must prove to the court that unlawful acts have been threatened and will be committed unless restrained, or have occurred and will be continued unless restrained; that substantial and irreparable harm to management's property will follow where the harm will be greater than the harm to defendants; no adequate alternative legal remedy is available; that public officers charged with the duty to protect complainant's property are unable to so.

Section 8 denies jurisdiction to any U.S. Court to issue an injunction in a labor dispute to "any complainant who has failed to comply with any obligation imposed by law" … or "who has failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration."

Until 1932 courts invoked the injunction to end strikes primarily where union solidarity and economic power was poised to prevail and make significant gains during a labor shortage. In many cases judges acted in such haste they issued injunctions in a labor dispute without a court proceeding where labor union

officials did not receive notice and, therefore, could not be present nor represented in court; an exparte proceeding.

The law shows an exasperation and profound contempt for judges who refuse to respect basic rights of due process, free speech or free assembly. In spite of the culmination of anger after decades of abuse, the Norris-LaGuardia Act allowed a modest advance for labor. It did not forbid the use of the injunction, although it made it next to impossible for corporate America to meet the conditions so carefully laid out in the law. The public policy statement in the law suggests that people ought to have full freedom of association and the right to elect representatives of their own choosing, but it does not guarantee these rights. Corporate America remained free to refuse union recognition, to fire union organizers or sympathizers, to write "yellow dog" contracts and to continue as usual, they just could not expect courts to enforce what they wanted when they did not have the economic power to get it on their own.

In 1932 working class Americans stumbled along in severe economic depression. Union officials looked on, helpless as their hungry and desperate membership declined and joined the ranks of the unemployed. However, the Norris-LaGuardia Act had no role for government action. Labor relations would be free from outside interference by federal courts or government bureaucracies, but few unions in this era had the economic power to gain recognition or force collective bargaining. It would take a new President and more federal legislation to establish a right to union recognition and rights to collective bargaining. Section 7a of the National Industrial Recovery Act of 1933 and the National Labor Relations Act of 1935 attempted to guarantee labor rights written into the legislation. The new laws would be quite different from the Norris-LaGuardia Act; the new legislation would require a government bureaucracy that did not always accept the views of Corporate America, or labor. (23)

Part IV - Twelve Years of Franklin Roosevelt – 1933-1945

"I didn't worry on the thick books on Marx. I joined the party when it moved a widow's evicted furniture back into her house. I thought it was right. That's why I joined."

---------- An American Communist circa 1935

The Communist Party gentleman above frustrated the cadre of committed American Communists because so many were like him. Investigative efforts to interview and understand American Communists found few of them joined the party understanding its doctrine or dogma. Members complained of too many meetings, too many rules, and too many long, unintelligible lectures on dialectical materialism, but they supported the party's more aggressive reform efforts over the established parties and the Roosevelt Administration.

William Foster estimated American Communist Party membership at 12,000 at Congressional hearings in 1930; later estimates had 24,500 members in 1934, 31,000 in 1935, 55,000 in 1938. The average member stayed a member only two to three years in a revolving door membership. The ebb and tide of members suggests the count of former American communists exceeded "card carrying" communists after the early 1930's. Party membership never exceeded a 100,000.

The Third Period Policy of organizing separate industrial unions had limited success from 1929 to 1935. The Passaic, New Bedford and Gastonia textile strikes all had communist organizers attempting to recruit members into new unions as part of the strikes, but they had AFL opponents attacking them and little success organizing stable local unions. TUUL did not do well elsewhere either. By 1935 Nazi Germany and fascism worried the Communist Party in Russia enough to make another change of policy.

The Seventh World Congress – 7th Cominturn - met in Moscow from July 25 to August 20, 1935. Spokesman Georgi Dimitroff called for a worldwide united front of working class solidarity in joint action against fascism. In the new policy communist parties in other countries could now support any group opposed to fascism, even their own capitalist and democratic governments. The new Communist directives would be known as the "People's Front" or a "Popular Front."

The unemployment rate reached just under 25 percent in the early Roosevelt administration and that did not reflect the barely employed who could not hope to support themselves with a job. People were hungry; people were desperate. The communists offered hope and help to raise money and organize protest. Most who joined supported the immediate economic goals and its ethical stance toward immediate problems like evictions, unemployment and union organizing; the American Communist Party supported equal rights, especially for women, blacks and minorities. American Communists acted as a far left wing political party.

Remember Marx and Lenin hated capitalists. Therefore, it should not be a surprise that capitalists hated Marx and Lenin. Their views and proposals threatened the established order and their dominant and privileged position in it.

American capitalists had the resources to pay for political campaigns and to lobby their business legislative agenda in Congress and the states. Newspapers and radio stations needed their advertising revenue to stay in business. Capitalists had the means to promote communist efforts as a dark and dangerous revolution.

Chapter Eleven - Phasing in a New Deal for Labor

"Just look at their Depression. From beginning to end it lasted ten years. An entire decade in which the Proletariat was left to fend for itself, scrounging in alleys and begging at chapel doors. If ever there had been a time for the American worker to cast off the yoke, surely that was it. But did they join their brothers-in-arms? Did they shoulder their axes and splinter the doors of the mansions? Not even for an afternoon. Instead, they shuffled to the nearest movie house, where the latest fantasy was dangled before them like a pocket watch at the end of a chain. Yes, Alexander, it behooves us to study this phenomenon with the utmost diligence and care."

---------- Osip Ivanovich to Count Alexander Ilyich Rostov from the Amor Towles novel, A Gentleman in Moscow.

In the first 100 days after Franklin Roosevelt's inauguration he signed twelve new pieces of legislation intended to bring an economic recovery. On May 12, the President signed legislation to aid farmers that included an Agricultural Adjustment Act (AAA). On June 16, 1933, he signed the National Industrial Recovery Act (NIRA). The NIRA acknowledged the country's economic collapse with a plan of recovery and created a National Recovery Administration (NRA) to administer the programs that followed. In a speech to the country he explained his hopes and aims for the new law. He wanted "to get many hundreds of thousands of the unemployed back on the payroll by snowfall" and to "plan a brighter future for the long pull."

The Plan

The plan called for "an industrial covenant to which all employers shall subscribe." As part of the covenant employers would be expected to "band themselves faithfully" into modern guilds and without exception agree to act together to establish codes of fair competition for their industries. Even though the plan provided for public hearings to review industry codes, the National Industrial Recovery Act granted vast new power to business to form cartels and raise prices as part of economic recovery.

In his speech president Roosevelt recalled the great cooperation during World War I and then he said, ". . . it is my faith that we can count on our industry once more to join in our general purpose to lift this new threat and to do it without taking any advantage of the public trust which has this day been reposed without stint in the good faith and high purpose of American business."

He reminded business that cooperation is in their self interest because "a decent living, widely spread among our 125,000,000 people, eventually means the opening up to industry of the richest market which the world has known." The word cooperation appears six times in his speech.

During the Congressional negotiations over farm legislation desperate farmers wanted mortgage relief and an expansionary monetary policy to generate

inflation of agricultural products. The Agricultural Adjustment Act that passed provided broad discretion to the U.S. Department of Agriculture to raise farm prices, by cutting production or making cartel like marketing arrangements.

During the Congressional negotiations over the NRA Senator Robert Wagner of New York pressed for language to require that every code of fair competition, agreement, and license approved, prescribed or issued under the National Industrial Recovery Act shall contain the following conditions: that employees shall have the right to organize and bargain collectively through representatives of their own choosing. His phrase was included in the law as Section 7(a) and endorsed by the President.

The Section 7(a) phrasing inserted into the National Industrial Recovery Act was too vague to define a guarantee for collective bargaining, which made it necessary for the government to play a more active role in labor relations. By August the Roosevelt insiders pressed the President to establish a National Labor Board (NLB) to help define and develop the government's role. The NLB started with seven members and a budget for an executive secretary and some staff. It had the power to persuade and to mediate but no authority to enforce compliance.

The Roosevelt Administration planning for industrial recovery relied on a spirit of accommodation between labor and industry, but agriculture was excluded and put in a separate plan. While the wording of the Section 7(a) did not include or exclude farms or farm labor, the Roosevelt administration did not support a NRA code for the agriculture industry. Instead the Agricultural Adjustment Administration (AAA) in the U.S. Department of Agriculture determined agricultural policy and under pressure from corporate agriculture made an administrative decision to ignore farm labor. Since the AFL considered agricultural workers impossible to organize, organized labor did not object. Since the farmers did not want labor unions, they did not object either. Since farm labor did not have a political voice, the Roosevelt Administration abandoned them to whatever the Agricultural Adjustment Administration decided to do. Officials there made the claim that farm labor would share in the benefit of higher revenue farmers would earn from government supported higher prices. Higher farm revenues to farmers would trickle down to farm labor as farm managers offered higher wages, they said. (1)

Agriculture under the Agricultural Adjustment Act

The Roosevelt Administration sent New Deal devotee George Creel to California to be ambassador and administrator of New Deal recovery plans. He billed himself as the sole source of authority for New Deal programs in California where he offered his views of a new order where capital and labor would work together for the common good. He declared "The central aim of the New Deal was to bring about a co-operative order, as opposed to an unlimited competitive order, with the pubic interest enforced as against the selfish interests of any group. This policy applies to labor unions as well as employers."

The California Cotton Strike

By 1933 farm workers had four years of Hoover Administration depression, conflict and desperate poverty behind them. Their meager successes in California were from union organizing and pitched battles. Their Cannery and Agriculture Workers Industrial Union (CAWIU) had their first convention in August 1933 where they doubted George Creel's plans for cooperation would eliminate the need for strikes and picketing. Since the Roosevelt administration would not write a code for agriculture and the farm workers were left out of Section 7(a) they decided to write a set of minimum demands that included a minimum wage, an 8 hour day, time and a half for overtime, an end to child labor, and union recognition among other things.

By the fall of 1933 farm prices were higher thanks to the government's use of price supports and acreage restrictions. Cotton prices increased the value of the California harvest by 150 percent. CAWIU's chief organizer Pat Chambers had little trouble convincing the 15,000 San Joaquin Valley cotton pickers they should get a raise. He demanded $1 per hundred pounds of cotton, a union hiring hall and no discrimination for union members. The farmers had to borrow money from the gin operators and finance companies to plant and harvest a crop. These groups met and determined a wage by collective cartel agreement. Their financing provided just enough funds to pay pickers at $.60 per hundred pounds.

Cannery and Agriculture Workers Industrial Union (CAWIU) members met in Tulare on October 1, 1933 and agreed to strike October 4, but many began leaving work immediately. Strikers at a ranch near Bakersfield set up a picket line October 2. The local sheriff agreed to deputize the owner of the ranch, who promptly arrested 13 picketers and threatened to bring in scabs if the others did not return to work. By October 4, cotton picking came to a halt over the length and breadth of the San Joaquin valley, an area 100 miles long and 40 miles wide. Growers would not negotiate over any issue but began forcibly evicting strikers from employer owned labor camps. Meager belongings were dumped on the roadsides.

The evictions were illegal and union officials protested to District Attorney, Clarence Wilson. He explained "For the most part, law-enforcement officials indulged the growers excesses out of fear that to do otherwise would expose them to unacceptable political consequences." The Sheriff added "We protect farmers out here in Kern County. They are our best people. They are always with us. They keep this country going. They put us in here and they can put us out again, so we serve them." Apparently the sheriff's training and education did not reference equal protection before the law.

Local newspapers advertised for volunteers to join a "protective association" of vigilantes to drive agitators out of the valley. In a posted noticed to the public at large, the employers asserted legal authority to "disburse all strike agitators and strikers from our locality." A few strikers returned to picking cotton in spite of supportive newspaper accounts of armed farmers out threatening and attacking strikers. In other collective actions growers threatened to boycott all

stores or businesses that offered help or assistance to strikers, a collective action they opposed for labor.

The evictions forced strikers to move to union organized camps. The biggest camp at Corcoran had 4,000 living in a space of about two city blocks. The close quarters made it easier to maintain security since the growers made repeated and ever more violent threats against strikers. State officials offered mediation, which CAWIU officials reluctantly agreed to, but the growers refused to deal with a union they denounced as communists. The state labor commissioner Frank MacDonald responded with a press release October 8: "I think their refusal to allow any officials, state or federal, to act as mediators is unjustifiable and tends to encourage communism." As always happened with communist organizers, the desperate poor they tried to help had no interest in or knowledge of communism, but welcomed help with their immediate needs for survival.

State agricultural authorities included a member of the State Recovery Board, Rabbi Irving Reichert, complained to Governor James Rolph demanding action to relieve the growing tide of grower violence. Reichert wrote in part "The high-handed and outrageous methods of the so-called vigilantes, instead of being firmly suppressed by the civil authorities, are aided and abetted by them. Gangsterism has been substituted for law and order in the cotton areas."

On October 10, the day after 700 cotton growers attended a get tough strategy meeting, 40 armed cotton grower-vigilantes showed up at a meeting of strikers and their families going on in the front of their union hall in the small town of Pixley. Pat Chambers leading the meeting immediately ordered everyone into the union hall. In the process one of the vigilantes fired a shot that killed Mexican Delores Hernandez. In response, Delfino Davila shoved the rifle downward, but he was clubbed to the ground and then assassinated. Remaining vigilantes opened fire on the fleeing crowd: two killed and eight wounded. Sheriff Bob Hill and two deputies witnessed the shootings and followed the vigilantes out of town but allowed them to depart without arrests.

To the south of Pixley at Arvin, growers assaulted a picket line using gun butts and pickaxe handlers until a Mexican picketer Pedro Subia was shot dead and the growers opened fire on the unarmed picketers. Only picketers had gunshot wounds, but a sheriff's deputy at the scene arrested two strikers on murder charges and seven others for rioting.

The two incidents of grower violence brought wider and more vocal protest, although no law enforcement effort to restrict firearms or disarm growers. Governor Rolph refused to be involved claiming local law enforcement to be legally responsible for protecting picketers or making arrests.

Unlike the governor, George Creel did not hesitate to take charge. Even though the NRA did not apply to agriculture, he acted as though it did. He announced "This strike is going to be settled in a way fair to all; but the federal government is going to insist on a settlement." He threatened to withhold New Deal agricultural benefits from growers if they did not end their violence, which was enough to bring their reluctant consent to cooperate with the fact-finding commission. CAWIU officials agreed to fact finding as a way to gain

union recognition while a weary and reluctant rank and file agreed to go along in exchange for federal relief funds.

Creel assured the growers he would insist strikers return to work immediately at $.60 a hundred pounds while waiting for the fact finding commission to propose a settlement. Creel would learn the meaning of solidarity because the rank and file refused to work without a contract and they could not be bullied by withholding relief funds, which they refused in spite of hunger and their children's malnutrition

The fact finding commission of three – a catholic bishop, Edward Hanna, a college president, Tully Knoles, and an economics professor, Ira Cross - opened hearings at Visalia October 19, 1933. Farm Bureau attorney, Edson Abel, represented ranchers while Carolyn Decker and an American Civil Liberties Union (ACLU) attorney, A. L. Wirin, represented pickers. Both sides called witnesses to answer questions from the three commissioners, the attorneys and Carolyn Decker.

Attorney Abel opened testimony accusing the commissioners with bias and assuring them the growers would never compromise on their $.60 per hundred pound wage. He called 14 witnesses, 11 of them cotton growers and 9 of them told the commissioners their pickers average 300 to 400 pounds a day with examples of a small number picking well over 400 pounds. Ms. Decker called 13 pickers and two of them testified they might have a few days with as much as 200 pounds, but 11 of the 13 reported 100 to 150 pounds a day.

The commissioners wanted to use the hearings to learn if pickers could make at least $600 a year, considered the minimum earnings for a subsistence living at the time. At 200 pounds a day $.60 a hundred pounds generates only $7.20 for a six day week, except picking 6 days a week for a full calendar year generates only $372. The President of the Agricultural Farm Bureau testified that weekly earnings were $11 to $12 a week, just enough to reach $600 a year picking six days a week year around.

Professor Gross asked the Director of the California Cotton Growers Association, a Mr. Woodward, also a grower "Have you any record of the picking days in the year?" He did not and answered with a simple "No." Attorney Wirin asked him "How many days during the average season are there that they cannot pick?" . . . "Have you any figures for last season?" He did not. Other growers evaded the same question.

About three-fourths of the pickers were Mexicans and Carolyn Decker contacted Enrique Bravo, the Consul for Mexico, for data on their cotton pickers. She found 3 percent could pick over 300 pounds, 30 percent between 200 and 300 and 65 percent 200 or less. Ms Decker further reported increases in prices of a 100 percent or more for such staples as flour, beans, carrots, milk, and beef. Federal price support programs helped raise prices, but not wages. The 1933 wage of $.60 a hundred pounds would be 50 percent more than the 1932 amount of $.40 per hundred pounds but still not enough to maintain purchasing power.

The hearings established the declining economic condition of pickers. In his closing comments Professor Cross stated "The committee is a fact finding body. All we can do is submit the facts as we find them." However, George Creel

wanted commissioners to use their facts to justify a $.75 per pound wage as a binding arbitration. On October 23, 1933 the commissioners agreed to act as arbitrators and announced the Creel settlement as $.75 per hundred pounds.

Both sides denounced the settlement, but Creel threats brought eventual acceptance. For the growers, it was Creel's threat to deny access to federal farm subsidies, but Creel sweetened the deal by assuring the growers that once they accepted he would cut off federal relief to strikers and give full protection to scabs returning to work. Creel explained "I have taken the position that Federal relief must be extended to all strikers up to the time of an adjudication and award, otherwise strikers would be starved into submission. After the Government has heard the case, however, and made an award, I have held that Federal relief should not be given to able-bodied men who have a chance to go back to work."

Creel blamed the strike on a few lawless, communist union agitators while declaring the strikers were ready and willing to return to work at $.75; hardly a new idea in labor relations. However, strikers showed their unanimous opposition by refusing the settlement. Several Kern County growers fearful of losing an entire harvest had offered their pickers $.80 a hundred pounds, which prompted CAWIU leaders to hold out a few more days and for union recognition. Strikers stalled in defiance of the Creel settlement even with heavily armed police and groups of vigilantes at their tent camps demanding they work or else. Finally, on October 26, 1933, strike leaders pressured the rank and file to end the strike for a $.75 wage. The committee issued a statement that "The representatives of the government – i. e. Creel – have made clear to us that the government does not wish to recognize our union. It is clear to the workers, that the government will not recognize any union which has a militant policy of struggle in the interests of the working class."

Creel told the growers and their corporate allies in cotton ginning and processing they needed to avoid violence and share power in labor relations, but he meant sharing with the government not unions. Creel reflected the larger policy aims of the Roosevelt "Brain Trust." They expected to keep order and the economy flowing while assuming their paternalistic good deeds would be the perfect substitute for collective bargaining. Creel got his way the first time, but it would not be long before corporate agriculture and corporate industry realized the Roosevelt Administration would not take political risks defending unions. Another chance to settle agricultural strikes was already underway. (2)

The Imperial Valley Strikes

To the south in the Imperial Valley two CAWIU organizers found militant and angry farm workers with experience in previous CAWIU strikes. Lettuce growers in the valley hoped to avoid CAWIU by negotiating with the Mexican consul at a meeting November 1, 1933. They made an agreement to pay at 22.5 cents an hour for the mostly Mexican pickers in the Imperial Valley. When some of the growers reneged on their agreement lettuce picking came to a halt. Mexican authorities warned the growers the CAWIU would take over the strike, which shortly they did. CAWIU organizers demanded 35 cents an hour, a minimum 5

hour day, clean drinking water, and union recognition among other demands. They set a strike date for January 8, 1934, the peak of the harvest.

The strike that followed came to an end after unrestrained vigilante violence directed by a sheriff, two under sheriffs, two local police chiefs, a state highway patrol captain, a police court judge, and justice of the peace who happened to be farm owners in the valley. Authorities applied brute force to deny rights to assembly. On January 9, efforts to hold a strike meeting in El Centro were attacked by police, sheriffs deputies, state highway patrol, Legionnaires and assorted vigilantes.

On January 12, at another union meeting in a hall in Brawley, a force of police, sheriffs, and vigilante growers showed up with arrest warrants for strike leaders. They surrounded the hall, fired tear gas inside and blocked the doors. Those inside had to break windows to escape. When the hall was cleared, police entered and destroyed everything they could find including kitchen equipment used to serve meals to strikers.

Strike meetings were declared as unlawful assembly. Assembly of two or more brought arrest for vagrancy or disturbing the peace. Many would be released but many were held for indefinite periods. Attorneys from the International Labor Defense fund who entered the valley were arrested and held. State officials from the Los Angeles Regional Labor Board and State Labor Commission were detained by valley police.

Attorney, A. L. Wirin, fresh from the cotton strike hearings, obtained a federal district court Injunction enjoining authorities from interfering in any way with a planned meeting in Brawley at the same hall police raided on January 12. As the meeting hour approached vigilantes and a state highway patrol man beat up and robbed Wirin in his hotel room and then dumped him in the desert town of Calipatria, eleven miles away. He made his way back to El Centro, where a sheriff's deputy advised him to leave California or confront vigilante justice.

Ignoring a federal court injunction in the Wirin abduction brought pressure on the Justice Department to enforce the law. The ACLU expected the Justice Department to send Federal Marshals to the Valley to enforce the injunction. The U.S. District Attorney in Los Angeles refused on the basis that Wirin was only the featured speaker at the meeting, which the vigilantes did not raid or break up. New Deal Attorney General Homer Cummings adopted this excuse, which allowed him to avoid confronting the politically powerful agriculture interests in California.

Next, Senator Robert Wagner of New York appointed a three person commission to investigate the agricultural situation in the Imperial Valley and make recommendations to the president's National Labor Board (NLB). The commission held hearings and made recommendations. Their recommendations called for the NLB to appoint a permanent and impartial federal mediator to promote cooperation between growers and farm workers, but the NLB sent George Creel instead. The timid response of federal officials assured the growers they could continue with brute force, which they did.

Through February and into March 1934, growers used armed vigilantes

to attack picket lines and beat up picketers. They attacked and destroyed strike camps and arrested and held strike leaders in area jails, but kidnappings identical to the Wirin kidnapping went on as their favorite terrorist tool. Ellis Jones was able to publish his story that included a minister, Alexander Irvine. They arrived in Calexico to attend a meeting of farm labor as representatives of the ACLU. Both were abducted in daylight in front of witnesses, and stuffed in separate cars, threatened, beaten, and dumped miles away in remote areas of desert. The minister was over 70 years old. Not all the many kidnappings made it into the news, but word spread until Imperial Valley earned the nickname, Kidnap Valley. Federal authorities continued to dawdle while maintaining violence was a matter for state authorities. (3)

Rather than ignore the protest generated by the grower's organized violence, the New Dealers turned to Secretary of Labor Francis Perkins who announced on March 27, 1934 she would send Pelham Glassford to California to be her special "labor conciliator." Glassford recall did his best to protect the bonus marchers just two years before, but after two years retirement in sunny Arizona he agreed to try what George Creel, the Justice Department and the National Labor Board had failed to do.

Glassford learned from Charles Wyzanski, the Solicitor of Labor, that his assignment did not include "actual police authority" but would rely on the force of his personality to persuade the growers to halt their violence and obey the law. Glassford accepted the early New Deal belief that aggressive union practices disrupted efforts to bring voluntary cooperation between business and labor. In his Imperial Valley assignment he decided initially that growers could be persuaded to abandon vigilante violence and negotiate a reasonable wage for farm workers if the CAWIU was eliminated from the valley.

In his early effort to gain the trust of growers he accepted their contention that CAWIU organizers "only objective is to create dissension, destroy private property and foment a strike." He blamed Mexican agitators for labor troubles. In a letter to his Washington managers he told them "It is absolutely essential at the present time that they [the growers] believe me to be entirely under their control." This pleased the growers but the attacks against union organizers and farm workers continued.

Glassford's efforts were complicated by the continued presence of the ACLU that pressed for federal action to restore civil liberties in the valley. The ACLU officials did their best to publicize the deplorable conditions of farm workers by staging demonstrations at farm towns around the valley. Glassford sought police protection even though he regarded the demonstrations as provocative and irresponsible, but to no avail. At Brawley vigilantes showed up to attack the demonstrators and forced them out of town at gunpoint.

By mid May it dawned on Glassford the growers had no intention of cooperating with him. He rebelled at being the sucker, but stalled until June 8, 1934 when a vigilante objector picked a fight and beat up another ACLU attorney, George Johnston, standing on a valley railway station platform. Glassford denounced the attack and over the next several weeks released a series of

denunciations of grower misconduct.

In a letter June 23, 1934 he told the Imperial County Board of Supervisors ". . . it is my conviction that a group of growers have exploited a "communist" hysteria for the advancement of their own interests; that they have welcomed labor agitation, which they could brand as "Red," as a means of sustaining supremacy by mob rule, thereby preserving what is so essential to their profits – cheap labor; that they have succeeded in drawing into their conspiracy certain county officials who have become the principal tools of their machine."

The scattered successes of the CAWIU convinced the powers in corporate farming it was time to organize for the long term in a statewide group to end union organizing, especially farm labor. In the fall of 1933 they combined to form the Associated Farmers of California (AFC). Members worked through political channels and media campaigns to promote public opposition to unions. They promoted anti picketing ordinances, the use of criminal syndicalism charges against labor organizers and promoted for an end to federal relief for strikers among other things. (4)

After the Imperial Valley strikes, CAWIU organizers moved north and established a union center in Sacramento in the summer of 1934, but a July 20, 1934 raid to enforce California's criminal syndicalism law shut down the center and the CAWIU. Raiders armed with sawed off shotguns and other weapons arrested 18 CAWIU officials including Pat Chambers and Carolyn Decker. They were held for over two years during a steady stream of communist charges and media attacks during a trial that finally ended April 1, 1935 with eight convictions, reversed on appeal. The reversal made no difference for the CAWIU, which disappeared under the official onslaught.

The CAWIU left a record mixed with some success. In 1933 alone there were 37 agriculture strikes, 24 conducted by the CAWIU with nearly 80 percent of the strikers being CAWIU members from an estimated 50,000 agriculture workers that left the fields in strikes. The threat of losing an entire crop allowed gains for 29 of the 37 strikes, with 21 of them gains through CAWIU negotiations. (5)

Agriculture strikes in the East, and South

California had a larger share of corporate farming than other states, which attracted more attention than elsewhere but the depression in agriculture hit everywhere. There were strikes in the cranberry bogs of Massachusetts; in the tobacco fields of Connecticut; in Texas where pecan pickers earned a pittance of $2.73 a week; in the fruit orchards of Washington and the hop fields of Oregon. In Hardin County, Ohio onion pickers wanted a raise of two and a half cents an hour. In New Jersey in June 1934, CAWIU organizers called a strike at Seabrook Farms after layoffs and a cut in wages to $.18 an hour, except Mr. Seabrook had signed a written, one year agreement to pay $.30 an hour. Seabrook blamed the strike on communist agitators and responded by evicting strikers from company housing; deputized vigilantes shot tear gas through the windows and attacked picketers and picket lines. A federal mediator set up a committee of five to mediate wage disputes and then stacked it with appointments of local worthies, hence the Nation

report entitled “Your government as Strikebreaker.”

In Arkansas, the mixed white and black tenant farmers expected federal price supports would help relieve their poverty for lives “below any level of decency.” Instead the terms of the Agricultural Adjustment Act allowed local administration of agriculture programs that directed the financial benefits to their white landlords. The wording of the regulations merely appealed to landlords to act in “good faith” to minimize “labor, economic and social disturbance.”

Appeals for change to Secretary of Agriculture Henry Wallace were met with excuses, but no action. After Wallace would not intervene in local county administration of the programs or provide for tenant representation on county committees, Norman Thomas and others from the Socialist Party, aware of the inequities in Arkansas helped organize and speak for a new Southern Farmers Tenants Union.

Eastern Arkansas had most of the state’s large landowners and corporate farms, the area that brought the most venomous anger, although opposition to a union of tenants brought evictions, threats and sporadic violence from roaming vigilantes in other regions as well; the newspapers printed the usual charges claiming the tenants union organizers were “reds” and communist agitators.

Norman Thomas did his best to pressure the Roosevelt administration describing “a reign of terror” against the Southern Farmers Tenants Union. He sought assistance from Senator Wagner and AFL President William Green but got the brush off. Later in a letter to President Roosevelt he charged his appointees in the Department of Agriculture were “frankly in fear of the southern Senators.” Roosevelt answered the letter by assuring Thomas an investigation soon would be underway, but ignored the cowardice charges. (6)

During his presidential campaign Franklin Roosevelt promised help for the “forgotten man at the bottom of the economic pyramid,” which had to include the farm worker as the poorest of the poor. However, farm workers and domestic workers, mostly black, were excluded from Section 7(a) of the NRA, and also from the National Labor Relations Act about to be passed, and every other piece of labor and social legislation of the New Deal. For these two groups, Franklin Roosevelt looked a lot like the old deal.

Industry Under Section 7(a) of the NRA

Some of the leaders of what remained of organized labor in 1933 realized the potential to recover and advance using Section 7(a), which generated a flurry of industrial organizing especially by John L. Lewis of the United Mine Workers, Sidney Hillman of the United Garment Workers, and David Dubinsky of the International Ladies Garment Workers. Lewis acted quickly in June 1933 to organize new locals and recruit new members. He pushed to get a national collective bargaining agreement put into the NRA codes and demanded and finally got steel industry captive coal mines included in UMW agreements.

Other impoverished and unorganized industrial workers looked for help to organize unions, but they had to confront an AFL and an AFL Executive Council dominated by craft union maniacs determined to keep their craft union

jurisdictions. The AFL Executive Council fought efforts to charter new unions organized by industry. These arguments went back decades but they got worse in the 1930's.

The Executive Council would only allow new charters for temporary local unions; those known as Federal Labor Unions (FLU's). FLU's could accept members unaffiliated with any established international union, but the Executive Council expected to manage these locals until their members could be claimed and parceled out for membership in craft union internationals.

When the AFL dodged or ignored pleas for help in organizing and financial support, some in the unorganized industries tried organizing themselves. The hungry and unemployed almost universally assumed they had the full support of President Franklin D. Roosevelt. Beginning in May 1933 a small group of rubber workers around Akron, Ohio decided they could exploit Section 7(a) to organize a new rubber workers union. They passed out flyers at plant gates and with no previous experience got more than 40,000 to sign cards pledging to join a new rubber workers union. Self help alarmed the AFL Executive Council so much they sent organizer Coleman Clarerty to take charge and organize a FLU and stall off industrial organizing.

The Amalgamated Association of Iron, Steel and Tin Workers continued as a hollow shell of a steelworker's union after the 1892 collapse of the Homestead Strike. It was still a hollow shell in 1933, although it remained an affiliate of the AFL with a charter that allowed industrial organizing. Its aging president was in his eighties and known as "Grandmother" Tighe. In spite of a surge of hope among steel workers the AFL Executive Council remained indifferent to an industrial union for steel workers. The hard pressed and impoverished workforce would have to wait two years for John L. Lewis to takeover.

Electrical workers at Philco Radio wanted to use section 7(a) to replace a company union. On August 3, 1933 they chartered Radio and Television Workers Federal Labor Union, Local 18386. Other electrical workers met to discuss common problems and applied for a national charter from the AFL, but the AFL Executive Council would not approve or support their charter. An existing AFL craft union affiliate, the Brotherhood of Electrical Workers, objected to an industrial union with electrical workers.

In the auto industry, small scale production in individual shops gave way to assembly line techniques in the 1920's where 80 percent of jobs could be learned in a week or less. The companies maintained the absence of union organizing reflected the contentment of the men, but there were collective slowdowns, brief but spontaneous strikes and turnover was extraordinarily high. Men would just walk out and leave work. In 1918 Ford hired 26,500 while 24,349 quit, about half of them just disappeared without bothering to give notice.

The AFL did not have any union chartered in the auto industry as of 1933, but a restive group at White Motors in Cleveland approached the AFL offices there for help. The executive secretary ridiculed the idea telling them "Why, no one can organize that bunch of hunkies down there." When the men approached the communist organizers in TUUL, the AFL took notice and sent organizers to

the plants.

It was the same story in one industry after another. The AFL stalled and tried to deflect industry organizing at a time when the possibilities for union expansion had never been greater. The New Deal gave hope to a depressed and impoverished workforce; the AFL Executive Board ignored it to fight over their personal province. Disgusted members of floundering Federal Labor Unions(FLUs) clamored for action while internal labor troubles compounded the ever present problem of employers who expected to ignore the depression and Section 7(a). (7)

Employers continued to oppose collective bargaining and ignored President Roosevelt's reminder that recovery needs the buying power that higher wages will bring. Many employers decided that company unions would satisfy Section 7(a) and still allow them the benefits of higher prices the National Industrial Recovery Act could provide. Others described Section 7(a) as a mistake and refused to go along and fired union organizers or stalled with lawsuits.

The new National Labor Board found itself in the middle of labor-management disputes without established precedents to guide decisions. Employers frequently denied their employees wanted to join a union and refused to meet union organizers. Efforts to mediate required the board to propose solutions and take positions. When the National Labor Board was established August 5, 1933 the hosiery industry near Reading, Pennsylvania was a month into a strike after management refused to recognize or negotiate with the American Federation of Full-Fashioned Hosiery Workers.

The NLB argued Section 7(a) required employers to meet with employee representatives and negotiate a written agreement. In the wrangling that followed the NLB pressed employers to accept a majority vote and then a majority vote by secret ballot to decide union representation. The process became known as the Reading Formula. The NLB used the formula to encourage striking workers to return to work if management would accept and negotiate with representatives chosen from a government supervised election.

For a short period extending into early 1934 the National Labor Board successfully mediated some strikes through an informal process of voluntary compliance. Their mediation rulings restricted management options to get rid of unions. Except for railroads the government did not previously object or act when management fired their employees for organizing or joining a union. Now the National Labor Board tended to rule against the practice. Before Section 7(a) companies were free to coerce employees into company unions against their will. Now the National Labor Board ruled against the practice and started calling for elections to decide union representation.

Even though Americans revere democracy with majority rule, management fought the Reading Formula. When the Board supervised a representation election it expected to allow all those on the last payroll to vote. Management wanted their strikebreaking new hires to be included but the NLB ruled against it. When a majority voted for a representative, the Board ruled the winner represented all the workers. Management wanted multiple unions to negotiate separate contracts

with a majority union, any number of minority unions and individuals, but the Board ruled against it. (8)

The appointment of the NLB and the use of the Reading Formula introduced a subtle but distinct change in labor relations. Under the Norris-LaGuardia Act the district courts were finally coerced to accept labor unions as legal entities allowed to use their economic power to negotiate wages and working conditions, or to strike without government interference. The courts always allowed corporations to take advantage of their economic power; under the Norris-LaGuardia Act labor unions could do it too. However, under Section 7(a) and the Reading Formula the government returned to interfering in labor relations, but in a new role: they claimed to be an impartial mediator. Now a government bureaucracy expected to enter the process of deciding what union will represent what workers. Previously the AFL always claimed the exclusive right to both decisions; prior to the NLB the AFL determined jurisdiction.

Some of the Strikes of 1934

In spite of the President's support and a practical decision to cooperate by many companies confronted with strikes, many companies refused to meet with the NLB after only a few months. Weirton Steel and Budd Manufacturing were two of the most vocal opponents of Section 7(a), but it would be the automobile industry that would be the undoing of the shaky labor peace during the early days of the National Recovery Act.

In West Virginia, a strike at the Weirton Steel Mills started in October 1933 after Ernest Weir imposed a company union. He agreed to allow his men to vote in a representation election using the Reading Formula until the men were back at work when he announced the upcoming election would be for representatives of the company union only. Company attorneys told the Board they would not be allowed on company property much less conduct an election. Specifically "We will not cooperate."

In Philadelphia, Budd Manufacturing established a company union in response to Section 7(a) claiming support from 92 percent of its 3,000 workers. When the AFL organized a new affiliate claiming members of a thousand Budd employees, the company officials refused recognition. The NLB ordered a new election between the company union and the new union, but Budd defied the order and refused to allow it.

AFL president William Green finally realized he had to send organizers into the auto plants or autoworkers would find alternative groups willing to help them. In June 1933 he appointed William Collins to organize autoworkers into Federal Labor Unions chartered and governed by the AFL and hence, the AFL Executive Council.

Thousands signed up at locals like FLU 18463 in Cleveland or FLU 18384 in Toledo, but there was little progress getting union recognition or a union contract. The auto companies had spies to counter AFL efforts to organize. Spies attended union meetings, while management fired organizers, and otherwise refused to respond to a union. General Motors (GM) officials told the National Labor Board

that "Section 7(a) was a mistake and that they did not intend to live up to it." The union locals wanted the National Labor Board to hold an election using the Reading Formula. GM vice president William Knudsen would not recognize the authority of the NLB or sign an agreement; he would meet only with individuals.

By March 1934 four FLU locals at GM assembly plants threatened to strike over recognition, reinstatement of fired workers, and a 20 percent wage increase. A strike was set for March 21, 1934. Since auto industry sales were leading a shaky recovery, a strike threat made the Roosevelt administration especially nervous.

The President himself intervened and took an active part proposing an agreement. He approved a separate Automobile Labor Board for the auto industry. The settlement included a new labor board that "favors no particular union or particular form of employee organization or representation" that could include multiple unions with "total membership pro rata to the number of men each member represents." The president was so eager for a settlement he overruled his own labor board and the precedent set with majority voting using the Reading formula. He allowed the auto industry to keep company unions and to throw out exclusive representation for one union.

Business was "tremendously happy" with the President's intervention, but no one in the labor movement, down to the lowliest rank and file, failed to see the turnaround after nearly a year of organizing effort. Business continued to bust unions, the AFL stalled and worried about jurisdictions, and now the President appeared to abandon labor support. (9)

The decision favoring the auto industry came March 25, 1934. The Electric Auto-Lite strike in Toledo started April 12. The West Coast Longshoreman's strike started May 9. The Teamsters strike in Minneapolis started May 12. The General Tire and Rubber Workers Strike in Akron Ohio started June 19. The Longshoreman's strike was followed by the San Francisco General strike started July 13. A United Textile Workers Strike in North Carolina started July 16 and expanded up and down the East Coast by September 1.

The Toledo Electric Auto-Lite Strike

Toledo depended on the auto industry, which was hard hit in the depression. The Electric Auto-Lite Company was one of several auto parts companies that sold essential parts like starters and ignition systems to Packard, Nash, Studebaker, Hudson and Chrysler. By 1933 the city's auto parts producers operated under relentless pressure to keep costs down or have the auto industry produce their own parts. Auto-Lite had already lost its Ford contract.

Auto-Lite replaced hourly pay with piece wages in their efforts to cut costs. Management set wage earnings for a countable quota of individual tasks. "Some of these men would be able to work, some of them would be sitting there, and some of them would sit there for hours; and they didn't get paid, not one penny – they didn't get paid a dime." Many worked only a day or two a week. Theoretically those who got work could generate a bonus exceeding the quota, but as always happens, Auto-Lite management decided exceeding the quota proves it was set too low and should be raised.

Years later another of the men described working at Auto-Lite. “You couldn’t go to the toilet. You couldn’t smoke. If you got caught smoking you would have been fired. If you’d get caught eating a sandwich you’d a been fired. If you’d got caught going to the time clock to ring your clock like they do today you’d a been fired. I saw a guy get fired for just walking past to see what time it was.”

Another explained “Seniority didn’t mean anything in those days. You either had to do something for the foreman or you wasn’t working. I knew a foreman that whenever he needed his home painted, he would lay off two or three operators, then offer them the job back if they painted his home.”

In 1933 four guys from Auto Lite’s Department Two decided they could and should form a union. They consulted the Toledo Central Labor Union, which set them up as an AFL Federal Labor Union, Local 18384. They made steady progress organizing in secret until early 1934 when they presented Auto-Lite with three demands: union recognition, a 10 percent wage increase and seniority. Management rejected all of them.

An attempted strike of four auto parts companies followed beginning February 23, 1934. Auto-Lite was one along with Spicer Manufacturing, Bingham Stamping and Tool Company, and Logan Gear Company. Production slowed significantly at Spicer, Bingham and Logan but not at Auto-Lite where only fifteen walked the picket line out of 1,500 Auto-Lite employees. Federal mediators showed up quickly and the employers offered a 5 percent wage increase, but nothing on seniority or recognition. Under pressure to do more the companies agreed to negotiate again in thirty days. That was enough to return to work February 28, but only for thirty days.

Auto-Lite refused to recognize Local 18384 as the bargaining agent for their employees. One of the Local 18384 organizers, Charles Rigby, recalled his meeting with J. Arthur Minch, Vice-President of the company. Minch said, “Well, we have no objections to Section 7(a), but we’re not going to recognize any union.” … “We have at least a million dollars to break your union.” … “You might as well forget it.” Minch used the thirty day lull to hire non-union employees and stock pile tear gas, guns and ammunition. When the thirty days ended April 1 Auto-Lite refused to negotiate further. A new strike started April 12, 1934. (10)

The strike got off to a slow start when no more than half the employees joined the strike; around 400 walked picket lines. New hires and non-union members crossed picket lines amid shouting and some pushing and shoving. Police did not interfere with pickets.

Depression era strikes did sometimes attract an influx of unemployed and the desperate. Management hoped to use them as strike breakers, but in Toledo that proved harder to do. The Lucas County Unemployment League helped organize and support local unemployed and many joined picket lines in a show of support for strikers. The unemployment leagues in Toledo and elsewhere depended on a Dutch born organizer and Christian minister, Abraham J. Muste. He previously served as Dean of the Brookwood Labor College in Katonah, New York and helped found the American Workers Party(AWP) in 1933. AWP hoped to promote

solidarity among the employed and the unemployed along the more practical and non-violent tenets of Marxian philosophy.

Auto-Lite responded by filing for an injunction to end picketing. In a proceeding May 3 Judge Roy Stuart of the State Court of Common Pleas limited pickets to 25 and authorized County Sheriff David Krieger to enforce his ruling.

Two days later Ted Selander and Sam Pollock of the Lucas County Unemployment League and followers of A. J. Muste announced they would not be willing to limit pickets or obey Judge Stuart's injunction. Sheriff Krieger arrested them and charged them with contempt of court. Judge Stuart found them guilty, but after he released them they returned to the picket lines to join a growing band of picketers. Sheriff Krieger arrested them again. The sheriff's efforts to enforce the injunction brought hundreds of arrests and arraignments, but Toledo had no facility to hold them. Many defied the Judge and the Sheriff and returned to the streets to picket.

The arrests attracted attention and publicity that energized the picketers. A series of rallies over three days attracted large crowds of a thousand, then 4,000 and then 6,000 on Wednesday May 23. Kreiger responded by hiring special deputies, but they were not from the pool of laid off Toledo police and none had experience as police officers. It didn't help either that the new deputies were paid by Auto-Lite and wore street clothes with just an arm band to identify themselves. Kreiger previously ran for state office from the Republican Party with the support of Clement Miniger, president of Auto-Lite, suggesting that Miniger had influence in these decisions.

The Sheriff decided "to take the offensive Wednesday." He arrested speakers and leaders before a crowd estimated at more than 6,000 that filled Champlain Street along the front of the Auto-Lite plant. He stationed deputies with tear gas on the roof of the plant. One of the union organizers John Jankowski described the incident that set off rioting. "What started the worst thing of all was when one of those scabs from the fourth floor threw a piece of steel that was inside of a generator in a coil, dropped it, and hit a woman on the head. Cut her head open while she was on the picket line. That's what started it." . . . "I wouldn't want to be guilty of anything like that, because they were ready to tear them screens down to get into that building and get that person who threw that down. So, that's when that war started."

Police deputies lofted tear gas bombs into the angry crowd that surged forward throwing bricks from the brick streets that wounded deputies and broke out every window on plant buildings. Cars in the parking lots were overturned and set afire in a rampage that went on until after midnight. Rioting picketers set up barricades at exit doors to the plant, locking 1,500 strikebreakers inside for the night.

Governor George White mobilized the Ohio National Guard. They arrived with 900 troops in 8 rifle companies and three machine gun companies at about 4:30 a.m. the next morning, May 24. The National Guard forced the crowd back and evacuated the plant of its weary strikebreakers after their nervous night in the dark.

Adjutant General Frank Henderson soon found out he would not have an easy time dispersing rioters. The previous days rioting attracted even bigger crowds that taunted and ridiculed the untrained and inexperienced guard troops. They were mostly high school students. Guard troops could not control the crowds with tear gas; some of the union rioters came ready with gloves, allowing them to toss smoking canisters back at the guard troops and through the broken windows of the plant. By afternoon bricks were flying through a haze of tear gas in a series of charges and counter charges. The crowds would attack with a hail of bricks forcing the troops backward against the walls of the plant; the troops regrouped and countered charged forcing the crowds backward in a confrontation with rifles and bayonets. After several rounds the guard troops opened fire into the rioters killing two and wounding fifteen.

Shooting did not disperse the angry and desperate crowds. In the evening in the dark the crowds advanced to the plant; guard troops opened fire again, wounding two. Adjutant General Henderson mobilized four more companies of troops and then demanded Auto-Lite shut down, which they finally agreed to do. Calls spread for a general strike.

Friday was quiet, but another large crowd estimated at 5,000 was in the streets on Saturday, May 26. Union leaders demanded the plant be emptied and shut down completely and the guard removed. In yet another melee fifty were arrested and many more injured.

The Department of Labor sent Charles P. Taft, son of former President and Chief Justice William Howard Taft, to mediate. Two others Eugene Dunnigan and Ralph Lind of the Ohio Regional Labor Board arrived to help. The three mediators tried to limit negotiations to Auto-Lite and Local 18384, but the Auto-Lite Council, a company union organized just before the strike, demanded priority for re-employment over members of Local 18384. Auto-Lite wanted the newly formed Automobile Labor Board to mediate if the union would withdrawal pickets and return to work. Union leaders decided to allow Taft to address the membership followed by a yes or no vote. The membership turned it down, but agreed to a Lind alternative proposal to have production shut down during an arbitration. The membership agreed but now Auto-Lite turned it down.

At this point the two sides gave up looking for outsiders to settle their strike. Clement Miniger was negotiating to sell Auto-Lite to a Texas investor, Royce Martin, at the time of the strike. Lind was able to get Martin and the union to agree to a five cents an hour wage increase, a minimum wage of $.35 an hour, union recognition, arbitration during the contract, and a system for re-hire among loyal, striking and strikebreaking employees. It would be loyal employees first, strikers second and strikebreakers third. The two sides agreed to the settlement June 4 with the help of Federal mediators. Governor White withdrew guard troops and the plant reopened June 5, 1934. Loyal and striking employees returned to work, strikebreakers mostly did not. Recognition of a union finally came three years and eight months into the depression that followed the stock market crash, a year after passage of Section 7(a) and a week of rioting. Recognition meant progress, but Local 18384 was a Federal Labor Union under the control of the AFL Executive

Board. Given its general membership, it could have been the beginning of an industrial union in the automobile industry, but it was not to be. (11)

The Minneapolis Teamsters Strike

The Minneapolis of 1933 remained a fortress of the open shop. Back in 1908 Minneapolis employers organized a membership association: the Citizens Alliance. It maintained an active program to keep unions out of Minneapolis, using spies and informers among other efforts. Alliance members did not acknowledge the depression or that Section 7(a) could make a difference in labor relations.

They might have continued to keep unions out of Minneapolis except for the organizing skills and gritty determination of the Dunne brothers, Ray, Vincent, Grant and Miles and like minded labor organizers: Carl Skoglund, Farrel Dobbs, Bill Brown. Ray Dunne had experience as a lumberjack and IWW member out west, but returned to his native Minnesota to work as a truck driver delivering coal, an important heating fuel at the time. From 1921 to 1934 he worked for De Laittre Dixon Coal Company as a driver, weigh master, dispatcher and superintendent when in 1933 a subsidiary of Ford Motor Company bought out De Laittre and then fired him for political activity.

At the time Dunne was fired General Drivers Local No. 574 of the International Brotherhood of Teamsters was a Minneapolis affiliate that avoided doing anything to offend the business community of Minneapolis and International Brotherhood of Teamsters President Dan Tobin.

Some of the dissatisfied rank and file wanted action to exploit Section 7(a). Given Ray Dunne's years of service at De Laittre he knew hundreds of local drivers and how unhappy they were with the status quo. He was also an expert organizer able to exploit the charter of Local 574 that did not specify that members must be drivers and drivers only, but allowed organizing everyone in the trucking industry.

By spring 1934 the Dunne brothers had several thousand signed up as dues paying members of Local 574. On April 30, 1934 they demanded a closed shop, shorter hours, average wages of $27.50 a week and premium pay for overtime. (12)

The Citizens Alliance set up an Employer's Committee to resist the union and announced it would not recognize the union or allow a closed shop. When the new Regional Labor Relations Board tried to mediate, the Employer's Committee refused to acknowledge their authority claiming they must protect the open shop and the rights of all workers not to join a union. The union dropped its demand for a closed shop and requested a written agreement under Section 7(a) instead, but the Employer's Committee withdrew from negotiations. A strike date was set for May 15, 1934.

The local press took the employers side forcing Local 574 to publish its own paper. The Employer's Committee described the union as social outcasts threatening the peace and welfare of Minneapolis. International Teamsters President Dan Tobin and the AFL leadership hurt the union cause by publicly opposing the leadership of Local 574 claiming "inside" workers were not truckers

within the union's jurisdiction.

The strike and picketing shut down "every wheel in the city". The union managed the strike from rented headquarters, directing cars and bands of picketers to key streets and intersections. Years later one of the Minneapolis police officers on the streets for the strike described the Dunne brothers as "soft spoken, gentlemanly little fellows, but tougher than hell!" and the strike as "beautifully organized." He went on about the organizing to say, "They had their own hospital. I think it was in a garage on Fourth Avenue around Twenty-fifth Street. They had their own canteen. They took care of their own wounded, fed their own people. Just a terrific job."

The opposition called for action to form a "citizens army" to "move trucks through the picket lines if necessary." The mayor authorized hiring 500 special deputies. Minnesota Governor Floyd B. Olsen attempted to mediate, but could not get the Employer's Committee to recognize the union. He proposed a system of arbitration for wage disputes, but the Employer's Committee replied there was nothing to arbitrate "as admittedly "it is a fair scale." They announced they would bargain collectively with "any duly selected and accredited representatives, selected by the employees of the firm; provided, however, that we will not enter into any written agreement with any organization of any kind of nature." They expected to repudiate Section 7(a).

Tension turned to violence Saturday May 19 when a union stool pigeon arranged for picketers to be dropped off along an alleyway of the Minneapolis Tribune building. Police waited to seal off the alley and beat picketers with lead pipes and baseball bats. The unarmed and unprotected picketers took a severe beating in the first altercation, dubbed the Battle of Tribune Alley.

By Monday the police department had 500 citizen deputies recruited from the ranks of salesmen, meat cutters, clerks, musicians, teachers, lathers, and electricians. They were offered $4.68 a day to serve, more than the striking truck drivers. Businessman Totton Heffelfinger added more recruits including local college students.

Early Monday May 21st police patrolled the area around the loading depots to protect regular truck deliveries. The union was ready with 600 picketers, now armed with pipes and clubs, who arrived marching four abreast to contest truck deliveries. Police circled and pulled their guns to keep picketers at bay, but a panel truck full of pickets roared around the corner and into police lines. That set off a club swinging battle that went on for hours. No shots were fired in the close quarter fighting which helps explain why the police got the worst of the fight. Over thirty police were injured badly enough to visit local hospitals. No trucks made deliveries.

An estimated 20,000 showed up the next morning to mill about the delivery depots, many were spectators. Radio station KTIP arrived to broadcast running commentary and then some of Totton Heffelfinger's recruits showed up in jodhpurs and polo helmets like it was a sports competition. Fighting started after a picketer launched a crate of tomatoes through a plate glass window. In the club swinging, head-busting street fight that followed picketers attacked the citizen

deputies as strike breakers, chasing them through the streets and beating them as they ran off in what was later dubbed the Battle of Deputies Run. Two of the citizen deputies were killed and many wounded. One of the dead was a graduate of prep school and the Ivy League, and President of the American Ball Company; he apparently did not understand the danger of taunting working class anger in the great depression.

Governor Olsen called for the National Labor Board to intervene in place of the Regional Labor Board and then cajoled the parties into a 48-hour truce. The governor persevered to get the union to settle based on a written agreement to have strikers reinstated with hours of work to be determined by NRA industry codes, to have the officers of the union represent all members of Local 574, and a method of settling disputes with arbitration. The agreement allowed Local 574 to represent drivers and helpers and all other persons engaged in trucking operations. The difference between "inside" workers and those engaged in trucking operations was not defined.

The Employer's Committee negotiated for all the trucking firms in Minneapolis when it accepted the agreement but then refused to speak for them. The Employers Committee left it to Local 574 to seek ratification as separate agreements for each of the 166 employers affected in separate agreements. (13)

The union accepted the limitations, halted picketing and returned to work, but it proved to be a brief period before the next strike that began in July. The employers refused to honor the terms in the agreement they signed. Employee paychecks reflected higher wages payable only at the company payroll window, where they were charged fees. The employers refused to appoint representatives to arbitration boards and asserted employees could arbitrate as individuals before the Regional Labor Board. The Regional Labor Board could make recommendations but relied on voluntary compliance. When the Employers' Committee refused to comply another strike became certain.

Both sides returned to public relations where the employers claimed the strikers intended to foment communist revolution with a strike that threatened civil, economic and political order in Minneapolis. The employers underestimated the growing support for the union position. A motorman later expressed the sentiments for the Minneapolis working class in an interview. "When this broke out in 1934, this was something new in the labor movement. They had leadership that really knew what to do. They took possession. All of the tactics they could use to bring this thing into being I learned as I went along. I was a dumb cluck, you know, but I could see they really knew what to do. . . . It wasn't a private affair. Everybody came [to the mass meetings]. Everybody was welcome. . . . Whenever I got the opportunity I went down. Whole families went down there. It was a perpetual picnic."

Monday evening July 15, union members endorsed their leaders and voted to strike again at midnight. Federal mediators Father Francis J. Haas and Eugene H. Dunnigan tried to mediate the strike with a series of compromise proposals. The mayor requested troops from Governor Olsen who replied "I will not take sides. I will enforce law and order if necessary. I feel the strike could have been

prevented." Chief of police Michael Johannes told his men "We are going to start moving goods. Don't take a beating. You have shotguns and you know how to use them. When we are finished with this convoy, there will be other goods to move. The police department is going to get goods moving. Now get going, and do your duty."

The second strike like the first brought truck deliveries to a halt. After four days the police decided on a show of force by escorting a delivery truck with 12 squad cars, each with four police armed with shotguns. Strikers had warning that police intended to have armed escorts, but they went ahead and drove a truck full of picketers in front of the police convoy.

Police jumped from the squad cars and opened fire with shotguns and side arms in a confrontation soon known as Bloody Friday. There were 67 wounded, two killed. Governor Olsen ordered an investigation that later determined twenty-five were shot in the back. His report found "Police took direct aim at the picketers and fired to kill; physical safety of police was at no time endangered; no weapons were in the possession of the pickets in the truck; at no time did pickets attack the police, and it was obvious that pickets came unprepared for such an attack; the truck movement in question was not a serious attempt to move merchandise, but a 'plant' arranged by the police."

In spite of the attacks and the losses the strike went on. The union would not give in and betray those killed and wounded in the Friday attacks and the Employer's Committee repeated their intention to move the trucks. That was enough for Governor Olsen who declared martial law July 26. The National Guard ended picketing, imposed a curfew and doled out permits to allow some deliveries for necessities.

Mediators Haas and Dunnigan made new proposals but both sides continued their belligerent tact. The union called for a mass meeting and threatened to return to blocking traffic in defiance of the governor. Governor Olson responded with a raid on union headquarters and arrested and jailed two Dunne brothers and several others claiming they did not have a permit to hold a mass meeting. He also raided the Citizen's Alliance, possibly to even the score or to establish his authority to keep the peace. (14)

The Governor finally lost his patience with the rounds of violence followed by niggling and hectoring. He stated "I have carefully read the statements of the Employers' Committee with reference to the Haas-Dunnigan wage scales, and find nothing in those statements which in any way challenges the fairness of those scales." On August 5 he published an executive order to the National Guard revoking all trucking permits making it necessary for trucking companies to accept the Haas-Dunnigan proposal as a condition to operate their trucks.

The Citizens Alliance responding by filing suit in federal court demanding an injunction to halt the use of martial law. The governor appeared in person before the court to represent the state. He contended martial law could not be subject to judicial review. In closing he informed the court he would not be responsible for the consequences if they ruled against him. They did not; although they took the opportunity to criticize him in their written opinion.

Still the employers would not settle. Members of the Minneapolis Central Labor Union were able to meet with President Roosevelt's advisor Louis Howe. It surfaced in their August 8 discussions that members of the government's Reconstruction Finance Corporation were loaning money to Minneapolis employers to support their cause. The new revelations brought a meeting between mediators Dunnigan and Haas and two Minneapolis bankers that finally brought serious negotiations to end the strike.

The Employer's Committee agreed to dismiss the strikebreakers they hired after July 16, to rehire all the striking employees and to have a minimum wage before arbitration. Haas and Dunnigan drew up a written agreement, but the Employers Committee demanded elections to authorize collective bargaining and arbitration. After four days to think it over the two sides accepted the Haas-Dunnigan contract and set plans for elections. The strike ended August 22, 1934 with union recognition; the right to represent all its members as an industrial union; and wages set at $20 for a 40 hour week for drivers, and $16 for helpers and inside workers.

The union made gains after putting up a determined and ferocious fight that brought them beatings, gunshot wounds and death. Maybe it was the desperation brought about by depression or the hope built into Section 7(a), but there was also active support by the governor and some behind the scenes negotiating by the Roosevelt administration to get what they got.

The violence and confrontation subsided after the Citizens Alliance finally recognized labor unions. Local 574 took the lead in labor relations in Minneapolis, helping and advising other unions, but President Dan Tobin expelled Local 574 from the International Brotherhood of Teamsters. It soldiered on as an independent union in a divided labor movement. The Citizens Alliance published "The Truth Concerning the Two Truck Drivers' Strikes in Minneapolis" to justify their position and warn about labor and the communist movement. (15)

The West Coast Longshoremen's Strike

In the 1920's maritime unions on the East and West Coast all but disappeared. Management operated company unions where anyone getting work on the docks had to be a member in good standing. This meant dock workers with a chance of working had to have their name listed in a Blue Book controlled by port officials; company unions were derisively referred to as Blue Book unions.

Harry Bridges worked as a winch operator on the San Francisco docks, an area known as the Embarcadero. "We have been hired off the streets like a bunch of sheep standing there from six o'clock in the morning, in all kinds of weather; at the moment of eight o'clock, herded along the street by the police to allow the commuters to go across the street to the Ferry Building, more or less like a slave market in some of the old world countries of Europe." The abusive process of daily job auctions known as the shape-up represented the worst possible side effects of a depression era surplus of labor. It allowed foreman to be tyrants and accept kickbacks while the steamship companies worked the men to exhaustion hooking cargo on a winch hour after hour. (16)

Bridges realized the need to organize at all the ports up and down the West Coast. To have a chance at success they had to have a single agreement otherwise the shipyard owners would shift the work to other ports. As Bridges summed it "What we had to learn and understand was that the ships moved and took the jobs with them – so we could not let the ships leave any port if we wanted to win our demands."

On February 25, 1934, after an industry wide meeting, Bridges and the International Longshoremen's Association (ILA) demanded a union hiring hall in place of the shape-up, a $1.00 an hour wage, a thirty hour week, and $1.25 an hour overtime. They threatened a strike beginning March 23, 1934 if waterfront employers continued to ignore them. The employers refused all demands but Bridges engineered a virtually unanimous strike vote in every port from San Diego to Puget Sound.

The San Francisco ship owners made plans to bring in strikebreakers and house them in old passenger ships they intended to moor in the harbor where they could keep them away from picketers. The ship owners counted on the Teamsters union to cross picket lines based on their decisions in other strikes.

The San Francisco police chief, William J. Quinn, regarded union organizers much the same as California law enforcement officials everywhere; picketing and mass meetings were communist activities to be put down by force. The chief of police of Los Angeles complained "In some of the larger cities it isn't possible to use some of the methods we use in some of the smaller cities and counties. God knows we would like to put them all in the hospital, particularly the leaders, but we can't get away with it anymore; . . . too many sentimental Alices take their side."

As the chance of a strike increased, Chief Quinn assembled a special task force of patrolmen, mounted police and radio cars, but the unemployed longshoremen had many more unemployed to sympathize and add to the protest. A newspaper reporter from the San Francisco News commented that many of unemployed have no prospect of a job after months of unemployment and so have "accumulated a vast feeling of protest."

Worry about the potential for violence and economic losses from the scheduled strike convinced President Roosevelt to ask for delay. He appointed a special mediation board, which held three days of hearings beginning March 28 followed by recommendations announced April 1, 1934. The board recommended a plan of procedures for representation elections, hiring halls operated as a "joint venture" of employers and longshoremen, but with employment divvied up locally. Finally, wages and hours would be fixed later by an arbitration board with an impartial chairman.

At a meeting of the San Francisco (ILA) local on April 9, the rank and file turned it down cold with Harry Bridges to explain the deal looked more like endless negotiations than agreement. The rank and file voted to suspend their president as "too conservative" and returned to repeating their original demands. Then on April 30, the employers gave notice they would cease negotiations May 7 without a more serious offer by the union. Strike votes at one port after another

brought large majorities for a strike to begin May 9, 1934. (17)

Once the strike started picketers turned out in large numbers while the employers insisted they would keep the docks open. On the first day at least 500 strikers showed up at the recruiting office in San Francisco to confront scabs. Police beat strikers with Billie clubs; strikers responded with a hail of rocks and bricks. The police prevailed, but sustained enough injuries for police Chief Quinn to announce "From now on strikers will be shown no quarter." Similar battles were reported at Fresno, Portland, Seattle and up and down the west coast.

In just a few days the Teamsters rank and file joined the strike and refused to drive loaded trucks off the docks in defiance of their leadership that wanted them to honor their contracts. Most of the sailors and seaman, organized and unorganized, joined the strike, even some of the ship captains. In only a few days all of the maritime seamen's unions joined the strike: cooks, stewards, engineers, deck officers, mates and pilots.

In a week the entire West Coast shipping came to a halt while the three state governors begged for federal help. Secretary of Labor Francis Perkins sent assistant Secretary of Labor Edward McGrady. He got to San Francisco May 17 and went to visit the employers before union officials and then announced he expected a committee of business leaders and a committee of strike leaders to have the authority to meet and make a binding settlement. McGrady did not take time to understand the rank and file controlled the strike and expected to vote, yea or nay on any settlement. Harry Bridges informed McGrady a settlement would need to be voted in by the membership.

McGrady did not take rejection well. At a press conference he informed the country that "Reds" controlled the strike. "I have observed that communists through direct action and by pleas made in the widely circulated communist press here, are trying to induce the strikers to remain out despite of our efforts to arbitrate."

The McGrady claims brought Congressional attacks on Secretary Perkins for ignoring Harry Bridges; they declared him "a known communist." Perkins cited a San Francisco immigration office investigation that could not find "any evidence " that Bridges "has ever been a member of the Communist Party." Police Chief Quinn wired authorities in Bridges hometown of Melbourne, Australia looking for evidence against him, but a disappointed Quinn remarked the report "reads like a recommendation for a high class job."

After McGrady's failure came Joseph Ryan, the President of the International Longshoremen's Association(ILA). He arrived from New York expecting to use his authority to get a settlement. He was a product of East Coast ports and like McGrady did not acknowledge the power of the rank and file on the West Coast. Like McGrady he decided people who said and did what Bridges said and did must be communists.

In a press conference Ryan announced he did not care about the closed shop, but Bridges and the rank and file expected a hiring hall with a closed shop and solidarity with other unions, not more blather. Ryan met with ship owners and reached agreement on a strike settlement. The settlement dropped the union

hiring hall in exchange for union recognition that made employers free to select their men. In other words the shape up would continue. Ryan announced the settlement as a fait accompli on May 28, 1934. On May 29, Ryan tried to defend his settlement before the rank and file, which turned it down by unanimous vote in an angry confrontation.

With Ryan and Bridges at odds the Chamber of Commerce and an industrial association of local businessmen decided to get involved with strike negotiations. At a meeting of 60 businessmen they organized a committee of seven to enter negotiations. In turn the labor unions combined to form a fifty member Joint Marine Strike Committee. They elected Harry Bridges chair. Positions hardened under threats of violence and a general strike, but Ryan continued to work with the Chamber of Commerce and the industrial association while excluding Bridges from the talks. On June 16, Ryan, the ship owners and all of corporate San Francisco announced a second agreement, but again it put the ship owners in charge of hiring halls, little disguised by some moderating language.

Every important person in west coast business, government and labor signed the agreement: Joseph Ryan, President of the International ILA, Michael Casey and John P. McLaughlin of the San Francanciso Teamsters, Local 85, Dave Beck of the Seattle Teamsters, two federal mediators, Charles Reynolds and J.L. Leonard, mayor of San Francisco, Angelo Rossi and J.N. Forbes of the Industrial Association. However, they ignored Harry Bridges and the rank and file. Bridges took charge of a Sunday, June 17 meeting in San Francisco where he called the agreement a sell out, negotiated without consulting the membership. San Francisco and all the West Coast locals except Los Angeles voted to reject it. (18)

The waterfront employers from the industrial association got police protection to clear the picket lines and drive trucks off the Embarcadero beginning June 24. Fearing trouble, Mayor Rossi asked for more assistance from President Roosevelt who appointed a National Longshoremen's Labor Board. After talks went nowhere the industrial association members decided to open the Embarcadero without further delay, no matter what. On July 3, they had trucks ready to go with protection from 700 police armed with tear gas and riot guns.

Pickets assembled early along with thousands of the curious who turned out to watch. At 1:27 p.m. a police captain, Thomas Hoertkorn, brandishing a revolver yelled out "the port is open" and five trucks drove out from Pier 38. Pickets armed with railroad spikes, bricks and rocks pelted the trucks; police used tear gas, billie clubs and side arms. The contest went on for hours with several dozen injuries, one fatal, but the trucks went back and forth to their warehouse as planned.

Fighting withered away in the evening of July 3 and did not resume until July 5, following July 4th festivities. Governor Merriam supported the ship owner's demand to open the port: "I will call upon the National Guard, the citizens of San Francisco and every citizen of the commonwealth to support the government." Both sides showed up ready for a bigger battle. The industrial association brought ten trucks and 800 police, some of them on horseback; strikers had thousands of pickets and thousands more sympathizers. The press showed up in force to

report the story they would label “Bloody Thursday” and the Battle of Rincon Hill. Venders sold candy and refreshments.

The first battle of July 5 got underway at 8:00 a.m. when 3,000 pickets refused to move when police ordered them back from a Belt Line railroad locomotive pushing two box cars toward the docks. Police advanced; picketers bombarded them with a hail of rocks and set fire to the rail cars. Fire trucks arrived but police turned the hoses on the picketers.

Thousand of strikers were lined up at Pier 38 ready to attack scab trucks attempting to enter the docks, but police charged them using firearms and a barrage of tear gas. At least four strikers fell wounded as strikers retreated toward a high knoll known as Rincon Hill where they took up defensive positions and erected ramparts from bricks that remained from a building recently torn down.

A reporter looked down from Rincon Hill where he heard gun shots and watched mounted police charge up the hill shooting tear gas as they came. Strikers threw rocks and bricks down the hill forcing police to retreat, but they dismounted and made several more charges on foot. They made their way up the hill in a cloud of tear gas, but by then the strikers had scattered and the tear gas canisters set fire to the grassy hillsides. Fighting broke off in the confusion, but would resume in the afternoon along the Embarcadero and then onto Market and Steuart Streets.

The afternoon battles played out with rampaging crowds much like the morning, except the crowds got bigger, involved more commuters and bystanders and there was much more shooting. Thousands watched from office windows as police lined up to shoot waves of tear gas on the streets leading into the embarcadero while mounted police charged into the crowds with billie clubs. Police on foot dragged suspects from offices and hotels. Picketers littered the street bleeding; some unconscious. During the shooting three men fell in the street from police shotgun blasts. Two died: Nicholas Counderakis [a.k.a. Nick Bordoise], a member of the cooks union, and Howard Sperry, an unemployed seaman; a third, Charles Olsen was hit in the shooting but survived; no police were shot. The newspapers reported 30 as shot with 67 wounded, but streets filled with blood and broken glass suggest there were more.

In the afternoon, July 5th, California Governor Frank Merriam called out the National Guard to enforce martial law along the Embarcadero, which ended the fighting but left strikers floundering for their next move. As chair of the Joint Marine Strike Committee, Harry Bridges called a meeting of city unions, which took place July 7. Bridges and others urged calling a general strike, which the union leadership opposed.

July 8th and 9th brought a pause when tens of thousands turned out for a funeral march for Counderakis and Sperry killed on July 5. Delay did little to diffuse general strike sentiment at least among the rank and file, who invariably supported a general strike by wide margins. The San Francisco Labor Council met Friday July 13 in a meeting that allowed each union five delegates to discuss and vote by delegation for a general strike. When the voting finished 105 unions agreed to join a general strike; 5 stayed out. Two of the five were milk wagon drivers and bakery drivers. The San Francisco General Strike got underway Monday July 16;

all work came to a halt. No streetcars, buses, or taxis operated. Deliveries stopped except milk and bread wagons. Filling stations, theatres, restaurants, shops, all closed: approximately 40,000 in San Francisco with an estimated 130,000 up and down the West Coast did not work. (19)

The legacy of Harrison Gray Otis lived on in California newspapers. It turned out John Francis Neylan, General Counsel for the Hearst newspaper empire, organized a meeting of San Francisco publishers and in the style of union collective bargaining worked to coordinate them against the strike. Neylan told his guests it was their duty to protect "our community" from communism and so prevailed on them to have a committee to clear editorials and stories about the strike. They all condemned the strike as communist revolution and exaggerated every worry anyone thought to have.

The San Francisco Chronicle ran a story entitled "Red Army Marching on City." It claimed without the slightest evidence that a "communist army planned the destruction of railroad and highway facilities to paralyze transportation and later, communications, while San Francisco and the Bay area were made the focal point in a struggle for control of the government." Mayor Rossi provided money for ammunition and 500 more deputy police. California Senator Hiram Johnson wrote "Here is a revolution not only in the making but with the initial actualities. … Not alone is this San Francisco's disaster but it is possible ruin of the Pacific Coast." Governor Merriam wanted to deport Australian Harry Bridges, one of the earliest of many future efforts to deport him. To Bridges "The general strike was brought about by us and deliberately planned by us as a mass protest against the killing and the murder of the men on the waterfront."

The rank and file agitation for a general strike took place while President Roosevelt sailed to Hawaii on a vacation trip aboard the cruiser U.S.S. Houston. He left Secretary of Labor Francis Perkins in charge, although the men of the administration felt justified making their case to use force to break the strike. In her memoirs Perkins wrote the strike "was in no way an alarming situation and that the likelihood of anything more than a brief strike of delivery and transportation workers was remote, and I thought it unwise to begin the Roosevelt administration by shooting it out with working people, who were only exercising their rights under the constitution and laws, to organize and demand collective bargaining."

The official propaganda campaign justified organizing a vigilante committee to carry out police assisted raids, which started in earnest on Tuesday, July 17, the second day of the strike. Police and vigilantes raided the offices of the Marine Workers Industrial Union near the Embarcadero. National Guard blocked the ends of the streets and trained machine guns on the hall as an aid to police who arrested 85 and in the process destroyed the union hall, wrecking office and kitchen equipment. There was indiscriminate raiding at other offices, meeting halls and some homes and apartments with arrests usually on a vague charge of vagrancy. Judges indulged the vigilantes by setting high bail in more than 300 arrests. (20)

The SF General Strike was a mass action of the rank and file, influenced

by the persuasive powers of Harry Bridges, but it involved other San Francisco unions with more cautious officials than the Longshoremen and Seamen. They never agreed a general strike was a good idea even though their rank and file did. When the Labor Council met Tuesday evening, July 17 they had a majority of more cautious members to urge all issues of the longshoremen and seamen go to arbitration. Bridges did not want to arbitrate the hiring hall, but the ship owners continued to refuse arbitration at this point.

The Labor Council's vote put considerable pressure on the Longshoremen to allow their dispute to go before FDR's Longshoremen's Labor Board, which signaled it was ready to arbitrate the dispute. The Longshoremen's Labor Board expected the Longshoremen's union to arbitrate all issues along with the ship owners and seamen, and demanded the Labor Council call off the general strike, which was already beginning to lose energy as Ms. Perkins predicted; some restaurants opened the second day and trolley service was back by mid week. After a long debate the Labor Council voted 191 to 174 to end the General Strike by ordering all those honoring the strike in sympathy to the Longshoreman and Seaman to go back to work.

The Longshoreman's strike continued, but after stalling the ship owners yielded to the pressure enough to agree to arbitrate with the Longshoremen but not the seamen. They claimed seamen did not have a union making arbitration impossible. It took a few more machinations by John Francis Neylan. He played host to a meeting of ship owners where he could pressure them to include the seaman. After the meeting Neylan released a press statement announcing ship owners would include the seamen's union in arbitration "if and when they selected representatives under direction of FDR's Longshoremen's Labor Board." Some speculated Neylan published the statement without approval from the ship owners, but finally there would be arbitration.

Harry Bridges was the last hold out. He still did not want to arbitrate control of the hiring halls; he wanted hiring halls as union and union alone. West Coast ILA officials responded by organizing a vote of the membership. The vote was 6,504 to 1,525 to allow the hiring halls as part of the arbitration and so Bridges had to back off. The unions agreed their members would return to work at 8 a.m. July 31, 1934, before the arbitration hearings and decision. The strike of 83 days came to an end.

President Roosevelt's Longshoremen's Board took its time, holding extensive hearings before making their decision announced October 12, 1934 in a ruling that respected Bridges and the ILA on almost all matters in dispute. The Longshoremen's Board set wages at $.95 an hour with overtime at a $1.40 for a six hour day and a thirty hour week averaged over four weeks. "The hiring of longshoremen shall be through halls maintained and operated jointly." … but . . . "the dispatcher shall be selected by the ILA union." A joint Labor Relations Committee of six - three from each side – would operate the hiring hall at each port. The committee would establish a registered list of longshoremen to be hired before others, non-union. All disputes would go to arbitration. Employers maintained the right to decide the method and equipment on the waterfront

while assuring safety and health of employees. A similar agreement decided the outstanding disputes for the International Seamen's Union. (21)

Harry Renton Bridges emerged from the strike as a respected and successful labor organizer, hated and feared by the ship owners and corporate America. He was an immigrant Australian who followed the I.W.W. legacy as incorruptible and by giving expression to the needs and frustration of the rank and file. He understood the class war and demanded respect for the working class. Years later he described one of his pet peeves. "I used to tear my guts out trying to tell them [the rank and file] they were just as good as anyone else around here; that they could become respected members of the community; that someday they'd be accepted."

Many of those who heard him remarked on his effective speaking characterizing his words as "cold" "clean" "clear" "rapid fire" "precise" and a "hammer blow." After Bridges made the Longshoremen's case before the Labor Board, a spokesman for the industrial association who heard him commented: "Bridges made an extraordinary presentation before the Board speaking without notes and extemporaneously. He showed not only unusual command of the subject matter but of the English language as well. Employers were able for the first time to understand something of the hold which he had been able to establish over the strikers both in his own union and in the other maritime crafts."

Various journalists expressed dismay that such a plain looking man, lean and almost bony who spoke in matter-of-fact tones could be such a tough minded and shrewd master of collective bargaining with an excellent memory, so useful to field hostile questions or cross examinations and persuading the rank and file.

In her memoirs Francis Perkins described him based on their meeting during the San Francisco strikes: "He was a small, thin, somewhat haggard man in a much worn overcoat, the collar turned up and pinned around his throat and with a cap in his hand. He was polite, deferential, hardly finding voice to make demands for the Longshoremen. His suggestions seemed practical and reasonable. I recall putting down in my mind that he was a typical British worker." As the head of the Longshoremen in the months to come he accepted pay less than the men on the docks.

Secretary Perkins further remarked that Bridges dominated West Coast industrial labor relations for many months after the San Francisco strike, which brought "violent protest against him locally and nationally." Corporate America attacked him as a communist working to overthrow the government. It was early for "commie" tirades, but even in 1934 the press, the public, and the politicians expected an investigation of "Reds" and communist charges. To corporate America he had to be a communist because he fought for equal rights and the right of collective bargaining for the working class. He would spend close to two decades defending against communist charges, but he never joined the Communist Party, nor did he attend its meetings as he proved repeatedly in deportation hearings and federal court proceedings, as we shall see. (22)

East Coast Textile Strikes

The troubles that brought the 1929 strikes at the mills in Elizabethton, Gastonia, Marian continued into the depression. Mill owners occasionally acted as paternal mediators between arbitrary supervisors and mill workers, but recurrent disputes and extreme poverty continued. Sometimes brief strikes and walkouts followed disputes, or whole families quit and went elsewhere. Turnover rates for a year exceeded 100 percent in some mills. As southern mill life passed into 1934 management expected higher productivity tending more machinery running at a faster pace with no increase in pay for those left after layoffs: the same stretch out as five years before. (23)

When President Roosevelt promised to reduce unemployment and put people back to work, mill workers took him at his word. They started out having faith in the president's pledge, but Roosevelt needed support from southern democrats and he needed it badly enough to allow the mill owners to control the National Recovery Administration enforcement process to their advantage, much like what happened with the agricultural and auto industry the previous spring.

The United Textile Workers(UTW) union had local unions in the south at the beginning of the great depression. However, the UTW originated in the north where the textile mill owners allowed unions as a way to avoid strikes and prevent price wars. The UTW cooperated with mill owners to achieve its goals and expected local unions to honor contracts. The International UTW operated with a centralized organization that did not allow strikes without approval from the International's executive board.

The low wage south posed a constant threat to erode national wages. UTW president Thomas McMahon argued "if we do not try to lift these workers up to the standards existing in the North . . . they will drag us down to their conditions as naturally as it is for water to find its own level."

By 1933 so many northern mills had already moved to the cheaper labor in the south, that UTW membership was down to 32,000. When UTW organizers with New England experience moved into the south they found thousands of mill workers angry over the stretch out and optimistic that Franklin Roosevelt and Section 7(a) would relieve the poverty and insecurity in their lives. Organizers were able to sign up members at a dollar each, but avoided discussing the differing expectations of southern mill owners. By August 1934, the southern mills had 135,000 out of a national membership of 185,000.

The Code of "fair" competition negotiated in the textile industry under the National Industrial Recovery Act set a minimum wage of $12 a week in the south and $13 in the north except for a lower "learners" wage. The workweek was set at 40 hours in two shifts and prohibited child labor below the age of 16. Wording in the Code followed Section 7(a) that guaranteed the right to organize and bargain collectively through representatives of their own choosing.

In a short time President Roosevelt's Director of the National Recovery Administration (NRA), Hugh Johnson, admitted that mill owners "chiseled" on the code. Some mills just refused to pay code wages, others cut the higher skilled

wages to the minimum, or paid learner wages to senior workers.

Mill workers had such faith in President Roosevelt they wrote him explaining their plight and asking his help. “I wish you would come down south to Greenville, S.C. and just stand at the gates and watch the Hungry[sic] depressed desperate faces of the employees. They are hungry, raged [sic] and unkempt? I work day after day with my back bowed, the perspiration pouring down my back. We simply have to fly about our work to hold our jobs.” … “I have gone through sleet and snow winter after winter without shoes or half enough clothing to keep me warm.”

And another women “They discharged all spinners that could not run 8 sides of spinning and that included women that was the sole dependers [supporters] of their family as bread earners. Another moaned “the load has almost got the best of me, for the machinery has been speeded to the highest notch, more cleaning up has been put on us, till we can’t hardly bear any more. I’ve seen women so wet with perspiration that it could be wrung from their clothes. I’ve seen them go to a window for a fresh breath of air only to be whistled at by a section hand and made to get away from the window, and he would threaten to discharge the next one who opened a window. . . .” They blamed the “low down boss-man” or the “blood thirsty rich.” (24)

However, the NRA administration allowed the Cotton Textile Institute and its attorney George Sloan to be the Code Authority to enforce the terms of the code and correct against mill owner violations. The code authority had the right to produce and report its own data. During NRA code negotiations South Carolina Congressman John Taylor pressed for wording to limit the stretch out. “I know mill life.” he said. “I have worked in mills and when I did, a weaver attended to twenty or thirty looms. Now it is 100 to 150.” Taylor wanted wording in the Textile Code to include a maximum machine load for employees. Congress would not go along but the NRA Director Hugh Johnson, wrote Section 15 so that no employee of any mill in the cotton textile industry shall be required to do any work in excess of the practices on July 1, 1933, unless such increase is submitted to and approved by the new Cotton Textile Industry Committee and the National Labor Board of the NRA.

Fierce opposition from mill owners was influential enough to control appointments to the Cotton Textile Industry Committee. The chair of the new committee was Robert Bruere with previous experience with productivity issues. He believed the stretch out complaints were an unjustifiable complaint against productivity improvements. The Bruere influence on the committee made it possible to rewrite Section 15 to be a new Section 17 that eliminated Section 15. Instead under Section 17 the stretch out would not be a code violation to be corrected, but a claim ready for investigation, hearings, and delay.

After the new Cotton Textile Industry Committee made its recommendation about the stretch out George Sloan in charge of correcting code violations proposed to expand the duties of the new committee. He proposed the new committee “guarantee a peaceful settlement of all disputes in the cotton textile industry.” The NRA Director Johnson accepted the proposal August 2, 1933.

President Roosevelt authorized a new National Labor Board to arbitrate code violations in all industries on August 5th. In doing so he agreed to allow existing boards to remain. That turned the Cotton Textile Industry Committee into the National Labor Relations Board for the textile industry, but not with power to enforce code violations, only to mediate textile industry disputes. Officially it was the Cotton Textile National Labor Relations Board, but it was known far and wide as the "Bruere Board."

The UTW executive board counseled patience to their unhappy members always telling them they would help mediate disputes through the Bruere Board. In the mean time letters of complaint with requests for relief poured into NRA Director Johnson and to Secretary Francis Perkins. All were routinely referred to the Cotton Textile Code Authority that was staffed by the mill employers and their attorney. Out of 1,724 allegations of code violations only 96 were reviewed. When the few investigators found violations the mill owners would promise to change them, but did not. In April 1934 Robert Bruere spoke before a meeting of the American Cotton Manufacturers Association. He told the meeting he was deliberately slow to make any precedent setting decisions because he did not want to start any "disturbing currents running through the industry."

Bureaucracy delayed and diffused dissent, but the failure to enforce the NRA Codes and the stalling and delays boiled over into a scattering of small strikes across southern mill towns. Then in May 1934 the mill dominated Code Authority announced a 25 percent cut in hours with a 25 percent reduction in weekly pay. It was enough to bring a June 1 strike threat, even from the bland UTW leadership.

The Vice President of the North Carolina Federation of Labor wrote that "Labor deplores the necessity of a strike but we have no other means of redress now that Dr. Bruere, Chair of the CTNIRB, made a definitive statement to the manufacturers that of over 2,000 cases before the Board, no decision has been rendered because of the disturbing influence that such decisions might have on industry."

Director Johnson recognized the tide of anger was serious enough that he arranged a meeting with Code Administrator George Sloan and UTW President Thomas McMahon. Sloan agreed to discuss the matter on condition he would not sit in the same room with McMahon. Someone would have to carry proposals back and forth, an insult that Hugh Johnson and McMahon allowed him to do.

McMahon ignored the wage and hour issues that were important to his rank and file, but demanded labor representation on the Code Authority as the condition to call off the threatened strike. In the back and forth between rooms he did not get a labor spot on the Code Authority, but an agreement to have a single appointment on the Bruere Board, which was expanded from three to five members. Nothing was done about wages and hours.

The McMahon capitulation set off a wave of angry protest in labor ranks and a biting ridicule from the mill owners and managers. Positions hardened on both sides until a strike was certain. The United Textile Workers (UTW) met in convention in August 1934 and set a September 1 strike date after 490 out of 500

delegates from local unions voted to strike. The strike came as the culmination of months of bureaucratic fumbling and delays by the National Recovery Administration of the Roosevelt Administration. (25)

The 1934 textile strike extended to mills and towns from Maine to Alabama, although most of the disruption and walkouts took place in the south since so many of the mills were in the Carolinas, especially along the route of the Southern Railway.

Estimates of the number on strike varied within narrow limits over the two and a half weeks of the strike. Into the second week estimates for the four states of Georgia, the Carolinas and Alabama, reached a high of 170,000 including 7,000 more from Tennessee. North Carolina estimates reached 71,000 strikers out of 110,000 mill workers, but the number dropped to 62,000 in the second week. Otherwise strike totals went up the second week with 44,000 of 60,000 in Georgia and 36,000 of 65,000 in South Carolina. The southern strike high of 170,000 was out of 272,000 mostly cotton mill workers, or about two-thirds of the industry labor force on strike. The New England and mid-Atlantic states included silk, wool and worsted fabric mills as well as cotton. Union estimates for the north were 140,000 left work out of a total 200,000 working in the mills. (26)

The President Roosevelt remained silent, and then on September 5 agreed to appoint a three person mediation board with John Winant, the former Republican Governor of New Hampshire, as chair. The other two included Atlanta attorney, Marion Smith and Robert Ingersoll from Brooklyn. It would be known as the Winant Board.

UTW Vice-President Francis Gorman took over managing the strike as someone with experience in southern organizing from the Marian and Danville strikes of 1929-30. He wanted NRA codes enforced and so directed much of his public attacks at the failures of NRA Director Johnson. In this strike Gorman turned transporting picketers from town to town into flying squadrons: strike caravans of 20 to 200 cars and trucks traveling from town to town and mill to mill with hundreds of pickets to pressure the non-union mill workers to join the strike. The flying squadrons did their best work shutting down the non-union mills in the first week of the strike, or until the National Guard blocked the roads.

Some towns were 100 percent union; others zero. Some mills were shut down entirely; others kept going as usual. Gastonia and Gaston County, North Carolina got much of the national attention with a concentration of 100 mills and 25,000 working in them. Strike estimates in Gastonia were 20,000. The local newspaper recalled the violence five years before and recommended shutting down the mills even though it was “unjust to those who want to work” but “trouble and bloodshed always comes when there is picketing because there is no such thing as peaceful picketing.”

Strikers staged a “monster” Labor Day parade September 3 in Gastonia to kick off the strike, but the arrival of Flying Squadrons shortly after convinced the giant Loray Mill to shut down and virtually every other Gaston County mill shut down by September 5. There were some scuffles at scattered mills and immediate calls to the governor for National Guard troops. In North Carolina, the governor

waited three days before sending troops to prevent "intimidation" and "coercion" by strikers.

The number of strikers and the response of the mill owners and government officials varied by mill and by state. Nonunion mills tended to hire armed guards and "sheriffs deputies" to surround the mills and intimidate the pickets and run off the flying squadrons to keep easy access for strikebreakers. Reports for North Carolina estimated 15,000 guards protecting mills. (27)

In Spartanburg, South Carolina 9,000 of 14,000 mill workers left work September 3, in spite of predictions by mill management that they would not. Spartanburg strikers in flying squadrons closed down five more mills September 4 on the way to Greenville, an especially anti-union town. The squadron arrived there September 5 with a reported count of 105 cars and trucks all flying American flags. They surrounded the city's four largest mills shouting for workers to "come on out, we won't hurt you." By now, five days into the strike, the National Guard was there along with the Greenville police. A journalist quoted National Guard Captain Harry Arthur who told him "My men have instructions to shoot and shoot to kill if any effort is made to rush them: not to wait for anything else." A few scuffles occurred at shift change with minimal violence, but the mills remained open in Greenville in defiance of the strike and those few there willing to strike.

In nearby Anderson County, South Carolina the mills remained mostly unorganized and mill owners expected to keep them open. In small and isolated Honea Path the UTW had members in a union local that left work at the Chiquola Mill. The sheriff responded hiring 600 special deputies that included non-striking employees. All were provided with rifles and side arms and non-union employees that came to work received sharpened hickory picker sticks "just in case" strikers entered the plant. Mill superintendent and also the mayor, Dan Beecham, swore in a hundred additional police that took positions at windows inside the mill or on mill grounds on the morning of September 6.

Police expected to escort strikebreakers into the mill but a mass of picketers blocked the gate at 6:00 a.m. shift change. Eyewitness accounts described an altercation between a striker and a management sympathizer before shots rang out. The plant manager shot the union leader, Lee Crawford, in the stomach. After he fell police guards fired into him and killed him as he lay on the ground. Ira Davis died from gun shot wounds after police knocked him to the ground: "Kicked 'em over and shot 'em again." Other guards then shot into the fleeing crowd from protected positions inside the mill hitting at least 50 people. Many of the wounded and all of the dead were shot in the back. The death toll was seven. Picketers fired no shots.

The Chiquola mill owners refused to allow mill churches to hold funeral services, which took place September 8, outside of town under "big trees" with 10,000 attending. They displayed the American flag carried on the picket line, now shot through with bullet holes. South Carolina Governor Ibra Blackwood declared the events in Honea Path an "insurrection" that justified imposing martial law.

The killings made national news with calls demanding justice and federal action. The Roosevelt Administration kept silent except for Labor Secretary

Francis Perkins. She did make clear that the 7 killed were killed by deputized guards but described the whole affair as an "unfortunate situation" caused by local governments deputizing "non-striking workers unaccustomed to police duty," who then shot because they were "frightened." It helped give the impression that strikers were doing something foolish rather than the truth: angry police deputies assassinated a labor official and picketers after their boss signaled his approval. (28)

In Macon, Georgia at a Labor Day rally mill workers carried banners - "Kill the Stretch-Out" - and cheered speeches by UTW organizer Ralph Gay, who had tried for a decade to organize a union in Trion: "Now, thank God, we have the support of Franklin D. Roosevelt, who sympathizes with us, and recognizes our right to organize and who, I believe, is the agent of God." Next day picketers blocked railroad tracks into one of two Georgia mills while picketers shouted insults at strikebreakers entering the other mill. Police escorted strike breakers into the mill while Gay warned picketers against blocking the mills: "If we are going to starve it will be on the picket lines and not in the mills. Don't undertake to mob anybody on the picket line." Police arrested Gay and several others; Gay was held on $75,000 bail.

In Trion, Georgia angry mill workers risked their jobs writing letters of complaint to Hugh Johnson and President and Mrs. Roosevelt. The company ignored NRA Code wages and some sent their pay slips to prove it. Paul Maxwell explained he was only receiving $3 to $5 weekly but was charged $6 a week for board: "we wont [sic] you to do some [sic] about it. We can't work for that." He enclosed a stamped addressed envelope but replies were always form letters to tell the procedure to file complaints for code violations. Trion Glove Mill evicted complainers when they found out.

On September 5 a flying squadron arrived in Trion to find 46 special deputies ready to keep the mill open. Arriving picketers tried to disarm the badly outnumbered deputies, but one of the deputies fired into the crowd before running into the mill. Two strikers fell to the ground badly wounded. When the chief of police, Arthur Bloodworth, refused to arrest the shooter, enraged strikers poured into the mill to find him. He was with Deputy Sheriff W. M. Hix and both had guns drawn before shooting started. When shooting stopped the deputy sheriff and a picketer were dead and at least twenty had gunshot wounds. Eyewitness accounts agreed Hix fell onto a table wounded when a boy leveled an automatic pistol through an outside window and fired the shots that killed him. The boy was never identified.

Georgia Governor Talmadge was up for re-election September 12 and wanted the labor vote. He announced before the vote that "no giant corporation or big interest will ever dictate to me what to do while I am the Governor." After the election Talmadge declared martial law and mobilized 4,000 troops that seized 120 picketers including 16 women who were held without charges in the military prison at Fort McPherson. (29)

The strike in New England had its share of disruption after the September 3rd Labor Day holiday, especially Rhode Island. UTW President Thomas

McMahon spoke at a Labor Day crowd in Providence, Rhode Island: “I know better than many that we have a friend in the White House.” More than half left the mills in Massachusetts, especially Bedford and Fall River, and Vermont, New Hampshire and Connecticut.

On September 7, several thousand strikers arrived by flying squadron to picket at the Saylesville, Rhode Island plant gate, but newly hired sheriff’s deputies chased them off and the sheriff announced an end to picketing. Strike leaders pledged a new offensive, which began around 3:00 p.m. September 10 when police confronted several thousand out of town strikers and local sympathizers in a rock and brick throwing melee. Police used tear gas and fired buckshot at strikers wounding at least two. Management put up barricades at the plant gate, two machine guns on the roof and announced operations will continue.

Another melee got under way at 3:00 p.m. shift change the next day, with deputy police and state troopers shooting from the roof hitting five in the crowd below. The mixed crowd of men and many women remained defiant even after police reinforcements arrived. The governor declared martial law and called out the National Guard until eventually 280 of the 103rd Field Artillery and the 243rd Coast Artillery arrived with orders not to shoot. That took some restraint when battling picked up again in the evening and spilled into nearby Moshasauck Cemetery. The crowd assembled behind gravestones throwing rocks and bricks and then rampaged about town breaking windows. Guard troops were still outnumbered but they had a good supply of tear gas. The rioting made the front page of the New York Times: “3,000 Fight Troops in Rhode Island.” The story claimed “One building [a gate house] was pushed over, mill gates were torn down, two attempts were made to set fire to the plant, eight strike sympathizers were shot, two suffered broken heads from nightsticks and flying hand grenades and 132 persons including 18 national guardsmen were injured.”

A similar riot took place in Woonsocket September 11. Guard troops ran off a crowd of several thousand with tear gas the first day, but they returned in much larger numbers the next night. Tear gas helped disperse the crowd, but they roamed into the business district and looted and destroyed much of the commercial district. Guardsman killed one and a dozen were injured. The National Guard declared martial law.

In New Bedford, every mill shut down when 100 percent of the 17,000 mill workers left work, but there was no violence, just talk. The famous Lawrence from 1911 did not strike and ignored the flying squadrons that visited many New England mill towns to stir up strike support. The mills in Lewiston, Maine were unorganized and ran as normal, but brief disturbances in Skowhegan and Augusta convinced authorities to call out the National Guard as a deterrent.

UTW second Vice President William Kelly denounced the failure of the NRA industry codes in a Labor Day rally in Philadelphia hoping to generate support and solidarity for the strike in Pennsylvania and New Jersey. Philadelphia had 20,000 textile mill workers and there were more in Hazleton, Bridgeport, and Easton. Flying squadrons of the most committed, some with hundreds of cars and trucks, went from mill town to mill town and succeeded closing some of the mills

for at least a day or two. The Paterson silk mill workers, still famous from the strike of 1913, wanted to join the 1934 strike as part of a national effort, but they had little reason to do so following a 1933 strike and negotiated settlement. (30)

Vice president Gorman was unable to do much for his membership still angry over the stretch out and the unemployment it was causing. The strikers had significant economic power given their solidarity, but it was to no avail. The strike started to fail by the end of the second week. Southern strikers did not have financial reserves to hold out beyond two weeks and the UTW had limited funds to help them. NRA Codes of Fair Competition were administered by the industry. George Sloan had offered to have the Bruere Board mediate the strike as a ploy for delay, but it was a serious mistake for Gorman to turn it down. It allowed Sloan to characterize the strike as an unjustified political action against the government.

The strike damaged the image of Franklin Roosevelt as the friend of labor, but not enough for him to make the Codes work the way they were supposed to work. The Winant Committee sent its report to Francis Perkins September 17, 1934. It called for the president to ask strikers to return to work and the mills to take back the strikers without discrimination. It recommended the Bruere Board be replaced with a new Textile Labor Relations Board that would report to the National Labor Relations Board. The NLRB replaced the NLB as a result of Executive Order 6763 signed June 20, 1934.

The president accepted the report when it was released. The next day the UTW Board unanimously accepted the Winant settlement without a vote of the rank and file, or any assurances. Sloan, serving as industry spokesman in spite of his role as attorney for the Textile Code Authority, would only say the industry would give "sincere consideration" to the proposals in the report.

One reporter wrote "For all the oratory and enthusiasm it appeared that the country's textile workers were going back to work with little more than a pious hope." The strike failed miserably, except that it took all the forces of friends and foes alike to turn back their anger and beat them. The state governors and most of the local constabulary did their usual by confronting picketing strikers at gun point, but it was their friends who let them down the most. The leaders and Board of the UTW went along in negotiating at one board after another when they knew nothing would happen. It was an old story for labor. FDR promised to put people back to work, but his National Recovery Administration was more interested in ending the textile strike than enforcing codes of fair competition.

The vice president of the UTW, Francis Gorman summed up the union failure in the aftermath of the strike when he said "Many of us did not understand what we do now: that the government protects the strong, not the weak, and that it operates under pressure and yields to that group which is strong enough to assert itself over the other. If nobody learned anything but this from the strike it was worth the lesson." It was cold comfort but there would be another try after John L. Lewis organized the CIO and set up the Textile Workers Organizing Committee (TWOC). (31)

The Wagner Act

Under Section 7(a) the National Labor Board did not have defined powers to make enforceable decisions in labor disputes. Corporate defiance convinced Senator Wagner his Section 7(a) addition to the National Industrial Recovery Act should be replaced with a separate law to create a government agency with enforcement powers. His initial effort came March 1, 1934 when he introduced a bill in the Senate known simply as S. 2926. The bill would create a separate agency with the enforcement power to bring a halt to a list of unfair labor practices named in the bill.

Business opposed the bill, which they declared unconstitutional, but the Senate Committee on Education and Labor held hearings and a lively debate took place. At the end of the hearings the committee chair, David Walsh of Massachusetts offered a renamed and revised alternative. Senator Walsh had more support for his less ambitious bill, but neither the Wagner nor the Walsh bills had support or opposition of President Roosevelt.

The President stalled but the turmoil of strikes forced him to take a stronger position on government policy toward labor. He wanted new powers with authority for him to create separate industry boards. On June 11, he asked his Solicitor of Labor Charles Wyzanski and labor attorney Donald Richberg to draft a new law. On June 13, the President had their draft submitted to Congress as Public Resolution #44.

Resolution #44 let the president create multiple industry boards by executive order to investigate the practices and activities of employers and employees as he did for the Longshoreman's board. Boards would be empowered to conduct elections to guarantee employees the right to organize and elect representatives without interference from employers. The Board could levy penalties of $1,000 or up to a year in jail for "willfully and knowingly" violating their rulings.

The bill offered a modest advance on Section 7(a); debate on the bill was brief. The law passed Congress on June 15 with minimal amendment and the President signed it June 19, 1934. On June 29, Executive Order 6763 replaced the National Labor Board with a new three member board appointed by the President and renamed as the National Labor Relations Board(NLRB). (32)

The President appointed new members to the National Labor Relations Board, but it had the same troubles as the old one. It proved to be a brief interlude before Senator Wagner reintroduced a modified version of his National Labor Relations Act following the November 1934 elections, elections that produced substantial gains and larger majorities in Congress for the Democratic Party. The election returns emboldened Senator Wagner to go ahead without the president's endorsement to introduce the National Labor Relations Act in the Senate on February 21, 1935. It started life as S. 1958.

Efforts to enforce Section 7(a) either failed entirely from business defiance or because business decided unilaterally a company union satisfied their obligation under the law. Company unions like the Rockefeller Representation Plan operated for twenty years before Congress voted Section 7(a) into the National Industrial

Recovery Act, but their growth accelerated so rapidly afterwards that the majority of company unions in 1935 started after June 1933.

Supporters of the Wagner bill did not believe collective bargaining could take place without banning company unions. Supporters also wanted a majority vote to determine exclusive bargaining rights for all employees in a bargaining unit with an obligation for business and labor to bargain in good faith, even though everyone accepted that bargaining in good faith could not compel agreement.

Opponents had their usual list of complaints about unions, but added a few more. As always they complained the law will deprive men of their right to work and bring about a closed shop. They claimed enforcement of the law would be an unconstitutional denial of due process and that labor relations in production were part of states rights that could not be regulated by Congress.

Hearings before the Senate Education and Labor Committee went from March 11 to April 2, 1935. On May 2 the Committee approved the slightly amended bill by unanimous vote. Senate debate started and ended on May 16 when the Senate voted 63 to 12 for the new law. The House passed their version May 20 and the president finally decided to offer his public support after a White House Conference May 24, 1935. (33)

Then on May 27, 1935 the Supreme Court stamped its disapproval of the National Industrial Recovery Act(NIRA) including Section 7(a), in the famous case of **Schechter Poultry Corporation v. United States**. First, the Supreme Court denounced the essential code making part of the NIRA. They explicitly refused to accept the codes as a necessary response to a "grave national crisis." … "Extraordinary conditions may call for extraordinary remedies. But the argument necessarily stops short of an attempt to justify action which lies outside the sphere of constitutional authority." … "The Constitution established a national government with powers deemed to be adequate" but limited by the constitutional grants. Those who act under these grants are not at liberty to transcend the imposed limits because they believe that more or different power is necessary. Such assertions of extraconstitutional authority were anticipated and precluded by the explicit terms of the Tenth Amendment-The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

Second, they condemned the NRA as an unconstitutional attempt to delegate legislative power to the executive branch. "The Congress is not permitted to abdicate or to transfer to others the essential legislative functions with which it is thus vested." The justices compared the authority and procedures of the Federal Trade Commission with the National Industrial Recovery Act and found the National Industrial Recovery Act did have a set of special procedures with a "quasi judicial body" to allow "for formal complaint, for notice and hearing, for appropriate findings of fact supported by adequate evidence, and for judicial review …" After reviewing the President's authority under the Act they described the law as a "sweeping delegation of legislative power." In a separate opinion Justice Cardozo called it "delegation running riot."

The Supreme Court could have stopped but returned to a third well worn

argument from the Commerce Clause of the Constitution – Congress shall have the power to regulate commerce with foreign nations and among the several states and with the Indian tribes - to invalidate Title I of the law as an unconstitutional attempt to regulate transactions without "direct" but only "indirect" effects on interstate commerce.

The justices did not care that "poultry coming to New York is sent there from other states." They argued the code does not concern transportation of poultry from other states or sales made to the Schechter poultry business in New York. When the Schechters bought poultry for slaughter and resale Justice Holmes called it "a local sale to retailers and butchers." Based on this argument they concluded "Neither the slaughtering nor the sales by defendants were transactions in interstate commerce. The undisputed facts thus afford no warrant for the argument that the poultry handled by defendants at their slaughterhouse markets was in a 'current' or 'flow' of interstate commerce, and was thus subject to congressional regulation. The mere fact that there may be a constant flow of commodities into a state does not mean that the flow continues after the property has arrived and has become commingled with the mass of property within the state and is there held solely for local disposition and use." Justice Hughes made it important that poultry came "to a permanent rest within the state."

Next they declared "In determining how far the federal government may go in controlling intrastate transactions upon the ground that they 'affect' interstate commerce, there is a necessary and well-established distinction between direct and indirect effects. The precise line can be drawn only as individual cases arise, but the distinction is clear in principle." … "We are of the opinion that the attempt through the provisions of the code to fix the hours and wages of employees of defendants in their intrastate business was not a valid exercise of federal power."

The president and quite a few others were furious the Supreme Court would use a case by case distinction between direct and indirect effects on interstate commerce to strike down national legislation passed by an elected Congress. After a few days of pause Senator Wagner publicly addressed the difference of codes made under the National Industrial Recovery Act from his National Labor Relations Act. The NRA codes attempted to fix wages and prices while his legislation attempted to assure rights to collective bargaining without regulating wages or employment directly.

The Senate Committee went ahead and met again to make several revisions, which were finally resolved in a House and Senate conference committee. Both houses passed the bill again on June 27 with large majorities and President Roosevelt signed the National Labor Relations Act into law July 5, 1935. It is often referred to as the Wagner Act. (34)

The National Labor Relations Act (NLRA), a.k.a. the Wagner Act, runs just nine pages divided into titles and sections. Section I has a Findings and Policy statement. In summary, it declared some employers deny the right of collective bargaining, which leads to strikes and industrial strife that burdens or obstructs commerce. The inequality of bargaining power between employees without full freedom of association, and employers organized in corporate ownership burdens

commerce and aggravates recurrent depressions. Experience proves protecting the right of employees to organize protects commerce. Experience demonstrates some labor organizations burden commerce through concerted activities, which can be eliminated by assuring the rights herein guaranteed. Therefore, the policy of the United States is to encourage the practice and procedures of collective bargaining and to promote the workers full freedom of association, self-organization, and designation of representatives of their own choosing to negotiate terms of employment.

The National Labor Relations Act (NLRA) remains as the primary labor law of the United States. In spite of the clear policy of the law to promote collective bargaining it excludes agricultural workers, domestic servants and family members, employees covered by the Railway Labor Act, government employees and those working at non-profit hospitals. There would be amendments and additions in 1947 with the Taft-Hartley Act and in 1959 with the Landrum-Griffin Act.

The Wagner Act and its amendments presumes labor relations in America generates opposing sides in a continuing conflict between two hostile and antagonistic groups: corporate capital and owners of property on one side, organized labor on the other. The economics of a free enterprise economy assures that profits for capital will be higher than they otherwise would be if the wages of labor are lower, and vice versa. The history of labor relations before 1935 proves these truths and nothing after 1935 has brought a meeting of the minds to change that conclusion, as we shall see.

The 1935 National Labor Relations Act establishes a government agency with a written set of legal rights and procedures that intend and hope to mediate the conflict to make it less destructive for capital and labor, and the larger society. After the opening findings and policy their follows a Section 2, entitled Definitions that lists eleven definitions for use in the law including employer and employee. Remaining sections are grouped with headings for structure or function.

Sections 3 to 6 of the law entitled **National Labor Relations Board** defines the National Labor Relations Board (NLRB or "Board"), its membership and administration in Sections 3-5. Section 6 provides authority to make, amend, and rescind rules and regulations to carry out the law.

Section 7 and 8 entitled **Rights of Employees** includes Section 7 that repeats the language of Section 7(a) from the National Industrial Recovery Act giving employees "the right to self-organization, to join, form, or assist labor organizations to bargain collectively through representatives of their own choosing and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection."

Section 8(1)-8(5) defines five unfair labor practices for an employer. 8(1), to restrain, or coerce employees in their right of self-organization; 8(2), to dominate or interfere or give financial support to a union; 8(3), to discriminate in the hire, tenure or condition of employment or discourage membership in a union; 8(4), to discharge or discriminate against union members making testimoney against an employer; 8(5), to refuse to bargain collectively with a union.

Section 9 entitled **Representatives and Elections** defines the process for unorganized employees to apply to the NLRB and become a certified union. Representatives of a majority of employees of a bargaining unit will be the exclusive representative of all employees.

Section 10 entitled **Prevention of Unfair Labor Practices** defines the Board's exclusive power to prevent unfair labor practices using a written complaint to make charges, to schedule a hearing to answer charges, to make a final decision and serve a cease and desist order to halt unfair labor practices. This section also defines an appeal process in the federal courts.

Section 11 and 12 entitled **Investigatory Powers** gives further definition of the Board's powers to conduct hearings and to do investigations.

Section 13 to 16 entitled **Limitations** establishes the right to strike and defines several legal conditions.

Reference Guide for the National Labor Relations Act of 1935– is a chapter appendix that fills in the heading titles and sections expanded from above for future reference since the Wagner Act shapes America's labor history after 1935. The wording has been condensed while the essence remains.

The NLRA does not require an employer to accede to any union demands, only to bargain collectively with representatives chosen by majority vote of a bargaining unit. The NLRA does not make an unfair labor practice a crime. No fine or other penalty results from violating the law, but defiant employers learned that courts could agree with a Board cease and desist order or agree to reinstate employees dismissed as an unfair labor practice violation and would order reimbursement of mitigated back pay. Because Board decisions could be delayed for long periods, those dismissed in violation of the law did look for and find other jobs. Reimbursement with mitigated back pay was computed as the difference of these two wages. (35)

The AFL supported passing the Wagner Act, but they would lose the power to determine jurisdiction for their member unions. Voluntarism ended with the NLRA; now the NLRB would take over and decide "the unit appropriate for the purposes of collective bargaining." The new NLRB became operational August 24, 1935 when President Roosevelt appointed the members of the new National Labor Relations Board: J. Warren Madden, John M. Carmody, and Edwin S. Smith. The Board confronted a scathing and vicious press opposed to organized labor. The business community expected to get rid of the law through constitutional challenge, since the Supreme Court continued to rule against legislation passed by Congress during the Roosevelt New Deal. After the Schechter decision the Supreme Court continued its hostile onslaught against Roosevelt's New Deal legislation. The president and a majority in Congress wanted to revive the economy and relieve suffering of the depression; the Supreme Court had another agenda.

In a new decision announced January 6, 1936 the Supreme Court declared the Agricultural Adjustment Act unconstitutional in the case of **United States v. Butler**. The justices would not allow regulation of agriculture as an invasion of power reserved to the states. The law allowed the government to collect a tax for

processing services as part of agriculture price supports, which Justice Roberts declared coercion intended to force farmers into a plan to regulate agricultural production. If Congress could pass the Agricultural Adjustment Act, the welfare clause "would become the instrument of total subversion of the governmental powers reserved to the individual states."

In another decision announced May 18, 1936, the Supreme Court declared the Bituminous Coal Act, a.k.a. the Guffey Act, unconstitutional in the case of **Carter v. Carter Coal**. In this case James Carter asked the Federal Courts for an injunction against his own company, Carter Coal of West Virginia. The injunction would prohibit his company from adopting the Bituminous Coal Code established under the National Recovery Act.

The price supports and other conditions of the act were not in operation when Mr. Carter filed his injunction, which makes it hard to complain of irreparable harm when nothing has happened in a government plan to raise coal prices for coal companies like Carter Coal. The Federal Courts allowed the injunction to be a cause to rule against relief from depression prices for coal. The Supreme Court insisted that coal mining is a local activity without direct, but only indirect, effect on interstate commerce. This decision came in spite of the fact that 97 percent of Carter Coal was shipped out of state.

Justice Benjamin Cardozo complained in dissent "Commerce had been choked and burdened; its normal flow has been diverted from one state to another; there had been bankruptcy and waste and ruin alike for capital and for labor. The liberty protected by the Fifth Amendment does not include the right to persist in this anarchic riot." It was all for nothing; the justices ruled 6 to 3 to nullify the law.

In another decision announced June 1, 1936, the Supreme Court declared the New York minimum wage law unconstitutional in the case of **Morehead v. Tipaldo**. In an effort to outlaw women's sweatshops Felix Frankfurter help draft a new minimum wage law, quickly challenged as an unconstitutional violation of the due process of law under the 14th Amendment. In a previous minimum wage case from 1923 the justices declared the federal government had no power to enact a minimum wage, but Frankfurter attempted to avoid the objections of the earlier case in writing a new law. It was to no avail. The justices voted 5 to 4 that "The decision and the reasoning upon which it rests clearly show that the state is without power by any form of legislation to prohibit, change or nullify contracts between employers and adult women workers as to the amount of wages to be paid."

There was dissent. Justice Hughes wrote "I can find nothing in the Federal Constitution which denies to the state the power to protect women from being exploited by overreaching employers through refusal of a fair wage as defined in the New York Statute." Harlan Fiske Stone wrote "It is difficult to imagine any grounds other than our own personal predilections. . . . The Fourteenth Amendment has no more embedded in the Constitution our preference for some particular set of economic beliefs than it has adopted, in the name of liberty, the system of theology which we may happen to approve."

None sitting on the Supreme Court sessions of 1935 and 1936 were

Roosevelt appointments. William Howard Taft appointed two; Woodrow Wilson one; Warren Harding two; Calvin Coolidge one; Herbert Hoover three. Four of them remained resolute and absolute: government could not regulate property or contracts at all, or ever. Nothing written in the constitution supported that view, but in their constitution life was a survival of the fittest and the weak must die, apparently in silence. Two justices remained open to argument on a case by case basis but one or both repeatedly voted with the diehard four. The other three agreed an elected Congress should be able to pass legislation to relieve the depression, but they were reduced to writing dissents.

A majority of the Supreme Court intended to repeal all of the Roosevelt New Deal. They would substitute their rigid doctrine and veto the decisions of an elected national Congress. Incredulous, and often angry, reactions filled the newspapers and journals of the day. One of the multitude came from a Wisconsin Law professor: "What we face now, at numerous and critical points, is the question, not how governmental functions shall be shared, but whether in substance we shall govern at all." He might have asked "Who are the Anarchists?"

Repealing the New Deal had the full support of the well to do and the business community, a minority, but still wealthy amid the suffering and 25 percent unemployment. The wealthy resisted all economic reform at every opportunity, yet took no responsibility for the depression in spite of their control over government and the economy in the 1920's and with Herbert Hoover. They were in charge when the economy collapsed but it was not their fault, or their problem. Like the resolute crew on the Supreme Court they continued to justify more of the same without the slightest embarrassment.

The last three court opinions came before the November 1936 national elections, which brought a substantial majority of Democrats to Congress and reelected FDR. At a cabinet meeting shortly after the election the group discussed what to do about the Supreme Court. No one thought five justices should control the President and an elected national Congress. They discussed an option to "pack" the Supreme Court with six new justices. Discussions continued until February 5, 1937 when FDR submitted his court-packing plan to Congress. It was controversial to put it mildly, but the packing plan faded after April 12, 1937, when five justices abandoned the absolute four in the case of **NLRB v. Jones & Laughlin Steel Co.** that affirmed the Wagner Act. As we shall see "A stitch in time saved nine." (36)

Reference Guide for the National Labor Relations Act - 1935

National Labor Relations Act of 1935 - a.k.a. the Wagner Act

Definitions

Section 2(1) - Persons includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy or receivers.

Section 2(2) - Employer includes any person acting in the interest of an employer, directly or indirectly, but shall not include the United States, or any State or political subdivision thereof, or any person subject to the Railway Labor Act or labor organization or its officers or agents.

Section 2(3) - Employee shall include any employee, and shall not be limited to the employees of a particular employer, . . . and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but excludes agricultural labor, domestic service, or employed children of parents

Section 2(4) - Representative includes any individual or labor organization

Section 2(5) - Labor Organization means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exits for the purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work.

National Labor Relations Board

Sections 3-5 -Establishes a three person National Labor Relations Board with members appointed by the President with the advice and consent of the Senate. The sections establish the internal workings and duties of the Board.

Section 6(a) - The Board has authority to make, amend, and rescind rules and regulations as may be necessary to carry out the Act

Rights of Employees

Section 7 - Employees shall have the right to self-organization, to join, form, or assist labor organizations to bargain collectively through representatives of their own choosing and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

Section 8 - It shall be an unfair labor practice for an employer –

Section 8(1) - made it an unfair labor practice “to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7.”

Section 8(2) - made it an unfair labor practice to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it.

Section 8(3) - made it an unfair labor practice for an employer "by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization."

Section 8(4) - made it an unfair labor practice to discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act.

Section 8(5) - made it an unfair labor practice to refuse to bargain collectively with the representatives of his employees subject to section 9(a).

Representatives and Elections

Section 9(a) - provided that "representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such a unit for the purposes of collective bargaining."

Section 9(b) - provided authority for the Board (NLRB) to decide "the unit appropriate for the purposes of collective bargaining" and whether it "shall be the employer unit, craft unit, plant unit, or other unit."

Section 9(c) - grants broad authority to the NLRB to investigate competing claims of union representation by more than one union.

Section 9(d) - when an order of the Board is based on facts certified from a section 9(c) investigation and there is a petition for enforcement, the record of the investigation shall include the entire transcript filed and the decree of the court enforcing, modifying, or setting aside the order of the Board shall be made.

Prevention of Unfair Labor Practices

Section 10(a) - empowers the NLRB with exclusive authority "to prevent any person from engaging in an unfair labor practice affecting commerce."

Section 10(b) - provides the "power to issue and cause to be served on any such person a complaint stating the charges in that respect and stating notice of a hearing before the Board …".

Section 10(c) - empowers to Board to decide a person has engaged in an unfair labor practice after considering all written testimony and oral argument. "The Board shall state in writing its findings of fact and issue and serve a cease and desist order. The Board can order payment of mitigated wages, or other compensation. The Board can also dismiss an unfair practice complaint.

Section 10(d) - allows the Board to modify a finding until "a transcript of the record shall have been filed with a court."

Section 10(e) - establishes the Board's authority and procedures in the Federal Courts. If the defending employer does not comply with a Board ruling, the Board will first petition a federal circuit court of appeals, or if unavailable, any district court. Requires that Courts must accept the facts as presented from the transcript, but the law gives the court authority to grant temporary relief, or to enforce, modify or vacate a Board ruling.

Section 10(f) - provides "Any person aggrieved by a final order of the Board can petition a Circuit Court of Appeals, which case will proceed in the same way as section 10(c), but proceedings under Section 10(c) or (e) does not operate as a stay of a Board order unless specifically ordered by the court.

Section 10(g)- Proceedings under 10(e) or 10(f) shall not, unless ordered by a court, operate as a stay of the Board's order.

Section 10(h) - When considering an injunction or restraining order or making, an order to enforce, modify or set aside an order of the Board, the jurisdiction of the courts will not be limited by the Norris-LaGuardia Act

Section 10(I) - Petitions filed under this act shall be heard expeditiously and if possible within ten days after they are docketed.

Investigatory Powers

Section 11 - Provides the power for Board members to conduct hearings and investigations: (1) power to issue subpoenas, administer oaths, examine witnesses, and receive evidence (2) power to compel appearance through court order, (3) no person may be excused from attending, testifying or producing evidence because testimony or evidence may incriminate them, (4) complaints or orders may be served in person or by registered mail, (5) process may be served in the judicial district of the defendant, (6) departments or agencies of the federal government when directed by the president must provide records or papers when requested.

Section 12 - Any person who resists, prevents, or impedes or interferes with any Board member can be fined as much as $5,000 or imprisoned for up to one year, or both.

Limitations

Section 13 - Nothing in this Act shall be construed so as to interfere with or impede or diminish in any way the right to strike.

Section 14 - Whenever the National Labor Relations Act conflicts with other laws the NLRA shall prevail.

Section 15 - If any part of this law shall be invalid, remaining parts will remain valid.

Section 16 - The law shall be cited as the National Labor Relations Acct.

Chapter Twelve - The Struggle to Organize

I knew that it was out of the question to have honest, economical government while a few are inordinately rich and the great mass of men are poor. In fact, it is to be doubted if anything really worthwhile until there is a fairer distribution of wealth.

----------Clarence Darrow, from his memoir, The Story of My Life, 1932

Supporters and opponents alike presumed the Supreme Court would rule the Wagner Act unconstitutional. The business community fought attempts to organize under section 7(a) in 1933 and 1934 before the Supreme Court decision in the Schechter Poultry Corporation. The frame of mind to hate unions continued without let up before and after Congress passed the Wagner Act. The new Board tried to enforce the Wagner Act as though it would be constitutional while the business community fought back with redoubled contempt and determination.

During the Congressional battle to pass the Wagner Act and the enforcement fight that followed, Senator Robert LaFollette Jr. of Wisconsin and a coalition of pressure groups, especially the ACLU, prevailed on the U.S. Senate to approve his Resolution 266 on June 6, 1936. Resolution 266 created a subcommittee for the Senate Committee on Education and Labor to investigate violations of free speech, free assembly and interference with the right of labor to organize and bargain collectively. Committee Chair Hugo Black named Senator LaFollette as subcommittee chair; the first hearings began August 21, 1936 to investigate labor espionage and strikebreaking.

During the same period the labor movement split almost in half in a divisive and diversionary battle over jurisdiction. The AFL Executive Board insisted craft unions must be able to organize and take members out of any industry; John L. Lewis and a cadre of supporters insisted labor organizers must be free to organize by industry. The AFL Executive Board would not allow their members to be members of a craft union and a member of an industrial union. As in decades past, they sneered at the idea as dual unionism.

The Wagner Act Cases

Many employers acted as though the Wagner Act was unconstitutional before the NLRB made its first attempt to enforce it. Business coalition groups like the National Association of Manufacturers(NAM), the American Liberty League, the American Newspaper Publishers Association had their lawyers prepare and distribute legal opinions explaining how the law was unconstitutional. The general council for the American Newspapers Association called the Act “unconstitutional beyond question or doubt.” The NAM had its Lawyers Committee draft and distribute 12,000 copies of a legal opinion that declared the law inapplicable and advised members how to challenge any NLRB enforcement efforts. One journalist joked “They will hand down their decision next month and save the Supreme Court a lot of trouble.”

Efforts to organize unions and expand membership went forward in spite of the business campaign. Complaints of firings for union organizing poured into the National Labor Relations Board along with demands to do something about it. NLRB efforts to address unfair labor practices brought a wave of injunctions suits from management. The Board reported "Allegations in a pleading filed by an employer in Georgia would show up in precisely the same wording in a pleading filed in Seattle." Some district court judges accepted claims from employer counsel that a Board hearing would cause irreparable harm. Defending injunction suits wasted NLRB staff time but did not eliminate enforcement, which went forward slowly. (1)

In the fall of 1935 the National Labor Relations Board reviewed evidence from a list of unfair labor practice reports and investigations and picked a short list of the five most promising cases to pursue and eventually make a Supreme Court test. The list included the NLRB v. Fruehauf Case, the NLRB v. Jones and Laughlin Case, the NLRB v. Friedman Harry Marks Case, the Associated Press v. NLRB Case, the Washington, Virginia and Maryland Coach Company v. NLRB Case.

NLRB v. Fruehauf -- In the Fruehauf case the Board learned Fruehauf employed a company spy to identify union members to discharge. When union members identified the spy in their ranks Fruehauf attempted a cover up by firing the spy as though he was a union member. The Board charged an unfair labor practice in a complaint October 23, 1935, hoping to head off a wildcat strike of angry employees. It was the first manufacturing case and the board wanted to show the Fruehauf Company was part of interstate commerce. Fruehauf did not file for an injunction, but elected to fight the complaint at a NLRB hearing that began November 6, 1935.

At the hearings Fruehauf counsel, Victor Klein, argued "the [fired] employees were involved solely in the manufacturing operation and had nothing to do with transportation. The Supreme Court decision in the Schechter Case outlawing the NIRA stated that manufacturing is strictly a local affair. On this basis we feel that this Act is entirely unconstitutional."

The NLRB counsel countered the constitutional objection by introducing evidence to show the Detroit based Fruehauf Company to be the largest truck trailer manufacturer in the country operating in 12 states through 31 offices. More than 50 percent of materials came from outside Michigan and more than 80 percent of finished products were shipped out of state.

NLRB counsel questioned Fruehauf attorney Klein about the use of company spies. Klein supported the position of the Michigan Manufacturers Association: there is "no reason why any employer desiring to know the facts in his plant, should not have the right to hire a detective." After an angry exchange with Board chair John Carmody the discharged men told their stories of dismissal, but company officials were so confident they would prevail in federal court they admitted the men were fired for union membership.

The NLRB filed a cease and desist order in response to the company

testimony. It demanded reinstatement and back pay for time lost. The company petitioned the Sixth Circuit Court to have the order set aside; the NLRB filed a petition for enforcement, also in the Sixth Circuit Court. After a June 2 hearing the court denied the Board's petition for enforcement. In a written opinion the Sixth Circuit denied the Congress had authority to regulate relations between a company and its employees which do not directly affect interstate commerce. The Board lost the case but retained the initiative to pick more test cases; only the losing side has a right of appeal to the Supreme Court. The Board abandoned Fruehauf and move to Jones & Laughlin Steel Corporation.

NLRB v. Jones & Laughlin --In June 1935 the company scheduled an election of officers for its company union at their plant in Aliquippa, Pennsylvania. The Amalgamated Association of Iron and Steel Workers had a local in Aliquippa, which the company refused to recognize. Their efforts to organize a boycott of the election infuriated management who had company police threaten dismissal to anyone who did not vote. Some refused and over the next few months the company dismissed ten people who happened to be officers of the Amalgamated Association local.

The NLRB filed an unfair labor practices claim January 28, 1936 followed by a hearing February 20. Jones & Laughlin attorney Earl Reed claimed neither steel production at the plant nor any part of their absolute right to hire and fire could be interstate commerce, which Reed further asserted, eliminated NLRB jurisdiction over the case. Attorney Reed was so confident his view would prevail in federal court he refused to argue his conclusion or give any evidence, but withdrew from the NLRB hearing.

Board attorneys countered with evidence to show Jones & Laughlin to be the fourth largest steel company in the United States. It had iron ore, coal and limestone holdings in Michigan, Minnesota, Pennsylvania and West Virginia and shipped 75 percent of its product out of Pennsylvania to subsidiaries in many states. After J & L left the case NLRB attorneys had the discharged men put their stories of intimidation and discharge into the official record along with other statistical evidence showing the causes and economic costs of labor disputes.

The Board issued a cease and desist order April 9, which ordered reinstatement and back pay for the men discharged and petitioned the Fifth Circuit Court for enforcement the same day. Arguments to the court took place June 1 and the court denied the petition June 15. The Board lost again. The Circuit Court paraphrased previous opinions that "The constitution does not vest in the federal government the power to regulate the relations as such of employer and employee in production or manufacture."

NLRB v. Friedman-Harry Marks --In yet another Wagner Act test case the Richmond, Virginia based Friedman-Harry Marks Company management dismissed four employees for attending an Amalgamated Clothing Workers(ACW) meeting. In a July 12, 1935 meeting between Co-owner Morton Marks and regional NLRB director Bennett Schauffler, Marks admitted the dismissals were for "union activity" but he did not believe his employees wanted to join a union.

In August a petition circulated for employees to sign. It wanted "our employer, and anyone else interested, to know that we are happy with our working conditions, and what we particularly desire now is that we be allowed to enjoy them peacefully." ACW organizers notified Schauffler that employees were threatened with dismissal for refusing to sign the petition. Two more union members were dismissed in August and twelve more in September.

The NLRB issued a complaint October 26, 1935 and a revised complaint November 15th after more employees were discharged. In hearings on December 5, NLRB Attorney A. L. Wirin established that Friedman-Harry Marks Company purchased 99 percent of fabric outside Virginia and sold over 80 percent of finished product outside Virginia. Wirin called discharged employees to testify in detail to their dismissals for union activities, which Company attorney Leonard Weinberg ignored without company challenge. Instead he declared the Wagner Act unconstitutional and objected to the hearing as a way "to harass and embarrass our client in the conduct of a legitimate business …"

The Board finally issued a cease and desist order March 26, 1936 when it ordered discharged employees reinstated with back pay. Two days later Board attorneys filed a petition for enforcement in the Second Circuit Court of Appeals in New York. Oral argument was set for June 2, but delayed while the Board took time to reply to a ridiculing letter from the defendant's attorney Weinberg based on the previously mentioned Carter v. Carter Coal Case, which remember ended just two weeks before on May 18, 1936. The letter said among other things "It now must be obvious to you that labor conditions in the manufacturing industries are not subject to regulation by the federal government under the commerce clause and due process amendment to the constitution, and that under this decision the National Labor Relations Act is unconstitutional."

The Board wrote a vigorous defense before arguing their case June 16, but again to no avail. The Second Circuit Court of Appeals denied the Board's petition for enforcement on July 13. The court declared "The relations between the employer and its employees in this manufacturing industry were merely incidents of production. In its manufacturing, [Friedman-Harry Marks Company] was in no way engaged in interstate commerce, nor did its labor practices so directly affect interstate commerce as to come within the federal commerce power."

The Associated Press v. NLRB --Yet another Wagner Act test case moved forward after the President of the American Newspaper Guild (ANG), Morris Watson, was fired the day after he requested collective bargaining from the Associated Press(AP). Management made excuses that Watson was dismissed "solely on the grounds of his work not being on a basis for which he has shown capability." The ANG executive council complained of the firing to the NLRB, which brought a charge of an unfair labor practice on December 7, 1935.

A hearing was set for January 8, 1936, but the AP retained a Liberty League attorney, John Davis, who filed an injunction suit in federal district court to prevent any effort of Board enforcement. The suit alleged "The National Labor Relations Act is not in truth and in fact a law and cannot be enforced, and said pretended

statute is void and unconstitutional in its entirety"

The injunction suit went before Federal Judge William Bondy on January 17, 1936, where attorney Davis again claimed the Wagner Act to be "null and void in toto." He repeated standard claims "that the employer-employee relationship cannot be interstate commerce and the law requires an invasion of contract." Judge Bondy stalled until March 17, 1936 before deciding the Board could go forward with a hearing, which got underway April 7. Board attorneys presented evidence of interstate commerce by showing the AP transmits news between state and regional centers all over the world. Morris Watson presented his story of AP coercion. The Associated Press moved to have the case dismissed but when the motion was denied they withdrew from the hearing.

The Board concluded from the hearing evidence that Watson's dismissal would "tend to lead to labor disputes burdening and obstruct commerce and the free flow of commerce." An order for the AP to reinstate Watson came May 21, which the AP predictably ignored. The Board responded with a suit in the Second Circuit Court of Appeals requesting enforcement. The Circuit Court upheld the Board in a Wagner Act case for the first time, but both sides knew the AP would appeal to the Supreme Court.

The Circuit Court sustained the Board in the Associated Press ruling on July 13, 1936. By now the Second, Fifth and Sixth Circuit Courts had completed rulings in four of the five Wagner Act cases. The Associated Press did not wait long to decide they wanted the Supreme Court to hear their case. They filed a petition for a writ of certiorari September 14 asking the Supreme Court to hear the case. Board attorneys deliberated over their three cases until September 30 when they went ahead and filed a petition for the Supreme Court to hear their three cases.

The Washington, Virginia and Maryland Coach Company v. NLRB --In the fifth Wagner Act case the Washington, Virginia and Maryland Coach Company dismissed eighteen of its eighty employees after company management learned of a union meeting and efforts to organize and schedule a collective bargaining session. The NLRB made formal complaint March 12, 1936 followed by hearings in March and again in May. The company justified the firings as discharge for cause. The Board ordered the men reinstated with back pay in a cease and desist order.

The Company failed to comply with the order and so the Board filed in the Fourth Circuit Court of Appeals in Richmond for enforcement on June 6, 1936. Company counsel argued that Wagner Act was totally invalid because it was intended to apply to all industry and as such was beyond the commerce power. Further company counsel argued it was an interference with the Fifth Amendment liberty of contract in all industries. The Board countered the Act was not intended to apply to all industry but to transactions allowed by the commerce clause.

The Circuit Court accepted the Board argument writing that "Congress did not intend to regulate intrastate as well as interstate commerce, and there is no ground for the argument that an important and inseparable part of the act have

been condemned, the whole should fall." This fifth ruling in the Wagner Cases came October 6, 1936; the company filed a petition for a writ of certiorari on October 17 demanding Supreme Court review. Both sides expected the Supreme Court to settle the constitutional question in their 1937 winter term with these five cases. (2)

As the Wagner Act cases moved forward, the 1936 presidential election approached with FDR campaigning against the Republican candidate Alfred Landon of Kansas. While business lined up in opposition to the New Deal as it had in 1932, organized labor took a more active role in the 1936 campaign with John L. Lewis out front. Lewis was a life long Republican who did not endorse Hoover or Roosevelt in the 1932 election, but he acted immediately to use the National Industrial Recovery Act to organize unorganized coal miners. By 1936, he was ready to actively campaign for Roosevelt and support his reelection.

In early 1936 Lewis combined with others to organize Labors Non-Partisan League (LNPL), an entirely partisan group intending to support FDR and Democratic candidates in the 1936 elections. Lewis made sure LNPL had funding, offices and staff to organize rallies, to line up speakers, to pay radio time, and to distribute campaign literature. Lewis took an active speaking role in the campaign referring to Landon in unflattering terms as the "little man from Topeka" or "the bootlicker of plutocracy."

FDR responded to the assistance "I am sincerely proud you are gathering in support of my candidacy. This would not be the case if you did not know, out of experience with the last three years, that the present administration has endeavored to support the ideal of justice for the great mass of America's wage earners and to make that ideal a reality."

No previous effort to elect a president by organized labor came close to the effort of the 1936 campaign and the mass of labor turned out in large numbers for Franklin Roosevelt. FDR won with 62 percent of the vote, an 11 million vote majority over Landon. John L. Lewis expected his efforts to translate in to political support for labor. (3)

The Packing Plan

Not long after his overwhelming 1936 election victory President Roosevelt announced a Supreme Court Packing Plan on February 5, 1937, just four days before the first Wagner Act case was scheduled to begin. By the end of 1936 President Roosevelt had abandoned his earlier notion that business would cooperate in an economic recovery. By now he was ready to use his political mandate to fight managerial domination of the economy and the use of the courts to maintain the status quo.

The plan he announced followed the plan suggested by Justice James McReynolds, when he was Attorney General back in 1914. McReynolds wanted the president to be able to appoint an additional judge to any federal court if a judge failed to retire within six months of retirement age. The number was limited to six for the Supreme Court and fifty for the lower courts. The formula for the plan applied to the immediate circumstance would allow President Roosevelt to

appoint six new justices to the Supreme Court.

At first the President justified his plan with the announcement that old justices need help keeping up with their work, but in speeches in early March he admitted his appointment of six new justices would break the Supreme Court's domination of Congress and the President. The Senate Judiciary Committee opened hearings on the bill and Attorney General Homer Cummings and other administration officials argued the role of judicial review had turned into a judicial claim to veto power over national legislation. Corporate interests that could not defeat unwanted legislation in Congress "are forcing that consequence upon the Court with its effective, if unconscious, consent."

There was opposition to the Packing Plan, which was not a sure thing. However, the Supreme Court was hearing the Wagner Act cases and several related cases during the same months of early 1937. If the justices abolished the Wagner Act and collective bargaining in a fog of word games and legal metaphors right in the middle of Packing Plan debate, it is quite reasonable to concede the Supreme Court would now be fifteen. (4)

LaFollette Hearings

In addition to the President's political pressure on the Federal Courts the LaFollette Commission picked up the pace of hearings exposing the often violent anti-union practices of corporate America. The first five days of hearings ended September 25, 1936 and exposed the espionage and spying of hired detective agencies, especially the notorious Pinkerton Agency. The Committee redoubled efforts in 1937 just as the Wagner Act Cases moved forward and Packing Plan debate heated up. The Committee held more hearings: eleven in April, and three days ending July 2 before a pause until the end of 1937.

Resolution 266 authorized the LaFollette Committee to investigate the abuse of civil liberties in labor union organizing, effectively free speech and free assembly in the first amendment to the constitution. The first amendment applies to government interference of civil liberties, but not to private sources like corporations. The LaFollette Committee helped publicize the threat to civil liberties that come from power in private hands and from corporations that can be agents of repression more than the government.

The Committee had subpoena power and so used it to grill corporate officials including officials from General Motors, Chrysler, various steel companies, the Radio Corporation of America(RCA), Goodyear Tire and Rubber Company among other smaller companies. They continued by grilling detective agencies including the William Burns Agency and the Pinkerton Agency again. Questions covered specific topics including espionage, stockpiling of munitions, strikebreaking and intimidation by local police; also the use of blacklists, deputy sheriff systems, private police among other abuses.

The hearings in March and April covered the violence and anti union hatred of Kentucky's Harlan Country Coal operators. Then three days of hearings June 30 to July 2 exposed the police attacks on "Little Steel" strikers at a "Chicago Memorial Day Incident" during the Memorial Day just passed. These early

hearings filled 7,300 pages of testimony and other exhibits. There would be more hearings and more testimony after five months of pause before the LaFollette hearings ended July 2, 1940 and eventually filled 27,000 pages. (5)

Arguments and Decisions - the Supreme Court Opinions of April 12, 1937

NLRB attorneys with the aid of Solicitor General Stanley Reed squared off with corporate attorneys in oral argument in the Wagner Act cases beginning February 9, 1937 and extending to February 11. Corporate America had reason to be confident the current slate of justices would strike down the Wagner Act with the same constitutional phases put to use so many times before: Article I, Section 8, the Commerce Clause, and especially the Fifth, Tenth and Fourteenth Amendments. After all, they were the same nine people from the Schechter case.

The Supreme Court filled with spectators the morning of the April 12, 1937, eager to hear the decisions in the Wagner Act cases. Justice Roberts read the opinion affirming the Associated Press v. NLRB Case and a short opinion affirming the Washington, Virginia and Maryland Coach Company v. NLRB Case. Justice Hughes read the opinion sustaining the NLRB v. Jones & Laughlin case, which opinion he used to sustain the Fruehauf and Friedman-Harry Marks Case.

In their Associated Press (AP) opinion the justices accepted the Board's unchallenged ruling that the Associated Press discharged Watson for union activities. The Wagner Act authorized the Board to make a cease and desist order, which the Associated Press did challenge as unconstitutional under the commerce clause, the first and fifth amendments to the constitution. The court declared "the only issues open here are those involving the power of Congress under the Constitution to empower the Board to make [the decision] in the circumstances."

The justices dismissed the AP's constitutional claims against the Wagner Act. The pressures of the packing plan and the LaFollette hearings may have influenced the decisions as many suspect, but a majority abandoned their previous attempts to define away commerce under the commerce clause. They concluded the New York office where Watson worked "receives and dispatches news from and to all parts of the world in addition to that from New York State and other Northeastern and Middle Atlantic States, which comprise the Eastern Division." The justices rejected the AP argument "that editorial employees such as Watson are remote from any interstate activity and their employment and tenure can have no direct or intimate relation with the course of interstate commerce." The justices further accepted the government's argument that strikes can disrupt the flow of interstate commerce so that "Congress may facilitate the amicable settlements of disputes which threaten the service of the necessary agencies of interstate transportation."

In a second constitutional argument Associated Press attorneys claimed that union participation will necessarily compromise impartiality of employees reporting the news: "any regulation protective of union activities, or the right collectively to bargain on the part of such employees, is necessarily an invalid invasion of the freedom of the press." The majority opinion called that argument an "unsound generalization." Based on the undisputed facts Watson was dismissed

for union activities and not distorted reporting: “Courts deal with cases upon the basis of the facts disclosed, never with nonexistent and assumed circumstances.”

Next, Justice Roberts read the brief opinion in the Washington, Virginia and Maryland Coach Co v. NLRB case that also affirmed the Wagner Act. Then, Justice Hughes took over to read his opinion affirming the Wagner Act as a legitimate exercise of the commerce clause of the constitution in the NLRB v. Jones & Laughlin case. “It is a familiar principle that acts which directly burden or obstruct interstate or foreign commerce, or its free flow, are within the reach of the congressional power. Acts having that effect are not rendered immune because they grow out of labor disputes. It is the effect upon commerce, not the source of the injury, which is the criterion.” … “Employees have as clear a right to organize and select their representatives for lawful purposes as the [Jones & Laughlin Corporation] has to organize its business and select its own officers and agents.”

Justice Hughes addressed the direct and indirect effects on commerce so often used in previous cases to dismiss disputes over the commerce clause. “In view of respondent’s far-flung activities, it is idle to say that the effect would be indirect or remote.” ... “Because there may be but indirect and remote effects upon interstate commerce in connection with a host of local enterprises throughout the country, it does not follow that other industrial activities do not have such a close and intimate relation to interstate commerce as to make the presence of industrial strife a matter of the most urgent national concern.”

Jones & Laughlin attorneys made additional claims asserting the Wagner Act violated the fifth amendment of the constitution that no person shall be deprived of life, liberty or property without the due process of law. Justices Hughes dismissed the claims: “The act does not interfere with the normal exercise of the right of the employer to select its employees or to discharge them.” … “The act establishes standards to which the Board must conform. There must be complaint, notice and hearing.” … “The order of the Board is subject to review by the designated court, and only when sustained by the court may the order be enforced.” The Fruehauf cases and Friedman-Harry Marks cases followed and both sustained the Wagner Act for the same basis as Jones & Laughlin. (6)

For decades the Supreme Court used the Commerce Clause of the Constitution and the 5th and 14th Amendments to protect property and contract rights for corporations by eliminating state and federal regulation. The Supreme Court treated capitalism as a doctrine written into the Constitution. On April 12, 1937 Justice Holmes and Justice Roberts changed their minds and decided to end the Court’s close judicial restriction of federal power to regulate commerce. The Supreme Court would be a policy making body. The Diehard four – Sutherland, McReynolds, Van Devanter, and Butler – remained unmoved, but without Holmes and Roberts they were now a minority. The President and Congress abandoned the Packing Plan proposal and Willis Van Devanter retired in 1937; replaced by Hugo Black. More retirements followed in 1938 and 1939.

Business exploded in anger with the Supreme Court’s decision, but it did not change any minds. The same groups that fought the Wagner Act would continue to fight organized labor by challenging NLRB enforcement and through

Congress by immediately demanding changes and modifications to the Wagner Act. It would be ten years with World War II in between, but they would get their way. (7)

Breaking Up is Hard to Do

The depression and new legislation supported by the friendly FDR administration did not relieve conflict within the labor movement. The failure of union officials to organize in the unorganized industries brought the spontaneous succession of strikes during the spring and summer of 1934. At Toledo, Minneapolis and San Francisco insurgents from the rank and file fought their established union leadership as well as their resistant employers.

The economy and the New Deal continued to flounder through 1934 while a majority of the AFL hierarchy remained opposed to new organizing by industry. AFL leaders like Arthur Wharton of the machinists, Bill Hutcheson of the carpenters, and Daniel Tobin of the Teamsters declared the unskilled "unorganizable." Many of the new members in the new AFL Federal Labor Union's clamored for support and action against industry stalling and evasions from Section7(a). Instead they got battles over craft union jurisdictions.

United Mine Workers President John L. Lewis knew the AFL chartered over a thousand Federal Labor Unions over 1933 and into 1934, but did nothing to organize them into industrial unions. By late 1934 their frustrated members began dropping out rather than risk the wrath of employers opposed to union organizing only to contribute dues to an AFL pledged to do nothing but split them into craft unions. All were equally frustrated with the NLB that had so much trouble enforcing decisions. Lewis arrived at the fall 1934 AFL convention in San Francisco low on patience and ready with specific proposals to charter unions in automobile, rubber, cement, radio and aluminum industries.

After more than a week of debate the convention voted to direct the Executive Council to charter unions in automobile, cement, aluminum and such other mass production and miscellaneous industries as the Executive Council may be necessary. A second directive ordered the Executive Council to promote and begin a campaign to organize the iron and steel industry. Both directives restricted newly charter unions to operate for a provisional period under AFL policies and with AFL appointed administrative and financial officers. (8)

AFL President Green did call an organizing meeting of the automobile locals for August 26, 1935 in Detroit, but the AFL Executive Council voted restrictions to an automobile union charter. One amendment limited membership to "all employees directly engaged in the manufacture of parts and assembling of those parts into completed automobiles but not including job or contract shops manufacturing parts or any other employee engaged in said automobile production plants." The phrase "any other employees" meant craft union employees they might claim for other unions. Proposals from the floor to amend the jurisdiction were ruled out of order.

Members representing these automobile industry locals wanted to nominate and elect officers. A resolution to have AFL President Green appoint a president

was voted down by 164 to 113, but Green had to concede the demands of his Executive Council. He stepped to the podium and said "By virtue of the power vested in me and upon orders of the Executive Council I will now appoint the officers of this union." He appointed a president and officers who would accept craft union jurisdictions. They were Francis Dillon, president, Homer Martin, vice-president, Ed Hall, secretary-treasurer.

The 1935 AFL Convention opened October 15 in Atlantic City, New Jersey after a full year of niggling and bickering but without progress organizing industrial unions. Over the previous year only 23,000 paid dues to 183 FLU automobile locals out of nearly a half a million working in the auto industry, but the Executive Council would not relinquish control. More proposals to charter a "United Auto Workers of America" brought AFL Executive Council calls for delay and a variety of complaints from craft union presidents.

Similar disputes broke out with attempts to organize other industries including the aluminum, rubber, cement, radio, and iron and steel industries. Outspoken International Association of Machinists president Arthur Wharton conceded nothing and demanded jurisdiction for the rubber industry to be defined from the conditions written in the AFL Constitution. That meant no charter could be issued except upon approval of the Council; and the rubber union must transfer members claimed by craft organizations prior to issue of a charter.

John L. Lewis showed up ready to confront the 1935 Atlantic City Convention. Delegates introduced 22 resolutions to charter industrial unions, but the majority of craft union delegates voted them down. The majority insisted all international unions have guaranteed craft jurisdictions not changed or limited by the San Francisco resolutions. Lewis countered the AFL had "a record of twenty five years of constant unbroken failure" leaving at least 25 million unorganized and "dying like the grass withering before the autumn sun." He accused the majority of acting in bad faith when the San Francisco resolutions "provided for the issuance of charters in mass production industries and, as we understood, upon a basis that would permit men in those organizations to have jurisdiction over the workers in that industry." He called the restrictions on UAW jurisdiction "a breach of faith and a travesty upon good conscience." In often quoted remarks Lewis declared "The Labor movement is organized upon a principle that the strong shall help the weak." Strong unions need to help the weak "withstand the lightning and the gale." The strong must "heed this cry from Macedonia that comes from the hearts of men." (9)

As the 1935 Atlantic City Convention wound to a close without concessions or progress toward industrial unions John L. Lewis organized a breakfast meeting to discuss the future with seven of his industrial union supporters. Later on November 9, 1935, Lewis, five of those at the Atlantic City breakfast and two more, met at UMW headquarters in Washington, DC. All shared Lewis disgust for the AFL, but it was Lewis who was ready to think about a second federation of industrial unions. The group agreed to be a Committee on Industrial Organization with Lewis as chair. The CIO would advise and explain the need for industrial unions and encourage and promote organization in mass production industries,

but remain within the AFL. The eight presidents invited other union presidents to join them.

Soon after on November 23, AFL President Green wrote the members of the CIO with a reminder that AFL rules and policies could only be changed by majority vote of delegates at the national convention. Those in the minority must accept the majority views until the next convention when they can try to persuade a majority. Lewis resigned his place on the AFL Executive Council and a succession of letters followed. On December 7, Lewis suggested Green should take over and be the Chairman of the CIO since he so often expressed support for industrial unions. Green wrote a return December 9 that he would not align himself with a dual union movement. On December 12, Green wrote the CIO through its secretary Charles Howard to warn the CIO will spread "discord, division, misunderstanding, and confusion."

When the AFL Executive Council met in January 1936 angry members wanted the CIO suspended. Suspending or expelling a member required two-thirds majority vote of delegates at a national convention and so delay kept both sides talking but positions hardened. A meeting between a committee of three of the AFL Executive Council and Lewis and five others from the CIO took place at UMW offices in Washington May 19, 1936. At the meeting George Harrison of the AFL said his group had no authority to negotiate. He could only tell them they must dissolve the CIO before they could search for common ground. Lewis wanted industrial union charters for a list of mass production industries. He told Harrison the CIO wanted to remain a part of the AFL, but we oppose "its eternal policy of doing nothing."

By this time AFL legal counsel, Charlton Ogburn, outlined a procedure giving the AFL Executive Council authority to suspend an affiliate in contradiction to long established practice. President Green supported the opinion, which the Executive Council adopted May 20, 1936. Letters went out immediately to the CIO unions that denounced the CIO as "a rival and dual organization within the family of organized labor" and demanded dissolution. The May 20 action included public notice of their intention to suspend all CIO unions by July 8, 1936.

The May 20 announcement set off another exchange of letters. On June 6, Lewis wrote to Green "I overlook the inane ineptitude of your statement published today." He suggested the Executive Council would soon name his successor. Green replied immediately that he could not get around his duties as AFL President by "subterfuge or expediency."

After the CIO unions rejected the demand to dissolve, there was more wrangling in letters back and forth until Green sent each CIO union president the Executive Council's charges and the procedural rules of a hearing to respond as a group on August 3, 1936. In a letter of July 21, Lewis denied the Executive Council had the authority to suspend affiliated unions, an authority limited to the delegates at a AFL convention. To suspend CIO unions before the up coming Tampa, Florida convention "would disqualify the unions affected from having any delegate representation in the convention, and in this case is intended to have the effect of an expulsion."

Lewis reminded them of the rule requiring a two-thirds majority of convention delegates dated from 1907 and that all previous suspensions occurred by convention vote, but to no avail. The Executive Council voted to suspend ten CIO unions as of September 5, 1936 with only one dissenting vote, David Dubinsky of the ILGWU. In written comments the CIO was "fomenting insurrection" with acts that "constitute rebellion."

The CIO Board voted unanimously to ignore the order since they would be unable to participate in the November 16, 1936 Tampa convention no matter what they did. Max Zaritsky of the Hat, Cap and Millinery Workers made a last effort to compromise by "finding a formula by which the hopes of all workers for the unity of the labor movement and the organization of the workers in the mass production industries may be realized." Green was willing to meet with Lewis but he had few illusions after two years frittered away and no industrial organizing. Lewis told Green "When the American Federation of Labor decides to reverse and rectify its outrageous act of suspension and is ready to concede the right of complete industrial organizations to live and grow in the unorganized industries it will be time to discuss and arrange the details of a re-established relationship." With CIO unions excluded from the Tampa Convention no voice dared oppose the Executive Council. The convention voted 21,679 to 2,043 for a resolution to endorse the AFL Executive Council in their suspension of CIO unions. (10)

The Rise of the Congress of Industrial Organzation

The labor movement broke up over the jurisdictional disputes in a tortured process over several years. Before the fall of 1936 Lewis hoped he could organize the millions in the unorganized industries as the voice of a powerful and unified labor movement combined in the AFL. By the fall he had a choice to abandon industrial organizing or get out of the AFL. The resolution at the Tampa Convention made a separate CIO federation of industrial unions a fait accompli.

Actually CIO effort started not long after the November 9, 1935 meeting of Lewis and his industrial union supporters following the contentious Atlantic City Convention. Lewis opened a CIO office on K Street in Washington on November 18, 1935 with his UMW colleague John Brophy as director of organization, although no one doubted Lewis was in charge.

The rise of the CIO started shortly after the change in Communist Party policy, which recall came after the 7th World Congress of the Communist International (Comintern) in the summer of 1935. William Z Foster represented the American party as one of 65 delegates that agreed the threat of fascism justified a change of practices from the 1928 to 1935 "Third Period." Rather than form separate labor unions the 7th Comintern urged unity of all opposed to fascism in a "People's Front" or "Popular Front."

Communists were now willing to work with non-communist leaders or anyone ready to fight fascism: "We advocate and consistently uphold the right of the trade unions to decide their policies for themselves." Dozens of American communists would disband the Trade Union Unity League (TUUL) to guide organizing industrial unions for the many Federal Labor Union members fed up

with AFL subterfuge.

Lewis allowed Brophy to hire anyone committed to the cause of industrial organizing and it was quite a cast of characters. Labor journalist Len De Caux would be publicity director and edit a CIO newsletter even though he favored communism with a record of criticizing Lewis. Attorney Lee Pressman would be legal counsel although he too favored communism. Others organizing CIO unions sympathized with communists or joined the CPUSA: Wyndham Mortimer of the autoworkers, Joe Curran of the merchant seaman, Mike Quill of the transit workers, James Matles and Julius Emspak of the electrical workers. Foster claimed to Len De Caux that 60 of the 200 organizers assigned to work on the campaign to organize the steel industry were communists.

The gruff hard-bitten Lewis opposed communism; back in the mid 1920's he called them "Reds" and barred them from membership in the United Mine Workers. In spite of his opposition he needed their energy and skills as organizers and decided to ignore their affiliation while they helped build CIO unions. David Dubinsky of the ILGWU chided Lewis for hiring communists but he brushed him off with the often quoted phrase, "Who gets the bird, the hunter or the dog?"

As the depression dragged into 1935 Lewis saw the anger and radical temper of an increasingly resistant working class, mostly unorganized. To organize them he had to lead a defiant rank and file movement, but the challenge to corporate power started mostly from unorganized outsiders, certainly not the established labor movement and not by Lewis, although Lewis would provide the indispensable leadership. For the next five years no one in organized labor came close to his insight and mastery of the skills needed to transform working class anger into a social crusade.

Len De Caux reported workers were pounding on their doors long before the CIO was ready for them. The pounding "came from within the AFL, and from all the unorganized industries. From AFL locals and central bodies – beleaguered outposts of unionism – came sighs of relief and anticipation that reinforcements were on the way. … We heard from auto and rubber workers, seamen; from radio, electrical, shipyard, furniture, textile, steel, lumber workers; from gas, coke, glass and quarry workers, from sharecroppers, newspapermen. … All said, "CIO let's go."

Lewis preferred the steel industry as his first priority for CIO organizing, but he accepted an invitation to speak January 18, 1936 to auto workers in Cleveland and the next day he spoke to rubber workers in Akron, Ohio. In spite of terrible winter weather he spoke to overflow crowds. The efforts to organize industrial unions in the rubber, steel, electric, automobile, textile, and maritime industries started early in 1936 and into 1937.

Rubber workers staged the first sit down strikes in early 1936. Rubber industry organizing included some violence, but CIO organizing in the steel and automobile industry brought pitched battles and a return of the violence of 1934. The CIO succeeded in organizing other major industries in electrical and radio manufacturing, the maritime industry, the packing industry and the textile industry. By the time of a national conference of CIO unions in October 1937,

there would be 32 national CIO affiliates, 600 local industrial unions directly affiliated and 80 state and city central bodies. (11)

United Rubber Workers

The AFL finally allowed rubber workers to hold a convention to write a charter and bylaws and become an AFL affiliated union in September 1935. AFL President Green wanted to appoint Coleman Claherty president and restrict membership to the unskilled not claimed by craft unions in exchange for financial support. Delegates at the convention demanded their own officers and elected Sherman Dalrymple as President. After the convention ended union members insisted they could organize all rubber workers, which they did in defiance of President Green. By early 1935 they had 38 locals of the former Federal Labor Unions affiliated in what amounted to an industrial union.

Dalrymple hoped to proceed in an orderly fashion but impatient members frustrated with pay cuts, a longer work day and arbitrary management staged a series of sit down strikes. The first sit down involved 500 and lasted 4 days at Firestone Rubber Co. beginning January 28, 1936 in Akron, Ohio. On February 8, 1,500 sat down at the Goodrich plant in a wage dispute; neither Firestone nor B.F. Goodrich would bargain or recognize the union initially.

At nearby Goodyear 14,000 left work February 18. Mass picketing closed down the plant in spite of heavy snow. A court injunction limited picketers to ten per plant gate. John L. Lewis contributed money and sent Powers Hapgood to Akron to assist. Although the former mayor of Akron organized a "Law and Order League" and a back to work movement amid various threats, the strike remained peaceful. The President of Goodyear announced "The Company will not sign any agreement with the United Rubber Workers even if a vote of employees shows that a majority wish to be represented by the union. He offered two comments: "the law does not require it and the second, we won't discuss."

Lewis demanded a response from the Roosevelt administration that sent a federal mediator who resolved the dispute enough to end the strike after a five week standoff. The company agreed to a 36 hour week for a 6 hour day and agreed to give notice before making changes, but management would not allow collective bargaining with the United Rubber Workers. They continued with their company union instead.

At the Goodyear plants in Gadsden, Alabama management hired goons to beat up Sherman Dalrymple and looted and destroyed union offices in response to June 1936 efforts to organize. Akron workers staged a sit-down strike in protest, but Gadsden officials beat up the next organizers sent to replace Dalrymple. The URW continued to grow in spite of the struggles with 30,000 members at the first annual convention in September 1936; membership reached 75,000 by the fall of 1937.

Firestone agreed to collective bargaining April 28, 1937 after a 59 day strike. It was a peaceful strike and Firestone made no attempt to operate its plants, but did not agree to exclusive bargaining rights. The NLRB finally conducted certification elections at Goodrich and Goodyear. The Goodrich employees voted

8,212 to 834 for the URW; Goodyear 8,464 to 3,193.

Just when negotiations looked promising the economy floundered. By the end of 1937 layoffs left 25 percent unemployed in Akron. “Goodrich demanded a 17.5 percent cut in wages and threatened to move jobs out of Akron unless they got union “cooperation.” Goodrich paid for a publicity campaign of threats and the newspapers denounced the union. After stalling Goodrich offered to avoid further wage cuts for 6 months if the union would accept the 17.5 percent cuts. The union voted no by 778 to 55 and a week long strike followed until Goodrich agreed to a hold the line contract May 20, 1937.

The election to organize Goodyear by the NLRB finally took place August 31, 1937, but Goodyear officials wanted to begin layoffs in response to the recession and would not agree to a written contract; a strike started November 18. Management stalled for months and although they did meet they refused agreement for anything. On May 26, 1938 picketers surrounded the Goodyear plant and watched loaded trucks going in and out of plant gates. The Times-Press of Akron reported police inside plant gates had “thousands of rounds of tear gas and nausea gas, shells, grenades, and bombs. Another room in the gate house was the armory, for arms of all kinds including four Thompson sub-machine guns.” An all night battle between police and picketers attempting to block trucks left at least 50 wounded from gas attacks and beatings.

Both the AFL and CIO threatened to call a general strike in Akron unless the mayor pulled the police and allowed picketing. On May 30, 1938 the company agreed to adjust seniority for layoffs, but nothing else. They would not settle outstanding grievances nor sign a written agreement. On June 28, Goodyear declared they had “negotiated enough” and wanted to go ahead with layoffs; they accepted negotiating a recall procedure, but they continued to stall and refuse a written contract. By November 22, management claimed they could not talk further unless the union dropped charges of domination by their company union. On December 14 management cited their plans for a modernization program that prevented them from signing a union contract. And so on. NLRB hearings began May 22, 1939 where Goodyear denied the Wagner Act required them to sign a comprehensive contract. A ruling by the NLRB followed by a lawsuit dragged into 1941. The Goodyear strike and refusal to make a written agreement came entirely after the National Labor Relations Act became law and the Supreme Court declared it within the constitutional powers of Congress. (12)

The Steel Workers Organizing Committee

In a letter of February 22, 1936 to AFL President William Green, Lewis offered $500,000 as an initial contribution to a $1.5 million fund to organize the steel industry; the AFL offered nothing. Lewis pressured officials of the Amalgamated Association of Iron, Steel and Tin Workers to turn over their AFL affiliate to the CIO in a drive to organize the steel industry. “Grandmother” Tighe felt sentimental toward his decades in the AFL but he and his secretary-treasurer, Louis Leonard, eventually accepted a Lewis proposal to turn over their union to the CIO by forming a Steel Workers Organizing Committee. AFL president

Green tried to stop it, but Lewis had his way on June 4, 1936 when Amalgamated Association officials signed an agreement with Lewis and the CIO to create the Steel Workers Organizing Committee (SWOC).

The SWOC assumed the responsibility for all organizing in, and agreements with, the steel industry. Lewis agreed to appoint two members of the SWOC from the Amalgamated Association, but otherwise Lewis appointed the chair, a secretary-treasurer and anyone else he wanted to name. He named Philip Murray, as SWOC chair.

Murray operated independently from the AFL with an office in Pittsburgh. He devised strategy for steel and its related mining operations including the Minnesota iron ore mines. Murray had to organize among many disparate ethnic and racial groups and he had to contend with company unions where United States Steel(USS) set the example and others followed. By 1934, 90 plus percent of steelworkers worked where there were Employee Representation Plans (ERPs), meaning company controlled unions. United States Steel was one of them.

U.S. Steel amounted to a bumbling giant in 1927 when its notorious CEO Elbert Gary died at the age of 80. The company was losing market share and not keeping up with technology but still the biggest steel company controlled by J.P. Morgan banking interests, a legacy of the 1901 merger. Morgan appointed new leadership, but the company continued to flounder until 1932 when it lost millions while operating at a fraction of capacity. Morgan changed course and named Myron C. Taylor to takeover as Chairman of the Board with orders to modernize.

Taylor responded to Section 7(a) by appointing Arthur Young to organize Employee Representation Plans(ERPs), which both Taylor and Young expected to be meek and submissive. By 1935 members of the company union took the initiative to organize committees from multiple US Steel plants. The upstarts had wage and hour demands. Young decided to make some concessions to head off Philip Murray who had SWOC supporters on company union committees taking steps to move U.S. Steel's company unions directly into the CIO.

In June 1936, the more determined representatives of the company union in Pittsburgh demanded a referendum for recognition as an independent union, which US. Steel stalled to avoid. During the delay SWOC supporters met and voted to demand a forty hour week, a 25 percent pay hike with weekly pay checks, vacation pay and a few more. In response CEO Myron Taylor named a committee to study the matter and make a wage proposal, which his committee presented November 6, 1936 at company union meetings. The proposal offered a five and half cents an hour raise to $.525 an hour with future increases linked to the cost of living, but not productivity; the proposal was made as a written contract "agreement" that Taylor and the committee wanted signed by company union representatives.

The company organized a conference to have a vote on the contract, except each of the 34 employee representatives from the company unions matched with 34 representatives from management. After all 34 employee representatives voted against signing the "agreement" management decided to grant the wage increase without the contract, but still refused to give in to a union.

Philip Murray kept pushing. By January 1937, SWOC organizers convinced thousands to sign union cards and pay a $1 in dues; after five years Chair Myron C. Taylor decided it was time to reconsider unions and collective bargaining. Possibly he accepted the political tide of the 1936 elections or just tired of the battle to suppress or defeat unions even before the still pending Jones & Laughlin Supreme Court decision, but whatever the reason he released a statement accepting collective bargaining for U.S. Steel.

The story includes a chance meeting at a restaurant in the Mayflower Hotel in Washington DC between Taylor and John L. Lewis. The meeting occurred during lunch January 9, 1937. Several months of negotiations followed until Taylor and Lewis reached an agreement with a wage increase to 62.5 cents an hour, an eight-hour day, a forty-hour week, with time and a half for overtime in a contract that applied to union members only. Seniority and grievance procedures were worked out as well. Sunday, February 28, 1937 Taylor and Lewis met for the last time when they worked out final details of the agreement to last one year. The U.S. Steel Board approved the agreement announced March 2; it was signed March 17, 1937. (13)

The United Auto Workers

How the automobile industry should be organized generated a major share of the fighting that split the CIO from the AFL. The fury and energy of autoworkers in FLU Local 18384 at Toledo in the Electric Auto-Lite strike did not change any minds on the AFL Executive Council. Back in August 26, 1935 at the previously mentioned Detroit meeting to organize autoworkers President Green appointed the officers to the AFL's version of an automobile union: Francis Dillon, president, Homer Martin, vice-president, and Ed Hall, secretary-treasurer. Their small membership continued to resist this AFL domination and to protest wages, hours and working conditions but with minimal response from Francis Dillon and the AFL. A group of protestors showed up at the AFL's Executive Council meeting in January 1936 demanding another convention no later than March 1st 1936.

The demanded convention finally took place beginning April 27, 1936 in South Bend, Indiana. Delegates elected from Studebaker and Bendix Corporation in South Bend and from Wisconsin, Ohio and Michigan arrived in a determined mood, ready to throw off the yoke of the AFL. President Green finally backed off and let the convention elect its own officers and be a union: the UAW-AFL. Francis Dillon faced up to his unpopularity and decided not to run. The convention elected advocates of industrial unions: Homer Martin, President, Wyndham Mortimer and Ed Hall as vice presidents, George Addes, secretary-treasurer. Seats on the new UAW-AFL Board went to industrial union advocates from locals around the country. One of these would become renown in labor relations: Walter Reuther, then president of the West Side Local 174 in Detroit.

The new Board of the new United Autoworkers demanded to adopt industrial union practices and so elected to affiliate with the CIO on July 2, 1936. From then on they were the UAW-CIO. Homer Martin got a seat on the CIO

board. The decision angered AFL officials who suspended and later expelled the autoworkers from the AFL. They did not recognize the South Bend Convention brought a new era to labor relations. (14)

Walter Reuther lost his job at Ford as a tool and die maker in 1932. Mr. Ford did not like it that he campaigned for the socialist candidate, Norman Thomas. Walter and his brother Victor left for a European sojourn that included working 15 months at a Russian automobile factory in Gorki. When they returned to Detroit in 1935 Walter and Victor remained on an industry wide blacklist and could not get jobs at the automobile companies. Victor recalled the name Reuther was anathema in the auto industry, but it did not keep them out of UAW organizing.

Three Reuther brothers – Walter, Victor, Roy – fit right in as part of plans to organize GM, which turned into a sit down strike at their Flint, Michigan facilities, where 40,000 worked and GM controlled everything from churches to the mayor and police. Flint facilities included Fisher Body Plant #1, a key plant that produced essential bodies for the Pontiac, Oldsmobile, Buick, and Cadillac. The UAW-CIO leadership calculated a successful strike there would shut down GM assembly operations and bring national production to a halt.

In the summer of 1936 UAW-CIO strategists sent full time organizers to Flint. First, UAW Vice-President Wyndham Mortimer and then Bob Travis and Roy Reuther did their best to avoid GM's hired stool pigeons and vigilantes. GM employed eight detective agencies to spy on employees: the Pinkertons, William J. Burns, Corporations Auxiliary, Railway Audit Corporation, McGrath, Industrial Standards, J. Spolansky, National Service Corporation and Charles N. Watkins. Union organizers started from barely 200 members given the fear of spies and dismissals, but met with small groups in private homes. Slowly they built membership to a thousand. By fall they had enough confidence to hold public meetings and press shop floor grievances with management.

The 1936 landslide election of Franklin Roosevelt helped elect a Michigan Governor sympathetic to labor: Frank Murphy. Organized labor trusted him enough they wanted to hold off the Flint strike until he was inaugurated January 1, 1937. It proved to be a smart strategy but around the country autocratic foreman infuriated autoworkers that triggered sporadic sit down strikes.

On November 17, 1937 in South Bend, Indiana employees took over the Bendix Corporation, an auto parts supplier, in a sit down strike. They demanded recognition as the collective bargaining unit. After nine days Bendix conceded and signed a contract for recognition, a grievance board, a minimum of two hours call-in pay, and a day's notice of layoff. On November 25, 1937, in Detroit, Michigan 1,900 employees closed another auto parts supplier, the Midland Frame Corporation, in a sit down strike. Within days the strike shut down Ford and Chrysler assembly. Midland settled for a ten cents an hour raise, seniority, and time and a half overtime pay.

On December 10, 1936, Walter and Victor Reuther and a committed group of West Side Local 174 organizers disrupted production at Kelsey-Hayes Company in Detroit, also in a sit down. Kelsey-Hayes employed nearly 5,000 to make wheels and brake drums, mostly for sale to Ford Motor Company. To

everyone's surprise Victor Reuther and several other Local 174 organizers got jobs in Department 49 where they found an angry group ready to join a union and participate in union plans. Walter Reuther had a meeting scheduled with Kelsey Hayes president George Kennedy at shift change December 10, the exact time Victor Reuther was ready with a plan to shut down production. The sit-downers left at 9:00 a.m. the next morning after Kelsey Hayes officials agreed to negotiate.

Negotiations continued back and forth for several weeks under constant threat of more disruption. Walter Reuther and an elected strike committee told George Kennedy they wanted union recognition, a wage increase and overtime pay. Kennedy agreed he would raise the minimum wage to $.75 an hour, but nothing else. He insisted on an open shop and tried to revive a company union over the weekend of December 12. Another sit down followed on Monday. The wrangling went on until Ford Service Department Director, Harry Bennett, threatened to cancel Ford's contract with Kelsey-Hayes and forcibly remove brake drum dies to the Rouge Plant. On December 23, 1936 the two sides made a brief, written agreement. Kennedy included the minimum wage of $.75 an hour previously offered and a promise to adjust pay and overtime for skilled workers in the "higher brackets" and there would "be no discrimination against any employee." The $.75 an hour wage was actually a 15 percent raise. They did not get union recognition.

A sit downer named Chester "Moon" Mullins that Reuther dubbed the "hillbilly anarchist" opposed the settlement along with a large group of sit downers. Reuther knew he did not get much but convinced a majority to go along for the sake of the UAW and the upcoming effort with GM. The strike only looked like a victory, but it was crucial for his future in the labor movement and showed the skills he would need for the campaign at GM. It showed he could persuade management and the rank and file. Moon Mullins enforced his version of the closed shop. He stuffed nonunion men in a wheelbarrow and pushed them around the plant before dumping them in the street. So much for contracts. (15)

GM stalling and refusals to respond to grievances at their auto plants exhausted the patience of the rank and file. Autocratic plant management set off sit down strikes at the Fisher Body Plants in Atlanta on November 18, at Kansas City December 16, and later at Cleveland on December 28, 1936. GM Executive vice president William Knudsen agreed to meet with Homer Martin in a December 22, 1936 discussion, but claimed individual plant managers settled strikes as necessary; he claimed GM did not have authority to negotiate. Homer Martin might have accepted the ploy but Wyndham Mortimer, the Reuther brothers and the rest of the UAW-CIO would not. They were determined to force GM to negotiate with the UAW-CIO as a national union.

UAW-CIO strategists still planned the strike to start in Flint January 1, but GM took steps to remove crucial auto body dies from Flint where the UAW-CIO was strong with the intention to reinstall them where the UAW was weak. In order to prevent the removal of key production dies, the UAW-CIO could not wait for January 1, but took over Fisher Body plant #1 and the smaller Fisher Plant #2 in sit down strikes that began December 30, 1936.

Over the next week much of the auto industry confronted strikes at GM

plants and GM parts suppliers: Delco Remy, Guide Lamp Company of Anderson, Indiana, the Chevrolet transmission plant in Norwood, Ohio, the Chevrolet plant in Toledo, Fisher Body plants in Janesville, Wisconsin and Cadillac Assembly in Detroit. Weekly production dropped from 53,000 to less than 2,000. It was a national strike, but everyone realized the contest would be determined by what happened in Flint.

A UAW-CIO committee of 17 met daily in strategy meetings while Roy Reuther and Bob Travis made the daily operational decisions to conduct the Flint strike from offices in Flint's Pengelly Building. A network of volunteer committees administered essential needs to maintain the strike including publicity, sound cars, strike relief, picket rotations, and food deliveries. The CIO provided money and help from the start: especially John L. Lewis and CIO General Counsel, Lee Pressman.

GM Vice President William Knudsen repeated his earlier claim: "I cannot have all these matters come here because that would concentrate too much authority in this office and I would be swamped." He would only bargain with strikers or their representatives after they vacated GM plants. President, Alfred P. Sloan Jr. posted a statement at company facilities: General Motors would "not recognize any union as the sole bargaining agency for its workers, to the exclusion of all others."

GM filed an injunction January 2, 1937 in state circuit court before Judge Edward Black. His restraining order called for immediate evacuation of the plant and ordered an end to picketing and other strike activity. The UAW-CIO ignored the injunction even before attorney Lee Pressman found Judge Black had a conflict of interest as the owner of $219,000 of GM stock.

Flint City manager, John Barringer, started a new opposition group the "Flint Alliance for the Security of Our Jobs, Our Homes and Our Community." Its newly appointed director, George Boysen, started a back to work movement, which claimed to have 25,887 members who took a GM loyalty oath. GM argued the right to work was from the beginning of the nation's history "the acknowledged right of each one of us to decide for himself, with no man's interference." The union countered with Victor Reuther circulating through the streets on daily publicity rounds giving news and views blaring from loud speakers on the roof of an old Chevrolet. (16)

Response to the strike remained a war of words until January 11 when GM took aggressive steps to vacate the smaller of the occupied plants, Fisher #2. Around 6:00 p.m. an expanded group of plant guards denied access at the plant gate used to deliver the evening meal. The temperature was -16 degrees and guards had closed off all gates into the plant and turned off the heat. The men got dinner up a 24 foot ladder, but plant guards seized the ladder, cutting off remaining access to the men inside.

When Victor Reuther arrived in his sound car he blared out instructions to a picket captain to have a group confront the guards and demand they open the gates and doors. The guards refused but stood by in silence while the men broke the locks. Guards showed no will to resist, but retreated through a first floor door

and locked themselves in the ladies bathroom. Then they passed the buck to Flint police by calling to announce "We are hostages."

Flint police arrived with tear gas grenades and guns drawn. Victor Reuther described the scene. "I could see the police coming across the tracks and down [Chevrolet] avenue. Over the bridge came a group of squad cars whose human occupants holding short, stubby muzzled guns, looked very strange in their gas masks. Then I saw more police on foot, shielding themselves behind the slowly advancing cars. As they got closer, they began lobbing tear gas shells that had points hard and sharp enough to break through reinforced glass. They were aiming them at the second floor windows of Fisher Two and into the midst of the pickets."

However, the sit downers were ready. They had the doors blocked with steel dollies, fire hoses connected, and the roof stocked with pound and half door hinges ready to shoot from sling shots devised from rubber inner tubes. Every round of tear gas brought a round of hinges that hit a few police and police cars. When police attacked pickets with Billie clubs, picketers blasted them with fire hoses through the -16 degree air.

Police retreated. In the delay onlookers and the curious joined the crowds while Victor Reuther blared a raucous stream of GM denunciation and cajoled onlookers to join the picket lines. Many did. Later one of them described how the Reuther sound car ruled the streets. "Reuther's voice was like an inexhaustible furious flood pouring courage into the men."

Police counter attacked, except they could not get to the gates in the barrage of door hinges and impromptu brickbats but in retreat turned and fired their stubby muzzled guns directly into the picketers; thirteen fell with bullet wounds. Victor Reuther expected a third attack and so organized barricades of all available cars at both ends of Chevrolet Avenue. A third attack did come when police advanced to fire long range tear gas shells from behind the newly erected barricades. The gas had its intended effect, but only briefly, as the wind blew the clouds of gas back over the police.

The wife of strike committee chair, Glenora Johnson, took over Victor's microphone briefly to give the cops a piece of her mind. "Cowards, cowards, shooting unarmed and defenseless men!" It would be after midnight before the shelling stopped. Morning brought the end of the battle with the sit downers still holding Fisher #2. In the era of the Industrial Workers of the World, bulls were sheriffs, police or the cops. To the Reuther brothers and quite a few more it was fitting to dub the confrontation of January 11 as the Battle of the Running Bulls. (17)

The strike was not over, but the events of January 11 forced the new Governor Frank Murphy to join the fray. The governor arrived in Flint in the early morning hours of January 12. He announced firmly he would work for non-violent solutions, but he had reason to worry about violence as hundreds of cars full of UAW members streamed into Flint from Detroit and especially Walter Reuther's West Side Local; the Flint Alliance had armed members filled with contempt for unions.

The governor called out the National Guard, but with strict instructions:

"They are here to protect the peace … and for no other reason at all." He authorized relief for strikers and summoned GM and UAW officials to confer in Lansing. After marathon bargaining Murphy got GM to a verbal agreement that called for the UAW to vacate both plants in exchange for a GM promise not to start production or remove machinery or equipment during 15 days of bargaining to begin January 18.

Trouble developed immediately when a newspaper reporter informed UAW officials of a GM press release reporting GM vice president Knudsen expected to include the Flint Alliance in negotiations. The Flint Alliance wanted Knudsen to allow them to represent non-union employees they claimed were a majority in Flint. UAW officials confronted the governor who personally confirmed the report, which brought an end to the agreement. The Flint sit-downers stayed in the plant while negotiations moved to Washington. John L. Lewis took over while Secretary of Labor Francis Perkins did her best to mediate. Lewis would not agree to vacate the plants without a written agreement; Knudsen would not negotiate until the plants were vacated.

Over the next several weeks the strike returned to a calculated and vicious war of words, although Flint Alliance vigilantes beat up at least two organizers and Roy Reuther was dragged from a sound truck and roughed up and equipment destroyed. On January 21, Lewis released a statement reminding President Roosevelt he asked for the labor vote to defeat the "economic royalists." Since the "economic royalists have their fangs in labor" the workers expect "every reasonable and legal way" to support them. Alfred Sloan called further conferences futile. President Roosevelt characterized Lewis comments as "not in order" but later released a statement as part of a press conference: "I was not only disappointed in the refusal of Mr. Sloan to come down here but I regarded it as a very unfortunate decision on his part." The president would not suggest anything more: "I have a cheerful disposition; that is the only thing that is left."

GM returned to court January 28 after the Judge Black embarrassment and the collapse of mediation. They wanted an injunction requiring immediate evacuation of the plants. Judge Gadola agreed to hear the new request in court on February 1, 1937. In the meantime the UAW planned a new offensive to revive the stalled strike. GM had three Chevrolet plants near each other in Flint in addition to the two Fisher body Plants. Even though cars could not be completed the plants resumed operations during the strike. GM had the plants surrounded with guards, but UAW strategists devised an elaborate ruse of precise cooperation to take over Chevy plant # 4.

In the plan, Roy Reuther, Bob Travis and a few others intended to divert guards from the larger Chevy Plant #4 to the smaller Chevy Plant #9. Reuther and Travis convinced a group in Chevy #9 to take over the plant in a sit-down strike to start February 1. The plan called for the men selected to shut off electricity precisely at the 3:30 p.m. shift change and roam through the plant shouting strike. Walter Reuther organized a caravan to bring UAW members up from Detroit. They were to assemble at Flint UAW headquarters and be ready to support the strike.

Roy Reuther and Bob Travis made sure the strike plan for Chevy #9 leaked to GM stool pigeons, while only five or six from the UAW knew the rest of the steps, a carefully guarded secret. The strike at Chevy #9 was a decoy that succeeded in drawing Chevy #4 guards over to Chevy #9, although Victor Reuther admitted in his memoirs the decoy men got mauled. Once tear gas filled Chevy #9 and chaos reigned the still secret steps moved forward.

A cadre of insiders and fifty of the men Walter Reuther brought up from Detroit entered Chevy #4 without opposition, shut down the electricity, and barricaded all the doors with heavy equipment. Those who wanted to leave were allowed out, but sit downers had Chevy #4. About 4:00 p.m. the strikers at Chevy #9 gave up and left the plant. Many took beatings and needed medical attention for head wounds.

Governor Murphy returned to active participation, but now with Judge Gadola as well as GM and the strikers. Gadola ruled February 1st that sit downers must evacuate the plant by February 3rd or he would levy a $15 million fine. He declared peaceful picketing unlawful in Michigan. The union immediately announced it would defy the order, even though they recognized the enormous pressure on Governor Murphy to use force. Murphy had the National Guard surround the entire GM complex and remove all picketers, but he would not order an evacuation of sit downers. He told Secretary Francis Perkins he did not want to be remembered as “Bloody Murphy.”

By February 3rd, GM finally decided they would bargain in spite of the sit downers. To save face they made a request to President Roosevelt to order the bargaining, which he did. Lewis did the bargaining for the UAW-CIO. He considered UAW President Homer Martin as a burden and sent him on a national speaking tour.

Lewis opened by demanding recognition for collective bargaining in all GM plants; GM offered to bargain for members only. Over the course of several days both sides made concessions. February 4, Lewis asked for exclusive representation in only 20 GM plants and GM agreed, but would not agree to exclusive representation; it would be members only.

Friday, February 5, Judge Gadola made threats; Governor Murphy, and Secretary of Labor Francis Perkins made more proposals. Judge Gadola found the UAW in contempt of court and demanded the sheriff to seize sit-down strikers, picketers and UAW officials. Murphy convinced the sheriff to hold off the seizures while he proposed exclusive representation for a limited time until a NLRB election, a count of membership cards, or a presidential board could determine representation. Secretary Perkins in collaboration with Governor Murphy made written proposals that would ultimately lead to a settlement.

Her proposals allowed the UAW to represent members only in collective bargaining, if GM agreed not to bargain with other unions for the term of the agreement and to abide by the fair labor standards of the Wagner Act. Lewis would wait four months to begin negotiations for exclusive representation. In exchange the UAW agreed to evacuate the plants immediately.

GM proposed three months of exclusive bargaining instead of four while

Lewis demanded six. The last negotiating took place at the Statler Hotel in Detroit on the evening of February 10, 1937. GM decided Judge Gadola could not help and so GM agreed to abandon the injunction suit, figuring Governor Murphy would never order the army to clear the plants. In the compromise Lewis judged his adversaries correctly: it would be six months. At 2:30 p.m. on February 11, 1937 Governor Murphy announced the agreement. (18)

The settlement marks a milestone in U.S. Labor Relations; the nation's largest automobile company finally conceded to collective bargaining and did so before the Wagner Act cases were concluded. However, other violence in other cities at GM facilities occurred during the negotiations in Flint, especially Anderson, Indiana, and in Saginaw and Bay City, Michigan. Chrysler, Ford and smaller automobile companies remained unorganized and therefore unfinished business.

Victor Reuther arrived in Anderson, Indiana January 25 to help with a strike at the Guide Lamp Company that started with a sit down the day after the Flint strike started. At the time the UAW had 400 members out of 11,500 who worked in the plants, but everyone was so sick of speed ups and management abuses the 400 had no trouble taking over the plant in a sit down; the others just walked out. Local opposition organized a Citizens Committee for Employment Security. When sit downers vacated the Guide Lamp plant January 16 after Michigan Governor Frank Murphy announced the first settlement that failed, the Citizens Committee stepped up their anti union threats and back to work efforts to break the strike.

The day Victor Reuther got off the train the Citizens Committee had an anti union rally going at the courthouse square. Afterwards the crowd spilled into the street and headed for the union offices. Some were armed with clubs, rocks and eggs. A union organizer, Charles Kramer was attacked by the crowd that delivered a severe beating. Police arrived at union headquarters before the mob and arrested everyone they found there as "outside agitators" except two stool pigeons who left early. The mob ransacked union offices and destroyed office equipment and furniture they dumped in the streets; the mob set fire to a picket shack near the Guide Lamp plant gate. Anderson Mayor Baldwin and police Chief Bill Carney assured Indiana Governor Clifford Townsend they could handle any problems without the need of the National Guard.

The strike in Anderson had not reached settlement when the Flint sit down ended February 11. Victor Reuther and his staff organized a rally in Anderson to announce and discuss the settlement. They could not get a venue at any church, school or the armory, but finally found a former AFL official who owned a vacant theatre, long closed. A thousand filled the seats to standing room only by 8:00 p.m. in spite of the cold and the need to have kerosene heaters. As Victor Reuther mounted the rostrum there were gun shots from outside the building with shots breaking windows and knocking down plaster inside. Panic ensued, but the crowd was trapped by the mob outside, which Reuther's staff estimated at three to four hundred.

The police chief entered the theatre, mounted the rostrum and informed the

crowd they could leave if Mr. Reuther would submit to protective arrest. Reuther knowing the danger refused but speculated in his memoirs whether the so-called police chief could have, or would have, prevented the lynching he thought quite possible. The crowd remained trapped in the theatre until after 4:00 a.m. Only a few of the mob remained and small groups left with union men in protection.

Reuther and a delegation paid a visit to Governor Townsend who again refused to call out the National Guard. When the theatre story got back to Flint and Detroit thousands of UAW members descended on Anderson. The governor sent state troopers to block the roads, but the men parked and walked in the rest of the way. With real "outside agitators" in town the Governor declared martial law. Another union rally took place February 22 at new union offices, but thousands signed UAW membership cards. (19)

A group of five UAW organizers traveled to Saginaw on January 26, 1937 where they checked into the Bancroft Hotel. They planned to arrange radio and newspaper advertising and rent a hall for a union meeting for Sunday January 31. The next day four of them and two others from Saginaw drove 12 miles to Bay City to make similar arrangements there. They did so at the Wenonah Hotel, the location of the radio station. A seventh person, a UMW official arrived and the seven of them conversed in the lobby until four left to make arrangements at the Bay City Times, the local newspaper; three stayed. The two groups of men were threatened and attacked separately by vigilantes from the local Loyalty Committee. One of the victims Joe Ditzel testified at the LaFollette hearings and three others - John Mayo, Anthony Federoff, William Hynes - made sworn deposition.

When the group of four returned to the Winonah Hotel they encountered around 25 vigilantes and the group of three was gone. The four were accosted, threatened with blackjacks and tried to escape by running into the Winonah Hotel cocktail lounge where they took refuge. In 45 minutes police arrived but did nothing to disperse the vigilantes. Instead they offered a ride to their Bancroft Hotel in Saginaw, but carloads of vigilantes followed them and so these Bay City police dropped them at the Saginaw police station. During this time the group of three were threatened, physically forced out of the Winonah Hotel into waiting cars, and driven to Saginaw. They were held for an hour before police arrived to drive them to the Saginaw police station, where a crowd of 50 vigilantes milled around outside.

Around 10:00 p.m. Saginaw police offered to escort them to their Bancroft Hotel rooms, but there was not yet a way for them to get back to Flint. Ignition wires were cut on their cars and police gave excuses why they could not take them to Flint. When they stepped out of police cars at the hotel they were attacked. In a sworn statement Anthony Federoff said, "While we were going into the hotel this mob gathered around, about 75 or 100, and they started to kick the life out of Ditzel and O'Rourke. This mob and O'Rourke ran on the inside of the hotel and they started to kick him. They actually booted him with their feet while he was prostrate on the floor." … "They (the police) didn't order the crowd to disperse while this landbasting (sic) was going on. No effort was made to disperse the

mob."

Police did get them to their rooms but they could not make telephone calls, phone lines were cut off without explanation. A Saginaw police captain, the General Motors police chief, and the Saginaw city manager hung around their hotel rooms. Saginaw police would not drive them to Flint. After more protest the cornered men demanded a state police escort. The Saginaw police captain agreed to escort them to the county line after claiming to speak with state police and arrange an escort the rest of the way.

The offer came on condition the men would hire their own taxi. When they left in their taxi with a police car in front and another behind, a convoy of vigilantes followed them. The state police did not show up and so the Saginaw police cars continued the escort at speeds upwards of 60 miles an hour. No vigilantes had passed them when the convoy crossed into Flint. In Joseph Ditzel's sworn statement he reported a gray sedan drove up from behind, allowed the rear escort police car to pass in front of their taxi and then swerved into their left door panels driving them into a phone pole and injuring the occupants who had to be hospitalized. The gray sedan continued on. Police made no attempt to find or apprehend the occupants.

Wherever the UAW attempted to organize at GM in the 1930's, GM funded a Citizens Committee of various names that would suddenly be making threats to organizers while police would suddenly become ineffective and unable to enforce the criminal law. LaFollette Committee testimony and reports documented the whole dreary mess, but publicity did not bring enforcement to the criminal law. Union organizing could be dangerous work. (20)

The UAW choose to begin organizing GM over Ford because they considered GM less violent than Ford. Ford maintained as many as 3,000 ex-convicts, criminals and goons in a private army managed by Henry Ford confidant, Harry Bennett. Ford had a well earned reputation for ruthless violence; Ford would have to be last. Following the February 11 success at GM the UAW concluded agreements with three smaller automobile companies: Hudson Motor Car, Packard and Studebaker, and six auto parts suppliers, and then moved on to Chrysler.

Walter Chrysler agreed to meet with UAW negotiators only after the February 11 GM settlement. The Chrysler Corporation used Corporations Auxiliary to do espionage and resist unions similarly as GM. However, it was at a disadvantage fighting unions with so many plants near Detroit and its heavy dependence on one dominate plant: Dodge Main in Hamtramck, Michigan. Another automobile union previously represented employees at Chrysler, the Automobile Industrial Workers Association(AIWA). Their leadership, Richard Frankensteen and R J. Thomas, claimed a membership of 20,000 in October 1936 when they prevailed on Chrysler to accept their seniority proposals after an almost unanimous strike vote. Walter Reuther persuaded Frankensteen and Thomas to combine with his UAW-CIO Local 174 and so now Chrysler would have to confront an even stronger union.

Chrysler offered the same terms of settlement as GM, but the union turned

them down and demanded exclusive representation. Chrysler refused and the UAW responded with a sit down strike March 8, 1937 at nine Chrysler plants. The sit down was peaceful and effective, although this time there was significant public opposition to another sit down. John L. Lewis intervened again to negotiate directly with Walter Chrysler. By March 24, he made an agreement with Chrysler to accept the same GM settlement. It was signed April 6, 1937. (21)

Ford Motor Company would be later and tougher. Volumes of published work describe the disturbed and distorted mind of Henry Ford whose distrust of everyone degenerated into bigotry and delusion. Harry Bennett's Service Department took care of labor relations with a system "that was both military and feudal." Victor Reuther called it "shameless terrorism." Any suspicion of union sympathies brought immediate dismissal. "Informers reported scraps of conversation overheard in the mill or on the approaches to the mill. While at their benches, workers had their overcoats ransacked and their lunch buckets pried into. They were shadowed on their way to the drinking fountain and the lavatory. They were plagued by spies during the break between shifts."

Bennett thugs delivered beatings that would normally bring criminal charges of assault and battery, or worse. Neither Ford nor Bennett showed the slightest sign they expected to have law enforced in Dearborn, Michigan or anywhere else. One of the worst beatings occurred at Ford's River Rouge plant when Walter Reuther, Richard Frankensteen and three others attempted to lead an effort to pass out UAW literature for a membership drive. The men were on a public overpass leading to plant gate #4 and they had a permit from the city government of Dearborn to be on the overpass.

That was on May 26, 1937 a few months after the end of the GM strike. Reuther was cautious but determined to organize the reluctant and fearful Ford work force. He invited reporters, photographers, ministers, and LaFollette Committee staffers to be on hand thinking public exposure would bring a measure of safety and help in the organizing. Reuther, Frankensteen and the others walked up the steps and out to the middle of the gate #4 overpass at Miller Road only to have 40 Bennett thugs surround and attack them.

Reuther recounted the violence: "I didn't fight back. I merely tried to guard my face." … Eight times, he remembered, "They picked my feet up and my shoulder's and slammed me down on the concrete and while I was on the ground, they kicked me again in the face, head and other parts of my body." … "There were about 150 men standing around … I should say about 20 were doing the actual beating." … After a bit they kicked Reuther and Frankensteen down the concrete steps at the end of the overpass; first about half way with more beatings before they kicked them the rest of the way. … From there they shoved and kicked them to a fence adjoining streetcar tracks, about a block away from the overpass.

Reuther and Frankensteen got the worst of it, but there were other men kicked, beaten and bleeding as well as a number of women from the Women's Auxiliary who had volunteered to hand out literature at other gates around the plant. Police were on hand, as Reuther noted, but did nothing to prevent the beatings.

Reuther succeeded getting publicity, which generally denounced Ford. The UAW declared “Today, the world has seen the true character of Ford Motor Co.” Ford responded by withdrawing advertising from Time, Life and Fortune magazines that criticized him. Ford lost market share after the episode, but showed no sign of compromise. It would be almost four more years before the UAW could organize Ford Motor Company. (22)

Chapter Thirteen - Wither the New Deal

After a while I got at the root of the employers' relentless fury. You may break any written law in America with impunity. There is an unwritten law that you break at your peril. It is: Do not attack the profit system.

----------Mary Heaton Vorse from her Memoir A Footnote to Folly, 1935

The end of the Flint GM strike and the United States Steel settlement turned out to be the high point of the New Deal, at least for the working class. Ford Motor Company remained unorganized and fought on. No one stepped forward to take Frank Murphy's role in the Little Steel strikes about to start while Franklin Roosevelt would take a no comment position. After deciding collective bargaining and the right to organize could be constitutional the Supreme Court approved repeated constitutional challenges to limit union negotiating powers. The AFL continued to undermine CIO organizing efforts while some CIO unions divided into warring factions.

An obsession with "too much" government spending brought budget cuts that set off a nasty recession beginning abruptly in August 1937 and soon to be known as the "Roosevelt Recession." By the end of the year every measure of economic gain returned to the depressed amounts of 1935. Gains in industrial productivity and stock prices vanished; employment declined two million. By 1938 relief agencies could not keep up with malnutrition, anemia, and starvation. Children ate from garbage dumpsters. As the end of the 1930's approached FDR knew war was coming and turned his attention to national defense spending, always a way to revive the economy. (1)

Little Steel

In February 1937, during the U.S. Steel Myron Taylor-John L. Lewis negotiations, Taylor briefed officials from a group of steel companies known as "Little Steel." Little Steel included big companies, smaller than U.S. Steel: Jones & Laughlin, Bethlehem, Republic, Youngstown Sheet and Tube, National, Inland, American Rolling Mill Company (ARMCO). When Taylor advised them of his negotiations with SWOC, they could not believe he would negotiate with a union. They were incredulous, angry, disgusted.

Little Steel officials continued their anti union practices in spite of the Wagner Act and the U.S. Steel precedent. The National Labor Relations Board documented a list of these sometimes violent anti union practices from a refusal to bargain case involving Remington Rand Corporation concluded March 13, 1937. In their written opinion the Board summarized the practices they found and gave them a title: the Mohawk Valley Formula. Little Steel adopted much of the Mohawk Valley list, especially the use of armed vigilantes and company police to intimidate strikers, parades of "patriotic" employees who crossed picket lines, and staging public rallies to promote a back to work movement or the right to work.

The successful conclusion of the U.S. Steel negotiations on March 2nd

and then the Supreme Court ruling in the Jones & Laughlin Case so soon after opened a flood of SWOC organizing. Philip Murray convinced over a hundred small companies to sign labor contracts by early May, but Little Steel companies remained mostly unorganized until the Corporate Board at Jones & Laughlin agreed to meet. Jones & Laughlin offered the same members only deal accepted by U.S. Steel, but the Aliquippa, Pennsylvania plant workers voted no and set a strike for shift change, 11:00 a.m. May 12, 1937; they expected their union to have exclusive representation for all who worked at the plant, as the Supreme Court agreed the law required.

At least 500 showed up to picket before shift change and many more joined them after 11:00 a.m. For two days no one entered or left the plant. The crowds got bigger and thousands of J & L's 27,000 employees arrived to sign union cards. It was a show of solidarity with a threatening air of violence that must have convinced management to accept the union terms. They might have been weary after losing the Wagner Act cases. Two days into the strike management agreed to accept a NLRB vote, which took place May 20. The SWOC got 17,208 of 24,235 votes and J&L agreed to the U.S. Steel terms plus exclusive representation. (2)

The rest of Little Steel had fiercely anti union presidents who would put up angry battles using Mohawk Valley methods. The fiercest of them all, Tom Girdler of Republic Steel, refused a SWOC proposal to meet for negotiations, but responded with layoffs and then on May 20, 1937 shut down two Republic mills at Massillon and Canton, Ohio in a lockout. Other Little Steel companies variously ignored letters, refused negotiations or met to inform union officials they would not sign any written contract. SWOC replied with a strike of all Republic, Youngstown and Inland Steel Company plants May 26, 1937.

The strike initially shut down operations at Youngstown plants and at Inland Steel, but the strike at Republic turned into deadly violence that would erupt on May 30, 1937 in a "Memorial Day Incident" at Republic Steel's South Chicago Works. On May 26 police dispersed picketers for hollering at non-striking workers and calling police scabs and finks; twenty-three were arrested and charged with unlawful assembly and disorderly conduct.

On May 28 Mayor Edward Kelly assured strikers peaceful picketing would be permitted. Just four days before the U.S. Supreme Court affirmed the right to peaceful picketing under the Fourteenth Amendment in the case of **Senn v. Tile Layers Local Union No. 5**. The police commissioner advised union attorneys that strikers could picket as they wished. Despite the assurance police pushed picketers two blocks from the plant entrance and reduced them to six. On May 28, strikers attempted to picket en masse and a scuffle ensured resulting in six arrests and injuries to six police. SWOC called a meeting and rally for Memorial Day to protest police misconduct.

By mid afternoon Memorial Day, police estimated 2,500 strikers and their families assembled outside union offices, a former tavern called Sam's Place on Green Bay Avenue north of the main gate of the Republic plant. Two union officers used a pickup truck as a platform to speak and condemn police conduct from the day before. Once the speakers were done a motion came for the crowd to

march to the plant. They marched south down Green Bay Avenue and then turned southwest onto a dirt road through an open field. Two union officials marched at the front carrying American flags. Wives, children and a variety of supporters joined the march: ministers, divinity students, a novelist, a social worker, a doctor, teachers and at least one reporter. A few carried signs; some picked up debris littering the field.

They intended to establish a picket line at the front gate but James Mooney of the Chicago Police had 264 officers on duty at the plant. His men advanced two blocks in line toward the marchers. Marchers came forward and assembled in a throng along the front of the police line. During the standoff someone near the back of the throng tossed a stick toward police, which witnesses reported did not reach the ground before police opened fire into the marchers in front of them followed by tear gas canisters shot into retreating crowds running through the field.

The police killed 10 and wounded 41 with gun shot wounds. At least thirty more were hospitalized with wounds from beatings with police clubs and many more needed medical attention from police inflicted wounds. No policeman had a gunshot wound although 35 reported injuries; three were hospitalized. Police bullets would be documented and published with outline drawings printed in the LaFollette Hearings. The ten fatal bullet wounds were six in the back and four in the side; none from the front. The 41 non-fatal bullet wounds to police victims were 4 from the front, 27 in the back, 6 in the right side and 4 in the left side.

Newspaper accounts blamed the strikers. In the New York Times of May 31, 1937 the headline read "Steel Mob halted." The story charged that demonstrators "armed with clubs, slingshots, cranks and gear shift levers, bricks, steel bolts and other missiles attacked the police and after being repulsed "tried to reassemble for another attack on the plant. …" The Chicago Tribune of June 6, 1937, called it an "attack" as an invasion by a "trained military unit of a revolutionary body." (3)

Reporter Paul Y. Anderson of the St. Louis Post-Dispatch learned that a Paramount news photographer had filmed the march and the police shooting. Attorney and secretary for the LaFollette Committee, Robert Wohlforth got a print of the film. Paramount refused to show the film, but Wohlforth held a private screening for Senator LaFollette, Senator Elbert Thomas and committee staff. Anderson wrote a story for the Post-Dispatch that viewers "were shocked and amazed by scenes showing scores of uniformed policemen firing their revolvers pointblank into a dense crowd of men, women and children, and then pursuing and clubbing the survivors unmercifully as they made frantic efforts to escape."

The LaFollette Committee conducted hearings on the Memorial Day Incident June 30 and July 1 and 2, 1937. This three days of hearings generated 536 pages of testimony from 33 participants along with still photographs of police conduct and other documents and exhibits. At the end of the hearings Senator LaFollette ran the Paramount film.

The police commissioner, counsel to the police department and 8 police officers defended their actions in testimony. The head of Republic Steel, Tom Girdler, did not testify but claimed "This crowd was being organized to force its

way into our steel plant to drive the men out." The marchers were "playing parts in a drama written, directed, and produced by revolutionists."

Ten strikers who marched and others who marched with them including the paramount camera man, a reporter, a minister, a doctor, a writer and a few more told a different story at the hearings. Chicago Daily news reporter Ralph Beck saw marchers asking permission to establish a picket line. Then he saw a tree branch hurled from behind the line of marchers toward the police. After a warning cry, "the next thing I heard was a shot from the rear of me, … and I turned around and saw a policeman's revolver pointing in the air over the heads of the other officers." Following the first shot came a "rain of rocks and clubs" from the strikers and a volley of several hundred shots from the police. Beck saw policemen at the front of the line "fire point-blank into the crowd." Then as the marchers broke and fled, the police "started to work with their clubs."

John Lotito carried an American flag at the front of the parade. He was talking to a policemen when "I got clubbed … and I went down, and my flag fell down, and I went to pick up the flag again, to get up, and I got clubbed the second time. … I started to crawl away, … half running and half crawling. …" Police shot him in the calf of his leg as he crawled.

Mrs. Lupe Marshall heard "a dull thud toward the back of … my group, and as I turned around there was screaming … and simultaneously a volley of shots. … I turned around to see what was happening, and the people that were standing in back of me were all lying on the ground face down. I saw some splotches of blood on some of the fellow's shirts." … Then "somebody struck me down from the back again and knocked me down. As I went down … a policeman kicked me on the side. … After he kicked me I tried to get up, and they hit me three times across the back, and then somebody picked me up and took me to the patrol wagon." Police piled the wounded on top of each other, "half dragging them and half picking them up. … Some had their arms all twisted up, and their legs twisted up, until they filled the wagon up, and one man said, "Well I guess that's all."

Running the suppressed Paramount News film climaxed the hearings and demolished police testimony and virtually every claim made by the police. Except for two brief intervals during which lenses were changed, the film captured the entire incident. It revealed that after the initial volley of shots the police had charged the marchers, swinging their riot sticks and throwing tear gas grenades. Only one marcher could be seen to resist the police onslaught. Police surrounded isolated marchers and beat them senseless. One man tried to run the gauntlet of officers; he was clubbed until he fell unconscious. Another, shot in the back and paralyzed below the waist, was dumped into a patrol wagon. Only two words were heard in the film, "God Almighty."

At the end a disheveled policeman had a grin on his face and made a motion of dusting off his hands and strides away. LaFollette report declared the riot "clearly avoidable" and placed responsibility on the Chicago police. Further, "The nature of the police injuries does not argue that the marchers put up marked resistance to the police; the medical testimony of the nature of the marchers wounds indicates that they were shot in flight." Further "shooting in the air cannot

explain 40 gunshot wounds, the majority in the back" nor could back wounds be reconciled with a claim of self defense. (4)

As we might expect the Little Steel attacks infuriated John L. Lewis. He expected support from the president and was quoted in the New York Times: "Labor will await the position of the authorities on whether our people will be protected or butchered." At a regular press conference June 29, 1937 FDR commented on the Little Steel Strike: "the majority of the people are saying just one thing, 'A plague on both your houses' " For FDR to avoid taking sides in a documented episode of one-sided violence against labor did enormous harm to personal and political relations between Lewis and the President. Roosevelt appeared to be taking labor support for granted in order to protect his middle class and business support, and forgetting labor cast the votes for his 1936 election landslide. The June 29 press conference would turn out to be the beginning of the end of John L. Lewis support for FDR. (5)

The Memorial Day slaughter did not end the strikes and battles with Republic or other Little Steel companies. After the lockout and strike at Republic Steel in Massillon, Ohio Republic officials encouraged local businessmen to organize a Law and Order League to promote a back to work movement. Strikers organized round the clock picketing, and the plant stayed closed before the company announced it would reopen. The police department agreed to deputize forty of Republic's company police, which occurred July 7. The strike remained effective and without violence until the night of July 11. When strikers arrived at their union hall preparing a new shift of pickets, they found a police patrol standing outside. Only the police were armed, but they opened fire on the union hall in what the LaFollette Commission would call an unprovoked and murderous attack. Three were killed and many others wounded in a haze of tear gas. The police arrested and jailed 165 people without warrants, without charges and taken from homes and apartments surrounding the union hall. The strike collapsed.

At the Republic Plant in Monroe, Michigan SWOC members made up only 15 percent of employees. The mayor of Monroe and a group of non-striking employees from an independent union demanded the plant reopen. Republic furnished the mayor with clubs, tear gas, and munitions once he agreed to deputize vigilantes. Picketers responded by blocking the road near the plant, but they were no match for police who ended picketing with a tear gas attack. A union organizer was severely beaten. The strike collapsed.

In Youngstown, Ohio both the Republic Steel and Youngstown Sheet and Tube plants remained closed, but worried officials authorized hiring more Mahoning County and Youngstown City police. Just over half of the new hires were employees of one or other of the two steel companies: 152 new county deputies, 144 new Youngstown police. The steel companies also funded a Mahoning Valley Citizens Committee that bought advertising to publicize a back to work movement. Nothing changed until a fight broke out June 19 in Youngstown at the Republic gate known as Stop 5. After 250 of the police arrived, a "Stop 5" riot ensued and continued through most of the night amid rock throwing, tear gas and shooting. By morning, two were dead and 42 injured, some of them women.

Republic Steel announced the plant would reopen June 22 and bought helmets for those willing to cross a picket line. The governor of Ohio responded with martial law hoping to maintain order while Federal mediation efforts moved forward.

The plant remained closed, but not for long. Picketing stopped since police arrested picketers and invaded homes searching for arms. Federal mediators pulled out June 24 and the plant reopened under National Guard protection and the strike came to an end. A local official commented, "We have broken the back of Bolshevism in America right here in the Mahoning Valley."

Trouble at Bethlehem Steel in Johnstown, Pennsylvania overlapped with Republic Steel at Youngstown. The strike there started June 11 when 12,000 of 15,000 left work at the Cambria works. Bethlehem had a company union and a close alliance with Johnstown Mayor Daniel Shields, a former bootlegger who served two years in prison. Shields predicted violence and then did his best to encourage Johnstown to "rise up and do the things all red-blooded Americans should do." Police did rise up and club pickets.

After the strike started a local minister and the manager of the Cambria works organized a Johnstown Citizens Committee to raise funds in a national anti union campaign handled by the John Price Jones Corporation of New York, a public relations firm. When the union scheduled a rally for June 20, Governor George Earle Jr. declared martial law and shut down the plant fearing violence. The shut down infuriated Bethlehem president Eugene Grace, local officials and the Citizens Committee; they mounted a back to work movement during the delay. The plant reopened June 27 after just seven days with nothing accomplished for the union but another failed strike.

SWOC succeeded in shutting down most of "Little Steel" but only for short periods. Roosevelt Administration officials made valiant mediation efforts and ultimately offered specific settlement proposals at Republic and Bethlehem, which the companies summarily rejected. Mediators pulled out June 24. Most of the companies had previously made a concession or two over wages and hours, but none would recognize a union or sign a contract. Tom Girdler of Republic Steel authorized a statement: "Republic cannot, and will not enter into a contract, oral or written, with an irresponsible party, and the CIO as presently constituted, is utterly irresponsible. Therefore, any discussion of this subject is futile."

Resistance in the Little Steel strike cost Republic Steel an estimated $8 million in net income. Tom Girdler's blunt refusal to bargain came long after the Wagner Act passed and after the Supreme Court ruled in the Jones & Laughlin case; eventually labor law would bring change to the steel industry. Nothing about the strike episodes resembles an economic negotiation as the National Labor Relations Act intended; two sides express their hatred for each other in violent contests. Wagner Act administrative procedures crawled forward, but Girdler defiance stalled steel union organizing four more years. (6)

Labor and the Courts

Justice Holmes wrote in his Jones & Laughlin opinion "It is a familiar principle that acts which directly burden or obstruct interstate or foreign commerce,

or its free flow, are within the reach of the congressional power. Acts having that effect are not rendered immune because they grow out of labor disputes." After the five Wagner Act cases the justices accepted that labor disputes before the court affect commerce enough to be subject to Wagner Act protections.

In all five of the Wagner Act cases the National Labor Relations Board argued the employers violated Section 8(1) and 8(3) of the NLRA. Recall Section 8(1) makes it an unfair labor practice to "interfere, restrain or coerce" employees attempting to exercise their right of self-organization. Section 8(3) makes it an unfair labor practice to "discriminate" in regard to hire or tenure of employment to encourage or discourage membership in a labor organization. The rulings in the Wagner Act cases established some operational limits to anti union practices, which suggested a degree of assurance to unions that the justices would protect the right of employees to organize or join a union free from employer discrimination, coercion or control.

The enforcement procedures in the NLRA, Section 10 call for an aggrieved person or persons to initiate unfair labor practice charges by filing a complaint with the NLRB. If the Board or Board staff accept the complaint it serves the person or persons with written allegations of an unfair labor practice. The companies charged have a right to file a written answer and the right to appear and give testimony at an administrative law hearing before an administrative law judge (ALJ). The ALJ can recommend dismissal or propose remedial action for an unfair labor practice ruling. The Board can initiate further testimony and review at its discretion prior to making their decision to dismiss, affirm, or modify the administrative law judge ruling.

In cases of finding an unfair labor practice, the administrative law judge and the Board have authority to issue a cease and desist order, require reinstatement as necessary with or without back pay, or take other "affirmative action as will effectuate the policies of this Act." The Board can initiate enforcement in a United States Court of Appeals, a.k.a. a circuit court, should either party ignore their rulings. Further, any person aggrieved by a final Board order granting or denying relief can file a petition for review in a circuit court.

In the early years after the Wagner Act management would challenge the National Labor Relations Board's claims of Wagner Act protections as an interference with management rights. Some of these labor disputes would move through the NLRB procedures to a Board ruling, only to be challenged in a circuit court and make its way to the Supreme Court; the Supreme Court did not hesitate to modify or reverse a Board ruling to limit, narrow down or restrict legal protections for union practices in labor disputes, especially the right to strike. The disputes Senator Wagner hoped would be an economic contest often turned into a legal and public relations brawl intended to change the rules of the contest.

The legal battles between 1935 and 1947, before the Congress amended the Wagner Act with the Taft-Hartley Act, reflected the brevity of the original statute. Clearly entitled sections with concise wording helped confine most disputes to management refusals to accept NLRB application of the rules for unfair labor practices in Section 8. Some other disputes in the 1935 to 1947 years challenged

rules for representation elections in Section 9, the meaning of employees under Section 2(3) and the duty to bargain in Section 8(5). When management refused to comply with NLRB findings and rulings in these early cases Board officials petitioned the circuit courts to enforce their order, which sometimes ended at the Supreme Court.

The Right to Strike – MacKay Radio

Strikes play a central role in the NLRA as passed in 1935. A strike or a threat of a strike would be the method to force both sides in labor disputes to evaluate their economic power. The NLRA did not allow the government to settle strikes, but expected a strike would bring a settlement by forcing both sides to weigh their economic losses against the economic terms of a negotiated settlement. The NLRA attempted to make the strike a viable contest by establishing labor's right to strike with a set of rules to protect labor in their negotiations, primarily the five unfair labor practices in Section 8. The right to strike would be questioned early in the case of the **National Labor Relations Board v. MacKay Radio and Telegraph Company**.

The MacKay Radio and Telegraph Company employed 60 people at its San Francisco office, mostly union members of Local No. 3 of the American Radio Telegraphists Association. After negotiations stalled for a new contract a strike began Friday, October 4, 1935. All the union men in the San Francisco Office left work. To maintain service MacKay brought in employees from their Los Angeles, New York, and Chicago offices to fill the strikers' places.

By Monday some of the men doubted the strike would succeed; one of them phoned their supervisor to find out "Could I return?" The supervisor said he would take them back and arranged to meet the employees at a downtown hotel. Before the meeting the supervisor learned the men might return to their former positions but striking employees could "return in such fashion as not to displace any of the new men who desired to continue in San Francisco." Shortly six of the eleven strikers returned to work because five of the replacements wished to stay on in San Francisco. After several days, the five not reinstated learned the roll of employees was complete, and that their applications would be considered in connection with any vacancy that might thereafter occur. The men not reinstated were especially active in the union and the strike.

In response Local 3 presented charges of an unfair labor practices to the NLRB, alleging discrimination against union members in violation of Sections 8(1) and 8(3) of the Wagner Act. At each step in the case MacKay attorneys disputed the Board's conclusion until the Board filed a petition of enforcement for a hearing before the Circuit Court of Appeals. The Circuit Court judges voted 2 to 1 to deny NLRB claims of an unfair labor practice. The case moved to the Supreme Court where among other things the MacKay attorneys insisted that the circuit court failed to interpret the law correctly in seven different ways. The Supreme Court addressed these MacKay claims in nine numbered paragraphs with the third, fourth and fifth paragraphs being especially important and relevant to the future of labor relations.

In the third paragraph, the justices affirmed that the MacKay strikers remained as employees as defined in Section 2(3) of the National Labor Relations Act.

In the fourth paragraph, the justices paraphrased MacKay attorneys with "There is no evidence and no finding that [MacKay Radio] was guilty of any unfair labor practice in connection with the negotiations. On the contrary, it affirmatively appears that [MacKay officials were] negotiating with the authorized representatives of the union. Nor was it an unfair labor practice to replace the striking employees with others in an effort to carry on the business. Further they cited NLRA Section 13 to explain that even though, 'Nothing in this Act shall be construed so as to interfere with or impede or diminish in any way the right to strike,' it does not follow that an employer, guilty of no act denounced by the statute, has lost the right to protect and continue his business by supplying places left vacant by strikers. And he is not bound to discharge those hired to fill the places of strikers, upon the election of the latter to resume their employment, in order to create places for them."

In the fifth paragraph, the justices found "The Board's findings as to discrimination are supported by evidence." . . . "There was evidence, which the Board credited, that several of the five men in question were told that their union activities made them undesirable to their employer; and that some of them did not return to work with the great body of the men at 6 o'clock on Tuesday morning because they understood they would not be allowed to go to work until the superior officials had passed upon their applications." . . . "We cannot say [the Board's] finding [of discrimination] is unsupported" but we cannot say either that MacKay's excuse for their discrimination "was an afterthought and not the true reason for the discrimination against them."

The Supreme Court agreed with the Board that MacKay radio targeted strike leaders and so did "discriminate in regard to tenure of employment and has thereby discouraged membership" in Local 3. The Board's order required MacKay to reinstate the men with back pay. The union prevailed in their discrimination charge, but in paragraph four the justices added an opinion unrelated to the evidence in the dispute before the court.

The unrelated opinion in paragraph four appears as a pronouncement that contradicts the ruling in paragraph five. In paragraph four the justices allow an employer to favor those who work during a strike over those that do not by replacing strikers with strikebreakers, but in paragraph five they make it an unfair labor practice to replace employees based on their union activity during a strike. The justices did not address this contradiction or explain why one would be an unfair labor practice discrimination and the other would not.

Paragraph four of the MacKay ruling limits the protections in Section 2(3), Section 7 and Section 13 to labor disputes with proven unfair labor practices by employers. A proven unfair labor practice needs the entire Board filing, a hearing and ruling process, which can be challenged and over turned in the federal courts after years of delay. A strike over low wages or seniority rules defines an economic strike, but paying low wages is not an unfair labor practice. The MacKay ruling

allows economic strikers to be fired and replaced.

The ruling ended the New Deal policy formula for eliminating economic disruption from labor disputes. Recall New Deal policy makers, or "Brain Trusters," wanted to assure labor could organize into unions that could negotiate with corporate America to prevent strikes from disrupting production and employment. Before Section 7(a) in the National Industrial Recovery Act union solidarity could create enough economic power to withhold labor to force negotiations and win some gains with a strike. Recall the many strikes of the late 19th and early 20th century where police, National Guard, vigilantes and the courts intervened to break the strike with whatever brute force they deemed necessary. Unions lost strikes they had the solidarity and economic power to win.

The New Deal policy makers hoped to end violence and strike disruptions by protecting the right to strike, but the MacKay ruling all but guarantees unions can only conduct strikes as they did before NLRA. The unfair labor practices in 8(1) and 8(3) of the Act attempts to limit management efforts to prevent employees from organizing or maintaining a union. Their primary gist prevents discrimination against employees for union organizing and membership. The MacKay ruling allows employers to replace strikers with strikebreakers in apparent violation of Section 8(3) wording to prevent discrimination in regard to hire or tenure of employment.

The justices further limited the Board's power in Section 10(c) - to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act – and they limited Section 13 protections - nothing in this Act shall be construed so as to interfere with or impede or diminish in any way the right to strike - to almost nothing beyond the organizing period.

The MacKay Radio ruling came May 16, 1938, barely three years after the NLRA passed into law. Strikers of 2024 can still be replaced as a legacy of the MacKay ruling. The Supreme Court has had opportunities to overturn or modify the MacKay ruling, but has refused to do so. MacKay was the beginning of the end of the right to strike as we shall see. (7)

Free Speech

The first members of the new 1935 National Labor Relations Board, known as the Madden Board after its first chair, Warren Madden, took the position that employers must remain neutral and silent while employees discuss organizing a union, either among themselves or with a union organizer from an existing international union. Given the long history of corporate hostility and attacks on unions the Madden Board regarded direct employer contact with employees in their union activity as an implied threat to their jobs and self support.

An early dispute erupted over an unfair labor practice complaint that Virginia Electric and Power Company took actions to coerce, dominate and discriminate against employees by organizing a company union they designated as the Independent in violation of Section 8(2), that makes it an unfair labor practice to "dominate or interfere with the formation or administration of a

labor organization." The Board ordered the company to disband the union and to reinstate fired employees with back pay. Both Virginia Power and the Independent filed petitions in circuit court, which denied enforcement of the Board order. Appeal was taken until the Supreme Court took that case of **NLRB v. Va. Electric Power** on a writ of certiorari.

The facts in the case showed the president of the company posted a "To the Employees of the Company:" bulletin in response to efforts to form an "Independent Labor Organization." He told them "a happy relationship of mutual confidence and understanding" without "any labor organization among our employees" . . . entitled them "to know certain facts and have a statement as to the Company's attitude with reference to this matter."

The bulletin went on to tell employees "The Company recognizes the right of every employee to join any union" but "It is not at all necessary for him to join any labor organization, . . . Certainly there is no law which requires or is intended to compel you to pay dues to, or to join, any organization." In a final paragraph J.G. Holtzclaw, president of the company, concluded with "If any of you, . . . have any matter which you wish to discuss with us, any officer or department head will be glad, as they always have been, to meet with you and discuss them frankly and fully."

Afterwards Virginia Power received individual requests to raise wages and improve working conditions. The company stalled until it "directed its employees to select representatives to attend meetings at which company officials would speak on the Wagner Act." At the meetings company officials read speeches explaining that requests by one individual could not be honored "without also making the same concessions to other employees" that amounted to collective bargaining. Management concluded this would not be a "logical procedure." The correct procedure needed to be "fair to all employees," which they declared would be to follow the procedures "provided in the Wagner National Labor Relations Act," which they cited as Section 7.

A short time later management suggested committees of employees meet on company property and company time to devise a constitution and bylaws for an Independent Union. Next the committee distributed application cards and shortly, the committee notified management a majority of employees signed the cards accepting the union. The next day committee representatives and management signed a union contract calling for a closed shop, dues check off and a wage increase. Shortly after beginning the contract the company started collecting dues and discharged two employees, Staunton and Elliott, for refusing to join the union. Later it discharged another employee, Harrell, for his membership and activity in an outside union.

In their ruling the justices quoted from the Wagner Act that "the findings of the Board as to the facts, if supported by evidence, shall be conclusive." This they declared "precludes an independent consideration of the facts" . . . so that . . . "we must ever guard against allowing our views to be substituted for those of the agency, which Congress has created to administer the Act." However, the justices decided the Board's unfair labor practice conclusions were "not free from

ambiguity and doubt." . . . and so . . . "We believe that the Board, and not this Court, should undertake the task of clarification."

The justices remanded the case – sent it back - to the Board for re-determination, with the admonition that the first amendment applies to employers and employees. They instructed the NLRB to carefully weigh coercion as defined in the law with free speech rights. They wrote in part

"The Company strongly urges that such a finding [of an unfair labor practice in this case] is repugnant to the First Amendment. Neither the [Wagner]Act nor the Board's order here enjoins the employer from expressing its view on labor policies or problems, nor is a penalty imposed upon it because of any utterances which it has made. . . . The employer in this case is as free now as ever to take any side it may choose on this controversial issue. But certainly conduct, though evidenced in part by speech, may amount in connection with other circumstances to coercion within the meaning of the Act."

The Supreme Court ended the Madden policy of separation. Further, they decided

> "The bulletin and the speeches set forth the right of the employees to do as they please, without fear of retaliation by the Company. Perhaps the purport of these utterances may be altered by imponderable subtleties at work which it is not our function to appraise. Whether there are sufficient findings and evidence of interference, restraint, coercion, and domination without reference to the bulletin and the speeches, or whether the whole course of conduct evidenced in part by the utterances was aimed at achieving objectives forbidden by the Act, are questions for the Board to decide upon the evidence."

During the 1930's Ford Motor Company employees were not permitted to speak during the few minutes allotted as a lunch period on pain of dismissal. Ford paid stool pigeons and spies to listen for anyone who spoke about unions or attempts to organize a union. Those discovered were immediately fired and put on a "blacklist" of those never to be rehired. Recall before the GM sit down strikes, union organizers like Wyndham Mortimer had to sneak around and hold secret meetings in private homes to avoid certain firings and physical attacks on organizers by GM's hired thugs. Few worried about labor's free speech rights in that period, but in the few short years to 1941 and this Virginia Power case the justices would overrule the Board to allow employers to crash union meetings in the name of free speech as long as they "carefully weigh coercion" and find management to be not too "coercive" in their union opposition. This was just the first free speech case. After the Taft Hartley Act of 1947 and more cases moved from the Board to the Supreme Court, terms like "no solicitation rules," and "captive audience meeting" would be a legal contest over free speech. (8)

The MacKay and Virginia Power rulings over the right to strike and free speech for employers were two early cases to make their way to the Supreme Court in the years 1935 to 1947 before Congress amended the NLRA with the Taft-Hartley Act. Unions expected free speech should apply to them but soon

found corporate America making claims that private property rights allowed them to deny employees from discussing union organizing on company property and to deny labor organizers access to company property. Management did not just refuse access they distributed anti union literature while often requiring attendance at anti union meetings to listen to anti union speeches as their free speech right.

Corporate officials wrote rules banning soliciting for any purpose, expecting to apply the rules to their employees or union organizers that might hand out union literature. When an employee at Republic Aviation persisted in passing out union literature, he was fired. In an unfair labor practice ruling the NLRB declared the "no solicitation" rule interfered with, restrained and coerced employees in violation of Section 8(1) of the National Labor Relations Act and discriminated against the discharged employee in violation of section 8(3).

The dispute moved to the Supreme Court in the case of **Republic Aviation Corp. v. NLRB**, which affirmed the Board order. The Supreme Court decided employees were "entirely deprived of their normal right to 'full freedom of association' in the plant on their own time, the very time and place uniquely appropriate and almost solely available to them therefor." Notice the ruling applies to employees but not union organizers. The issue of access would come up again after the Taft-Hartley Act amendments, as we shall see. (9)

Employers and Employees and the Duty to Bargain

Other unfair labor practice challenges moved through the legal process in disputes over the definition of employees covered by the NLRA, and the duty to bargain.

Employees and Employers---------- The Wagner Act did a poor job of defining an employee, which provided an opening for legal disputes. The rights and protections for labor under the National Labor Relations Act applies only to employees described in Section 2(3) of the law. Employers determined to avoid employee efforts to organize a union demanded to define their employees as something else. They would be supervisors, directors, department heads, foremen, independent contractors and so on. The law only provided that "The term 'employee' shall include any employee, and shall not be limited to the employees of a particular employer" but did not define what activities would distinguish an employee from management. The failure to be specific left the NLRB to apply a large measure of discretion with a broad definition, or for court challenge to give a narrow definition.

After Board review in an early 1944 case of the **NLRB v. Hearst Publications**, Hearst Publications petitioned the circuit court claiming the newsboys could be independent contractors and not entitled to organize a union under the NLRA. Justice Wiley Rutledge wrote for the majority that decided the work of the newsboys established them as employees under the NLRA in that "newsboys work continuously and regularly, rely upon their earnings for the support of themselves and their families, and have their total wages influenced in large measure by the publishers who dictate their buying and selling prices, fix

their markets and control their supply of papers. Their hours of work and their efforts on the job are supervised and to some extent prescribed by the publishers or their agents. Much of their sales equipment and advertising materials is furnished by the publishers with the intention that it be used for the publisher's benefit."

The Wagner Act did an equally poor job of defining employer in Section 2(2). The term "employer includes any person acting in the interest of an employer, directly or indirectly[.]" In a 1947 case, the Packard Motor Car Company claimed their 1,100 foreman could not be included in a union of 32,000 rank and file workmen represented by the UAW because foreman were part of management. In January 1947 in **Packard v. NLRB** the Supreme Court decided foreman "maintain quantity and quality of production subject to control and supervision of the management" that qualified them for union membership. Justice William O. Douglas wrote a dissent where he argued the NLRA intended to make employers and employees two separate adversarial groups in opposition to each other. He argued foreman cannot be employees without blurring the line between labor and management in a case where management has authority to enforce "oppressive industrial policies." Foremen were "instrumentalities of those industrial policies." Since Congress failed to separate employees from employers in the law he wanted the Supreme Court to do so by judicial mandate. Notice Justice Douglas wanted to legislate where Congress had failed to do so in a competent manner. His minority opinion would become a majority opinion in a much later case, as we shall see. (10)

The Duty to Bargain and Exclusive Representation ---------- Section 8(5) in the NLRA made it "an unfair labor practice to refuse to bargain collectively with the representatives of his employees subject to the provision of Section 9(a)." Section 9(a) requires a union must be authorized by a majority of the employees in a bargaining unit defined by the NLRB. If a majority approves of a union the bargaining unit will become the exclusive representative of **all** the employees. Corporate America probed the duty to bargain collectively and the "exclusive representation for all" requirement early. In **J. I. Case v. NLRB** of 1944, the company refused to bargain with a NLRB certified union because it had individual contracts with employees. On August 1, 1941 the J.I. Case company negotiated uniform, individual and voluntary one year employment contracts with 75 percent of its employees. The NLRB conducted an election with a majority of employees voting for a CIO union local. In December of 1941 management claimed the individual contracts barred a union representation election and refused to recognize or bargain with the union.

After an administrative law hearing the NLRB found J.I. Case in violation of NLRA Section 8(1) - interfering, restraining, or coercing employees in the exercise of their rights - and Section 8(5) refusing to bargain collectively. The Supreme Court eventually ruled in the Board's favor stating that "Individual contracts . . . may not be availed of to defeat or delay the procedures prescribed by the National Labor Relations Act looking to collective bargaining, nor to exclude the contracting employee from a duly ascertained bargaining unit; nor

may they be used to forestall bargaining or to limit or condition the terms of the collective agreement."

The Supreme Court upheld another Board ruling that further established exclusive representation in the 1944 case of **Medo Photo Supply Co. v. NLRB**. In Medo management recognized a labor union under NLRB procedures. Twelve members of the bargaining unit requested a meeting with management to explain they were dissatisfied with the union and would abandon it if management would agree to their request for a wage increase. Management agreed to the increase for the twelve and some additional employees; management decided their actions amounted to decertifying the union and they would no longer bargain with it.

The NLRB determined Medo to be in violation of Section 8(1) - interfering, restraining, or coercing employees in the exercise of their rights - and again Section 8(5) - refusing to bargain in good faith. Medo objected and the matter moved to the Supreme Court that sustained the Board's ruling. The justices declared "The obligation to bargain in good faith exacts "the negative duty to treat with no other." . . . The majority opinion went on to write "[B]y ignoring the union as the employees' exclusive bargaining representative, by negotiating with its employees concerning wages at a time when wage negotiations with the union were pending, and by inducing its employees to abandon the union by promising them higher wages, violated Section 8(1) of the Act, which forbids interference with the right of employees to bargain collectively through representatives of their own choice." . . . "Bargaining carried on by the employer directly with the employees, whether a minority or majority, who have not revoked their designation of a bargaining agent would be subversive of the mode of collective bargaining which the statute has ordained." A certified union will be the exclusive bargaining agent for all employees; management must negotiate solely with those who represent the union.

In **Franks Brothers v. NLRB** a majority of 45 out of 80 clothing workers authorized the Amalgamated Clothing Workers of America (ACW) to represent them. Management wanted an election, which was scheduled a month later on July 25, 1941. Before the election, Franks Brothers went ahead with "an aggressive campaign against the Union, even to the extent of threatening to close its factory if the Union won the election." The union suspended the election and filed charges with the NLRB. The NLRB took almost nine months negotiating with Franks Brothers before giving up and issuing a complaint alleging unfair labor practices. The complaint came in October 1942 after 13 people left employment, leaving a minority of 32 votes from the original majority of 45. The Board refused to agree to another election but made an "affirmative order requiring the employer to bargain with the Union, which represented a majority at the time the unfair labor practice was committed."

The circuit court affirmed the Board order and the Supreme Court took the case on a writ of certiorari. The Supreme Court majority concluded "Out of its wide experience, the Board many times has expressed the view that the unlawful refusal of an employer to bargain collectively with its employees' chosen representatives disrupts the employees' morale, deters their organizational

activities, and discourages their membership in unions. The Board's study of this problem has led it to conclude that, . . . a requirement that union membership be kept intact during delays incident to hearings would result in permitting employers to profit from their own wrongful refusal to bargain." . . . And "It is for the Board not the courts to determine how the effect of prior unfair labor practices may be expunged."

Make note that the Supreme Court cited Section 10 of the NLRA to rule as "necessary to effectuate the policies of the Act" and so the Board has the authority to order an employer to bargain – a bargaining order - even though a majority may be in doubt due to unfair labor practices. When an employer makes an excuse not to show up and at least make an appearance of bargaining, circuit courts and Supreme Court justices have found it relatively easy to enforce a bargaining order by the Board. In Franks Bros stalling reversed a representation election and violated Section 8(5), but what employers can do and say as free speech and how far they can go to get rid of a union would present more difficult decisions. When the Board and the courts should make a bargaining order overturning a lost election would become quite controversial, as we shall see. (11)

In the J.I. Case, Medo Photo Supply Co. case and Franks Bros. cases the NLRB and the Supreme Court found violation of the fifth of the Section 8 unfair labor practices. In all the cases management made excuses not to show up or bargain at all when the brief single sentence in the law requires the employer to at least show up and make a proposal.

Showing up and bargaining does not assure agreement and the NLRA does not require agreement, nor provide any assurance an agreement can be reached in negotiations for a union contract. During debate on the NLRA Senator Walsh, chairman of the Senate Labor and Education Committee, stated, "When the employees have chosen their organization, when they have selected their representatives, all the bill proposes to do is to escort them to the door of the employer and say, 'Here they are, the legal representatives of your employees.' What happens behind those doors is not inquired into, and the bill does not seek to inquire into it."

A collective bargaining agreement comes, if it comes, when labor and management reach a voluntary agreement without intervention by the Board, the courts, or the government. If the two parties refuse to agree on a collective bargaining contract they are not required to go to binding arbitration or have any third party settle their disagreement. They reach impasse. What to do about impasse created a legal abyss, which abyss court justices later took it upon themselves to fill. What they did favored management, as we shall see. (12)

Senator Wagner and Congress created the NLRB as a separate administrative agency that would specialize in settling labor disputes and develop expertise for rulings they hoped would generate settled and uniform national law. Congress expected the law to be administered by future Boards in the fashion of courts where decisions create a binding precedent for the future referred to as stare decisis. While the history of the hostile use of injunctions in the federal courts to break strikes left many in Congress to distrust the federal courts, Congress

felt compelled to write rules in the law for Federal Court review. Section 10 - the prevention of unfair labor practices - included Section 10(e) that allows the Board to petition a federal circuit court to grant a restraining order or to review the Board record and enter a ruling enforcing, but also modifying, or setting aside all or part of a Board order. Section 10(f) allows any aggrieved party to a board order - the loser - can petition the circuit court where the case took place, or where the person or persons reside, or in the District of Columbia Circuit Court. The 10(f) phrasing prevents the Board from shopping for a particular one of the 13 circuit courts. Those aggrieved with a circuit court ruling could petition the Supreme Court for a final review.

In the depression of the 1930's administrative agencies with judicial functions like the National Labor Relations Board were new and some circuit court and Supreme Court justices looked upon them as annoying interlopers treading on their authority. From the beginning of NLRA enforcement circuit court and Supreme Court justices regarded the Board as a "court below" meaning they could overrule their decisions at their discretion. Justices did not always appreciate that National Labor Relations Board specialists and attorneys might know more about labor disputes than they do, or that their upper class origins and isolation from the working class might influence their decisions.

In spite of the hostility toward the Board the federal court justices did work to define standards for respecting Board decisions in their majority opinions. In the 1941 case of **Phelps-Dodge v. NLRB** the majority decided that a law like the NLRA with "such a large public policy" … "must be broadly phrased and necessarily carries with it the task of administrative application." . . . "Because the relation of remedy to policy is peculiarly a matter for administrative competence, courts must not enter the allowable area of the Board's discretion[.]" In the case of Packard v. NLRB mentioned above the majority opinion decided a Board decision "involves, of necessity, a large measure of informed discretion, and the decision of the Board, if not final, is rarely to be disturbed."

Gradually standards for court review developed. In many cases the evidence or facts supported both the labor view and the management view. The Board has to weigh the importance of conflicting evidence and make a decision. Some of circuit court and the Supreme Court justices tried to accept they should not over rule a decision because they like the opposing view better. Otherwise the justices expected Board rulings should not be "arbitrary and capricious," or show "compelling indication of error." In the alternative Board rulings should be enforced when "supported by substantial evidence," or if not "inadequate, irrational or arbitrary," or the Board "did not exceed its powers or venture into an area barred by the statute." These qualifying gestures show respect for the Board, but in all cases the Supreme Court justices regard themselves as superior to all other judicial bodies, the courts below. The Supreme Court expects to have the last word.

From August 16, 1937 until October 1, 1945 when Harry Truman made his first Supreme Court appointment, Franklin Roosevelt made seven Supreme Court appointments. All had a more favorable outlook toward labor rights, especially

Frank Murphy, Stanley Reed, and Wiley Rutledge, than the justices they replaced. All the unfair labor practice cases cited above came within dates where Roosevelt appointments had at least a majority vote of five on the court. It would be 1955 with the appointment of John Marshall Harlan before Roosevelt appointments would cease to be the court majority. The labor history of Supreme Court rulings helps justify the feelings of many that the Supreme Court acts as a political body.

Getting Along is Hard to Do

The success from organizing industrial unions through 1937 implies unity and solidarity, but unity within the labor movement was not to be. The international unions affiliated with the CIO battled over internal politics and policy, especially in the automobile industry. The divisions between the AFL and CIO continued in spite of unity talks that did not bring unity while the stubborn and aggressive John L. Lewis launched a variety of tirades, some directed at the Roosevelt Administration; 1938 through 1941 would prove getting along is hard to do.

In late 1937 President Green and other officials in the AFL and Chairman Lewis and other officials in the CIO authorized negotiations to bring the suspended CIO unions back into the AFL. Good public relations required both sides to talk and appear reasonable, but talking did not bring compromise over jurisdiction. When talks failed, the hard line members on the AFL Executive Council made proposals to expel the suspended CIO unions, which they succeeded in doing in January 1938 at the AFL national convention.

In the spring of 1938 the CIO presidents responded by calling for CIO members to meet and adopt a constitution to make the CIO a permanent federation of industrial unions. The convention took place November 14, 1938 at Pittsburgh, Pennsylvania. A draft constitution was ready and accepted with minimal debate. The convention agreed on a policy which included "The CIO states with finality that there can be no compromise with its fundamental purpose and aim of organizing workers into powerful industrial unions, nor with its obligation to fully protect the rights and interests of all its members and affiliated organizations." The CIO constitutional convention abandoned the use of "Committee" and voted a new name. From then on there would be the Congress of Industrial Organization.

Continued hostilities between the AFL and the CIO would lead to AFL efforts to organize dual unions and raid CIO membership, but disagreements within and among CIO unions further subdivided the labor movement into warring factions. Communists, non-Communists and anti-Communists used up time and energy fighting for union leadership and policy control. The anti-Communists tended to believe labor should cultivate the respectable politics of the conformist middle class; communists wanted labor to be a movement of social change. Non-communists kept their eye on the main chance. John L. Lewis wanted a unified labor movement to be a respected and significant political power, but did not fit any category. He needed the political power of a united labor movement to lift the standard of living for the working class. In that way he wanted what the communists wanted, but he remained anti-Communist. (13)

The United Auto Workers led the way with internal battling, mostly

between communist and anti-Communists. The GM strike settlement following the Flint sit-down allowed for an elaborate grievance procedure. In practice, GM expected to maintain rigid shop rules while union members fought their shop floor supervisors for "undermining" the new agreement. Arguments over the authority of shop stewards and company foreman among other disputes brought wildcat strikes in the spring and summer of 1937.

During the Flint sit down strikes John L. Lewis sent UAW president Homer Martin on a speaking tour to keep him out of negotiations he could not be trusted to make. Now he was back blaming the communists for wildcat strikes, a charge that helped divide the union into scheming factions campaigning for control. Martin accused the Flint officials who managed the sit down strike of building a communist "Red Empire."

Martin used communist allegations to justify demoting or reassigning union staff: Flint veterans Wyndham Mortimer, Roy and Victor Reuther, Robert Travis among them. For a while the communists ignored the provocation, but when the UAW convention met in Milwaukee in June 1937 the union was divided into a "Progressive Caucus" of Martin supporters and a "Unity Caucus" of his opposition, primarily communists, socialists and activist rank and file.

Since Martin wanted to get rid of the "reds" both sides fought over union officers and how to choose them. John L. Lewis helped negotiate a compromise that retained two unity board members – Wyndham Mortimer and Ed Hall – in exchange for creating three progressive vice presidents with Martin followers – Richard Frankenstein, R. J. Thomas and Walter Wells. The compromise allowed Martin to maintain a majority on the Executive Board.

As the end of the 6-month time limit in the sit down strike agreement neared expiration GM President William Knudsen made an end to wildcat strikes a prerequisite for a re-negotiated contract. Martin, acting alone, gave permission for GM to fire disruptive workers or wildcat strikers in a September 16, 1937 letter to GM president Knudsen. Martin followed that with more staff dismissals and took control of the union newspaper.

Walter Reuther and the rank and file of his West Side Local 174 in Detroit took the lead opposing Martin. Reuther stressed the need to make the shop grievance system work at a UAW conference and to "put the heat on General Motors you have to have power under control, disciplined power." Within days following the conference GM workers in Pontiac, Michigan took over the Fisher Body plant in a spontaneous sit-down strike. Work speed ups and the decision to layoff 1,350 in Pontiac after shifting work to a non-union GM plant in New Jersey brought a mass response. The sit down ended in hours but GM's Knudsen dismissed four men he claimed were agitators that provoked the sit down, citing the Martin letter as authority. The next day about 500 took over the plant again and welded the gates shut in a show of militant solidarity similar to the Flint strike. GM's Knudsen made more threats: "Irresponsibility on the part of the locals, unauthorized strikes and the defiance of union officers will eventually make agreements valueless and collective bargaining impossible in practice."

The Unity Caucus with Walter Reuther leading the way wanted to support

the strike while Homer Martin and the Progressive Caucus did not. By fall 1937 the Roosevelt recession brought sharp cuts in auto employment. With minimal economic power to negotiate both the progressive and unity sides of the UAW looked on as GM imposed a contract in March 1938, described as a "wretched surrender to the corporation" by Walter Reuther. Grievance procedures were cut back and the four fired Pontiac employees remained fired. The settlement proved to be very unpopular among the rank and file. UAW membership declined sharply cutting dues revenue; GM plant managers returned to their arbitrary rule. Homer Martin remained as UAW president, but a consensus formed in the aftermath that Martin had to be go as UAW president.

As of 1938 Walter Reuther acted as an important part of leadership in the Unity Caucus, willing and able to negotiate with communist and socialist factions to counter Martin. The communists betrayed Reuther's trust by first convincing Richard Frankensteen to abandon the Progressive Caucus and then excluding Reuther from a majority coalition assembled to control the UAW board. Reuther was furious, but both sides had to respond when Martin countered the new faction by suspending and dismissing enough of them to retain his control of the Board. Martin called them all Reds and communists to justify his actions.

A coalition of Homer Martin opponents including Walter Reuther demanded a hearing under internal due process rules in the UAW constitution, but Martin brought a squad of bouncers to the hearings. An abusive verbal battle ended just short of violence, but without reinstating the suspended officers. John L. Lewis agreed to be peacemaker and sent his two colleagues Philip Murray and Sidney Hillman to Detroit to work out essential compromises. Lewis hoped a compromise could carry the union to the next convention, where opponents could be rid of Martin as part of an orderly democratic vote.

Instead Martin met with Harry Bennett of Ford Motor Company in secret negotiations, which became public in January 1939. That ended the Lewis compromise; both factions made plans to establish a separate auto union. Martin met in Detroit to organize a United Auto Workers affiliate of the AFL. The suspended officers had full support from John L. Lewis and the CIO to reconstruct a new UAW affiliate of the CIO.

A UAW-CIO organizing convention took place in Cleveland beginning March 27, 1939. Either George Addes or Wyndham Mortimer had a clear majority to be president of the UAW-CIO, but they deferred to Murray and Hillman and allowed them to appoint R. J. Thomas as a non-communist compromise candidate; Addes became secretary-treasurer. They all agreed on the need for organizing new locals and in new industries. R.J. Thomas appointed Walter Reuther to be director of the UAW General Motors Department. It was just the place for the ambitious Reuther to build a new coalition in the UAW. It would be eight years of continuous scheming and a few underhanded tricks, but Walter Reuther would be president of the UAW from 1947 until a plane crash ended his life in 1970. (14)

War loomed in public discourse by 1938 and continued amid gathering Nazi and Japanese aggression. Isolationists easily dominated the interventionists in the early public discussion, but gradually the foreign policy turned into a source

of dissension in politics and for the labor movement. John L. Lewis remained an outspoken isolationist through this period, which clashed with Franklin Roosevelt, who shifted to preparing for war.

Lewis spoke on Labor Day 1939 "War has always been the device of the politically despairing and intellectually sterile statesmen. It provides employment in the gun factories and begets enormous profits for those already rich. It kills off the vigorous males who, if permitted to live, might question the financial and political exploitation of the race." . . . "Labor in America wants no war nor any part of war. Labor wants the right to work and live – not the privilege of dying by gunshot or poison gas to sustain the mental errors of current statesmen."

The Labor Day speech came shortly after a Nazi-Soviet Non-aggression Pact announced on August 23, 1939 and the Hitler invasion of Poland that engulfed Europe into World War II. Before the Nazi-Soviet Pact the American Communist Party(CP) supported preparing for war as collective security for the United States and the Soviet Union, but they were horrified to have the Soviet Union allied with Nazi Germany. The change turned them into opponents of war and the Roosevelt Administration; they could not image preparing the United States to fight the Soviet Union.

Roosevelt responded with overt measures to defend U.S. interests. He asked Congress to lift American neutrality and allow shipping war materials to Great Britain. Soon after that Roosevelt defense planning turned into an obvious priority over domestic policy. He changed from "Dr. New Deal" to "Dr. Win-the-War" as some described the shift. Lewis and others in the labor movement noticed idealistic New Deal staffers disappearing to be replaced with assorted corporate executives and C.E.Os.

The Nazi-Soviet Non-aggression Pact intensified worries over U.S. security, which conveniently allowed attacking labor organizers as communists. Before 1939 Congress authorized a succession of committees to investigate security. Senator Lee Overman investigated the Bolsheviks beginning in 1919; Congressman Hamilton Fish investigated communists beginning in 1930; Congressman Samuel Dickstein investigated Nazi influence beginning in 1933. Later Dickstein proposed a committee to investigate "un-American Propaganda." His proposal did not pass but a similar proposal of Congressman Martin Dies passed in March 1938. The result was the initial House Committee on Un-America Activities" a pioneering effort in the use of guilt by association in Congressional hearings that amounted to an interrogation, labeled as a witch-hunt by many.

A bill to deport Harry Bridges was introduced in Congress in 1940 after a 1939 deportation hearing failed to prove he was a communist at the time he was charged. The bill died in the Senate, but Congress passed the Alien Registration Act, a.k.a. the Smith Act, with amendments to address the Bridges defense, among other things.

The Smith Act signed into law on June 28, 1940 amended wording in the October 1918 immigration law. The amended wording provided for deporting "Any alien who was at the time of entering the United States, or has been at any time thereafter, a member of any one of the classes of aliens enumerated in

Section 1 of this Act, shall, upon the warrant of the Attorney General, be taken into custody and deported in the manner provided in the Immigration Act." The classes of deportable aliens in Section 1 included members of, or those "affiliated with" any group that knowingly advocates the overthrow of the government by force or violence: communist party members. The vague phrase "affiliated with" allowed broader discretion for a hearing examiner to deport aliens.

The first case under Smith Act phrasing started on June 27, 1941 when the FBI raided offices of Socialist Workers Party (SWP) in Minneapolis. The raid justified arresting 29 party members with 15 of them members of Local 544 of the Teamsters Union. The Roosevelt administration worried about U.S. security and potential disruption to war production from groups with varied socialist and communist philosophies, usually asserting labor rights and threatening to strike. The Roosevelt crackdown on communists would be mild compared to the Truman and Eisenhower years, but Roosevelt approved the institutional changes exploited after he died. That included the Smith Act and placing domestic espionage under FBI control, meaning J. Edgar Hoover.

This first case resulted from a split in the membership of Local 544. Some members did not like the left leaning politics of the Socialist Workers Party going back to the 1934 depression era strikes. An organized opposition to the established leadership told their story to FBI agents that resulted in signed statements claiming that the Socialist Workers Party members of Local 544 would use force in a plan for the violent overthrow of the government. International Brotherhood of Teamsters President Daniel Tobin took the side of the opposition and ordered Teamsters members to end their membership in the SWP.

The court evidence of violating the Smith Act came from reports by informants attending meetings where speakers predicted violence in a revolution of the future; there was no evidence of preparation, just talk. The convictions followed from political beliefs, although opposition to administration war policy figured in their conviction. Of the 29 defendants 18 were convicted and sentenced December 8, 1941 to prison terms ranging from twelve to sixteen months. Smith Act enforcement would plague the labor movement well into the 1950's and often with Supreme Court approval as we shall see.

Some opponents of the Smith Act argued the wording was modified solely to deport the hated Harry Bridges for his successful labor organizing. Charged again, Bridges second hearing ended with a recommendation to deport him because he had been "affiliated with" communists in violation of the Smith Act. The Board of Immigration Appeals reversed, but Attorney General Francis Biddle overruled the Board of Immigration, a decision that brought court suits that reached the U.S. Supreme Court. The Justices ruled 5 to 3 in Bridges favor in the Supreme Court case of **Bridges v. Wixon** decided June 18, 1945.

Justice William O. Douglas wrote the majority opinion where he rejected the view of the circuit court that Bridge's cooperation with Communist Party members during his union work establishes unlawful affiliation with it. Douglas declared "The associations which Harry Bridges had with various Communist groups seem to indicate no more than cooperative measures to attain objectives

which were wholly legitimate. The link by which it is sought to tie him to subversive activities is an exceedingly tenuous one, if it may be said to exist at all."

Justice Douglas opinion further argued that the Attorney General admitted making his decision to proceed based on hearsay testimony of conversations by two informers in admitted violation of written hearing rules. In a dissenting opinion written for the three objectors by Chief Justice Harlan Fiske Stone argued "Congress has committed the conduct of deportation proceedings to an administrative officer, the Attorney General, with no provision for direct review of his action by the courts. Instead it has provided that his decision shall be 'final,' as it may constitutionally do."

Justice Frank Murphy wrote a separate opinion concurring with the Douglas opinion but arguing that free speech protections in the Constitution apply to aliens residing in the United States. He characterized the case and the Attorney General's decision as part of "a concentrated and relentless crusade to deport an individual because he dared to exercise the freedom that belongs to him as a human being and that is guaranteed to him by the Constitution."

The end of the deportation case did not end the assault on Bridges legal status in the United States. Even though he was granted citizenship in 1945 shortly after the Bridges v. Wixon ruling, President Truman's Attorney General Tom Clark convinced a Grand Jury to indict Bridges for perjury in his deportation testimony. The same two informers testified against him along with 11 former communists willing to fabricate claims against Bridges. The trial lasted 81 days and ended with a conviction and a five year prison sentence; a denaturalization order followed. The FDR dominated Supreme Court set aside his conviction for procedural reasons in June of 1954, but the Eisenhower administration filed a civil proceeding to deny him citizenship. In July 1955, a federal judge in California finally pressured the Justice Department to give up their legal assault on Bridges, ending a right wing crusade against him and organized labor that began in 1934, more than 20 years before. (15)

John L. Lewis and Franklin Roosevelt found getting along impossible to do. As the November 1940 presidential election approached Lewis continued to be the voice of peace; to Lewis war could be justified only from an attack on the United States. Roosevelt needed the labor vote, but schemed to diminish his influence. Rather than treat Lewis as an insider, Roosevelt appointed two CIO union presidents to join an administration advisory defense council: Philip Murray of the steelworkers and Sidney Hillman of the Amalgamated Clothing Workers(ACW). Lewis wanted a presidential executive order requiring defense contractors to accept collective bargaining. Sidney Hillman answered for the administration: the needs of defense planning are too important to worry about labor law.

At the political conventions in the summer of 1940 the Republicans nominated Wendell Willkie to run against Franklin Roosevelt going for a third term. Roosevelt chose a new running mate, his Secretary of Agriculture, Henry Wallace. It was a concession to the liberal wing of the party, but Lewis could not

accept the platform or the candidates of either party. He realized the Democrats expected they could take the labor vote for granted; labor had no where else to go.

Wendell Willkie remained competitive with Roosevelt into October as the election approached. A New York Times story on October 16 suggested Lewis might endorse Willkie if Roosevelt ignored labor's grievances. Lewis reserved radio time for the evening of October 25, 1940 right before the election. In the address broadcast over 322 stations to an estimated audience of 30 million Lewis spoke against the President's emphasis of war over domestic policy and did so in caustic terms. He then endorsed Republican Wendell Willkie for president, effusively praising Willkie over Roosevelt in the process. Since Lewis had prepared his address in private, the announcement came as a surprise. He went on to say if the CIO would not support him and Willkie lost the election he would resign as president of the CIO.

The labor vote went for Roosevelt, who won easily over Willkie. Many have speculated why Lewis would throw down the gauntlet and bet against Roosevelt, but few thought Lewis believed Willkie would win. His loyal assistant Len De Caux reported on their chat on the eve of the election. "Lewis said he had done his main job when CIO was successfully organized. He wanted to step down in 1939 – both for personal reasons and because the Roosevelt administration and its eager agents in CIO were pulling the movement out from under him. He had no taste for being titular head of an organization that didn't follow his leadership. By now, November 1940, things had gone from bad to worse. Lewis said he was not again going to be talked out of a decision he'd had to make."

Roosevelt's tepid response to Little Steel defiance of New Deal law and policy combined with the Roosevelt recession of 1937-38 and the failures of domestic policy to relieve the ravages of unemployment infuriated Lewis in addition to growing signs the United States would enter another European war. Lewis concluded the New Deal was over and as of November 1940, he was right. (16)

The next CIO convention began on November 18, 1940 shortly after the presidential election at the same Chelsea hotel in Atlantic City where Lewis first met to organize the CIO in 1935. Lewis made the opening address where he reiterated his intention to resign: "I won't be with you long. In just a day or two I will be out of this office which at the moment I now occupy." His left wing supporters including the communist cliques thought they might get him to change his mind while the significant opposition from Sidney Hillman and his the Amalgamated Clothing Workers(ACW) delegation worried he would.

His opponents at the convention attacked him for his failure to unify the CIO with the AFL. They took the unity talks seriously while Lewis saw them as a deliberate attempt to disrupt CIO organizing. The AFL demanded to parcel out CIO membership before allowing CIO affiliates back in the AFL. Lewis repeatedly offered unity if all AFL and CIO unions joined in a single federation and then adjusted differences afterwards. That would finally happen in 1955, but not before.

Philip Murray, the Amalgamated Clothing Workers delegation, and a

few other delegations demanded the convention adopt a resolution renouncing communism. Sydney Hillman maintained "The Communists cannot participate in the Democratic processes because they don't think; they take orders." The convention finally accepted a wordy medley of anti-communism: "We neither accept or desire – and we firmly reject consideration of any policies emanating from totalitarianism, dictatorships, and foreign ideologies such as Nazism, communism, and fascism. They have no place in this great modern labor movement. The CIO condemns the dictatorships and totalitarianism of the Nazism, communism and fascism as inimical to the welfare of labor, and destructive of our form of government." No delegate, communist or otherwise, dared oppose it and so it was considered a unanimous vote. It showed the practical side of the communists present who decided to yield to CIO unity.

The convention agreed to make Philip Murray the new CIO president and he was confirmed without opposition. He was a centrist candidate, which the left wing including Lewis and the right wing of the CIO could accept. No other candidate could be acceptable to both sides.

Lewis influence declined in the larger labor movement even though they needed him more than they realized. Lewis continued as president of the United Mine Workers where he demanded equality and respect for himself and his UMW membership. He would lead the United Mine Workers through World War II and make his own policy decisions as an independent part of a divided labor movement. (17)

Building a War Machine

Defense related production preceded the start of World War II much like it did for World War I. Even though America did not enter the war until December 1941 war production started an economic boom beginning in early 1940. Preparing for war brought increasing pressure for organized labor to eliminate strikes, which were billed as unpatriotic or treason. In the 1938 off-year elections Republicans picked up 85 seats in the House of Representatives, which further empowered conservative politicians already hostile to strikes they blamed on Roosevelt's New Deal.

Organized labor accepted the need to make a no-strike-pledge, even John L. Lewis, but it did little to help their public image or win favor with corporate America, or Congress. In June 1941 House Judiciary Committee Chair Hatton Summers declared "When the time comes that it is necessary to deal with the enemies of the nation and the factory or elsewhere, I believe I can speak for each member of the committee. If it is necessary to preserve this country, they would not hesitate one split second to enact legislation to send them [strikers] to the electric chair."

To help mobilization to a war economy FDR created the National Defense Mediation Board (NDMB) by Executive Order 8716 on March 19, 1941. The NDMB had a mandate to "exert every possible effort to assure that all work necessary for national defense shall proceed without interruption and with all possible speed." It could help settle disputes that threatened "to burden or obstruct

the production or transportation of equipment or material essential to national defense." The National Defense Mediation Board(NDMB) had 12 members, four each from management, labor and government, which could do investigations, conduct hearings, do fact finding, and publicize recommendations, but policies were not formally binding.

Walter Reuther of the UAW responded to public pressure with his own plan to convert the auto industry to producing 500 planes a day. His proposal called for a joint board with authority to run the auto industry during the war. The Board would have equal numbers of industry and union members with a government appointee as the leader.

Reuther's joint board would make the plans and commitments for the entire industry and distribute production through three subcommittees. A technical subcommittee would convert basic facilities and distribute production among them. Subcommittee members would be from the auto industry, parts producers and organized labor. A labor supply subcommittee with equal members from labor and management would have authority to train, transfer and distribute labor as necessary. A third subcommittee would manage subcontracting with an equal number of industry purchasing agents, parts industry specialists and labor representatives. The plan called for wide distribution of production contracts to include small business.

Reuther made his proposal early in the winter of 1941 before the auto industry bothered to offer any plan of its own. The Reuther plan made labor a partner in management decisions, which management regarded as a threat to their prerogatives. His good timing was enough to get some attention, but corporate America maintained their confident attitude knowing that FDR would need them and favored them anyway. Labor relented to the no strike pledge, but they got little in return: some appointments on a few boards and committees, but words of praise prove hard to find.

Reuther's 500 planes a day reflected the more moderate factions of organized labor, especially the UAW. The UAW-CIO had a faction of communists and Frankensteen supporters that dominated the autoworkers while the right wing Martin effort to take over autoworkers failed. The UAW-CIO repeatedly won the NLRB representation elections over the UAW-AFL. The left wing elements of the CIO and the UAW fought attempts to use patriotism and the manpower needs of war production as an excuse to limit labor rights. The National Defense Mediation Board (NDMB) had plenty of opportunity to mediate a series of defense industry strikes, mostly strikes by the UAW.

The UAW sent Wyndham Mortimer to California to organize at Vultee Aircraft Company and North American Aviation. After winning an NLRB election to unionize Vultee, Mortimer and the union asked for a pay raise. When Vultee refused to negotiate 4,000 left work November 15, 1940. Attorney General Robert Jackson charged communist influence that prolonged the strike, although it only lasted 12 days. Vultee agreed to a twelve and half cents an hour raise. It was an early indication the Roosevelt administration would join in making communist charges against organized labor, or the practice of red-baiting. It would get worse

with the next defense industry strike at Allis-Chalmers in Milwaukee.

In Milwaukee UAW Local 248 President Harold Christoffel called the Allis-Chalmers strike for January 21, 1941 during new contract negotiations. The rank and file voted 5,958 to 788 to strike, which shut down the plant. Local 248 wanted a wage increase, a grievance procedure and a closed shop. The Allis-Chalmers Company had more than $20 million dollars of government defense contracts and no need to quibble over wages. Sidney Hillman proposed a settlement acting as the negotiator for the government's Office of Production. The union accepted the agreement, but management turned it down.

Management claimed someone stuffed the ballot box, although not by enough to change the outcome. Office of Production Director, William Knudson, and Secretary of the Navy, Frank Knox, used the charge to ignore Hillman and justify ordering the union back to work, in effect to break the strike. At a Local 248 meeting March 29, the rank and file voted to stay out while Allis-Chalmers President Max Babb announced he would reopen the plant with strikebreakers April 1. When they did, three days of rioting followed.

The Wisconsin governor announced he would send the National Guard, but changed his mind and closed the plant after confronted with union and city wide opposition. Secretary of War Henry Stimson demanded the government takeover the plant, but Roosevelt had his new National Defense Mediation Board intervene. This time management accepted a 5 cents an hour pay raise, terms for a grievance procedure and union security in a settlement about the same as the Hillman proposals.

The Allis-Chalmers strike brought a separate controversy because management and the press claimed the strike to be a communist party effort to delay defense production for a war communists opposed. UAW president R. J. Thomas, his Executive Board and Local 248 President Harold Christoffel denied the charges in a show of solidarity. Red baiting charges of communist influence could not be proved, but the charges alone made an effective tool to fight unions in a time of intense patriotism and pressure from the Roosevelt Administration to end strikes in defense industries. (18)

Wyndham Mortimer won another NLRB certification election for the UAW at North American Aviation in California. During the campaign Mortimer wrote and distributed literature criticizing the low wages at a defense contractor with a $200 million dollar tax supported contract to build warplanes. The local voted 5,829 to 210 to authorize a strike if wage negotiations failed to reach agreement. After the National Defense Mediation Board(NDMB) intervened, Richard Frankensteen, two of his UAW-CIO assistants and three bargaining committee members traveled to Washington for NLRB hearings. After the Board delayed starting, Board members promised to make a settlement proposal with pay retroactive to May 1 in an announcement May 22. After another week the three negotiating committee members reported to California that NDMB was stalling. Mortimer did not expect much help from the NDMB but he counseled patience to an impatient rank and file ready to strike.

Out in California the bargaining committee decided to strike immediately.

Mortimer acquiesced explaining that further delay would be perilous to the continued strength of the union, "since many men were quitting the organization and others were beginning to heed the call for wildcat action coming from provocateurs and other dubious elements in the plant." When Frankensteen learned of the strike threat he called it unauthorized and ordered the men to continue working, but to no avail. On June 5, 1941 several thousand picketers surrounded the North American Plant at all nine gates with picket lines that closed the plant.

President Roosevelt told a cabinet meeting the strike occurred because of "communistic influences" he thought justified "that we might load some of the worst of them on a ship and put them off on some foreign beach with just enough supplies to carry them for a while." He was tired of peace talk.

UAW and CIO officials sent Frankensteen to Los Angeles with authority to order Mortimer and his supporters to end the strike immediately with the message "Washington would give us the kind of legislation that would not only affect the workers in North American, but the workers of the entire labor movement of this country." When Mortimer and four others refused to end the strike, Frankensteen fired them all. The same evening he claimed in a national radio address the strike was an unauthorized wildcat strike where "the infamous agitation and vicious underhanded maneuvering of the Communist Party is apparent." Notice that Mortimer accepted firing rather than ignore the preferences of his rank and file.

Again, Secretary of War Henry Stimson counseled Roosevelt to take over the plant, which he authorized by Executive Order. The Roosevelt administration took the signs of internal discord seriously enough to have their labor insider, Sidney Hillman, concur in the plan. A force of 2,500 troops with fixed bayonets ended picketing and opened the plant. Draft boards announced they would end deferments for anyone refusing to work; union officials were banned from the plant. The rank and file counted for nothing inside the labor movement, or out. (19)

Hitler invaded Russia beginning on June 22, 1941. The invasion took everyone by surprise, but especially the American Communist Party that abruptly reversed 22 months of their anti-war, anti Roosevelt opinions and practices. Now they wanted to "Defend America by giving full aid to the Soviet Union, Great Britain, and all nations who fight against Hitler." John L. Lewis counted on the Communists for support even though he was anti-Communist, but not after the Nazi invasion. The change left Lewis more isolated than ever before. In a complete turnaround American communists favored entry into war to protect U.S. and Soviet interests. They transformed into the ultimate patriots supporting labor's no strike pledge, condemning wildcat strikes and working overtime to expand war production.

Henry Ford ignored the Wagner Act dismissing 4,000 of his work force from 1935 to 1941 ranting against unions as usual. The legal complaint from the Battle of the Overpass ended December 22, 1937. The NLRB wrote "We think it plain from the record that the respondent deliberately planned and carried out the assaults in an effort to crush union organization among its employees" The National Labor Relations Board continued attempts to enforce the Wagner Act at

Ford. The UAW filed complaints; National Labor Relations Board held hearings and the slow procedures of bureaucratic law ground forward.

Ford retained another attorney to keep fighting, but he could only stall. The Supreme Court denied demands for a writ of certiorari and the NLRB ordered reinstatement of dismissed employees in one case after another. A new organizing drive got going in October 1940 in Detroit during continued legal wrangling. After Harry Bennett discharged eight union men, the union responded with a vote to strike April 2, 1941. The union surrounded the River Rouge plant with an automobile barricade in a metal picket line.

Bennett called it "a gigantic communist plot threatening national defense" and sent telegrams to Michigan Governor Murray Van Wagoner and President Roosevelt asking for help to break the strike, probably to appease a maniacal Henry Ford. But the jig was up. Van Wagoner proposed a settlement, which included following NLRB certification procedures. A union certification election May 21, 1941 tallied 51,866 for the UAW, 20,364 for the AFL and 1,958 for no union. Ford would have to bargain with the UAW. It took a while longer and maybe some persuasion from son Edsel Ford but Henry Ford gave in to a final agreement June 18, 1941. The settlement included disbanding the Service Department. (20)

John L. Lewis returned to his duties as UMW president after several months of pause following the 1940 CIO convention. In March 1941, he started negotiations for a new bituminous coal contract scheduled to expire April 1. Lewis proposed a typical package of wage and benefit improvements and then added a demand to eliminate a north-south wage differential.

By late March, compromise settled basic wage and hours issues, but not the north-south wage differential. The southern mines insisted they continue with wages at $.40 an hour less than northern mines. On April 11 they withdrew from negotiations and appealed to the Roosevelt Administration to send the case to the National Defense Mediation Board(NDMB). The Roosevelt Administration responded with a proposal for the northern mines already in agreement to resume production while the administration hoped to get southern operators to negotiate during production. To encourage the union to accept a return to work without a contract the proposal included retroactive pay in the southern mines.

Lewis convinced the northern operators to accept the President's proposal with a slight modification: the northern mines would re-open under terms of their unsigned contract but if and only if the idle southern mines also reopened and continued negotiations. The southern mines refused but their refusal left them in a minority responsible for cutting off coal production for national defense. Secretary of Labor Francis Perkins sent the case to the NDMB on April 24, which recommended the southern mines accept the President's proposal.

The southern mines refused again to end the north-south differential until June when the case went back to the NDMB, which ruled the southern mines should eliminate the differential. Lewis recognized he had the leverage to insist the southern operators sign the same contract as the one negotiated for the northern mines. That contract had some protective clauses including a right to halt coal production for a mourning period after coal mine accidents. After further stalling

even Harlan County operators went along. Lewis got his way in a settlement finally signed July 5, 1941. (21)

The Little Steel companies including Bethlehem and Republic Steel under pressure of the defense build up agreed to NLRB procedures July 25, 1941. Once the NLRB supervised union recognition elections in the Steel industry, as called for in the Wagner Act, the SWOC won easily, but it would be September 1941 before Little Steel companies would bargain. The long dreary battle with Little Steel officials would drag on. Republic Steel would pay mitigated back wages and reinstate the strikers who lost their jobs. The "Little Steel" settlement and the adjustment in wages would become a notorious "Little Steel" formula for holding down inflation and cost of living adjustments during World War II, about to begin. (22)

The ink was barely dry on the July 5, 1941 UMW settlement before John L. Lewis started another negotiation to establish a union shop at coal mines owned and operated by the steel industry, mines known as captive coal mines. Already 95 percent of captive mine workers were dues paying members of the UMW, but steel industry officials feared a union shop in the captive mines would bring a demand for a union shop in the entire steel industry. Lewis called a strike September 15, 1941 and 53,000 captive coal miners left work. Two days later Lewis ordered the men back to work for 30 days pending a National Defense Mediation Board review of the case. After 30 days the board failed to act, but suggested the two sides submit the union shop question to binding arbitration. Both refused.

Next, President Roosevelt suggested that former U.S. Steel president Myron Taylor mediate the strike with Lewis, apparently on the theory the two of them had negotiated a contract for U.S. Steel in 1937. Taylor refused to play that role and so Lewis set a strike for October 25. In a counter move President Roosevelt announced he wanted Lewis and the UMW to call off the strike "as loyal citizens, to come to the aid of your country" . . . "essential to the preservation of our freedoms, yours and mine."

A captive coal mine strike did not threaten defense production, the steel companies had a 30 day supply of coal and could buy coal from other mines if necessary. To make that point Lewis replied "There is yet no question of patriotism or national security involved in this dispute. Defense output is not impaired, and will not be impaired for an indefinite period. This fight is only between a labor union and a ruthless corporation. If you would use the power of the State to restrain me, as an agent of labor, then, Sir, I submit that you should use the same power to restrain my adversary in this issue, who is an agent of capital. My adversary is a rich name named Morgan, who lives in New York."

Roosevelt made further public appeals to patriotism over the next few days, which brought Lewis a hail of angry abuse from all sides of politics and from members of Congress. Lewis countered by calling a strike of 53,000 captive miners on October 28, a second strike. More discussions followed between Taylor and Lewis with the approval of FDR. Lewis agreed to order the captive miners back to work pending a review and non-binding recommendation of the full NDMB, but he set a new strike deadline of November 15. Since the full NDMB

had allowed a closed shop in several other disputes, both sides assumed they would do so again. Instead, only two of the four labor representatives voted yea in a 9 to 2 vote against the union shop. Both AFL representatives voted against Lewis; only Philip Murray of the CIO and Thomas Kennedy of the UMW voted with Lewis and both resigned from the NDMB.

FDR immediately called a meeting of three from the steel industry and three from the UMW to threaten anti-strike legislation and threaten a take over of the mines unless they reached a settlement. He wanted the two sides to agree or appoint an arbiter and go back to work in the meantime. He did not want to go on record for or against the union shop, but again both refused. On November 17 steel officials pulled out of talks and Lewis threatened to shut down the entire soft coal industry.

Defeated again, Roosevelt and administration advisors realized they could not coerce Lewis and get the miners back to work. When they pressed Lewis again for arbitration he referred the matter to the UMW policy committee. However, he added "Your recent statements on this question, as the Chief Executive of the nation have been so prejudicial to the claim of the mine workers as to make uncertain that an umpire could be found whose decision would not reflect your interpretation of government policy, congressional attitude and public opinion."

Labor Secretary Francis Perkins talked with steel executives who confirmed they would not agree to a union shop, but agreed if the president ordered it they could go along and still avoid a union shop in the steel industry. Roosevelt would not order a union shop but Ms. Perkins worked out a plan for arbitration where two of the three arbiters would vote for Lewis and the union shop. Lewis defiance protected his members, but it came with brutal personal attacks all recorded and embellished by a hostile press. It should have been a lesson for the rest of organized labor, but they may have been distracted. The "so called" arbitration decision came December 7, 1941 and so it was ignored by the press.

The Steel Workers Organizing Committee(SWOC) would finally have a convention to write a constitution and bylaws as a representative union to replace SWOC and Philip Murray as benevolent autocrat. On May 22, 1942, SWOC would become the United Steel Workers of America(USW). World War II was underway and the Roosevelt Administration expected to take over labor relations using the National Defense Mediation Board at first, and then a new and more powerful National War Labor Board. (23)

Labor and World War II

On January 12, 1942 President Roosevelt signed Executive Order 9017 creating the National War Labor Board (NWLB) to replace the National Defense Mediation Board (NDMB) and replace meditation with binding arbitration. The new NWLB had a 12 member board composed of four members each from labor, management and government. If a labor-management dispute threatened war production, then NWLB procedures started with negotiation, then Federal Conciliation, then to the NWLB with the power to settle any dispute "which might interrupt any work, which contributes to the effective prosecution of the war."

The National War Labor Board (NWLB) had complete authority "to decide the dispute and provide by order the wages and hours and all other terms and conditions governing the relations between the parties" and to "provide for terms and conditions to govern relations between the parties which are to be fair and equitable between an employer and an employee under all the circumstances of the case."

Other boards affected jobs and employment such as the War Production Board (WPB) created in January 1942. It was intended to convert factories from peacetime to wartime production. Conversion required labor to do new jobs, which inevitably affected wages, hours and working conditions. (24)

The No Strike Pledge

Philip Murray and CIO officials met with President Roosevelt barely ten days after Pearl Harbor where they made an unconditional no strike pledge and promised "to promote and plan for ever increasing production." Walter Reuther tried to mollify the rank and file with the slogan "Victory through Equality of Sacrifice." He expected fair treatment as a condition for labor's no strike pledge, but within weeks President Roosevelt insisted factories run seven days a week without premium pay for work on Sundays and holidays. The President brushed off Murray by demanding the CIO give up premium pay voluntarily as "a salutary effect upon the public state of mind." It was early with the war barely under way but the message did not sound like equality of sacrifice, especially to Walter Reuther.

Corporate America and government found it easy to characterize labor complaints as an unpatriotic threat to the war effort that justified repressive action and calls for restrictive legislation. Secretary of War Henry L. Stimson worried news coverage could hurt soldier morale. He supported national service legislation and told the Congress "The purpose of a national service law is to get at this basic evil which produces the irresponsibility out of which stems strikes, threats of strikes, excessive turnover, absenteeism and other manifestations of irresponsibility with which we are now plagued." Labor joined the chorus when Teamsters President Daniel Tobin announced "Tell the rat who advocates strikes that the blood of these young men across the seas fighting a fight for our freedom will be on your hands or on your conscience."

National service legislation never passed while the no strike pledge dominated wartime labor relations. The NWLB wrote "The basis for the national war labor policy in America today is still the voluntary agreement between the responsible leaders of labor and industry that there be no strikes or lockouts for the duration of the war. All labor disputes, including grievances, therefore, must be settled by peaceful means." The peaceful means turned out to be National War Labor Board (NWLB) arbitration. Members appointed to the NWLB wanted disputes exclusively resolved by grievance and arbitration procedures. They worked to avoid all collective action preferring to have disputes settled by a process conducted by NWLB appointed arbitrators with authority to impose their decision.

Members of the National War Labor Board conceded the no-strike pledge and their authority to make settlements in place of a union reduced the services of organized labor and collective bargaining that could easily reduce their membership or bring disintegration. They tried to adjust for the loss of collective bargaining by assisting with their union security. The security in union security equates to financial security because unions need members and their dues to continue operating. Unions prefer the closed shop as union security while business prefers the open shop and the right to dismiss anyone at anytime. NWLB made a compromise between the two extremes by requiring current union members to continue paying their union dues in "Maintenance of Membership" clauses in their settlement orders. At first the NWLB expected employers to fire those who refused to pay their union dues, but later they replaced that with dues check off.

In practice, the NWLB treated the maintenance of membership as a favor to unions that depended on good behavior, meaning no strikes. The union officials need for maintenance of membership in arbitration orders worked to separate the interests of labor leaders from their rank and file. Union officials had to oppose and suppress strikes without regard to the wishes or interests of their rank and file or lose their maintenance of membership clause and the dues money that goes with it.

Under NWLB rules and pressures the rank and file could only plod through a bureaucratic grievance procedure controlled by their union leadership and the NWLB. When the United Auto Workers showed evidence that Chrysler had provoked a wildcat strike, the NWLB was unimpressed. They wrote we "cannot possibly acquiesce in the implied suggestion of the union that labor's no strike pledge is to be suspended whenever a union claims with or without merit, that management is provocative."

The NWLB responded to management fears that wartime decisions could bring a lasting challenge to managerial prerogatives and independent decisions. Settlements established the principle that management acts and the union reacts by filing a grievance to challenge a management decision through arbitration.

NWLB decisions established management prerogatives to determine production, to make capital investment or technological changes even if layoffs occur, to determine the size of the workforce and conditions of employment, to designate supervisors, to expand, reduce or close facilities, and to make transfers without employee consent. Management prerogatives included decisions over health insurance, company unemployment funds, sick leave, medical, hospital, maternity and pregnancy benefits. Management retained all powers not expressly prohibited. Once the NWLB made a decision like layoff a management function, employers did not have to bargain over the matter. The War Labor Board would not allow union demands to restrict employer authority and management could make a decision without first bargaining with the union, or face arbitration. Unions could negotiate over wages and seniority, but little else was open to discussion if management refused.

The wartime methods to prevent strikes and maintain production evolved into written arbitration agreements that became the sole source of employee

rights. Agreements set precedent that allowed management the right to act on its own interpretation of an agreement. Unions could file a grievance if they objected, but they could not strike or they would lose cooperation or help offered by the NWLB. The type of participation proposed by Walter Reuther in 500 planes a day did not occur.

Many of the wartime precedents set by the NWLB were new. Since the National Labor Relations Act was only a few years old and the National Labor Relations Board was also new their rulings by 1941 were mostly confined to matters of union recognition in unfair labor practices, but not to arbitration disputes from an existing contract agreement. The NWLB wartime use of arbitration set precedents for NLRB rulings in its post war labor settlements. Many parts of labor relations during World War II would continue after the war and today. (25)

The Little Steel Formula

The rank and file initially accepted the no strike pledge with the idea prices would be stabilized or wages adjusted to the cost of living. Based on the President's anti inflation program the NWLB decided that workers had no right to expect a wage increase during the war. Soon after the war started the unions at the "Little Steel" companies demanded a wage increase. They cited Bureau of Labor Statistics cost of living reports that showed a 15 percent increase from January 1, 1941 to May 1, 1942. In response the NWLB devised a "Little Steel Formula" that limited wage increases to 15 percent for the duration of the war. Then in October 1942 the President required the NWLB to get authorization for any wage increase they might grant from a new Office of Stabilization.

By 1943 labor support for the no strike pledge began to erode as corporate profits, executive salaries and the cost of living jumped upward while wages were realistically frozen. Strikes occurred in spite of the no strike pledge, although almost all were wildcat strikes not authorized through a union hierarchy, but unplanned walkouts or sit-downs. Most were short, a few days or a week. There were 256 wildcat strikes at three Ford Detroit plants alone in 1943.

The auto industry was especially hostile to labor and repeatedly angered their workforce with speed-ups, endless overtime, arbitrary firings and disciplinary actions. The NWLB expected employees to wait for grievance procedures rather than shutting down production with walkouts and wildcat strikes, but many in the rank and file lost patience with the delays. CIO union leaders acted as enforcers of National War Labor Board (NWLB) dictums. They suspended and expelled members, removed and replaced elected local leaders, eliminated local unions, or did nothing when their members were fired or draft board deferments cancelled. Management stalled and would not process grievances and the NWLB had a long backlog trying to act on the 10,000 to 15,000 grievance cases a month they were getting by late 1943. (26)

Strikes and Riots

After the 1941 invasion of the Soviet Union the communists supported

"everything for victory" with support for the no strike pledge as their patriotic duty and a way to bring labor into "win the war" unity. Communists also gave their support after the War Production Board(WPB) proposed a wage incentive plan in early 1943 that had a piece wage tied to speedups and group production rates. They argued the government's tightly restricted limits on wage rates that incentive plans might be accepted in the rank and file as a way to have extra pay depend on extra effort and skill. The non-communist rank and file opposed the idea almost universally where patriotic zeal did not transform labor relations for the working class any more than it did for management.

Rank and file opposition and contempt for management, the National War Labor Board and the Roosevelt Administration continued to grow in 1943. Incentive plan proposals could not substitute for Roosevelt administration continued use of the Little Steel Formula, the inequality it generated, or the daily grind of shop floor life. Those on the shop floor characterized their bosses as an incompetent part of a slow and bungled conversion to a war time economy. (27)

During this time John L. Lewis called a strike in the coal industry. He consistently objected to the Little Steel Formula while his colleagues in the CIO made a few timid protests and otherwise wrung their hands. He characterized NWLB members as "labor zombies" and when Senator Harry Truman called him before his Senate War Investigating Committee, he took the offensive and accused the government of causing inflation with the guarantees allowed business for cost plus profits pricing.

In early January 1943 about half of 40,000 anthracite miners walked out of the mines of eastern Pennsylvania. Neither patriotism nor presidential plea stopped the wildcatters worn out with the hardships imposed by the Little Steel Formula. They left work without consulting John L. Lewis and demanded a $2 a day pay raise. Lewis stalled before ordering them back to work.

The coal operators did not believe Lewis would defy the government and call a strike; the northern operators wanted the NWLB to determine wages; the southern operators demanded a wage cut and an end to UMW negotiations until after the war, but Lewis and the operators accepted a contract extension from April 1 until May 1, 1943.

Lewis offered to drop the $2 a day demand for a guarantee of work six days a week, but the northern and southern operators rejected the offer and so the dispute went back to the National War Labor Board. On April 28, the NWLB director, William Davis, suspended hearings until the miners returned to work. The next day another 60,000 miners joined the walkout.

When the extension ended May 1 President Roosevelt responded with an order to Secretary of the Interior, Harold Ickes, to seize the nation's bituminous mines and manage them in the public interest. Lewis attempted negotiations with Ickes. Both agreed to send the miners back to work until May 18. In the mean time the National War Labor Board opened the hearings on the coal strike, but Lewis refused to participate. He did not believe he could get an unbiased hearing with so many in the Roosevelt Administration attacking him.

The NLRB ordered Lewis to resume collective bargaining May 14; they

expected a report on their progress in ten days. In a separate agreement Lewis and Ickes extended the back to work order until June 1, which undermined NWLB authority and infuriated Davis, who forbid further negotiations until Lewis accepted his authority.

When June 1st arrived President Roosevelt intervened again with a public announcement ordering the miners back to work. Lewis responded with another contract extension. While negotiations went on Congress passed anti strike legislation on June 15, 1943. The new Labor Disputes Act, a.k.a. the Smith-Connally Act, provided new power for the National War Labor Board to force union officials to appear before the Board and to enforce their rulings as a binding agreement.

The Smith-Connally Act also provided the President with authority to take possession of plants, mines and facilities used in war production if strikes, lockouts, slowdowns or other interruption threatened war production. Section 5 put the National War Labor Board in charge of wages or other terms of employment at defense facilities run by the federal government. There were criminal penalties for individuals who attempted to organize strikes, slowdowns or job actions at defense plants and it included a 30 day delay period and a requirement for a strike vote.

The Smith-Connally Act would not become law until June 25, 1943 over the President's veto. Roosevelt wanted a stronger if slightly different authority. In the mean time, the NWLB made a few enhancements to another settlement order of June 18, which they demanded to last for nearly two years. The order infuriated Lewis and the rank and file who started walking off the job the next day. By June 20, 500,000 had quit work.

Lewis met with Secretary Ickes the next day hoping to make a settlement through him instead of the Board. He told the press "The mine workers have no favor to grant the coal operators nor the members of the War Labor Board, who have dishonored their trust, but will make any sacrifice for the Government, the well-being of its citizens, the upholding of our flag, and for the triumph of our war effort." Lewis agreed to extend the contract until October 31, 1943 or as long as the government kept possession of the mines.

It would be July 5 before coal production returned to normal, but there was still no agreement between the UMW and the coal operators. Lewis had fewer options to fight under the Smith-Connally Act, but he negotiated a separate and slightly better agreement with the Illinois Coal Operators, which he presented to the NWLB August 3, 1943. They turned it down, but Lewis went back to the Illinois operators and got another agreement.

While the NWLB stalled, a quick succession of mine blasts killed 12 miners in Harlan County, Kentucky, 14 miners in Minersville, Pennsylvania, and 27 near Birmingham, Alabama. A wave of new wildcat strikes followed when as many as 90,000 miners left work. Lewis dutifully ordered them back until the NWLB turned down the second Illinois contract claiming it violated the president's anti inflation policy.

The President threatened "decisive action" to get coal mined, but the next

day, November 1, 1943, 530,000 miners walked out in a show of solidarity. That evening President Roosevelt ordered Ickes to seize the mines again and directed him to negotiate a contract with the UMW to continue for the period of seizure. Lewis and Ickes announced a Memorandum of Agreement on November 3, which finally brought the whole dreary thing to an end. The new agreement made small compromises, which the northern operators accepted May 29, 1944; southern operators refused for another year.

John L. Lewis had the solidarity of his members to take on corporate America and the Roosevelt administration.; when he called a strike his members did what he asked them to do or what they knew he wanted. They trusted him to protect their economic interests and he did, although at significant personal cost. Lewis dutifully explained patriotism and the war effort did not require fixed wages while prices and profits soared. The public and the press attacked him with a bitter and vehement hatred. (28)

Wildcat strikes during the summer of 1943 and the UMW strike negotiations suggest the rank and file from the larger labor movement admired Lewis for his nerve in taking on the Roosevelt Administration. In 1943 one in four autoworkers left work in an unauthorized wildcat strike; in 1944 it would be one of two. At Chrysler in Detroit 27,000 left work one afternoon. One of those 27,000 reported "The stewards walked through the plant and announced [a company wide action], and in five minutes the plant was dead."

Many in the rank and file wore out with the stalling and timid proclamations from union officials and wondered what they got for their union dues. CIO President Philip Murray could manage only "today we must accept the basic principle of stabilization of wages." So many labor officials tied their success and the success of the labor movement to the Roosevelt Administration, they refused to challenge repeated administration decisions that ignored labor or put it at a disadvantage.

The no strike pledge posed a nightmare for union politics because the rank and file made it so hard to ignore. By late 1943 or early 1944 the consensus formed that the United States would eventually defeat Germany and Japan; it was only a matter of when. Some of the left wing elements in the labor movement wanted to withdraw the no strike pledge no later than the defeat of Germany, if not immediately. By now, the Roosevelt Administration and the CIO leadership made support for the no strike pledge a symbol of patriotism and good politics for promoting Roosevelt to a fourth term.

At the UAW, Walter Reuther talked a fine line of moderation. He supported the Lewis wage demands, but not his strikes; he condemned the Little Steel Formula but not a break with the no strike pledge. Reuther vied for political control of the UAW from a nominally communist George Addes-Richard Frankensteen faction. At the 1944 UAW convention he proposed a selective withdrawal of the no strike pledge. It would be only for factories converted to civilian production, but delegates emphatically turned it down. Neither those in support of the pledge nor the radicals opposed to it would compromise. A majority at the convention finally voted to continue the no strike pledge while Reuther just barely retained

his seat as a vice president on the UAW Executive Board, but wildcat strikes continued. Arguments in the labor movement over the no strike pledge would not end until after the defeat of Japan. (29)

The needs of war production generated many new jobs in defense industries, but the Roosevelt Administration took an indifferent position toward job rights. Organized labor pressured FDR to enforce job rights for all, but administration officials had excuses to avoid doing much. White workers expected blacks to accept working in the lowest paid of unskilled jobs; defense contractors found it easiest to go along. In protest, A. Philip Randolph, President of the Brotherhood of Sleeping Car Porters, organized a 1941 mass march on Washington to protest racial discrimination. The politics disturbed the Roosevelt Administration enough to persuade Randolph to call it off in exchange for Executive Order 8802 of June 25, 1941. E.O. 8802 created the Fair Employment Practices Commission (FEPC). FEPC attempted to provide relief from discrimination in the employment of workers in defense industries or government service based on race, creed, color or national origin.

Whites turned promoting blacks into protests and riots. At the shipyards in Chester, Pennsylvania and Sparrows Point, Maryland whites rioted in response to FEPC efforts to promote blacks. In Philadelphia, federal troops put down a strike and riots of whites protesting eight blacks promoted to motorman on the Philadelphia transit system.

In the south, at the shipyards at Mobile, Alabama and Beaumont, Texas whites rioted rather than allow blacks to take skilled jobs. At the Alabama Dry Dock and Shipbuilding Company (ADDSCO) on Pinto Island, off Mobile, war production raised employment from 1,000 to 30,000 with 7,000 blacks employed in the unskilled and low paid jobs; not one black worked in a skilled job. On May 24, 1943, long after the executive order, shipyard management promoted 12 blacks to welding jobs. The next morning supervisors and uniformed plant guards looked on as white workers worked themselves into a frenzy of anger over the promotions. A CIO union official Charles Hansen reported violence “spread like wildfire, even on the repair side [of the yard], where whites and colored had worked together for years.”

Since there were no black welders on the job at the time, enraged whites made a general assault on their black co-workers with pipes and clubs, shouting “Get going. Nigger. This is our shipyard” among other threats. A one sided melee followed with blacks clubbed and beaten. Jesse Aubrey, a black worker, described a “swelling mob built to the point where it involved approximately 4,000 persons with pipes, clubs, and everything that was ‘killable.’ “ It was whites assaulting blacks. The publisher of the Mobile Register commented on the rioting: “The Negroes were entirely free of blame.” The consensus among company officials, military officers, union leadership, and the press was that recent and young migrants from the rural South were mostly responsible for the violence. No one was killed but 50 blacks were injured, some seriously. It took United States Army troops from nearby Brookley Field to restore order. Three died in similar rioting in Beaumont, Texas shipyards in mid June 1943.

There were other notable race riots generally related to defense jobs but also war related crowding and housing shortages. In June 1943 at Los Angeles, gangs of white soldiers and sailors attacked Latinos, a.k.a. pachucos or little Mexican-American youth, in a Zoot Suit race war. Military officials did little to restrict shore leave and the police mostly looked the other way as troubled brewed for the zoot suitors, conspicuous in long coats, peg-top pants, "ducktail" haircuts and for running in gangs and crashing parties. The zoot suitors took the worst of the neighborhood battles, which went on much longer than necessary. The newspapers fueled the trouble with headlines such as "Zooters Threaten L.A. Police;" elected officials provided no leadership.

In Detroit, 100,000 blacks found work in the auto plants converted to war production. Most of them joined the UAW and the NAACP. Both the Reuther faction and the communist faction of the UAW promoted equality of opportunity and equal pay for equal work, but many blacks were shunted into the hardest and lowest paid foundry jobs, especially at GM. Severe housing shortages and the refusal to allow black families near white neighborhoods only added to the tension and protest. The NAACP organized thousands in support of the right for black families to live in a federally funded housing project known as Sojourner Truth Homes, but their effort generated rioting February 28, 1942.

Detroit blacks and whites clashed often on streetcars, retail shops, and city parks. Black workers protested their inferior status on the job with wildcat strikes while white workers organized their own wildcat strikes. An estimated 20,000 whites walked out in a wildcat shutdown at Packard Motors to protest promoting blacks to better jobs. It was called the Hate Strike and lasted a week. On the evening of June 20, 1943, police arrived at Belle Isle Park, an island in the Detroit River, where they reported several hundred white service men in a brawl with young black men. The fighting spread across the bridge to areas near the Navel Armory with as many as 5,000 eventually involved in the rioting. Rioting continued through the night with rumors that fueled anger for both whites and blacks.

Around 11:30 p.m. a black man announced to a black night club filled with 500 patrons that it was time "to take care of a bunch of whites who killed a colored woman and her baby at Belle Isle Park." Another rumor spread among whites that Negroes had "raped and killed a white woman on the bridge." Both rumors proved to be completely false and probably fabricated, but the truth did not matter in the racial tensions of 1943 Detroit. Blacks began stoning white cars and looting white property in a black neighborhood known as Paradise Valley, an area close to downtown. Negro rioters stopped an eastside streetcar and stoned white factory workers leaving work. White youth arrived to begin assaulting unsuspecting blacks as they walked home along Woodward avenue from nearby theatres.

Rioting continued through Sunday night and into Monday, June 21. Mayor Edward Jeffries was slow to act, but did contact Michigan Governor Harry Kelly by 9:00 a.m. Monday morning. Governor Kelly ordered Michigan State Troops and police to Detroit, but he did not invoke martial law.

During the day Monday more and more white youth, many of them teenage,

arrived along the Woodward Avenue corridor. Official reports describe a mob of 10,000 white youth rampaging about stopping, overturning and burning as many as 16 cars and assaulting vulnerable blacks. Black pastors called for the Governor to request federal troops, but there were administrative delays.

Monday afternoon black rioters concentrated on looting white owned stores in Paradise Valley; they did not loot black owned stores. There were also assaults by blacks with reports of whites dragged from cars and buses and clubbed and beaten. At 6:30 p.m. Monday four white youth shot and killed a 58 year old black man waiting for a streetcar. Police used tear gas to disperse the mobs but Monday evening brought some of the worst violence with shooting and reports of sniper fire from upper stories of hotels and buildings.

U.S. Army units finally ended the rioting June 22 after widespread violence claimed 34 lives: 25 black, 9 white. At least 18 of the 25 blacks killed died from police gunshot wounds. There were 433 injured enough to be treated at Receiving Hospital: 222 white, 211 black. There were 101 hospitalized: 37 white, 64 black. Police arrested 1,833. A thorough review of arrest records suggests white rioters were younger and came to riot areas from other neighborhoods. Black rioters were older, tended to live in or near riot areas and to be employed. War production had to be suspended; thousands stayed home.

Governor Kelly released an 8,500 word report of a Fact-Finding Committee August 11, which blamed the riot on the exhortations by many Negro leaders to be 'militant' in the struggle for racial equality." Two sociology professors from Wayne State University, present during the riots, assembled data and commentary in a book entitled Race Riot in 1943. They quoted reporters from the Detroit Free Press that "Detroit has been building steadily for three years toward a race riot." Other comments noticed the parallel to Hitler's racism and American race riots. A quote from Life Magazine called the rioting "an old, ugly fact in U.S. life: prejudice and misunderstanding between the white and black races. (30)

As the 1944 election loomed, everyone around Roosevelt during these months wondered how, or if, he would survive another term; these same people presumed the vice presidential nominee would be the next president. The Smith-Connally Act brought sobering reality to the hostile attacks of the right wing in Congress. It included a clause preventing unions from contributing financial support to candidates running for federal office. The CIO Executive Board responded by creating a Political Action Committee (CIO-PAC). Its first duty was to support Franklin Roosevelt and the Democrats. It used individual contributions to substitute union funds and organized volunteers to do door-to-door canvassing for the 1944 elections. With Franklin Roosevelt accepted as the candidate for a fourth term, a covert effort got underway to replace Vice President Henry Wallace.

Wallace represented the liberal wing of the Democratic Party with support from the old line New Dealers, the CIO-PAC, the labor movement and the black community. He was the hand picked candidate of Roosevelt in 1940, but now Democratic Party funders wanted him out as too radical. Roosevelt, ever the politician, did not want to upset his carefully cultivated working relationship with corporate America. At a White House meeting July 11 party officials convinced

Roosevelt that Senator Harry Truman would "hurt him the least." Corporate America would be happier while the labor-liberal vote would not vote Republican and so could be taken for granted.

As the war wound down with victory guaranteed, FDR proposed a plan to Congress to assure full employment and a job for every American. It was a sign his care for the larger society and egalitarian good nature would return during re-conversion to a peacetime economy. Then he died with his fourth term barely underway and left the peace and afterward to a decent, honest man devoted to free enterprise and pliable enough to bring joy to corporate America. (31)

Part V – A New Era – 1945-1981

"A Liberal is only a hop, skip, and a jump from a Communist. A Communist starts as a liberal."

----------Testimony of Lieutenant Colonel Byron N. Randolph, before the President's [Truman] Temporary Commission on Employee Loyalty, 1946

The Communist Party of the USA(CPUSA) did not attract a significant following during the 1930's, or ever. In their organizing efforts a small cadre of U.S. party officials and devoted followers made confusing and foolish statements in their efforts to attract new members, which opened them to a steady stream of attacks. Attackers accused CPUSA of being part of a world communist movement in a larger international organization managed from the Soviet Union, knowing some of them did attend meetings in Moscow.

Americans managed the CPUSA as a Soviet franchise receiving and distributing pamphlets and materials written in Moscow. Attackers seized on key words and phrases in the communist program. Communist materials outlined the need to establish a "dictatorship of the proletariat" throughout the world and emphasized their hope to unify the world's societies under communist rules and regulation. The conquest of power required the "violent overthrow" of capitalist dominated governments in a "revolution" against the entire "bourgeois state."

In the 1930's the General Secretary of the Communist Party USA, a man named Earl Browder, made a plaintive effort to connect party intentions to the American spirit of 1776 and the American Declaration of Independence. Wealthy and well educated men signed the Declaration, which recall was a letter to King George, a man they all regarded as an intolerable tyrant. The letter went on at length listing and explaining their grievances as though they hoped to persuade the King to agree it was time to break the bonds between them and give up the American colonies: "Ok, have it your way."

We have to doubt George Washington wanted to spend the next eight years as an army General in a revolutionary war. Revolutionaries want to alter or throw out the existing government and replace it with something better, but the demand for change does not suggest or prove a preference for fighting, violence or war. The men who signed the declaration of independence had enough experience with kings and princes to doubt King George would give up the colonies without a fight. They expected a war, but that hardly proves they wanted one.

The signers had a considerable following in support of their revolution, but many of the colonists remained loyal to the King; they were Loyalists or Tories. The colonists remained deeply divided and while the majority on one side or the other could not be determined, the decision to have a revolution and organize a new and sovereign country did not come from a majority vote of the people.

Nicolai Lenin lived through two Russian Revolutions: the one that failed in 1905 and the one that succeeded in 1917. He had few illusions about entrenched power and the need for mass participation to bring significant changes in government. Like George Washington and the colonialists he expected dissolving

a government of privileged tyrants would bring violent resistance.

Most of the tiny minority of Americans in the labor movement who characterized themselves as communists – Wyndam Mortimer, Lee Pressman, Len De Caux – preferred to work through labor unions hoping to push the New Deal to the left into more egalitarian reforms. No communists in the labor movement worked toward, or planned an insurrection, or pressed for violent revolution. Many of them kept their communist sympathies behind closed doors.

None of that mattered too much while Franklin Roosevelt was alive. But after FDR died anti New Deal politicians and the bitterest part of corporate America had an easy time shutting down liberal politics and organized labor with an endless string of communist allegations. Their repeated use of the phrase "violent overthrow of the government" and the irrational fear it created acquired a destructive power all its own. What organized labor gained from the New Deal would soon be gone.

Chapter Fourteen - Harry Truman and the Post War Struggles

"Among unions the sense of insecurity is pervasive; they seem to live in constant fear for the safety of the organizations."

----------Labor Journalist, William Leiserson

Harry Truman became President April 12, 1945. Republicans and southern Democrats undoubtedly rejoiced in the death of Franklin Roosevelt. Corporate demands and Republican policy ruled national politics from the end of reconstruction until his election in November 1932. For the seven sessions of Congress from 1933 to 1947 or 14 years the Democratic Party controlled both houses of Congress.

Truman professed to be a friend of labor, but he lost his temper early in his presidency and blustered and blasted union leaders in a quite unfriendly string of confrontations right up to the 1946 elections. Truman turned his role in national labor relations into a personal battle, especially with John L. Lewis. He declared "It is as simple as ABC's, however, that the Administration must find out sometime whether the power of Mr. Lewis is superior to that of the federal government."

Truman was forewarned the labor vote might stay home in 1946, which they did out of despair or indifference. Truman would not be the last to take the labor vote for granted, but Democrats and labor paid a significant price: Republicans took both houses of the 80th Congress. Republicans could exact revenge on and through Harry Truman; the 80th Congress from January 1947 to January 1949 would be a labor disaster, among other disasters. Harry Truman helped divide the Democratic Party into a weaker and less effective counter to the Republican onslaught. Eventually he would get on friendlier terms, but not before doing significant and permanent damage to organized labor such as the Taft-Hartley Act that continues today.

Communist Russia fought as an ally of the United States in WWII. When President Roosevelt met with British Prime Minister Winston Churchill and Russian Communist Josef Stalin at Yalta on the Russian Crimea in February 1945, they discussed post war policy as allies. In their famous meetings it appears President Roosevelt accepted Russia as an equal partner among the three allies and accepted Russian intentions to protect their eastern front from another invasion. After all, European armies invaded the Soviet Union twice in the still young twentieth century and conducted a brutal and savage slaughter in the process. No country suffered more than Russia from WWII.

Once President Roosevelt died United States moderation toward Russia in the Yalta agreements, or otherwise disappeared. The Republicans and then Democrats all worried Russian Communism would spread around the world. American business entered a competition with the Soviet Union for control of foreign politics and international trade. Soviet policy they all decided threatened American economic influence and American claims to advance capitalistic markets and democratic hopes in the rest of the world.

However, it was a corporate and Republican Party idea that American

citizens acted as agents of Moscow in a conspiracy to overthrow the U.S. government. The Democrats followed along organizing a liberal minded group of Americans for Democratic Action(ADA) that foolishly thought it could help ferret out American communists while maintaining constitutional rights and civil liberties. (1)

Off to a Slow Start

The Japanese surrender of August 14, 1945 ended World War II and brought a new set of worries. Few expected an easy conversion to a peacetime economy. Congress repealed a capital tax, lowered corporate tax rates and allowed other tax saving financial calculations to aid the changeover to domestic production, but voted down improvements to unemployment benefits and watered down a full employment bill originally favored by FDR. It did pass education subsidies for returning soldiers, a.k.a. the G. I. Bill of Rights.

The end of World War II ended labor's no-strike-pledge. Manufacturing had 37 percent of national establishment employment in 1945; much of it organized in CIO unions. The need for a mass labor force in many industries provided substantial economic power in labor negotiations, but they had only limited political support. Truman wanted to avoid a fight with Republicans, but they opposed him while the Democrats divided on labor issues in the post war conversion. Few labor leaders thought Truman could be trusted to keep the New Deal going.

On August 18, 1945 Truman terminated the NWLB with Executive Order 9599, which permitted wage increases without specific government approval, provided the increases would not serve as a basis for higher prices or added costs to Federal Agencies purchasing goods or services from contractors. Truman recognized the potential for paralyzing labor disputes, but he hoped to avert strikes by keeping a lid on inflation with continued war time price controls and still help labor recover lost buying power caused by the Little Steel formula.

Efforts to work out post war labor relations started before the war ended in March of 1945. William Green of the AFL and Philip Murray of the CIO met with Eric Johnston, President of the Chamber of Commerce to draft a charter with principles they hoped would bring labor-management peace. Three of the principles required "respect for the rights of property and free choice of action, recognition of management's right to manage free of government restrictions or burdensome restrictions, and recognition of the right to bargain collectively without hindrances."

Philip Murray believed in the charter: "It's Industrial Peace for the Postwar Period." However, the Executive Board of the Chamber of Commerce did not endorse their President's work and the National Association of Manufacturers would not accept the charter, nor endorse labor's right to collective bargaining. Philip Murray offered another resolution that would pledge the meeting to agree that collective bargaining had broken down, which called for labor and industry to engage in "genuine collective bargaining." Murray wanted corporate America to endorse the Truman request for a plan of wage increases in exchange for a pledge

not to strike, but his business opponents ignored him.

After the war ended Truman sponsored a Labor-Management Conference to promote cooperation. In a national radio address October 30, 1945 he spoke of the need to have price stability and higher wage rates. Higher prices could wait, but higher wages were essential "to cushion the shock of our workers, to sustain adequate purchasing power, and to raise the national income." Truman delivered the opening remarks at the Labor-Management Conference on November 5, 1945 urging labor and management to work out their differences and avoid strikes and disruptions in the national interest.

The conference went for naught without agreement on management prerogatives or labor's right to collective bargaining. John L. Lewis declared "We say we are for free enterprise. We are opposed to a corporate state and all its manifestations as expressed in the CIO resolutions. It is the business of labor unions in steel and autos to work themselves out of the deadlock." To Lewis and the Reuther brothers the failed conference was another sign confrontation would be necessary to settle labor disputes. As the conference ended Walter Reuther was ready with his own plans. (2)

The Strike Wave of 1945-1946

In the twelve months following the victory over Japan just under 5 million - 4.98 million - would leave work in 4,630 strikes and walkouts. Many of the strikes were small and short, but 436 involved strikers of a thousand or more and 42 involved over 10,000. The combined 42 biggest strikes totaled just under 3,000,000 strikers and 85.4 million days of work lost. Of the 436 biggest strikes, 230 were by industrial union affiliates of the CIO, which involved over half of the year's strikers. In the great strike wave of 1946 no strike would be more contentious than the UAW-CIO strike at General Motors that began November 21, 1945. It would go 113 days. (3)

Automobile and Steel Strikes----The UAW strike at General Motors came with a Walter Reuther innovation. He demanded a wage settlement based on GM ability to pay. Reuther insisted GM had the ability to pay a 30 percent wage increase without an increase in the price of cars. If GM refused, he demanded they open the books and show why not. Reuther's proposal would make labor a partner in industry decisions in much the same way as he proposed to do with "500 planes a day." Management guarded their prerogatives, refused to respect labor as a source of shop floor knowledge, and continued to exclude labor from any managerial influence.

Charles Wilson, now GM President, threw out the Reuther proposals October 3 knowing a strike vote was set for October 24. He offered an 8 percent wage increase if the UAW would support increasing the standard workweek from 40 to 48 hours, and he said "the strikes will be against the interest of all the people of our country as much as they will be against General Motors." It was during this period that George Romney called Reuther "The most dangerous man in Detroit because no one is more skillful in bringing about the revolution without seeming

to disturb the existing forms of society." Reuther talked about higher wages as a way to reduce income inequality and achieve purchasing power for prosperity. He put great emphasis on purchasing power parity that would generate economic growth and a higher standard of living for all. Wilson did not deign to attend the October negotiations. He sent underlings as bargainers who declared Reuther a socialist, but ability to pay could not be discussed.

The rank and file voted 6 to 1 to strike on October 24. Wilson announced a final offer of 13.5 cents an hour, which Reuther dubbed "a conspiracy against the public." On November 19th he offered to have a three person arbitration board make a binding decision for a wage increase, but only after they had a chance to review the corporate accounts and agree GM did not have the ability to pay more. It was a final gesture before calling the strike of 175,000 GM workers at 80 GM plants in 60 cities.

No one crossed the picket lines in a show of unanimous solidarity even among the many racial and ethnic groups accustomed to internal battling. The strike generated little trouble or violence and GM simply shut down in resignation with no attempt to bring in strikebreakers. Picketers initially blocked non-union foreman and white-collar workers, which infuriated GM officials, but Reuther did not wait long to order picketers to let them through.

Both GM and Reuther doubted the UAW had the economic power to win the strike. He needed political and public support and so both sides kept up with press publicity. Newspapers did not care for Reuther and his tactics, but Time magazine put him on the cover of their December 3, 1945 issue and Life and Fortune magazine offered plaudits. Life called Reuther a man "who can rise above the bear-pit level of wage and hour battling to attack the great problems of the national economy." Fortune wrote "He believes that labor's political and economic power must be brought to bear for one great purpose: to gain for labor – and thus, he believes, for the consumer – a true partnership in the U.S. productive machine."

On December 3, 1945 Truman called on Congress to create fact-finding boards to settle strikes of national importance. He wanted to impose a 30-day cooling off period. He made the proposals without talking with CIO President Philip Murray or Walter Reuther and the UAW. He did not wait for Congress to act but appointed boards for the steel and automobile industries and pressured Reuther to send the autoworkers back to work.

The normally calm Murray called the announcement Truman's appeasement; Reuther called it a clean break with the New Deal. On December 10, GM ended the war time contract and therefore the conditions negotiated by the National War Labor Board. Now they would start bargaining with a 13.5 cents an hour raise with all other terms and conditions starting from scratch.

The Truman fact-finding board got started December 20, 1945 but to officials from the automobile and steel industries it looked like more wartime oversight after the war was over. GM attorneys told the Truman board they would withdrawal from discussion if there was mention of ability to pay and they did when Truman's pick to lead the Automobile Board, Lloyd Garrison, tried to do

so. They did not claim they could not pay the 30 cents an hour increase Reuther demanded, they equated ability to pay as an attack on American industry and free enterprise and probably an insult to them personally.

Reuther made his case before the board and the public without GM to rebut him. The Truman fact-finding board published its report January 10, 1946. It recommended a 17.5 cents an hour raise, which the Auto Board assured the public would allow GM to increase production and profit without a price increase for new cars. G.M and the UAW recognized the report as a ploy since the wage increase was modest, but the language supported ability to pay. Reuther saw his public relations advantage and agreed to accept the offer if GM would approve it by January 21, 1946, which they did not.

The UAW strike overlapped with the strike and settlement in the steel industry. United Steel Workers President Philip Murray agreed to avoid a strike until January 14, 1946; a fact-finding Board did not get started on steel until January 5, 1946. During negotiations the United Steel Workers demanded a $.25 an hour wage increase but the President of U.S. Steel Benjamin Fairless refused to bargain unless the Office of Price Administration (OPA) allowed a $7 a ton price increase. OPA Administrator Chester Bowles refused any increase more than $2 a ton.

Chester Bowles continued to offer $2 a ton price increase for steel, but John Snyder of the Office of War Mobilization and Re-Conversion offered $4 even before Benjamin Fairless agreed to a wage increase. The early concession encouraged the Little Steel Presidents to demand a larger price increase. Later in the spring 1946 Truman would bluster and make a variety of threats to the railroads and UMW president, John L. Lewis, but as of January 1946 he was indecisive, adopting a stabilization policy in labor negotiations while failing to have his administration speak with one voice.

By January 10 Philip Murray settled on a $.20 cents an hour wage increase while Fairless offered $.15. At a White House meeting Truman suggested $.195 an hour and both agreed to postpone the strike a week while Fairless consulted the Little Steel Presidents. They were the same Little Steel Presidents from the 1937 Memorial Day Massacre and they were ready to fight labor again, they demanded higher prices and would not settle for $.195 an hour. In another White House meeting Truman suggested $.185 per hour increase that Murray accepted, but Fairless refused; the steel industry would not go along unless the Truman administration allowed a price increase for steel.

The steel strike started January 19, 1946 when 800,000 walked out at 1,000 facilities around the country. OPA Director Chester Bowles advised Truman to avoid responding to pressure groups and adopt a policy that would avoid inflation as a matter of national interest. Bowles urged the president to seize the steel mills and impose a wage-price settlement that would hold down the cost of living.

Truman thought he could get both sides to compromise while Bowles warned him the Administration's first offer of a $4 a ton price increase would be a starting point for higher demands, which would be inflationary and wreck his stabilization policy. Truman over ruled Bowles and so the strike was settled

February 15, with an $.185 cents an hour wage increase in exchange for a government sanctioned $5.30 a ton price increase.

Bowles was a wealthy businessman who regarded Truman as naïve to think business would compromise on his terms. The steel settlement became the pattern for other strikes as Bowles predicted. Other industries did as the steel industry and demanded price increases as a condition for a wage increase. Higher prices and inflation followed, but business smiled in delight to be rid of wartime controls.

When the UAW negotiations resumed Walter Reuther thought Truman would get behind a push for GM to raise their 17.5 cents an hour offer to 18.5 cents, in effect like everyone else. GM emphatically refused apparently viewing the penny as the difference of a market wage and Reuther's idea of ability to pay. The UAW strike dragged on over the penny and the wording for work rules and seniority rights. Management demanded language to guarantee authority to reassign work without concern over seniority. GM finally agreed to allow seniority as a "preference" in reassignments, other things equal. It was not much, but enough to settle the strike. GM had the financial reserves to starve the UAW, which accepted the settlement March 19, 1946. (4)

Railroads-----In 1946 negotiations between railroad management and 20 different railway unions went on for months. The new Secretary of Labor Lewis B. Schwellenbach assisted by mediator John Roy Steelman did not bring agreement. Truman had already invoked the 60 day cooling off period in the Railway Labor Act of 1926. Negotiations fell apart in May for a strike set for May 18, 1946, but Steelman took over negotiations and got 18 of the unions to agree to accommodation.

The two holdouts were the most powerful unions directed by old friends of Truman who helped him retain his Senate seat in 1940. They were Alexander Fell Whitney, President of the Railway Trainmen and Alvaney Johnston, President of the Brotherhood of Locomotive Engineers. Whitney had the greatest power with 200,000 trainmen in 1,145 lodges nationwide. Johnston was a huge rotund man who looked like a labor boss that should represent the 80,000 engineers he represented.

On May 15, Truman suggested a raise of 18.5 cents an hour. On May 17, Truman had Whitney and Johnston come to the White House. Whitney said we have to go through with the strike: "Our men are demanding it." Truman showed them an executive order as he signed it. He would seize and operate the railroads effective the next day. The next day, Saturday, they agreed to wait five more days to strike.

On May 23 the strike was scheduled to begin at 5:00 P.M. Truman again spoke with Whitney and Johnston at the White House and again they refused to call off the strike. The strike brought a total halt of the railroads. Only around 300 of 24,000 freight trains ran. Of 175,000 passenger trains about 100 ran. Rush hour commuters were stranded. Passenger trains stopped at remote stations and passengers had to get off.

Truman spoke to the country in the evening of May 24 "I am a friend of

labor" … [but] "it is inconceivable that in our democracy any two men should be placed in a position where they can completely stifle our economy and ultimately destroy our country." He told the union and striking workers if they were not back to work by 4:00 p.m. the next day he would call out the army and do whatever is necessary to break the strike.

He had Clark Clifford and Sam Rosenman write his speech to Congress and a bill to draft railroad workers into the army. Steelman was meeting with the two union bosses and trying to work out a deal. Truman's advisors did not believe he could legally draft an occupational group into army service, but they went ahead with efforts to satisfy Truman intentions to go ahead.

Truman showed up and walked into the House of Representatives Chamber a little after 4:00 p.m. to a standing ovation. Clark Clifford was on the phone to Steelman in a nearby office. Steelman said a settlement was awfully close.

The President Truman spoke and on May 24, 1946 demanded Congress allow him to draft railroad strikers into the army. "For the past two days the Nation has been in the grip of a railroad strike which threatens to paralyze all our industrial, agricultural, commercial and social life. … The disaster will spare no one. Strikes against the government must stop. The Congress and the President of the United States must work together – and we must work fast." He was calling for temporary emergency legislation "to authorize the president to draft into the Armed Forces of the United States all workers who are on strike against their government."

Word was received through Clark Clifford that the strike had been settled on terms proposed by the President, which was an 18.5 cents an hour raise. The draft bill went forward and the house voted 306 to 13 in favor. Ultimately the Senate voted no by 70 to 13. Claude Pepper and Robert Taft were against it.

Truman called the railroad strike, a strike against the government, but the railroads were private enterprise as he certainly knew. Truman expressed the public's contempt for the strikers, who wanted him to break the strike. His bluster ended the shutdown, but there was a coal strike already under way. Truman would break the coal strike too, only this time he would resort to the courts. (5)

Coal and the Case of the United States v. the United Mine Workers----
The United Mine Workers contract with bituminous coal operators expired April 1, 1946. In March negotiations, UMW President John L. Lewis asked for a union health and welfare fund financed with payroll deductions, improvements in mine safety, recognition of a foremen's union, and better wages.

When the contract expired April 1 without progress 340,000 coal miners left work, shutting down the nation's bituminous coal mines. Lewis made his usual demand for respect: "I have pleaded your case not in the quavering tones of a mendicant asking alms but in the thundering voice of the captain of a mighty host, demanding the rights to which free men are entitled."

After a White House conference on May 10, 1946 Lewis ordered the miners back to work until May 25, but he could not get the coal operators to agree to negotiate a health or welfare fund. After two weeks of wrangling the two sides

informed the President they were hopelessly deadlocked. Truman stalled until May 21 before ordering the Secretary of Interior, Julius Krug, to seize the coal mines and have the government negotiate an agreement with the union.

Krug empathized with Lewis on the health and welfare issue and the two signed a contract amendment May 29, 1946, which carried forward the terms and conditions of the previous National Bituminous Coal Wage Agreement of April 11, 1945. The new amendments included returning to work and an 18.5 cents an hour raise, $100 in vacation pay, a guaranteed 5 day week, and a 5 cent royalty for the health and welfare fund. Krug also agreed to a new mine safety code in a favorable agreement to the miners.

The southern coal operators would not agree to accept the health and welfare fund, nor would they accept the new mine safety codes negotiated by Secretary Krug. Lewis knew the government would eventually give up possession of the mines to their private owners since the war was over, but he wanted to re-negotiate the government contract before they did. The matter dragged on until October 21, 1946 without an agreement when Lewis invoked a clause in the original April 11, 1945 Lewis-Krug government contract. It was in writing that either party to the Lewis-Krug contract was "privileged to give ten days' notice in writing of a desire for a negotiating conference, which the other party was required to attend; fifteen days after the beginning of the conference either party might give notice in writing of the termination of the agreement, effective five days after receipt of such notice." The ten days notice started from October 21 and fifteen days of negotiation and five days following receipt of written notice of termination was November 20, 1946.

Lewis asked to meet for new negotiations in October, but Secretary Krug advised President Truman he had a plan to avoid negotiating with Lewis and force him to negotiate with the coal operators. On November 13, 1946 Krug informed Lewis it was time for him to negotiate with the coal operators. Lewis countered with a reminder the government had possession of the mines and their Lewis-Krug contract remained as their only contract with the United Mine Workers.

Lewis drafted a letter to Krug delivered November 15, 1946,which gave written notice the UMW union would terminate the Lewis-Krug agreement November 20 and he distributed a copy of the notice to his membership. On November 18, 1946 Truman's Attorney General filed a complaint for a preliminary injunction in federal district court seeking judgment that the United Mine Workers could not unilaterally terminate the Krug-Lewis agreement. Krug and Truman expected to ignore the Norris-LaGuardia anti-injunction law. The complaint further treated the November 15 Lewis letter as a strike order since the UMW had a policy of "no contract-no work."

Judge Goldsborough immediately granted an injunction to stop the strike without notice and before holding a hearing set afterwards for November 27. Miners started leaving work November 18 after receipt of the Lewis letter. By midnight November 20, the bituminous coal mines were shut down.

The Attorney General responded by filing a petition to force Lewis to show cause why he should not be held in contempt of court for violating the injunction.

When he appeared his attorneys argued the injunction violated both the Clayton Act and the Norris-LaGuardia Act. Recall the Norris LaGuardia Act reads in part "No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute." However, Judge Goldsborough ruled neither the Clayton Act nor the Norris-LaGuardia Act would apply to the Lewis case.

The trial on the contempt charge followed on November 27 after Lewis pleaded not guilty and demanded a jury trial as allowed for in the Norris-LaGuardia Act. Judge Goldsborough found Lewis guilty of ignoring the injunction, which the court declared encouraged miners to strike by reason of UMW's "no contract-no work" practices. The Judge imposed a $3.5 million fine for the union and $10,000 fine on Lewis.

The union filed an appeal in Circuit Court, but the Attorney General filed a writ of certiorari to move the case directly into the Supreme Court. There was still no contract, but Lewis sent the miners back to work. Bituminous coal mines remained under Federal control on March 25, 1947, when a mine explosion killed 111 men at Centralia Coal Mine in Illinois. Twice in the six months before the explosion mine inspectors cited the mine for safety violations. Lewis called a week long strike of coal miners on memoriam; only two mines out of 3,345 inspected in 1946 operated without safety violations. Lewis would finally get a new UMW coal contract in July 1947, after the Supreme Court decision, which came in the case of the **United States v. United Mine Workers** filed on January 14, 1947 and not ended until March 6, 1947. (6)

In the United States v. United Mine Workers the justices upheld the injunction and the charges of both criminal and civil contempt. Chief Justice Fred Vinson wrote the opinion for the 7-2 court majority. Justice Felix Frankfurter wrote a concurring opinion; Justice Hugo Black and Justice William Douglas wrote opinions concurring in part and dissenting in part; Justice Frank Murphy and Justice Wiley Rutledge wrote separate dissenting opinions.

The 56 page ruling came embedded with some grimy politics. The war ended before the court dispute and the need to seize the coal mines to protect the war effort ended with it. There was no compelling need for the government to intervene in a private post war labor dispute. Truman had already expressed his anger and contempt with labor demands in general and John L. Lewis in particular. Since the Attorney General acted on his instruction, the case resembles a Truman vendetta.

The trial judge and seven of the Supreme Court justices went along but they decided to wash away the Norris-LaGuardia Act in the process. They wrote "Defendant's [Lewis] first and principal contention is that the restraining order and preliminary injunction were issued in violation of the Clayton and Norris-LaGuardia Acts. We have come to a contrary decision."

The justices started by declaring "it seems never to have been suggested that the proscription on injunctions found in the Clayton Act is in any respect broader than that in the Norris-LaGuardia Act." They let that assertion justify looking only at the Norris-LaGuardia Act and dispensing with the Clayton by

implication. To dispense with the Norris-LaGuardia Act the justices had to make the miners employees of the federal government, which they did with the sole excuse the federal government seized the mines to assure operation under war time powers. Once the justices made the strikers government employees they declared the Norris-LaGuardia Act will not apply because the wording in the Act made "no express exception for the United States." The justices bolstered that claim by referring to "an old and well-known rule that statutes which in general terms divest pre-existing rights or privileges will not be applied to the sovereign without express words to that effect."

Lewis and his attorneys doubted the use of such a rule but the justices claimed other cases were so similar that "we are inclined to give [the old and well known rule] much weight here." They further asserted "Congress was not ignorant of the rule which those cases reiterated; and, with knowledge of that rule, Congress would not, in writing the Norris-LaGuardia Act, omit to use 'clear and specific (language) to that effect' if it actually intended to [have the Norris-LaGuardia Act] reach the Government in all cases." The opinion does not cite debate in Congress over the "old and well known rule" nor explain how or why the Congress would have knowledge of it to write the government out of the Norris-LaGuardia Act. The so-called "old and well known rule" derives from English law that the Crown will be unaffected by acts of Parliament if not named in the law.

The justices further complained the wording in the Act referred to persons, employees, employers, associations of employees, or associations of employers, but not specifically the government. Failure to name an employer in the wording of the law as a government employer, the justices asserted, automatically excludes the government from coverage of the law.

Lewis and his attorneys did not accept their miners were employees of the government given mine operation continued with company managers and mine ownership along with financial assets, liabilities, risks and taxes continued with the coal companies. The justices wrote "the Government, in order to maintain production and to accomplish the purposes of the seizure, has substituted itself for the private employer in dealing with those matters which formerly were the subject to collective bargaining between the union and the operators." The justices outlined actions describing a government supervised arbitration between a union and a coal company and ignored the November 13th letter from Krug to Lewis ordering him to negotiate with the coal companies.

The justices were not satisfied to stop here. They wanted Lewis punished for criminal and civil contempt of court for assuming the Norris-LaGuardia Act applied to his case. To justify the penalties they looked back to a 1906 case where a condemned man in Tennessee named Johnson filed with the U.S. Supreme Court for a stay of execution. The Sheriff holding Johnson, a sheriff named Shipp, conspired with vigilantes to lynch him. The justices charged Shipp with contempt of court for ignoring the stay and demanded he show cause for his conspiracy in a criminal contempt of a court proceeding. Shipp's attorney's denied the Supreme Court had jurisdiction because they characterized the case as "frivolous."

Justice Oliver Wendell Holmes wrote the Shipp opnion for the majority "that orders made by a court having no jurisdiction to make them may be disregarded without liability to process for contempt. But even if the Circuit Court had no jurisdiction to entertain Johnson's petition, and if this [Supreme] court had no jurisdiction of the appeal, this [Supreme] court, and this [Supreme] court alone, could decide that such was the law."

The justices used the 1906 words of Justice Holmes to declare "The defendants [John L. Lewis], in making their private determination of the law, acted at their peril. Their disobedience is punishable as criminal contempt." . . . "We find impressive authority for the proposition that an order issued by a court with jurisdiction over the subject matter and person must be obeyed by the parties until it is reversed by orderly and proper proceedings. This is true without regard even for the constitutionality of the Act under which the order is issued." The "impressive authority" they claim to require all parties, including labor unions to obey in all cases until they decide jurisdiction, appears to conflict with the constitutional power of Congress to define Supreme Court jurisdiction as defined in Article III of the constitution.

As with many Supreme Court cases there were dissents: 1. Justice Frank Murphy and 2. Justice Wiley Rutledge. Justice Murphy started with "An objective reading of the Norris-LaGuardia Act removes any doubts as to its meaning and as to its applicability to the facts of this case.". . . "[The Krug-Lewis] strikes and labor disturbances grew out of the relations between the operators and the miners. The Government further recognized that fact by its subsequent refusal to negotiate with the miners on their demands and its insistence that these demands be addressed to the private mine owners."

Nor did Justice Murphy accept the majority claim the miners were ever government employees, which "bear no resemblance whatever to employees of the executive departments, the independent agencies and the other branches of the Government." Further, he reminded the justices of the history of federal government injunctions to break the 1877 strikes, the Chicago Pullman strikes, the draconian 1922 Shopman's strikes among many other strikes. The majority knew perfectly well Congress drafted the law precisely to prevent the federal government from using the injunction to break strikes of labor unions.

He acused the majority justices of subterfuge to re-establish government breaking strikes in private industries: "Under some war-time or emergency power, [government] could seize private properties at the behest of the employers whenever a strike threatened or occurred on a finding that the public interest was in peril." … "The workers would be effectively subdued under the impact of the restraining order and contempt proceedings. After the strike was broken, the properties would be handed back to the private employers. That essentially is what has happened in this case."

And finally, Justice Murphy denied the government's authority to hold John L. Lewis in criminal and civil contempt. Murphy admits "it is better policy to obey a void order than run the risk of a contempt citation" but only as "a general proposition" which is why the Norris-LaGuardia Act "specifically prohibits the

issuance of restraining orders" . . . "There is no exception" . . . or "the prohibition against restraining orders would be futile were a [Norris-LaGuardia] exception recognized for the minds of lawyers and judges are boundless in their abilities to raise serious jurisdictional objections." Murphy understands delay break strikes.

Justice Wiley Rutledge agreed with Justice Murphy, the Norris-LaGuardia Act prevents federal court jurisdiction in labor disputes, always and absolutely. However, Justice Rutledge more carefully addressed the majority demand that an injunction must be obeyed until the justices themselves review and declare it invalid or not, and that criminal sanctions apply for failure to obey even when a district court injunction proves to be invalid. He complained the U.S. Constitution gives Congress the authority to "deny jurisdiction as well as to confer it." And "Congress has acted expressly to exclude particular subject matter from the jurisdiction of any court, except this [Supreme] Court's original jurisdiction, I know of no decision here which holds the exclusion invalid, or that a refusal to obey orders or judgments contravening Congress' mandate is criminal or affords cause for punishment as for contempt."

Justice Rutledge further complained "First Amendment liberties especially would be vulnerable to nullification by such control. Thus, the constitutional rights of free speech and free assembly could be brought to naught and censorship established widely over those areas merely by applying such a rule to every case presenting a substantial question concerning the exercise of those rights. This [Supreme] Court has refused to countenance a view so destructive of the most fundamental liberties." . . . "For in labor disputes the effect of [injunction] orders, . . . is generally not merely failure to maintain the status quo pending final decision on the merits. It is also most often to break the strike, without regard to its legality or any conclusive determination on that account, and thus to render moot and abortive the substantive controversy." He did not add on behalf of corporate America, but he might as well have.

In his 8,861 word dissent, Justice Rutledge included a lengthy discussion of the majority's failure to separate criminal from civil contempt. He wrote "the idea that a criminal prosecution and a civil suit for damages or equitable relief could be hashed together in a single criminal-civil hodgepodge would be shocking to every American lawyer and to most citizens."

A defendant's rights and court procedures differ significantly. For criminal contempt the accused has the right to be innocent until proven guilty under criminal court procedures. Criminal contempt proceeding occurs between the public and a private party and not as a result of the original dispute that brought the case to court. Criminal contempt allows a court to impose prison and a fine as punishment in vindication of actions in defiance of the court's authority. Government must be a part of the case as in the United States versus a named defendant.

Civil contempt proceedings occur between private parties as a result of a private dispute. Private litigation has alternative procedures intended to be separate from public prosecution. Civil contempt allows a fine limited to the money damages caused by defiance of the court's order, but not punitive relief either as prison or a punitive fine. That was the ruling of the Supreme Court in the

1911 labor case of Gompers versus Buck's Stove and Range Company.

In the Gompers' case the district court imposed a prison term as punitive punishment for criminal contempt, but in what was a civil contempt resulting from Gompers refusal to obey a court injunction in a dispute between two private parties. Punitive punishment by a prison term, the Supreme Court ruled, will not be allowed in a civil contempt case, but only money damages. Recall Gompers did not go to prison. To assure clear understanding of the criminal and civil contempt differences Congress wrote them into Section 42(b) of the Rules of Criminal Procedure.

Justice Rutledge took an angry tone at the majority brush off of the Gomper's precedent and Rule 42(b). The majority managed to excuse ignoring these rights with "Its [rule 42(b)] purpose was sufficiently fulfilled here, for this failure to observe the rule in all respects has not resulted in substantial prejudice to the defendants." . . . And "Disposing of both aspects of the [criminal- civil] contempt in a single proceeding would seem at least a convenient practice." While the majority adjusted the district court fine in their ruling they lumped both fines together and refused to identify money damages from a punitive fine. Such is the dribble of malpractice and excuses a majority Supreme Court justices write in political decisions such as this. Make note the case was brought by the Attorney General and approved by Democratic President Harry Truman, the "friend of labor."

Congress passed the Clayton Act in 1913 and the Norris-LaGuardia Act in 1932 to prevent the federal government from using injunctions to break strikes on behalf of corporate America. As a law professor William Howard Taft declared the Clayton as nothing. He claimed the common law did not provide protection from a district court injunction and the Clayton Act added nothing new. That was before he became chief justice to rule on his claim. Now again in the United States v. United Mine Workers the majority denied Congress had the power to determine court jurisdiction and claimed independent authority beyond the separation of powers to get a pre-ordained result.

Any doubt the Supreme Court acts as a political body disappears with a review of the opinions in Duplex Printing Press Co. v. Deering and United States v. United Mine Workers. For both of these cases an elected Congress passed legislation with the power and intention to protect labor from specific abuses and both times the Supreme Court contorted and strained the English language to wash them away on behalf of corporate America. (7)

Walter Reuther and the Allis-Chalmers Strike-----After Walter Reuther ended the 119 day GM strike March 17, 1946 he won election to be president of the UAW, March 27, 1946 at the UAW's Atlantic City, New Jersey convention. His supporters promoted him as a leader with imagination and militancy, but he beat incumbent R. J. Thomas by only 124 votes from 8,765 votes caste.

During his first year as UAW president, Reuther presided over a divided executive board with a communist leaning faction that opposed him on many issues. R. J. Thomas had enough support to run and win one of two UAW vice-presidents positions and hold a seat on the executive board. While Thomas never

claimed communist sympathies he would be part of Reuther's opposition known as the Addes-Thomas-Leonard faction

Given Reuther's narrow margin of victory it was necessary to avoid confrontations with these labor movement communists, but he felt compelled to counter widespread efforts to discredit unions from charges of communist connections abroad, especially the Soviet Union. As of 1946 Reuther defined a communist as a small group of people with communist party loyalties: "I am going to get rid of people whose party loyalty is above union loyalty." Reuther's definition minimized communist influence in labor unions to the few that maintained connections to, and observed directives from, the Kremlin.

Barely a month after Reuther became UAW president the Allis-Chalmers equipment manufacturer provoked a strike by UAW Local 248 in Milwaukee. Company management unilaterally withdrew War Labor Board maintenance of membership ending dues check off, demanded cut backs in shop stewards and offered 13.5 cents an hour raise immediately after GM had accepted 17.5 cents. An Allis-Chalmers official announced their bad faith by declaring the strike will end when "the union capitulates or when the union is broken."

Harold Christoffel remained as president of Local 248 from the 1941 strike and with the same militant rank and file; management remained ready to repeat the same communist charges as before. The strike and mass picketing got started April 30, 1946, which shut down the plant. The company demanded the Wisconsin Employment Relations Board limit or end picketing, which they tried to do by court order.

Reuther agreed to back the strike with money and sent R. J. Thomas to help in spite of his dislike of Christoffel and others with communist sympathies running Local 248. President Truman and his new Secretary of Labor, Lewis Schwellenbach, remained non-committal while the strike dragged into the fall when the local newspapers launched a campaign of communist red baiting. Harold Story, attorney for Allis-Chalmers, argued his flagship plant had a strike that was a political result of the communist menace.

After some of the striking picketers confirmed their communist connections by handing out leaflets, an infuriated Walter Reuther decided Local 248 officials should step aside and let an outside administrator make a settlement as much to shut off red baiting as anything else. But he underestimated the antagonism from both sides. Allis Chalmers would not meet with anyone from Local 248 and demanded the CIO take over any negotiations, while a majority of Local 248 members refused to let Reuther make a settlement they expected to be in the company's favor. The CIO did appoint a negotiator but without progress; more delays gave the House Un-American Activities Committee (HUAC) and the House Education and Labor Committee time to hold hearings and attack the UAW as filled with communists.

Two first term Congressmen sitting on the Education and Labor Committee took the opportunity to join the attacks: Richard Nixon and John F. Kennedy. Congressman Kennedy showed off his anti-communism in aggressive questioning and then demanded Harold Christoffel be indicted for perjury. Christoffel denied

he was a communist in contradiction to testimony from paid FBI informant and former communist party member Louis Budenz. After two trials he was convicted.

By now, March 1947, many were crossing the picket lines and the strike collapsed without a contract, or a settlement. Reuther spoke at the next UAW board meeting: "We're living in a period in which there are going to be witch-hunts, hysteria and red-baiting by the most vicious group of congressmen that have gathered under the dome of the Capitol. What is happening in Local 248 is just a small … dress rehearsal." He concluded it to be "nothing short of criminal negligence for a union not to recognize these basic facts and attempt to get its house in order." (8)

The 80th Congress

Truman and the Democrats lost control of the 80th Congress, which made it easy for the Republican dominated House Un-American Activities Committee(HUAC) to promote their views of the communist threat. In January 1945 Representative John E. Rankin of Mississippi introduced a motion to convert the House Un-American Activities Committee from a special committee to a permanent standing committee with an indefinite future. By a vote of 207 to 186 the House of Representatives voted authority for the new HUAC to investigate the diffusion of subversive and un-American propaganda in the United States of foreign or domestic origin and authority to recommend remedial legislation. In the 80th Congress HUAC conducted hearings intended to identify American Communists. It no longer mattered what a witness actually did or whether they were members of the Communist Party, a witness could be a communist based on their political views.

President Truman turned the communist threat into a Truman Doctrine of foreign policy in a speech to Congress March 12, 1947. Truman claimed Communist aggression threatened peace and freedom around the world that automatically threatened American security. These threats required the United States to support people attempting to resist subjugation by minorities with communist politics or outside pressures. Congressional support to intervene in foreign political battles followed from a speech of June 5, 1947 by Secretary of State George Marshall. Congress debated and then passed the Economic Cooperation Act April 3, 1948, which provided $20 billion of funding for rehabilitation and recovery for war torn Europe. The Act would always be known as the Marshall Plan, after its principal architect. Some funds would go to Greece and Turkey to fight efforts to replace their established governments by insurgents with communist beliefs. Others in the Truman Administration jumped in with their own commentary. George Kennan called for a need to "contain" Communism. Bernard Baruch introduced the term cold war: "Let us not be deceived, today we are in the midst of a cold war."

The Truman Doctrine did not need to change the internal affairs of the United States. Whatever its merit or demerit, the Truman Doctrine defined a foreign policy as he explained it. In practice though the Truman Doctrine contributed to brewing anti communist attacks on Americans that preceded Truman and continued into the Eisenhower administration.

President Truman acquiesced to a hostile 80th Congress and joined in promoting a sweeping communist hysteria. Since Republicans questioned the loyalty of the federal civil service, he joined them and signed Executive Order 9835 for a purge to eliminate communists working in government. His Attorney General Tom Clark declared communists to be in "conspiracy to divide our people, to discredit our institutions and to bring about disrespect for our government." In other statements Clark argued "Those who do not believe in the ideology of the United States shall not be allowed to stay in the United States."

Truman helped persuade politicians, especially Republicans, they could win an election campaign by labeling their opponents as communists or communist sympathizers: Joseph McCarthy and Richard Nixon to wit. Motives for anti communism varied but corporate America found it convenient to be anti communist as a new way to attack the New Deal they always hated, and especially attack the New Deal gains of organized labor. (9)

Bills to repeal or "reform" the Wagner Act circulated virtually since it was passed, but now Republicans decided rolling back New Deal labor reforms would be their first priority. The Republican majority in the 80th Congress allowed corporate attorneys to write what they wanted and allied with southern Democrats ignore any objections and override a veto. The Republican publicity campaign cited the strikes of 1945-46 and the howling opposition of Harry Truman as proof labor had too much power and must be restricted to restore a proper "balance."

The 80th Congress passed the Taft-Hartley Act over President Truman's veto in a lopsided override vote. On June 21, 1947 the House of Representatives voted 331 to 83 to override where 106 Democrats joined 225 Republicans. Only 71 Democrats and 11 Republicans voted to sustain the veto. Two days later the Senate voted to override by 68 to 25 where 20 Democrats joined 48 Republicans in the override. Only 22 Democrats and 3 Republicans voted to sustain the veto and defeat the Taft-Hartley Act. (10)

Labor did a poor job interpreting the political climate during Taft-Hartley debate, especially President Truman as the friend of labor. As the Republicans took over the 80th Congress to write labor legislation, the AFL and CIO continued raiding their memberships in jurisdictional strikes. In a jurisdictional dispute, a union organized by the CIO had a contract with an industrial employer creating a legal obligation for both to respect collective bargaining, but a minority from an AFL craft union would call a strike demanding recognition of a minority craft union; and vice versa with the CIO. Truman recognized strikes, picketing and secondary boycotts in jurisdictional disputes as a union abuse, but he was unable or unwilling to get labor to negotiate over proposals to amend the National Labor Relations Act. Truman was under heavy pressure from anti-union members of the Senate to let Republicans have what they wanted in the Taft-Hartley Act while organized labor relied on him to veto the bill in an all or nothing gamble. Truman's private correspondence identifies his veto as a political ploy to avoid alienating the labor vote for the upcoming 1948 election while accepting Congress would override his veto. (11)

The Taft-Hartley Act

The Taft-Hartley Act made changes and substantial additions to the National Labor Relations Act. The original 1935 law had 16 trim and concise sections that fit on 9 printed pages. The Taft-Hartley Act amended the original 1935 law and made it Title I of the new law. There were also additional sections added into Title I. The Taft-Hartley Act added new titles with the additional titles full of regulations many times longer than the original law. In addition to the Title I amendments and additions, the 1947 Taft-Hartley Act added Title II, Title III, Title IV and Title V. Corporate America complains about regulations, but not for labor unions.

The amendments and additions to the NLRA appear as a Reference Guide to the Taft-Hartley Act in their essential but condensed form as Table II at the end of the chapter.

The Taft-Hartley Act destroyed the carefully crafted intentions written into the National Labor Relations Act by Senator Robert Wagner, its author and sponsor. The 1935 statute embodied his democratic philosophy and belief in social justice. Senator Wagner wanted a country and an economy that would encourage "The development of a partnership between industry and labor in the solution of national problems" . . . That partnership would be "the indispensable complement to political democracy. And that leads us to this all-important truth: there can no more be democratic self-government in industry without workers participating therein than there could be democratic government in politics without workers having the right to vote." … "That is why the right to bargain collectively is at the bottom of social justice for the worker, as well as the sensible conduct of business affairs. The denial or observance of this right means the difference between despotism and democracy." Of course, Senator Wagner assumed wealthy capital owners and their managers could learn to respect the working class. (12)

The new amendments and additions reflected the ideas of corporate America and many in Congress that America's labor law should not be out of "balance." The original National Labor Relations Act established the rights of labor to collective bargaining: it was labor's law. Inserting phrases to protect employers, to protect employees as individuals, and inserting unfair labor practices for unions in Section 8(b), employer free speech in Section 8(c) and other amendments make it possible for corporate America to do more than defend against Board enforcement. Now they can go on the offensive and use the law to challenge labor unions directly. What was Labor's Law would now be just labor law.

Taft-Hartley did not eliminate the right to collective bargaining as written in Section 7, regarded as an impolitic move, but it was decisively anti union as intended. As anyone could predict John L. Lewis had nothing but contempt for Taft-Hartley Amendments. He called them a "despotic, damnable, reprehensible, unwholesome, vicious slave statute." Walter Reuther called it "a vicious piece of Fascist legislation." Many labor officials took the opportunity to denounce Taft-Hartley at their annual conventions beginning with the 1947 conventions and on into the 1950's. Lewis organized an effort to repeal Taft-Hartley with a political

campaign in the coal mining districts organized by UMW. His efforts succeeded in defeating forty-one House members and six Senators in the 1948 elections who voted for Taft-Hartley, but Taft-Hartley remained untouched until 1959 and the Landrum-Griffin amendments as we shall see.

Immediate assessments from less partial sources varied, but most recognized Taft-Hartley would change the entire nature of collective bargaining. The notion that the Taft-Hartley restored a balance to labor relations did not fit introducing unequal penalties inserted in amendments and new sections in labor law. For example, Title III subjects employees to discharge and unions to damage suits, injunctions, or denial of access to NLRB procedures, whereas repeated employer violations of the law did not affect any of their new rights under Taft-Hartley. Employers might be expected to reinstate an employee unjustly discharged as part of the original Wagner Act, but reinstatement hardly qualifies as a corporate penalty.

Before the Taft-Hartley amendments unions and management remained free to devise their own economic strategies in negotiations. Several Taft-Hartley amendments allow management to intervene in a union's direction of strikes, which many predicted would make labor relations a battle of lawyers and the courts. More lawyers was an obvious prediction given that nearly all the Taft-Hartley options for employer intervention severely restrict or eliminate union sources of economic power such as strikes, boycotts, picketing, and union security.

The reference guide shows the key amendments and additions for all of the Taft-Hartley Act, but three sections dominated labor relations disputes after 1947: Section 8(b)(4) and its four sub-sections 8(b)(4)(A-D), Section 8(c), the free speech section, and Section 8(d), the good faith section.

Section 8(b)(4) Secondary Boycott----------Section 8(b)(4) intends to limit union strike options and strategies. It is often referred to as the secondary boycott section but only 8(b)(4)(A), the first subsection, addresses secondary boycotts. All four of Section 8(b)(4) sub sections intend to limit the collective actions of union employees to a single employer in a single bargaining unit. It attempts to confine a strike and bring a halt to efforts by unions to use a broader solidarity by expanding economic pressure to another, secondary employer or employers.

The first part of 8(b)(4) applies to all of the four letter subparts A-D. The first part of 8(b)(4) makes it an unfair labor practice for a labor organization or its agents -- to engage in, or to **induce or encourage** the employees of any employer in the course of their employment to engage in, a strike or concerted refusal to work on any goods and services. Section 8(b)(4) must apply to union conduct where "the object thereof" applies to any of the four lettered subparts such as Section 8(b)(4)(A), or Section 8(b)(4)(B) and so on for 8(b)(4)(C) and 8(b)(4)(D). If any of the four apply, they become an unfair labor practice of unions that the NLRB will be expected to end. The first of the four subparts, Section 8(b)(4)(A), defines and applies to the secondary boycott.

Consider some examples of a secondary boycott like one at Hormel & Co. the meat packers. The Taft-Hartley Act does not anticipate limiting a primary

strike or picketing at a primary employer, like a Hormel processing plant in this example. Under Taft-Hartley a grocery store selling Hormel products would be a secondary employer. If strikers at Hormel picket at grocery stores, attempting to persuade customers **not to buy** Hormel products Congress expected that to be a primary boycott and a lawful part of free speech, not affected by Taft-Hartley in Section 8(b)(4)(A). If instead the pickets attempt to persuade customers **not to shop at** grocery stores that sell Hormel products Congress expected that would be a secondary boycott of the grocery store, illegal by 8(b)(4)(A). If further the union attempts to get employees of the grocery store to strike if the grocery store carries Hormel products Congress wanted that to be a secondary strike, illegal by 8(b)(4)(A).

If union members at Kohler Company, the plumbing fixtures manufacturer, are on strike and members of a plumbers union agree to help their fellow union members pressure Kohler by refusing to install Kohler plumbing fixtures for their employer-contractor then Congress wanted that to be a secondary boycott, illegal by 8(b)(4)(A). In effect, a broader solidarity of multiple unions using a secondary strike or boycott of many union members increases the economic power of the labor movement and improves their chances of winning a strike. Banning these practices decreases the economic power of unions.

The trucking industry and the Teamsters union abound with opportunities for secondary boycotts. If a union is on strike at Serta Perfect Sleeper and Teamsters union drivers at Consolidated Freight lines refuse to pick up and deliver Serta mattresses to, or from, furniture stores that sell Serta Products, Congress wanted that to be a secondary boycott, illegal by 8(b)(4)(A).

In the 1930's and into the 1940's Farrell Dobbs and Jimmy Hoffa of the Teamsters worked to get identical regional contracts with trucking companies using the secondary boycott. When trucking employers in Omaha refused to accept the Teamsters contract, Teamsters officials had the Teamsters local in Kansas City threaten to strike or boycott Kansas City employers that took deliveries from Omaha trucking companies. The threat of cutting off a market was enough economic power to get Kansas City and Omaha trucking companies to go along with union demands.

Teamsters union contracts formalized secondary boycotts by writing a clause into their contracts that required area wide trucking companies to allow their employee-drivers to refuse to transport shipments of any employer engaged in a strike. This clause in union contracts, authorized an automatic secondary boycott, known as **a "hot cargo" clause**.

Secondary boycotts did not begin in 1947. Recall the case of Loewe v. Lawlor from 1908 where the Brotherhood of United Hatters of America objected to Loewe & Company of Danbury, Connecticut hiring non-union scabs. In response the union organized a primary boycott of Loewe & Company hats and also warned retailers they risked a secondary boycott of their stores by AFL affiliated union members if they sold Loewe & Company hats. Without a labor law to interpret the Supreme Court ruled both boycotts a restraint of trade in violation of the Sherman Antitrust law.

Recall in Duplex Printing v. Deering in 1921 the striking Machinists Union tried to organize a secondary boycott of Duplex printing presses by the rank and file employed at newspapers buying or using Duplex presses. In Bedford Stone v. Journeyman Stone Cutters strike in 1927 unionized stone cutters organized a secondary boycott at construction sites by having the rank and file refuse to install stone cut by Bedford scabs. During these years before Congress passed any labor law corporate America used the antitrust laws to defeat strikes, but secondary boycotts were the same in 1908 as in 1947 but in 1947 Congress wanted the NLRB to get rid of them.

Section 8(b)(4)(A) provides a legal definition of a secondary boycott to be an unfair labor practice. Congress settled on a convoluted legal definition attempting to prevent forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person. The NLRB and the courts were left to figure out how to apply the definition.

The three additional subparts of Section 8(b) (4) define unfair labor practices that primarily regulate picketing.

Section 8(b)(4)(B) makes inducing and encouraging a strike or picketing to get union recognition an unfair labor practice.

Section 8(b)(4)(C) makes inducing and encouraging a strike or picketing of an employer that already has a recognized union and a union contract an unfair labor practice.

Section 8(b)(4)(D) makes inducing and encouraging a strike or picketing of an employer when there is a dispute over employee occupations in the bargaining unit assigned by the NLRB an unfair labor practice, unless the employer is failing to conform to an order of the NLRB.

A Proviso included for all of Section 8(b)(4)(A-D) makes it lawful for anyone to refuse to cross a picket line of another employer already on an approved and ratified strike.

Enforcement of the new sections depends on the National Labor Relations Board and how the General Counsel and the Board majority interpret and apply the law to disputes brought to it. Enforcement of Section 8(b)(4) includes another sub section added to Section 10, which defines the Unfair Labor Practice enforcement powers of the NLRB. A new Section 10(l) applies to Section 8(b)(4) (A-C) only. If a NLRB official has cause to believe a violation of Section 8(b)(4) (A-C) is true he [sic] is expected to give his belief priority over all other Board work and to petition a federal district court for an injunction to enjoin the union conduct. The district court shall have jurisdiction to grant such injunctive relief notwithstanding any provision of the Norris-LaGuardia Act. While unions are expected to wait, Congress restored the injunction to labor disputes to restore judicial strike breaking.

To prove a violation of a secondary boycott under Section 8(b)(4)(A) attorneys for corporate America need to show evidence and convince Board

members that striking employees attempted to induce and encourage secondary employees or secondary employers to violate the law. Corporate America pressured for enforcement that limited picketing to the single location at a plant, warehouse, construction site, or store. The wording of the law refers only to "any employer" or "any other employer" and so leaves open to question whether picketing at a grocery store to persuade customers not to buy products of a company on strike would make the grocery store a secondary employer or whether picketing customers at any location should be part of free speech. Section 8(b)(4) disputes can end up in long drawn-out litigation that turn on a few words of testimony at administrative law hearings, further appeals to the Board and on to the courts as we shall see.

Section 8(c) free speech-------- After the Wagner Act corporate America insisted their First Amendment rights could not be compromised even though the Supreme Court allowed them to make anti union speeches following their 1941 decision in the NLRB v. Virginia. Speeches they ruled there could not be "too coercive." In 1947 corporate America convinced Congress to insert a new "free speech" sub section 8(c) into the National Labor Relations Act. Section 8(c) defined that it shall not constitute or be evidence of an unfair labor practice to express "any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form" . . . "if such expression contains no threat of reprisal or force or promise of benefit." Corporate America wanted this new section, always known as the free speech section, to address their wish to make anti union opinions known to employees during organizing campaigns. While Congress provided corporate America what they wanted they did not limit free speech in the free speech amendment to just corporate America, Congress had it apply to unions as well.

Section 8(d) Duty to Bargain in Good Faith---------- The original NLRA had only a sentence in Section 8(5) establishing the legal obligation to bargain collectively by the employer. The Taft-Hartley Act added a new Section 8(d) with the aim of defining specific subjects of collective bargaining. The new wording defined bargaining collectively to be the "mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, and the execution of a written contract if requested by either party, but the obligation does not compel either party to agree to a proposal or require making a concession."

Congress introduced the term "good faith" in the phrasing but did not define it. Corporate America argued the National Labor Relations Board did occasionally intervene in negotiations, which they wanted decisively banned with the new Taft-Hartley amendments. They wanted the new phrasing to make sure that good faith bargaining does not compel making concessions in contract negotiations. The new Section 8(d) added "good faith" but implied "bad faith" would be more than just an employer's stubborn refusal to reach an agreement and sign a contract. Congress left it to the courts to decide on an operational meaning for good faith.

Supreme Court Justice William Brennan would later comment "[I]t remains clear that Section 8(d) was an attempt by Congress to prevent the Board (NLRB) from controlling the settling of the terms of collective bargaining agreements."

Section 8(d) also included a controversial **Proviso** creating a no strike clause. Be sure to notice that if a collective bargaining contract has an expiration date or date of automatic renewal the wording of (1) and (4) below prevent a strike or lockout during the operation of a contract. By ending the fourth sentence with the phrase "whichever occurs later" a strike or lockout can only come on, or after, the date the contract expires. Any notice more than 60 days before the contract expiration automatically assures the expiration date occurs later. This wording implies collective bargaining contracts have an automatic no strike clause as a result of the Taft-Hartley Act. Maybe that was just an accident of wording in the hustle to get the law passed; maybe not.

The four part proviso requires

> (1) written notice upon the other party to the contract of the proposed termination or modification 60 days prior to the expiration date thereof, or in the event such contract contains no expiration date, 60 days prior to the time it is proposed to make such termination or modification; requires (2) an offer to meet and confer with the other party for the purpose of negotiating a new contract or proposed modifications; requires (3) notification of the dispute to the Federal Mediation and Conciliation Service within 30 days and simultaneously notifies any State or Territorial agency established to mediate and conciliate disputes provided no agreement has been reached by that time; and requires (4) for the contract to continue in full force and effect, without resorting to strike or lock-out, all the terms and conditions of the existing contract for a period of sixty days after such notice is given or until the expiration date of such contract, **whichever occurs later**. . . . Any employee who engages in a strike within the sixty-day period specified in this subsection shall lose his status as an employee of the employer engaged in the particular labor dispute.

Some Other Changes---------Taft-Hartley included several other changes that generated widespread attention. The amended section 8(a)(3) banned the closed shop from collective bargaining contracts, but allowed the union ship, which recall requires a new employee to become a union member after 30 days. Section 14(b) allows states to eliminate the union shop, the agency shop or any form of union security that has dues check off; section 14(b) is universally known as the right to work even though it does not use the term and has nothing to do with the right to work.

A new Section 9(h) required swearing to a non-communist oath. It required an affidavit be filed with the NLRB by each union officer of a labor organization affiliate that "he is not a member of the communist Party or affiliated with such party, and that he does not believe in or teach the overthrow of the United States Government by force or by an illegal or unconstitutional methods." The Courts

allowed it as constitutional but Congress finally agreed to remove it as part of the 1959 Landrum-Griffin Act.

Administrative Changes--------Taft-Hartley brought immediate changes to the make up of the National Labor Relations Board with amendments and additions to Section 3(a-d). The Board had three members all appointed by FDR from July 1935 to July 1945 when Harry Truman made his first of six appointments. After August 1, 1947 the Board expanded to five members as provided in Taft-Hartley. Truman nominated three Republican members but Democrats maintained a majority on the Board until President Eisenhower's appointments created a Republican majority August 1953.

Before 1947 the Board members appointed and managed their General Counsel. Under the Taft-Hartley amendment a new Section 3(d) created a General Counsel appointed by the President with the advice and consent of the Senate for a term of four years. Congress provided this new General Counsel with the authority to supervise all attorneys employed by the Board, except administrative law judges or legal assistants employed by Board members. Authority extended to the officers and employees of the regional offices. He [it was written in the law that way] shall have final authority, on behalf of the Board, to investigate charges and issue complaints under Section 10 to prosecute complaints before the Board and other duties the Board may proscribe.

Under the new arrangement the independent General Counsel would become the prosecutor and the Board were serve as a judicial body. House, Senate and Conference Committee reports included comments like the new Board "will not act as prosecutor, judge, and jury[.]" Instead "[I]ts sole function will be to decide cases." The Board would function like a court. The General Counsel would act on behalf of the Board but without any direction, review or control by the Board. Further the Board could not appoint anyone to mediate or conciliate in labor disputes thereby leaving the supervision of all attorneys to the General Counsel. The Board retained authority to administer union representation decisions like representation elections and the bargaining unit.

Sitting board members at the time of Taft Hartley objected to concentrating so much power in a single and separate General Counsel, which Board chair Paul Herzog described as creating a "labor czar." A potential conflict between the Board and the General Counsel could occur, and early on did occur, when a Board ruling differed from the opinion of the General Counsel. The Board could be expected to want the General Counsel to pursue enforcement anyway.

President Roosevelt made the first eight appointments that served on the three member Board until President Truman made the first of his appointments July 5 1945. Truman nominated two new Board members and nominated attorney Robert Denham to be General Counsel on August 1, 1947 before the August 22, 1947 start for the new law. However, the law got off to a slow start because Senator Taft and Senator Joseph Ball grilled the Truman nominees pressuring them to enforce the new law in the decisive way they preferred. The Senate refused to approve the candidates before August 22 and forced Truman to make

recess appointments, which the always blunt John L. Lewis charged was intended to keep "a whip hand over nominees." As labor relations disputes continued into the post Taft-Hartley years enforcement depended on whether the five member Board and the General Counsel were appointed by a Republican or Democratic president. The law should be the law since the wording is the same for all, but enforcement varies as we shall see. (13)

Labor and the Communists

After Taft-Hartley passed Walter Reuther decided the labor movement had enough problems fending off communist red-baiting without offering grist for more. Ever the politician, he insisted on UAW compliance with the non-communist oath and his supporters voted three to one at the 1947 UAW convention to comply. The Allis-Chalmers debacle and the Taft-Hartley defeat convinced Reuther it was time to get communist sympathizers off the UAW Executive Board. He spent the year before their 1947 convention campaigning for a slate of non-communist board members who supported an end to factionalism. He succeeded in defeating the executive board candidates of his Addes-Thomas-Leonard opposition. With majority anti communist support on the UAW Board, Reuther completed a purge of union staff while doing his best to be a liberal and anti-Communist influence in the labor movement.

By 1947, Harry Truman accepted the corporate claim that American interests earned the right to dominate the world economy along capitalist lines after its dominant role in WWII. Even though the Soviet Union fought WWII as an American ally their socialist economy made them an enemy to corporate America. Hence, support for the Marshall Plan and aid to repressive right wing governments in Greece and Turkey to prevent left wing political pressures from establishing socialist economies.

Convincing the public to go along made it necessary to promote fear that communists were dangerous to more than corporate profits. Communists needed to be dangerous to freedom and democracy. In the early post war the U.S. Chamber of Commerce published a series of pamphlets to "educate" the public in the dangers of communism. One of the pamphlets entitled "Communists within the Labor Movement" specifically targets organized labor as controlled by communists determined to bring an end to the American way of life.

The insertion of a non-Communist oath into the Taft-Hartley Act was another sign of this expanding campaign to use anti-communism to win elections and attack labor and the New Deal. The irony was Democrat Harry Truman worked and schemed to be the leader of the campaign as the best way to get reelected. It worked for the 1948 election but the politics of communism divided the Democratic Party and plagued labor and the Democrats until Richard Nixon finished off what was left of the New Deal coalition by advancing with his southern strategy in the 1968 presidential elections. (14)

The 1948 Election

Back on September 12, 1946 Truman fired his Secretary of Commerce Henry Wallace for giving a speech to the Independent Citizens Committee for the Arts, Sciences and Professions, even though he had submitted the speech to Truman for clearance beforehand. In the speech Wallace advocated peaceful coexistence with the Soviet Union.

To the truly liberal elements in the New Deal, the black community, and many in the CIO Henry Wallace was the logical heir to the New Deal. They were angry when Roosevelt dropped him from the ticket for the 1944 elections, but Roosevelt wanted to continue his confederation with corporate America developed during the war years. Wallace had supporters at the 1944 Democratic convention but he was easily shoved aside. Once Truman became president, Wallace and his supporters looked on in horror as Truman conducted an aggressively anti-communist campaign in foreign and domestic affairs. He kept threatening military intervention in countries with left wing communists and wanted continued military expenditures in what many hoped would be peacetime.

After Henry Wallace lost his job as Secretary of Commerce, he worked with some of the liberal parts of labor and the Democratic Party to speak publicly to supportive audiences and then organize a new Progressive Citizens of America (PCA). Toward the end of 1947 Wallace decided to run as the PCA party presidential candidate in the 1948 elections, opposing incumbent Truman and Thomas Dewey, the Republican. Supporters and volunteers started organizing the new party with local committees, then moved on to statewide organizations and a national party convention in the summer of 1948. The Progressive Party unified around the program adopted by Wallace the previous December and published as an article by him in the January 5, 1948 edition of the New Republic.

In the article Wallace wrote “I have been saddened by the sight of the richest and most powerful, and to me, most beautiful nation in the world haunted by fear.” He saw American politics as a one party bloc “formed to perpetuate a foreign policy based on hatred and fear.” He doubted the humanitarian claims of the bloc: “It is curious to see men who have never displayed real interest in health, education and social security at home pull out all the stops when they talk about the needy peoples of Europe.” He predicted a policy of fighting Russia and Communism as an “endless drain on American resources.”

In domestic policy Wallace objected that “Neither party puts up an effective fight against religious and racial discrimination, for the rights of the Negro people, for the restriction of restrictive covenants and anti-Semitism, for the creation of a genuine Fair Employment Practices Commission(FEPC), for the defeat of the poll tax and an anti-lynch law. Neither party defends the first amendment.” He preached a liberal domestic policy, but it was his stance on foreign policy that brought the most determined attacks. He wanted a policy “based on understanding with Russia” and “peaceful coexistence,” but both party campaigns responded with the label Red and Communist.

With only a few exceptions, organized labor would not support Wallace

and quickly became a vocal and determined opponent in a divisive battle within the labor movement. Labor hated the Taft-Hartley Act and correctly distrusted Truman and his erratic bluster, but they knew a large Wallace vote guaranteed the election of Republican Thomas Dewey with more charges of communists taking control of unions. Even a good third party candidate cannot get elected in American politics; there might be enough votes to put the decision into the House of Representatives, but otherwise the other party wins in a split vote. In effect, the 1948 campaign turned to Truman as the lessor of two evils and his labor supporters attacking Wallace as a communist.

Wallace had four major campaign tours and blanketed the nation, but with disastrous and violent results. Appearances and speeches provoked riots, gunplay and car chases. In North Carolina, at Charlotte, Winston-Salem, Greensboro, Burlington people showed up to disrupt, howl obscenities and throw eggs and tomatoes. At Charlotte, a Wallace supporter was stabbed in the arm and six times in the back. Officials claimed Wallace showed up intending to cause or incite riots. In Alabama, Bull Connor of 1960's civil rights fame, expected to segregate the audiences by race, but Wallace refused to go along. He would not participate in an unconstitutional meeting because "we believe in free speech and free assembly without police restriction or intimidation." In South Carolina, police received a call from Rudolfo Serreo threatening to assassinate the local chair of the Wallace campaign committee. When he did, he was not charged with murder but the lesser charge of manslaughter and then sentenced to three years. Violence plagued northern rallies in Boston, Cleveland, Philadelphia, and Detroit as well.

Truman kept claiming Wallace had communist sympathies: "The fact that the Communists are guiding and using the third party shows that this party does not represent American ideals" and so on. The press went along with the attacks and portrayed Wallace and the platform of the Progressive Party as the latest directives straight from the Kremlin. Wallace repeatedly denied the claims, but to no avail. On Election Day, Tuesday, November 2, 1948 Truman eked out a victory over Republican Dewey while Wallace had an insignificant total of 1,157,140 votes, almost all of it from New York or Los Angeles, and not a single electoral vote. The Democrats recovered the Congress as well, but Truman should have learned after the Taft-Hartley debacle he could not turn back the Republican onslaught after so vigorously siding with them in their anti communism.

Actually the principal support for Wallace that remained by election time came from American communists, even though Wallace fairly and honestly denied communist connections, or support for Kremlin politics. The communists supported him because he believed in what they believed: peace and peaceful coexistence with the Soviet Union, less military spending, labor rights, health care and more equality in the distribution of income. The tiny vote for Wallace in the 1948 elections emboldened the right wing in their threats toward labor and civil liberties. It provided more grist for a long and disgraceful witch-hunt that ignored constitutional free speech and any measure of decency. Joseph R. McCarthy would make his first charge of 205 communists in the State Department in his famous speech at Wheeling, West Virginia, February 9, 1950. HCUA stepped up

their inquisition. (15)

The CIO Purge

Recall the CIO under John L. Lewis started from protest against demands for conformity to decisions of the AFL Executive Board. Insurgents founded the CIO in a determined effort to break the status quo, while the AFL complained the insurgents were a bunch of communist troublemakers out to break the rules established in the AFL Constitution and By-laws. In the immediate post war the political pressure on organized labor from anti-Communists news and views divided labor into battling factions of insurgents and conformists with Walter Reuther leading the conformists and Philip Murray falling in behind. Hostilities began as early as 1946 and grew in a steady crescendo until 1949 when the former insurgents, now conformist, expelled CIO affiliated unions they labeled as communist controlled.

CIO president Philip Murray spent his career as the protégé of John L. Lewis, a man not prone to conformity under pressure. Lewis attended the 1947 AFL National Convention as president of the UMW's where he expressed his contempt for the AFL decision to capitulate to the "fascist" requirements of Section 9(h) of the Taft-Hartley Act. "If [Congress] see that we are on the run" … they might … "charge us with treason or high crimes and misdemeanors. That is the next logical step. That is what happened in Italy and Germany, didn't it? … If you don't resist, the power of the state, the central government, will be used against you that much more quickly, because they won't lose any sleep at night worrying about a labor movement that is fleeing before the storm."

Philip Murray's history with Lewis made it hard for him to accept the use of threats against CIO affiliates who did not wish to agree with decisions made, and policies adopted, by the CIO Executive Board, or dictatorial policies pushed through a CIO convention. Murray called for unity in the early post war years but his CIO opponents organized against him and gradually wore him down.

It was mostly contentious talk at the 1946 convention; at the 1947 convention talk turned to expelling CIO affiliates that did not adopt anti-Communist positions. CIO officials with a majority of the executive board, expected CIO affiliates to accept the Truman Doctrine and big business claims that communists posed a threat to the United States. Philip Murray opposed the use of coercion in a speech to the convention where he said among other things that "We decreed in 1938 that any union affiliated with the Congress of Industrial Organization should and must exercise certain autonomous rights, and those rights could not be abridged by dictum by the president of this organization, or by its executive board." (16)

The dispute festered until the Tenth Constitutional Convention of the Congress of Industrial Organizations, which ran six days beginning November 22, 1948 at Portland, Oregon. When it was time to consider and approve the Report of the Officers Committee accepted by a majority on the committee, debate turned to a written minority report with objections to positions taken by the majority.

Objectors did not like it for the CIO to accept "a continuing high level of expenditures for armaments, peacetime conscription and for the Truman Doctrine

and Marshall Plan to preserve such fascist regimes as in Greece and China and Turkey and to rebuild the Nazis in Western Germany." Objectors claimed as established fact "that Nazi industrialists in Western Germany have been reinstated to their former positions of power and influence" and that "It cannot be denied that French miners … are shot and beaten by the French Government and police under direction of American administrators."

Objectors did not like it that some CIO unions would use the new de-certification provision of the Taft-Hartley Act to organize a competing dual union and raid established CIO unions they condemn as communist controlled. Objectors complained they had a right to support the Henry Wallace campaign as a way to support the extension of New Deal policy. They did not agree support for Wallace made them communists.

The objectors caused quite an uproar at the 1948 and again at the 1949 convention. Walter Reuther spoke against them at both conventions. In 1948, he insisted collective decisions made by a democratic vote of CIO delegates bound all member unions to adopt the majority policy as an obligation that goes with accepting the privileges and protections of the CIO. He refused to acknowledge the difference of a vote by the rank and file of an individual union such as his own UAW with a policy adopted by affiliated but independent unions with their own elected officers. Both the AFL and CIO had written constitutions that guaranteed affiliated unions would be autonomous.

In his reply to the minority report Reuther included charges the objectors supported the Wallace third party campaign by order of the Communist Party in Moscow. He claimed the Marshall Plan to be a "simple matter of human needs." He characterized his fellow trade unionists in the CIO as "colonial agents of a foreign government using the trade unions as an operating base." Apparently he believed he could protect the integrity of the labor movement and successfully eliminate the taint of communism attached to it by endorsing the Truman administration foreign policy and getting rid of communists in the labor movement.

If Reuther had any suspicion communist charges were political and reflected a right wing political agenda, the written record of the conventions does not show it. Communist investigations and hearings took place during the 79th Congress of 1945-1947, during the 80th Congress of 1947-1949, and the 81st Congress from 1949-1951, where repeated communist charges were treated as truth; denials as false. The hearings gave him plenty of opportunity to learn a sampling of statements by HUAC chairs and the record of committee hearings before the 1949 CIO convention.

Several different HUAC chairs and members used their position to spread their anti-Communist views. John E. Rankin of Mississippi called the Fair Employment Practices Commission "the beginning of a Communistic dictatorship the lie of which America never dreamed." He claimed communism "hounded and persecuted the Saviour [sic] during his earthly ministry, inspired his crucifixion, derided him in this dying agony, then gamble for his garments at the foot of the cross."

HUAC hearings moved from Washington to cities around the country like

a traveling theatre troupe or a circus. The proceedings provide a public record of witnesses subpoenaed and forced to defend allegations of communist beliefs. Nothing about HUAC proceedings suggests changing any minds, but Reuther persisted attacking his own labor movement. (17)

The Eleventh Constitutional Convention of the Congress of Industrial Organizations ran five days beginning October 31, 1949 at Cleveland, Ohio where Reuther and his confreres had an anti-Communist amendment to the CIO constitution drafted and ready for a vote of delegates. The amendment barred members of the communist party from service as an officer or member of the executive board, or anyone "who consistently pursues policies and activities directed toward the achievement of the program or the purposes of the Communist party . . ."

CIO president Murray announced the motion to adopt the amendment and opened the floor for comments, although by now the adoption of the amendment was a foregone conclusion. By 1949 President Murray had changed his mind after defending autonomous rights in 1947, or had his mind changed for him as some suggested. He spoke in favor of expelling members for their communist beliefs. He was one of eleven people to speak about the amendment to the 1949 convention: six for, five against. Those favoring expelling communists sometimes resorted to slogans like "I want unity for free peoples. I want that sort of unity that will not permit somebody to knock at my door or at my neighbor's door in the night and then I disappear and no longer exist."

Mostly though speakers for the amendment to ban communists insisted the future of the CIO required the majority to silence the views of the minority. Walter Reuther insisted the amendment had nothing to do with democratic rights. Instead "It is the question as to whether or not the majority, in whose hands the responsibility lies for protecting the very existence of our organization, has a right to protect this organization against destruction by the minority."

Notice Reuther worried for the "very existence of our organization" and used the word "destruction" as a possible result of communist charges. Some of his colleagues leading CIO unions could be connected to the Communist Party of the USA, which corporate America used to attack and discredit organized labor. Apparently he expected getting rid of the communists in the labor movement would bring a halt to the corporate attacks he viewed as threatening the existence of organized labor.

In his address to the 1949 convention Reuther adopted the terms and claims corporate America used against the labor movement. He described CIO officials opposed to the communist amendment as "subservient to a foreign power" … who … "are colonial agents using the trade union movement as a basis of operation in order to carry out the needs of the Soviet Foreign Office" . . . and they . . . "take their instructions from the Soviet Union."

Toward the end of his comments Reuther announced "We don't challenge these few people in CIO to go out and peddle the Communist Party Line. What we do challenge and what this constitutional provision provides putting an end to is not their right to peddle the Communist party line. We challenge, and we are

going to put a stop to their right to peddle the Communist Party line with a CIO label on the wrapper. That's what we are going to do." Reuther used the words "CIO label," a revealing misstep since there was no substance to his charges, only labels with slogans devised by politicians and corporate America.

Reuther surely knew how carefully CIO founder John L. Lewis worked to separate union substance from the communist label. Lewis was always an outspoken anti-Communist from the beginning of communism in the 1920's. Avowed communists could not be members of the United Mine Workers. Lewis knew Lee Pressman and Len De Caux had communist sympathies when he hired them and he knew they hired hundreds of communists as organizers for the CIO, but none called themselves, or their work, communist or he would fire them.

The substance of the Lewis CIO was a program of industrial unionism and left leaning Democratic Party politics. Reuther knew the Stalin brand of communism in the Soviet Union did not have votes or power in United States politics; he knew any security threat the Soviet's might pose to the United States had nothing to do with the U.S. labor movement. In spite of it all, Reuther thought he could appease the Truman Administration and corporate America and protect the labor movement by riding the CIO of affiliates with a communist label; it was his darkest hour.

The 1949 convention voted to adopt the anti-Communist amendment, but it would get worse. The Committee on Resolutions made motions to expel two affiliated unions: United Electrical, Radio, and Machine Workers of America (UE) and United Farm Equipment Workers(FE). Resolution No. 58 – On the Expulsion of UERMWA– started with "We can no longer tolerate within the family of CIO the Communist Party masquerading as a labor union. The time has come when the CIO must strip the mask from these false leaders whose only purpose is to deceive and betray the workers." The resolution claimed UE officials "seek to justify their blind and slavish willingness to act as puppets for the Soviet dictatorship and its foreign policy . . ."

A numbered list cited evidence as UE opposition to the Marshall Plan, UE support for the Henry Wallace campaign and the Progressive Party, UE opposition to a merger of the Farm Equipment union with the UAW, UE criticism of CIO policy and plans towards the Taft-Hartley Act, and UE's "shameless" attack on Philip Murray and the Steel workers union. UE officials insisted their rank and file could take political positions different from the CIO Executive Board or a CIO convention, but Walter Reuther and Philip Murray had the votes in the 1949 convention to turn a political disagreement into communist domination that justified expelling affiliates.

While no officials from United Electrical, Radio and Machine Workers of America (UERMWA) attended the convention, Harry Bridges of the International Longshoreman's Association spoke in opposition to expelling UERMWA. "So now we have reached the point where a trade union, because it disagrees on political matters with the National CIO can be expelled. And yet we say we are not a political organization." . . . "In the Union that I represent wages, hours, conditions, and the economic program come first. I have no loyalty to any

political programs or any political party or any government except the American government. Neither does its membership nor its officers take second place to any in their Americanism and their patriotism."

A second resolution, No. 59 - A Resolution Expelling the Farm Equipment-CIO and revoking its certificate of affiliation with the CIO – followed shortly. A resolution passed at the previous 1948 CIO convention authorized the CIO Executive Board to negotiate and order a merger of the United Farm Equipment Workers Union (FE) and the Metal Workers Union with Walter Reuther's United Auto Workers (UAW). But the officers of FE "refused to discuss the directive of the CIO Executive Board and walked out of the meeting." Resolution #59 included a CIO claim that a "vast majority" of the rank and file of the Farm Equipment Union wanted to be in the UAW. A voice vote of the convention adopted the motion to expel FE without debate. (18)

The 1949 convention ended without expelling all CIO unions with a communist label. Shortly afterwards President Murray designated committees of executive board members to hold hearings for remaining affiliates either unable or unwilling to meet the political loyalty test now expected of CIO unions. Under pressure from the threat of expulsion some affiliate officials were ready to support any anti-Communist policy the Truman administration might choose, but they did not always have the vote of their members. Actually both sides in the dispute ignored the needs and interests of the dues paying members of the rank and file who we can expect worried more about wages, hours and working conditions than about foreign policy or political loyalty, as Harry Bridges suggested.

The results were a foregone conclusion with 9 more CIO unions expelled from the CIO: Fur and Leather Workers Union, Mine, Mill and Smelter Workers Union, International Longshoremen's and Warehousemen's Union, Food, Tobacco and Agricultural Workers, United Office and Professional Workers, United Public Workers, American Communications Association, National Union of Marine Cooks and Stewards, and International Fishermen and Allied Workers.

Expelling eleven unions did not mean they would continue as independent unions, although they tried. For several years before the 1949 convention CIO officials organized alternative unions to compete for members and demanded NLRB elections in order to raid the jurisdiction and members from the offending unions they finally expelled; the raiding continued after the 1949 convention. Those rank and file cast out of one union did not always join another.

The raiding and expulsions ended the CIO as a force ready to battle for a liberal social policy for the working class. By 1955, the CIO would be absorbed into the AFL and disappear. All agreed to call it a merger except the CIO would get nothing but George Meany and their name tacked on the end: AFL-CIO. Much like Samuel Gompers and the AFL of the 1920's Reuther and his CIO confreres adopted the agenda of business unionism, which they expected would persuade management to act in partnership with unions in labor relations.

Reuther would go on to lead the UAW in contract negotiations into the 1960's starting with a slogan "Teamwork in the Leadership, Solidarity in the Ranks." His efforts in the 1948 and 1950 UAW, auto industry contract talks

brought amazing success and significant benefits to auto workers. The press extolled his success in the 1950 contract they dubbed the Treaty of Detroit. Reuther would return to the bargaining table to negotiate more three year contracts that brought real wage gains, pension benefits, health care, supplemental unemployment benefits, and more, but during the early 1950's he deluded himself into thinking his success was changing American politics and generating respect for organized labor. He thought he was seeing a "maturing relationship" between unions and management. He thought he was persuading corporate America to have business and government take more responsibility to assure the standard of living of the working class. Instead his success depended on the auto industry's immediate need for a mass workforce and America's dependence on domestic auto production, which allowed him to bring considerable economic power to the negotiating table in spite of Taft Hartley. Eventually he would learn; productivity, free trade ideologues and imported cars hung in the shadows. (19)

Un-American Activities

In the post war and into the 1950's, Congress continued to fuel communist fears using their law making and investigative powers to publicize and attack communists as an un-American danger to the United States. Pre war legislation included the Smith Act of 1940. Section 9(h) of the Taft-Hartley amendments provided another option for coercing and debasing union officials. A slate of post war legislation provided new options to accuse and coerce alleged communists after Congress passed the Internal Security Act of September 20, 1950, the Immigration and Naturalization Act, a.k.a. McCarran-Walter Act of June 27, 1952, and the Communist Control Act of August 24, 1954.

Congressional investigations continued in the post war with more hearings by the House Un-American Activities Committee, but more members of Congress found political advantage authorizing committee investigations and holding public hearings. In addition to the Un-American Activities Committee, the House Committee on Education and Labor, the Senate Internal Security Subcommittee and the House Subcommittee on Investigations chaired by Joseph McCarthy all conducted investigations and hearings; J. Edgar Hoover and the FBI supplied a variety of assistance as well.

The authority bestowed on prosecutors, boards, bureaucrats and committee inquisitors allowed them to fabricate communist charges as an excuse to repress a variety of liberal views. The first amendment ceased to be a guarantee of free speech; the fifth amendment could not protect the right against self-incrimination; the sixth amendment rights that include a right to a jury trial, a right to be informed of charges, a right to be confronted by witnesses against them, a right to defense counsel did not protect the accused from threats of prosecution and reprisals.

Both appointed and elected government officials conducted these un-American activities, which followed a consistent pattern. The accused were questioned or charged as communist subversives attempting to overthrow the government by force or violence, which immediately generated support from a significant segment of the population. The accused were treated as secular heretics

in a process that made it impossible to deny accusations or provide evidence to prove or disprove allegations. The accused and convicted did their best to delay and stall in the courts. It all played out for years, but those charged as communists always suffered one immediate penalty unrelated to charges or convictions: they lost their jobs and found their names on black lists. Sometimes they were fired before a hearing or indictment; a charge attached to a name brought instant dismissal. Corporate America quietly rejoiced in the shredding of the New Deal as Democrats and organized labor cowered in fear.

Truman Loyalty

Baiting political candidates as communists – Red-baiting – was so successful for Republicans that Harry Truman decided to join them. After the 1946 election losses he signed Executive Order 9803 on November 25, 1946 establishing a Temporary Commission on Employee Loyalty. It was a short and tentative order primarily because Truman was in a hurry to be a bonafide anti-Communist. He expected the commission he created to inquire into the standards, procedures, and organizational provisions for ferreting out subversives in government. E.O. 9803 called for a report on or before February 1, 1947.

There followed the much longer and more detailed Executive Order 9835 of March 21, 1947 requiring all applicants for federal jobs and all two million men and women in government service to submit to a loyalty investigation to be conducted by the Civil Service Commission. "Whenever derogatory information with respect to loyalty of an applicant is revealed a full investigation shall be conducted." E.O. 9835 called for creating a Loyalty Board in each employing department or agency to conduct investigations and a Loyalty Review Board in the Civil Service Commission for those who wished to appeal their dismissals as subversives.

The investigators relied on informants, except that E.O. 9835 specifically allowed the "investigative agency" the right to "refuse to disclose the names of confidential informants." Standards for refusing employment or dismissing employees included "Membership in, affiliation with or sympathetic association with any foreign or domestic organization, association, movement, group or combination of persons, designated by the Attorney General as totalitarian, fascist, communist, or subversive . . ." Truman's Attorney General Tom Clark kept a list of groups he judged in sympathetic association with subversive groups. Clark put the American Council for a Democratic Greece on his subversive's list, which coincidentally opposed Truman Administration support of the right wing government there. There was no requirement for a hearing prior to listing groups as subversives. (20)

The Hollywood Ten

The House Un-American Activities Committee conducted inquisitions of actors, writers, musicians, producers, directors, and celebrities in film, theatre, television and radio, The first inquisition started in late 1947 with an attack on

the Hollywood motion picture industry. Representative John E. Rankin set the tone by describing Hollywood films as "the loathsome, filthy, insinuating, un-American undercurrents that are running through various pictures." The visibility of well paid film industry celebrities guaranteed an extra dose of publicity for their message: if it can happen to them it can happen to you. We can expect jealousy motivated committee members but they intended to exploit film stars as the ideal way to spread fear and silence opponents.

Committee members expected to cleanse the film industry by exposing people sympathetic to the communist party. Subpoena's went to 41 people for hearings that started October 20, 1947. The committee had witnesses pre-classified as friendly if they agreed to denounce communists and unfriendly if they would not. Friendly witnesses included Ronald Reagan, Robert Taylor, Gary Cooper, George Murphy, Robert Montgomery, Ginger Rogers, and Adolphe Menjou. Menjou pleased the committee with "I am a witch-hunter if the witches are communists. I am a red-baiter. I would like to see them all back in Russia." Walt Disney declared the cartoonists in the Screen Cartoonists Guild expected Mickey Mouse to talk like a communist.

The unfriendly witnesses preferred not to use the fifth amendment to refuse to answer questions, but put their faith in the first amendment. Witnesses claimed their right to free speech made it unnecessary to justify their views on any subject: "It is absolutely beyond the power of this committee to inquire into my association in any organization." Ring Lardner refused to answer Committee Chair J. Parnell Thomas who demanded "Are you a communist?" Lardner could not say no without pandering to the communist hysteria and dividing the film industry, or say yes, without losing his job and getting black listed.

The committee allowed author and screenwriter Albert Maltz to read a prepared statement. In it Maltz maintained "this is an evil and vicious procedure; that it is legally unjust and morally indecent" . . . where . . . "the constitutional guarantees of every other American have been subverted and no one is any longer protected from official tyranny."

Maltz quoted Parnell Thomas from the official transcript of a previous hearing, where Thomas previously attacked the New Deal: "I just want to say this now, that it seems that the New Deal is working along hand in glove with the communist party. The New Deal is either for the Communist Party or it is playing into the hands of the Communist Party." A defiant Maltz closed with the right to his own opinion: "I will not be dictated to or intimidated by men to whom the Ku Klux Klan, as a matter of committee record, is an acceptable American institution."

The hearings ended abruptly after only 10 of 19 unfriendly witnesses testified and Chairman Thomas claimed to have names and numbers from communist party membership cards. On November 25, 1947 the House of Representatives cited ten of the unfriendly witnesses for contempt of Congress followed by a grand jury indictment for refusing to admit or deny membership in the Screen Actors Guild or the Communist Party.

Their friends in the film industry and others organized a publicity campaign

to defend them, Humphrey Bogart, Gene Kelly, and John Huston among them. A circuit court affirmed the decision and the U. S. Supreme Court refused a writ of certiorari and so all ten went to prison. Ring Lardner went to Danbury prison where soon he met J. Parnell Thomas convicted of embezzling money in a payroll padding scheme.

The major studios – MGM, RKO, Warner Brothers – met shortly after the hearings and made a deal with HUAC to fire the Hollywood Ten and anyone else thought to be a communist as long as HUAC members did not attack specific films or the studios and their bosses. It would be known as the Waldorf Agreement after the Waldorf-Astoria in New York where the meetings took place.

It would get worse in the 1950's with a more serious purge of hundreds of people. The few would lose their jobs for wayward thinking so the masses would remain compliant and work for less, a profitable strategy in a corporate dominated society. (21)

Red Channels and Related Inquisitions

The mystery of who's who in communism helped three former FBI agents realize they could make money manufacturing and selling lists of people, organizations and publications they labeled as communist. Congressional inquisitions like the Hollywood Ten provided names to start and their connection to the FBI allowed credibility for exploiting America's fears to make any claims they wanted to make. The press of the era treated communist conspiracy claims as the truth, which assisted in compiling a blacklist to distribute and sell for profit.

Products for sale included a monthly newsletter called Counterattack and they produced and sold a booklet of 213 pages known as Red Channels: The Report of Communist Influence in Radio and Television. Red Channels had eight pages discussing what to look for and fear about communist fronts and 151 names and communist connections of actors and actresses, directors and producers, singers and composers, musicians, writers, authors and poets. They also listed 127 organizations labeled as communist or communist fronts and 17 publications of communists or communist fronts.

Corporate sponsors for radio and television programming took the list at face value, which forced radio and television stations to comply with the blacklist or lose their sponsors: a cartel. Corporate America would not risk losing market share or the profits that goes with it by caring whether the charges were right or wrong. The celebrity of those well known for their music, writing or participation in films made them more vulnerable to finding their names on the list or confronting an end to work in their professions. Leonard Bernstein, Aaron Copeland, Morton Gould, Lena Horne, Burl Ives, band leader Artie Shaw, and folk singer Pete Seeger had their names on the list.

They learned Pete Seeger was the national chairman of the Bulletin of People's Songs from citations for appearances advertised in the Daily Worker. He was the entertainer at Wallace for President rallies, and at a Peter W. Cacchione Supper for the benefit of Community Club No. 2, Thomas Jefferson Section, which club they claimed as a front for the Communist Party. The committee cited him

as an instructor at the Jefferson School of Social Science and at schools teaching political action technique. They cited their sources but they were all from the House Un-American Activities testimony or Congressional hearings.

Red Channels listed Leonard Bernstein as a sponsor of the Scientific and Cultural Conference for World Peace. Bernstein was affiliated with the American-Soviet Music Society, the Progressive Citizens of America and the World Federation of Democratic Youth. Anyone that could be in anyway connected to the Soviet Union made the list. Anyone connected to Civil Rights groups, the International Workers Order, the National Committee for People's Rights, the Negro Labor Victory Committee and many more organizations defending rights ended up on the list. Anyone supporting Henry Wallace as president could expect to labeled a communist and fired.

The organizations on the list reveal more about right wing political views than the people on the list. They identified peace groups as communist fronts like the American League for Peace and Democracy, the American Continental Congress for World Peace, and they attacked free speech groups: the American Committee for Democracy and Freedom. The list included groups connected to labor or labor rights: American Labor Party, International Labor Defense, the Negro Labor Victory Committee, Citizens Committee for Harry Bridges, and the New York Tom Mooney Committee, even though Mooney was finally out of prison by the time of Red Channels. (22)

Section 9(h)

Recall Section 9(h) of the Taft-Hartley amendments required each union officer of a labor organization to swear in a written affidavit that "he is not a member of the Communist Party and that he does not believe in or teach the overthrow of the United States Government by force or illegal methods." Failure to comply, or really acquiesce, left a union without access to labor law: a union could not be certified by the National Labor Relations Board, could not be have exclusive bargaining rights or a union shop, and could not file an unfair labor practice claim.

Officials in both communist and non-Communist unions resisted, at first. The sense of personal humiliation directed at unions invited resistance. Gradually though they gave in rather than try to operate without NLRB certification. Submitting reflected corporate notions of a ruling class dominating and humiliating those from an inferior class. Eventually 250 international unions complied that included 21,500 local unions with 193,500 officials all the way down to shop floor stewards that signed non-communist affidavits. Only two unions did not sign: the United Mine Workers of John L. Lewis, no surprise there, and the International Typographical Union.

Signing a non-communist affidavit could not restore the status quo for labor union officials because the law allowed prosecution under federal law for anyone falsely signing an affidavit. Non-communist union officials with communist connections could not sign without risking indictment; a risk intending to dissolve unions with left leaning officials.

Organized labor stalled signing Section 9(h) but the National Labor Relations Board suspended any unfair labor practice complaint pending compliance with Section 9(h), which the union charged was unconstitutional. The dispute went to the Supreme Court in the case of **American Communications Association v. Douds** decided May 8, 1950.

Chief Justice Fred Vinson wrote the opinion for the court; Justice Hugo Black wrote a dissent. Vinson decided Congress wanted Section 9(h) to eliminate the political strike as a result of "substantial amounts of evidence" . . . uncovered by Congress that . . . "Communist leaders of labor unions had in the past, and would continue in the future, to subordinate legitimate trade union objectives to obstructive strikes when dictated by party leaders, often in support of the policies of a foreign government."

These were mere preliminaries before Vinson announced the question "that emerges is whether, consistently with the First Amendment, Congress, by statute," . . . can deny positions to persons identified by . . . "particular beliefs and political affiliations."

Justice Oliver Wendell Holmes left a free speech test in his famous opinion in **Schenck v. United States** back in 1919. Recall the test applies if someone makes a public statement that "creates a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent."

In order to make the law constitutional Vinson first denied there was a free speech question by converting speech into harmful conduct: "Section 9(h) does not interfere with speech because Congress fears the consequences of speech; it regulates harmful conduct which Congress has determined is carried on by persons who may be identified by their political affiliations and beliefs." Then he dismisses the Schenck precedent with "So far as the Schenck case itself is concerned, imminent danger of any substantive evil that Congress may prevent justifies the restriction of speech."

That logic sets up a favorite ploy of Supreme Court Justices: a circle of logic true by its own terms. First, Vinson declared communists by their political affiliations and beliefs engage in political strikes. Political strikes are not a question of free speech but amount to harmful conduct. Congress has the power to regulate harmful conduct if it is a substantive evil as defined in Schenck. Vinson then declares union advantages granted by Congress under the National Labor Relations Act and justified by the Commerce Clause provide labor unions with great power over the economy. These powers can bring substantive evil from political strikes called by Communists, which justifies a non-communist oath in the land of the free.

Vinson wanted to reassure America the Supreme Court recognizes the importance of their free speech rights when he asserted "The statute does not prevent or punish by criminal sanctions the making of a speech, the affiliation with any organization, or the holding of any belief." He does admit Section 9(h) might cause some "discouragements" from coercive effects, but the " 'discouragements' of Section 9(h) proceed against labor officials, not against the groups or beliefs identified therein, but only against the combination of those affiliations or beliefs

with occupancy of a position of great power over the economy of the country."

Only Justice Hugo Black objected to the attack on free speech with a dissent. He wrote "The Court admits, as it must, that the "proscriptions" of Section 9(h) of the National Labor Relations Act as amended by the Taft-Hartley Act rest on 'beliefs and political affiliations,' and that 'Congress has undeniably discouraged the lawful exercise of political freedoms' which are 'protected by the First Amendment.' . . . Crucial to the Court's contrary holding is the premise that congressional power to regulate trade and traffic includes power to proscribe 'beliefs and political affiliations.' No case cited by the [Supreme] Court [majority] provides the least vestige of support for thus holding that the Commerce Clause restricts the right to think."

Declaring the communist oath constitutional justified a new variety of criminal indictments alleging perjury from denials entirely concentrated on labor officials. The Justice Department relied on former communist party members allowed to recant their beliefs in exchange for testimony as paid informants. The informers sold gossip, or guesses, or fabricated claims of conversations that did not occur, to justify getting paid to falsely convict labor union officials. (23)

More Smith Act Trials

During the late 1940's prosecutors used Smith Act indictments to make communist allegations and attack communism. The most famous Smith Act trial took place later at the Foley Square Court House in New York. In spite of the declining presence and miniscule numbers in the Communist Party federal prosecutors had no trouble convincing a Grand Jury to indict 12 members of the National Board of the Communist Party for violating Sections 2 and 3 of the Smith Act.

The indictment charged the twelve "with willfully and knowingly conspiring (1) to organize as the Communist Party of the United States of America, a society, group and assembly of persons who teach and advocate the overthrow and destruction of the Government of the United States by force and violence, and (2) knowingly and willfully to advocate and teach the duty and necessity of overthrowing and destroying the Government of the United States by force and violence." Their trial began January 17, 1949 and ended with guilty verdicts October 14, 1949 after nine months and 16,000 pages of testimony. The guilty verdicts proved the Justice Department could leverage the carefully nurtured fear of communists to have a jury of U.S. citizens send twelve misfits to prison for their contrarian beliefs, but the decision put quite a strain on American justice.

Prosecutors had undercover informants from the FBI testify to the plans they heard discussed in party meetings. Testimony went on for eight weeks with one of the spies claiming under oath "the defendants had personally taught me to need to overthrow the government." Defendants included William Z. Foster renown for his work in organized labor. All of them maintained they did nothing but talk in communist terms as advocates of a peaceful transition to socialism.

During the trial, Judge Harold Medina sent four of the accused and then later the five defense attorney's to jail for contempt of court following verbal

arguments. He advised the jury "It is not the abstract doctrine of overthrowing or destroying organized government by unlawful means which is denounced by this law, but the teaching and advocacy of action for the accomplishment of that purpose, by language reasonably and ordinarily calculated to incite persons to such action." After the jury returned guilty verdicts Judge Medina assessed $5,000 fines and five year prison terms. Convictions resulted solely for their beliefs expressed in front of spies and informers. Appeal was taken until a majority of the Supreme Court of the United States affirmed the decision June 4, 1951 in the case of **Dennis v. United States**.

In Dennis v. United States Chief Justice Fred Vinson wrote the opinion for the court but there were two dissents: another by Justice Hugo Black and a second by Justice William Douglas. Those convicted did not dispute evidence, but the meaning to be drawn from it. Defendants maintained Marxist-Leninist doctrine "taught that force and violence to achieve a Communist form of government in an existing democratic state would be necessary only because the ruling classes of that state would never permit the transformation to be accomplished peacefully, but would use force and violence to defeat any peaceful political and economic gain the Communists could achieve."

The Vinson opinion depended on a distinction he made between advocacy and discussion; he declared the Smith Act "is directed at advocacy, not discussion." He cited the trial judge's instruction to the jury: "The trial judge properly charged the jury that they could not convict if they found that petitioners did 'no more than pursue peaceful studies and discussions or teaching and advocacy in the realm of ideas.' " He further charged that "it was not unlawful to conduct in an American college or university a course explaining the philosophical theories set forth in the books which have been placed in evidence."

As in American Communications Association v. Douds Vinson wants to deny his opinion restricts free speech: "Congress did not intend to eradicate the free discussion of political theories, to destroy the traditional rights of Americans to discuss and evaluate ideas without fear of governmental sanction." There followed a long discussion of the clear and present danger rule from Schenck v. United States. Even though Vinson admits a revolution by force and violence has a low probability of success, the court "must ask the question "whether the gravity of the "evil," discounted by its improbability, justifies such invasion of free speech as is necessary to avoid the danger?" He concludes the "requisite danger existed." Apparently Americans can talk about Communism as long as they do not advocate for it as a good idea; that will be a crime.

In his dissent Justice Black wrote in part "I cannot agree that the First Amendment permits us to sustain laws suppressing freedom of speech and press on the basis of Congress' or our own notions of mere "reasonableness" . . . that makes the first amendment little more than an admonition to Congress. . . . "The [First] Amendment as so construed is not likely to protect any but those "safe" or orthodox views which rarely need its protection."

Justice Douglas argued the majority could not apply the clear and present danger rule to something so trivial: "The restraint to be constitutional must be

based on more than fear, on more than passionate opposition against the speech, on more than a revolted dislike for its contents. There must be some immediate injury to society that is likely if speech is allowed." None mentioned the Republican Party's determination to shut up opposition to the established order by corporate America or suppress labor rights and powers. (24)

More Smith Act trials followed, another at Foley Square beginning April 15, 1952 resulting in thirteen convictions. The convicted included IWW veteran Elizabeth Gurley Flynn and Alexander Tractenburg, publisher of the American Labor Year Book. The trial featured 263 days of testimony before going to the jury; paid prosecution witnesses were back from the first trial. One witness, Harvey Matusow, described an alleged plan to sabotage American industry in the event of war with Russia. All the guilty were fined and sentenced to varied prison terms. Two years later Harvey Matusow confessed to making false testimony, but only two of the convicted would get another trial.

In California, the FBI arrested Oleta O'Connor Yates and fourteen other leaders from the California Communist Party for a Smith Act trial that began February 1, 1952. Ms. Yates refused to answer when the prosecutor asked that she identify someone as a communist and as Judge Louis E. Goodman demanded; she went to jail for contempt of court. All charged were convicted for their beliefs as described in the testimony of spies and given 5 year prison terms and $10,000 fines.

In March of 1952 six communists arrested in Baltimore and Cleveland were charged with conspiracy to violate the Smith Act among themselves and eleven from the first Foley Square Trial. Evidence used to convict them included attending a class on the "History of the Communist Party in the Soviet Union" and publishing an article entitled "Concentration and Trade Union Work." The Judge told the jury "it is not alleged in the indictment that the defendants have actually committed violations of the [Smith] Act but only that they have agreed or conspired to do so." All went to prison and paid $1,000 fines.

Many more Smith Act trials took place between 1953 and 1955. All these Smith Act trials ended with convictions based on testimony of professional informants or ex-communists. In Honolulu, six were sentenced to five years in prison and $5,000 fines and similarly for convictions in Seattle, in Detroit, St Louis, Boston, Philadelphia, and Cleveland. In Seattle three defense witnesses went to jail for contempt of court. A third Foley Square trial featured four who fled from the second Foley Square trial indictment, and the two who won retrials. All were convicted.

A majority of convictions resulted from teaching or promoting communist practices, but a significant number resulted solely from membership in the Communist Party. Even though the term communist or communism did not appear in any section of the Smith Act prosecutors, judges and juries treated membership as a crime. (25)

Communist Legislation and Enforcement

After losing the 80th Congress in the 1946 elections the Democrats restored

their control of both houses of the 81st and 82nd Congress from January 1949 until January 1953. Combined with President Truman the Democrats had four years to moderate the still rampant communist hysteria before Republican Dwight Eisenhower won the presidential election in November 1952 and swept Republican majorities into both houses of the 83rd Congress.

Democrats had the power but not the solidarity, sense, or courage to stem the abuses. The House Committee on Education and Labor, and the House Committee on Un-American Activities now with Democratic control continued unabated. The Democratic controlled Senate voted a Resolution to establish a rival to the HUAC to be called the Senate Internal Security Subcommittee (SISS). Democrat Pat McCarran would be the first chair, although his Democratic Party label did not prevent him from opposing the New Deal policies, he considered "too liberal."

Members of Congress ministered to the public's fear of communists by writing additional legislation attempting to clarify Communist Party membership and belief in communist principles as crimes. The language to do that required long and convoluted terminology, especially given claims that communists could be identified, tried and convicted without trampling on constitutional rights. Smith Act prosecutions did not satisfy Congress. They passed three more statutes hoping to indict and convict left wing political opponents, especially in labor unions.

The Internal Security Act of 1950---------Democrats helped to pass another communists in conspiracy act, the Internal Security Act, a.k.a. the McCarran Act, of September 22, 1950. The vote was 312 to 20 in the House and 51 to 7 in the Senate using support from many northern Democrats, even so called liberal Hubert Humphrey. Truman made a hollow gesture and vetoed the bill but lost in the override vote by 286 to 48 in the House and 57 to 10 in the Senate.

Congress justified the Internal Security Act in a Title I section subtitled "Necessity of Legislation, " which included fifteen numbered paragraphs defining a conspiracy of communist threats. "There exists a world communist movement which, . . . is a world-wide revolutionary movement, whose purpose it is, by treachery, deceit, infiltration into other groups (governmental and otherwise), espionage, sabotage, terrorism, and any other means deemed necessary, to establish a totalitarian dictatorship in countries throughout the world."

The verbiage continues on to claim communists "are organized on a secret, conspiratorial basis and operate to a substantial extent through organizations, commonly known as "Communist Fronts", which in most instances are created and maintained, or used, in such manner as to conceal the facts as to their true character and purposes and their membership." And then "In the United States individuals who knowingly and willfully participate in the world Communist movement, . . . repudiate their allegiance to the United States, and in effect transfer their allegiance to the foreign country . . ."

Providing bureaucratic operation for Communist conspiracy theories required a statute of 45 pages. The verbiage got long and drawn out because some in Congress worried about free speech but actually believed they could ferret out and punish communists and still maintain free speech. Definitions in Title

I, Section 3 included a definition of a Communist Organization as a communist action organization or a communist front organization. A communist action organization is directed, dominated or controlled by a foreign government in order to advance World Communism. A communist front organization primarily gives aid and support to communist action organizations.

The law had several goals or aims to accomplish. One amended existing espionage and immigration laws including the Smith Act to make it easier to deport aliens since aliens could be communists. Another authorized "Emergency Detention" by directing the FBI to compile a list of potential spies to be rounded up and incarcerated in the event of a national emergency. Eventually Congress appropriated funds to construct detention centers and have them ready for occupancy, so to speak.

The primary part of the law allowed the Attorney General to require communist organizations and its members to register and provide a list of officers and members and other financial information. Registration would be required following a petition by the Attorney General to hold hearings before a new Subversive Activities Control Board (SACB) to identify and catalog communist organizations. The findings and decisions of the SACB would be binding and there were severe penalties written into the law for failure to register following an order of the SACB. Since all groups identified by the Attorney General understood they would be penalized for registering, or not, the Communist Party took the lead to begin a 15 year odyssey through the courts.

The initial effort to enforce the law went to the Supreme Court in the case of the **Communist Party of the United States v. the Subversive Activities Control Board**, which ended in 1956. In that case the Communist Party appealed an order to register after a SACB hearing by claiming that three witnesses against them gave perjured testimony. The government admitted the three were paid informers that gave false testimony, but the government argued their ruling should stand because of other "good" evidence to convict them.

The Supreme Court sent the case back to the SACB for more hearings, but the SACB again ordered the accused to register as members of the communist party. Another appeal followed that ended at the Supreme Court in 1961. In this second case of the **Communist Party v. the Subversive Activities Control Board** the Supreme Court agreed the SACB had authority to order the Communist Party and its members to register. When the accused Communists again refused to register, they were indicted and subject to the criminal penalties in the law.

The communists defended themselves by arguing they were denied their fifth amendment rights against self-incrimination. The new dispute landed at the Supreme Court in the new case of **Albertson v. Subversive Activities Control Board** that ended in 1965. The justices acknowledged the Internal Security Act requires registration that subjects registrants to prosecution before they have a chance to defend against the charges or the government bothers to prove their case in court. Registering required admissions on a printed submission form devised to enforce the law that included information that would subject people to other communist conspiracy laws including Smith Act enforcement and penalties as

well as Internal Security Act enforcement. Finally, the Supreme Court decided the Internal Security Act violated constitutional rights against self-incrimination. After 15 years the justices stopped pandering to Congress and communist conspiracies. No group or individual ever registered.

The Immigration and Nationality Act---------The Immigration and Nationality Act, also known as the McCarran-Walter Act, passed into law June 25, 1952. President Truman vetoed the bill, but Democrats joined in voting to override. The McCarran-Walter Act amended existing immigration laws from as far back as 1918. Parts of the amended law made it easier to deport aliens among other changes. Senator McCarran wanted only immigrants of "good moral character."

Section 241 lists deportable aliens that included aliens who are anarchists, or aliens who are members of, or affiliated with, the Communist Party, Communist Party Association, or Communist Party of any state or foreign country, or political or geographic subdivision thereof, or section, subsidiary, branch, affiliate or subdivision, or any predecessor, or successor regardless of any new name they may adopt.

Section 242 grants arbitrary authority to the Attorney General to arrest and hold aliens "pending a hearing to determine deportability" at some later date. Further phrasing authorizes the Attorney General to arrest and hold aliens in custody for an indefinite period and use their sole discretion. This section goes on to include an alternative procedure to bypass immigration law hearings. The alternative procedure allows the Attorney General to appoint a special hearing officer to conduct a proceeding in accordance with regulations "as the Attorney General shall prescribe." A finding of deportability need not be required in a proceeding if the alien in custody admits to being a communist and voluntarily departs at his own expense. A finding of deportability authorizes the Attorney General to continue holding a deportable alien in custody for up to six months until deportation can be effected. If at the end of the six month period deportation was not "practicable, possible or advisable" the alien shall be subject to further detention and incarceration by the Attorney General. If delays drag on indefinitely the law provides for potential review or revision of the Attorney General's detention order by finding a court to issue a writ of habeas corpus.

Section 242 fits the definition of an unconstitutional Bill of Attainder, which applies to a legislative act that imposes punishment upon a named individual or an identifiable group without a judicial trial. Court justices apparently shared the prejudices of Congress for alien communists. In communist cases the justices tended to declare a Bill of Attainder does not apply to aliens because deportations are not punishment. The English language needs a bit of massage to suppress communists.

The Communist Control Act----------Attacking communists produced such enticing political advantage Congress diverted more time to debate and pass another anti-Communist statute: the Communist Control Act(CCA) of August 24, 1954. This new attack combined two anti-Communist proposals. Senator

Hugh Butler wanted to amend the Internal Security Act by defining a third type of communist organization: the Communist Infiltration Organization. Senator Hubert Humphrey proposed making Communist Party membership a crime worthy of five years in prison. Debate in both the Senate and the House ended with one bill that passed the Senate in a unanimous vote and only two no votes in the House.

The law featured an essay of justification in Section 2 that declared the Communist Party to be an "instrumentality of a conspiracy to overthrow the government of the United States." Phrasing further declared Party dedication to violence makes the existence of a Communist Party a "clear, present and continuing danger to the security of the United States." This additional assertion by the Congress justified a declaration that "whatever rights, privileges, and immunities which have heretofore been granted to said [Communist] party or any subsidiary organization by reason of the laws of the United States or any political subdivision thereof, are hereby terminated" . . . and that "the Communist Party should be outlawed."

The Communist Control Act added many more pages of surplus verbiage to America's already long and convoluted anti-Communist statutes. Senator Butler succeeded in getting sections added to amend the Internal Security Act. Amendments included his Communist Infiltration Organization defined as one "which is substantially directed, dominated or controlled by an individual or individuals who are, or within the last three years have been, actively engaged in giving aid or support to a communist action organization, a Communist foreign government, or the world communist movement."

All the anti-Communist laws had many pages of verbiage defining communist beliefs and description of activities Congress believed to be typical of communists. The Communist Control Act merely added more verbiage to existing excess without providing further clarity to charges or enforcement for the many cases filling the court dockets, often for years. (26)

Joe McCarthy

Senator Joseph McCarthy made his famous speech in Wheeling, West Virginia February 7, 1950 where he claimed to be holding a list of 205 people known by the Secretary of State to be card carrying communists. He would spend the next two years as a freelance demagogue directing his independent voice in a rampage of disloyalty charges against State department officials and government bureaucrats. His favorite targets were Secretary of State Dean Acheson and Army Chief of State George C. Marshall, along with Truman Loyalty Board officials and a few others. McCarthy denounced Acheson as the "Great Red Dean." In his memoirs Acheson called the West Virginia speech a "rambling, ill-prepared result of his slovenly, lazy, and undisciplined habits with which we were soon to become familiar."

Senator Millard Tydings, Chair of a Subcommittee of the Senate Foreign Relations, investigated the charges in hearings soon after the Wheeling speech. The majority report concluded that McCarthy deliberately provoked "a wave

of hysteria and fear" . . . "fraught with falsehood from beginning to end, its reprehensible and contemptible character defies adequate condemnation," all to no avail. In a Senate speech of June 14, 1951, McCarthy accused George Marshall of making common cause with the Russians in a great conspiracy. It was part of a long string of accusations that American "communists within our borders have been more responsible for the success of communism abroad than Soviet Russia."

He perfected his media skills without a power base until the presidential election in November 1952. The Eisenhower election included the sweep of Congress, which allowed Senator Robert Taft to make McCarthy Chair of the Committee on Government Operations where he appointed himself to be chair of the Subcommittee on Investigations. McCarthy appointed Roy Cohn as chief counsel, but it turned out McCarthy was acquainted with Joseph Kennedy, who wanted him to appoint his son Robert F. Kennedy (RFK) as chief counsel instead. Kennedy noticed McCarthy's friendly personal side, but this friendship was enough to get RFK an appointment as assistant counsel.

McCarthy assigned Kennedy to investigate western shipping vessels serving communist China in the period American soldiers were fighting the Chinese in Korea. After several months of study Kennedy completed his assignment with the finding 75 percent of ships arriving in mainland China flew western flags, especially from Greece. Kennedy looked on at a press conference after McCarthy pressured Greek ship owners to boycott the China trade, although other countries, especially the British would not go along. Kennedy wrote a final report for McCarthy condemning trading with the enemy, but this would be the only Kennedy assignment; he argued against other investigations and charges coming from the sub committee and resigned as assistant counsel before taking other assignments.

The China trade investigation appeared benign compared to over a hundred other investigations and charges from McCarthy and Cohn. They claimed the Voice of America that prepared American propaganda broadcasts for overseas had communist subversives.

Roy Cohn and G. David Schine, a young man appointed by Cohn to be a committee consultant, made a well publicized trip through American embassy libraries in Europe looking for communist books they could pull off the shelves. They attacked newspaper columnist Drew Pearson as a communist and accused him of having a "twisted perverted mentality." They attacked the Republican Party, which happened to be the party of many of America's newspaper owners.

In late 1953 and into 1954, McCarthy decided to attack the army, first by charging Communist spies infiltrated the army Signal Corps in Monmouth, New Jersey and next claiming an army dentist named Irving Peress was a communist who had received a promotion from captain to major. McCarthy demanded to know who had promoted Peress, which he insisted would lead to a network of communist spies in the army.

There was more but now the army retaliated by having a committee investigate Roy Cohn's negotiations to get David Schine out of the army draft and then by negotiating a succession of leaves and special privileges for him as

a private in the army. When the army released its report the conclusion was that Cohn "had sought by improper means to obtain preferential treatment for Private Schine." McCarthy claimed the Army was trying "to force a discontinuance of further attempts by McCarthy's subcommittee to expose Communist infiltration in the Army."

Patience wore out on McCarthy's Committee, which had enough votes to begin investigating McCarthy, who had to step down as chair. Karl Mundt took over; but McCarthy got the right to cross examine witnesses as a member of the committee. The committee voted to force Roy Cohn out as majority counsel in favor of Ray Jenkins of Tennessee; Democrats on the committee including John McClellan wanted Robert Kennedy as minority counsel. The army got their own lawyer, Joseph Welch, a Boston attorney, aided by James St. Clair, another Boston attorney. Thus, began the Army-McCarthy hearings on April 22, 1954 before a national television audience. The hearings degenerated into a circus of angry trivia and a brief fisticuffs between Cohn and Kennedy before ending June 17, 1954.

The majority Republican report of the hearings favored McCarthy, but the Democrats published a minority report critical of McCarthy and Cohn. Polls showed the public wearing out with McCarthy and his antics. On June 11, 1954, Senator Ralph Flanders of Vermont called for McCarthy's Censure. The Senate set up a special committee to investigate and hold hearings, which began August 31, 1954. The special committee issued a unanimous report recommending censure, which the Senate voted 67 to 21 on December 2, 1954. (27)

McCarthy's name identifies the era of witch hunts, red-baiting and un-American activities as McCarthyism, but he did not have a new idea from start to finish. His skill at attracting attention in the national press and media separated him from the others doing the same, or worse. Even though his censure took him permanently out of the spotlight, McCarthyism continued with more Communist charges and obsessions.

The post WWII years generated a surge of conspiracy theories, mostly related to communists. The fear they generated provided the ambitious politician with vote getting grist to attack their political opponents, especially Democrats bold enough to defend labor rights and protections. It can be no accident that virtually all anti-Communist attacks were directed at individuals in their employment. The Truman Loyalty Board, the Hollywood Ten, Red Channels, the Taft-Hartley oath, and McCarthy harassment all attacked their victims through their jobs, their professions and their livelihood. The Communist Party of Marx and Lenin and especially the Communist Party in the United States started as a party determined to get a better deal for labor. Attacking the American Communist Party with a succession of legislation, indictments and convictions amounts to another scheme to attack labor unions.

We might expect that some true believers like John E. Rankin or J. Parnell Thomas thought their HUAC inquisitions protected American Security, but very little so in the cynical board rooms of corporate America. Corporate America knew exactly what they wanted and set about to leverage their advertising dollars

as a means to exploit a gullible media and pliable members of Congress to make communist charges to divide labor and destroy labor rights.

The Republicans Takeover

The lopsided veto override of the Immigration and Nationality Act of 1952 reflected some of President Truman's political decline, although the Korean War was a bigger problem. In June 1950 Truman entered the Korean War with the full support of Congress, the press and the public, but his military leaders did not predict Chinese intervention, the MacArthur retreat or a stall in trench warfare while the casualties mounted. Surely there must have been someone in the federal government smart enough to understand China would not allow a U.S. dominated democracy on their border. After the public grew disgusted with the war, Truman realized he could not repeat his unlikely 1948 victory in the 1952 elections. He bowed out while suggesting Adlai Stevenson, the first term Governor of Illinois, to be the democratic candidate. Stevenson was not sure he wanted to run for president, at least in 1952, but after stalling a while he accepted the nomination.

The Republicans, desperate for victory after five presidential terms with a democrat, collared war hero Dwight Eisenhower. His public persona fit perfectly in the mood of the time for a country sick and tired of grave questions from around the world and wishing to retreat into the hopeful pleasures of hearth and home.

Stevenson had committed liberals, probably the black community, but he needed all the votes he could get from what was left of the New Deal coalition. His speeches were literate and sometimes eloquent, often emphasizing civic dedication and idealism in public service. He wrote his own speeches and made up his own mind, but the prospects looked bad from the beginning. Eisenhower filled his speeches with platitudes and campaigned as a celebrity war hero. Toward the end of the campaign with "I like Ike" buttons everywhere, he said "I will go to Korea." That put away Stevenson if there was any doubt left. The vote was not close: Ike 33.9 million votes to 27.3 million for Stevenson. Stevenson got eight southern states and West Virginia in the electoral college. Republicans took control of both houses of Congress. The south remained in the Democratic Party but there were signs the southern habit of voting for Democrats might be changing.

The Merger

CIO President Philip Murray died November 9, 1952; AFL President William Green died November 21, 1952. Walter Reuther took over as president of the CIO, although with some internal opposition. George Meany, the long time secretary-treasurer of the AFL took over as AFL President.

The change to new leadership brought initiative for an AFL-CIO merger, primarily from George Meany. After the Murray-Reuther collaboration in the 1949 communist purges, the CIO steered away from left wing social issues but still did not resemble the business unionism of the AFL. Power in the AFL was concentrated in the President and the Executive Council, but much less so in

the CIO where the affiliated unions were more active. Efforts to merge brought disagreements that took several years to talk out.

Meany admitted a merger could not take place while AFL unions were recruiting members out of CIO unions for collective bargaining elections and CIO unions were doing the same in a competition dubbed as raids. Meany met with Walter Reuther in January 1953. They agreed to investigate and found only a few unions involved with a net gain for the AFL of only 8,000 members. A unity committee drafted a no-raiding agreement on June 2, 1953. After a year of wrangling 65 AFL unions and 29 CIO unions signed a no-raiding agreement June 9, 1954. Not all the unions signed; the Teamsters, the Steelworkers and a few more did not sign but they would not be excluded from a merged federation.

In spite of these and other problems Meany wanted a fast track merger that left unresolved problems to post merger negotiations. Another meeting in October 1954 established a five person committee assigned to draft a merger agreement with Walter Reuther and George Meany as part of the committee. Their merger agreement signed in February 1955 created a constitution that left overlapping jurisdiction to later negotiations but with the proviso that "The merged federation shall be based upon a constitutional recognition that both craft and industrial unions are appropriate, equal and necessary as methods of trade union organization." Reuther insisted the new federation include an Industrial Union Department(IUD), no doubt fearing craft union domination. The agreement created an Ethical Practices Committee and committed the new AFL-CIO to civil rights and anti-discrimination.

A first convention took place in New York December 5, 1955. Over the four days of the convention delegates addressed many operational and administrative needs and concerns. George Meany would be president and the Executive Council would be 17 from AFL unions and 10 from CIO unions in proportion to the combined membership. Walter Reuther was elected to be head of the IUD. Many duplicate staff positions had to be parceled out. When the convention ended Meany proved he could get two groups of adversaries into a single Federation of 135 national or international unions. The new AFL-CIO had a membership of 14,000,000. No one, including Meany, doubted how hard it would be to make it work. (28)

Meany and the Reuther brothers clashed over policy and practices from the beginning. Victor called the merger a shotgun wedding. Reuther wanted to devote substantial resources to organizing, which put him at odds with Meany, who did not. Reuther's repeated efforts to finance organizing campaigns in several different industries met Meany opposition and excuses to stall or evade. The Reuther's wanted to commit resources to organizing farm workers; Meany did not. Walter wanted to organize a march on Washington to demand a federal response to the unemployment from another Eisenhower recession; Meany opposed it. Reuther wanted unions to be part of a mass movement to change social policy for organized labor and the working class. Meany believed labor officials manage their unions from a top down hierarchy without the need for input from the rank and file.

The two would also clash over labor's involvement with foreign trade

unions and in foreign policy, first in the post war and eventually over the Vietnam War. Meany saw communists combined as both dictators and socialists; one automatically went with the other. He argued "Communism, of course, is a dictatorial system; it denies workers the rights of freedom. Workers are controlled by government through one means or another." . . . "Businessmen are always looking for profits. They don't see anything wrong with making profits anywhere they can make them." . . . "I don't think American corporations should be allowed, under our law, to do business with communist nations." However, Reuther, still the anti-Communist, had more progressive views. He favored self determination for countries recovering from war and believed western style production would raise standards of living and demonstrate the advantage of free unions and free markets.

After WWII international unions agreed to meet in Paris in October 1945 to organize a World Federation of Trade Unions (WFTU), but conflict over American and Soviet aims in the European Recovery Program soon split the world labor movement. In December 1949 the non-communist labor movement met in London to organize the International Confederation of Free Trade Unions (ICFTU) The ICFTU worked for the European Recovery Program with a democratic framework. Delegate Walter Reuther helped write the ICFTU manifesto of "bread, peace and freedom."

George Meany would not allow the ICFTU to influence AFL foreign policy efforts. Instead the AFL operated its own Free Trade Union Committee (FTUC), which had CIA funding from 1949 to 1958. Its director Jay Lovestone, stoutly resisted oversight from the CIA, but carried forward with anti-Communist efforts in as much secrecy as he could maintain. Meany and Lovestone did not always require a country to be democratic to fund its union organizing advice and anti communist programs. They used their budget and their efforts to support right wing governments as long as they would be anti-Communist.

It remains a question if the rank and file had lots of interest committing union funds and staff to support foreign labor committees, conferences and expensive travel and donations. In the post WWII turmoil over America's role in the world many from politics, government, business, labor, and academia felt justified to comment on American foreign policy and the aims of the communists. George Meany was one who took extreme positions in his well known views, but he was dominant as AFL president with an executive board that would not oppose him, except for Reuther.

The two sniped at each other through the 1950's and 1960's. Reuther got much of the attention. He spoke often and toured, especially in Europe where he would travel three and four weeks in the summers. He spoke to enthusiast audiences in Germany, Sweden, Italy, and Great Britain, well covered in the press. He generally offered policy suggestions and spoke in favor of international collective bargaining. He was a popular and respected figure that Meany liked to ridicule. After trips he would announce Reuther "speaks as a tourist" to let everyone know he was boss. The AFL funded none of Reuther's suggested programs.

The contrast showed in another well covered event where Meany spoke to the National Religion and Labor Foundation. He attacked Jaraharal Nehru for being too quiet about communism: “No country, no people, no movement, can stand aloof and be neutral in this struggle. Nehru and Tito are not neutral. They are aides and allies of communist in fact and in effect.” The press covered his blunt opinions around the world, showing his tendency to see things one way with no subtleties. The Reuther brothers took the offensive and negotiated their own trip to India. Victor got the Voice of America to rebroadcast one of Walter’s speeches criticizing the AFL, no doubt infuriating Meany.

When President Eisenhower invited Soviet Premier Khrushchev to tour the United States in September 1959. The State Department hoped the AFL would invite him to speak at their convention, but Meany blocked it. With State Department support Walter Reuther organized a dinner in San Francisco for Khrushchev and American labor leaders. Reuther wanted the AFL Executive Council to endorse the event, but Meany opposed and it was voted down. Reuther had UAW resources to carry forward some of his efforts, but he got nothing from the AFL. The stakes would get higher in the 1960’s with the Vietnam War and another effort by the CIA to fund anti-communism through organized labor in Latin America beginning in 1961. It would be known as the American Institute for Free Labor and Development (AIFLD). (29)

Reference Guide to the Taft-Hartley Act - 1947

The Taft-Hartley Act

New Short Title and Declaration of Policy - Congress added a second and conflicting policy statement put in front of the Findings and Policy statement. This second policy does not mention collective bargaining but declares the purpose of the revised National Labor Relations Act will be to protect the rights of individuals, to protect employers and employees from interference from each other and to protect the rights of the public from labor disputes affecting commerce

Amendments in Title I - Section 1

Findings and Policy - The Taft-Hartley Amendments added a paragraph to the original Findings and Policy statement declaring it necessary to eliminate "certain practices by some labor organizations, their officers, and members" that "have the intent or the necessary effect of burdening or obstructing commerce by preventing the free flow of goods."

Amendments in Title I - Section 2 - Definitions

Section 2(3) – Employees - The amendment to Section 2 changes the definition of employees to include independent contractors, those employed as supervisors, or anyone subject to the Railway Labor Act. Those in domestic service or agricultural jobs continued to be excluded as employees under the National Labor Relations Act.

Additions in Title I - Section 2 - Definitions

Section 2(11) - Supervisors - Supervisors added in 2(3) is defined as any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if . . . such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Section 2(12) – Professionals - A Professional' employee added and defined to be any employee doing work (i) predominately intellectual rather than routine menial, manual, mechanical or physical work, (ii) involving consistent discretion and judgement with (iii) output produced that cannot be standardized with (iv) learning acquired by a prolonged course of intellectual instruction at an institution of higher learning or a hospital and different from general academic education or apprenticeship. It will also include someone who has completed their education under (iv) above working under supervision of a professional.

Amendments in Title I - Sections 3 - National Labor Relations Board

Section 3(a) – NLRB - Added two members to the National Labor Relations Board to make a five person board still appointed by the President and confirmed by the Senate.

Section 3(b) – NLRB - Made three members a quorum to do business and allowed the board to delegate its powers to regional directors to hold hearings, make investigations, and to determine a bargaining unit, and hold elections.

Section 3(c) – NLRB - Added a requirement for the Board to make an annual report to Congress accounting for all cases, employees, and money disbursed

Section 3(d) – NLRB - Created a General Counsel of the Board appointed by the President for a four year term, who will supervise all NLRB attorneys. The General Counsel will have final authority to investigate charges and issue complaints under Section 10, of the NLRA.

Amendments to Title I - Section 7 - Rights of Employees

Section 7 – The amendment to Section 7 changed the wording of the right to collective bargaining by adding the right of employees "to refrain from any and all" such [union] activities.

Amendments to Title I - Section 8 - Unfair Labor Practices

Section 8 - The Amendments to Section 8, unfair labor practices, renumbered the five unfair labor practices of employers to be Section 8(a)(1-5), amended section 8(a)(3) and added six unfair labor practices of unions numbered as Section 8(b)(1-6).

Section 8(a)(3) - closed shop, union shop Amended to make an Unfair Labor Practice for an employer to encourage or discourage membership in any labor organization provided that nothing prevents signing a labor contract that requires new hires to become union members after 30 days. The amended wording eliminated the closed shop and substituted the 30 day stipulation for a union shop on condition of a majority vote of the membership.

Additions to Title I - Section 8 -Unfair Labor Practices

Section 8(b)(1) - Added to make an Unfair Labor Practices for a labor organization or its agents to restrain or coerce employees in the exercise of their collective bargaining rights

Section 8(b)(2) - It shall be an Unfair Labor Practices for a labor organization or its agents to cause or attempt to cause an employer to discriminate against an employee in the exercise of their collective bargaining rights except for non payment of dues.

Section 8(b)(3) - Duty to Bargain - It shall be an Unfair Labor Practice for a labor organization or its agents to refuse to bargain collectively with an employer provided it is the representative of his employees.

Section 8(b)(4) - Limiting Strike Options - It shall be an Unfair Labor Practice for a labor organization or its agents to engage in or induce or encourage the employees of any employer to engage in a strike, or "concerted refusal" in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods or services, where the object is

Section 8(b)(4) (A)---- forcing or requiring any employer or self-employed person to join any labor or employer organization, or any employer or other person to cease doing business with any other business or person.

Section 8(b)(4) (B) - forcing or requiring any employer to recognize or bargain with a particular labor organization as a representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of Section 9;

Section 8(b)(4) (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 under the provisions of Section 9;

Section 8(b)(4) (D) - forcing or requiring any employer to assign particular work to employees in a particular labor organization . . . unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work. Provided there is nothing in subsection (b) that shall be construed as unlawful for any person to refuse to work if there is an approved strike going on at the time.

Section 8(b)(5) - It shall be an Unfair Labor Practices for a labor organization or its agents to charge members excessive or discriminatory fees.

Section 8(b)(6) – Featherbedding - It shall be an Unfair Labor Practices for a labor organization or its agents to make it an unfair labor practice for a union from demanding payment to members for services not performed, a practice known as featherbedding.

Section 8(c) - Free Speech - Expressing any views, arguments, or opinion, or the dissemination thereof whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice … if such expression contains no threat of reprisal or force or promise of benefit.

Section 8(d) - Good Faith - To bargain collectively shall be the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, and the execution

of a written contract if requested by either party, but the obligation does not compel either party to agree to a proposal or require making a concession.

Section 8(d) – Proviso - A current Collective Bargaining agreement cannot be terminated or modified without 60 days of written notice to the other side and with offers to meet and discuss proposed changes and 30 days notice to the Federal Mediation and Conciliation Service. The current contract will remain in effect without strike or lockout for the 60 days of notice.

Additions to Title I - Section 9 - Representatives and Elections

Section 9(a) - Grievances - A proviso added at the end of section 9(a) assured the right for union members to conduct their own grievance proceedings.

Section 9(e) - Decertification - Allows 30 percent or more of disgruntled union members to file a petition to the NLRB requesting an election to de-certify a union. De-certification elections, or other elections, can only be authorized once in any 12 month period.

Section 9(f) - requires each union file its constitution and bylaws and other relevant information including financial information with the Secretary of Labor.

Section 9(g) - requires each union to file an annual standard report to the Secretary of Labor.

Section 9(h) - Communist Oath - requires an affidavit be filed with the NLRB within the preceding 12 months by each union officer of a labor organization affiliate that "he is not a member of the communist Party or affiliated with such party, and that he does not believe in or teach the overthrow of the United States Government by force or by an illegal or unconstitutional methods."

Additions to Title I - Section 10 - Prevention of Unfair Labor Practices

Section 10(j) - following an Unfair Labor Practice allegation and complaint filed by the Board, the Board may petition a district court for a temporary injunction or restraining order, which the court can grant as it deems just and proper.

Section 10(k) - provides procedures and power to hear and determine the unfair labor practice dispute.

Section 10(l) - Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4)(b) (A),(B) or (C), the preliminary investigation of such charge shall be made forthwith and given priority over all other cases. If a NLRB official has reasonable cause to believe such charge is true and that a complaint should issue, he shall petition any district court of the United States for appropriate injunctive relief pending the final adjudication of the Board with respect to such matter. The district court shall have jurisdiction to grant such

injunctive relief or temporary restraining order notwithstanding any provision of the Norris-LaGuardia Act. A proviso requires the NLRB official make a showing or substantial or irreparable harm.

Amendments to Title I - Section 13 & 14 - Limitations

Section 13 - Right to Strike - Nothing in this Act, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right.

Section 14(a) – Supervisors - allows management to eliminate supervisors from the bargaining unit.

Section 14(b) - Right to Work - allows states to eliminate the union shop, the agency shop or any form of union security that has dues check off; section 14(b) is universally known as the right to work.

Addition of Title II - Conciliation of Labor Disputes in Industries Affecting Commerce; National Emergencies

Section 201-204 - Promotes a government policy of helping to settle labor disputes by establishing a Federal Mediation and Conciliation Service as an independent agency with duties to prevent of minimize disruptions from labor disputes

Section 205 - Establishes a twelve member National Labor Management Panel to advise in the avoidance of industrial controversies.

Section 206-211 - establishes authority for the president to declare a national emergency if a strike or threatened strike of an industry or substantial part thereof imperils the national health and safety. Procedures allow for the president to appoint a board of inquiry, to direct the Attorney General to file an injunction in federal court to enjoin the strike for 60 days, after which the NLRB holds a secret ballot vote on management's final offer. The provisions of the 1932 Norris-LaGuardia Act prohibiting injunctions in labor disputes "shall not be applicable."

Section 212 - Title II does not apply to any issue subject to the Railway Labor Act

Addition of Title III – Law Suits

Section 301 - Suits By and Against Labor Organizations

Section 301(a) - Suits for violation of contracts between an employer and a labor organization affecting commerce, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

Section 301(b) - Any labor organization and any employer affecting commerce

will be bound by the acts of its agents. Any labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in United States courts. Any money judgment against a labor organization shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

Section 301(c) - In proceedings by or against labor organizations district courts shall have jurisdiction in (1) the district where the union has its principal office, or in (2) any district where its officers or agents are engaged in representing employee members.

Section 301(d) - The service of summons, subpoena, or other legal process of any United States court on an officer or agent of a labor organization, in his capacity as such, shall constitute service upon the labor organization.

Section 301(e) - When an "agent" acts for another person they make the other person responsible for their acts, the question of whether the specific acts performed were actually authorized or later ratified shall not be controlling.

Section 302(a-g) - Restrictions on payments to employee representatives makes it unlawful for any employer to pay or deliver, or to agree to pay or deliver, any money or other thing of value to any representative [ie union official] of any of his employees, and makes it unlawful for any representative of any employees to receive or accept, or to agree to receive or accept, from the employer of such employees any money or other thing of value. Exceptions allow for payment of wages for employment of union officials, contracted services, and trust funds for union members, but trust funds requires a written agreement with the employer, with the employees and employer having equal representation in administration of the fund. Violators will be guilty of a misdemeanor crime.

Section 303 - Boycotts and Other Unlawful Combinations

Section 303(a) - It shall be unlawful, for the purposes of this section only for any labor organization to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to engage in any activity defined as an unfair labor practice in Section 8(b)(4).

Section 303(b) - Whoever shall be injured in his business or property by reason or any violation of section 301(a) may sue in any district court subject to the limitations and provisions of section 301 above without respect to the amount in controversy, or in any other court having jurisdiction, and shall recover damages by him sustained and the cost of the suit.

Section 304 - makes it unlawful for labor unions "to make a contribution or expenditure in connection with any election to any political office

Addition of Title IV

Section 401-406 - created a new joint committee to study and report on basic problems affecting friendly labor relations and productivity to be known as the Joint Committee on Labor Management Relations. It would be seven members of the Senate and seven members of the House from their respective labor committees. The study and report together with recommendations shall be finished by January 2, 1949.

Addition of Title V

Definitions

(1) The term “industry affecting commerce” means any industry or activity in commerce or in which a labor dispute would burden or obstruct commerce or the free flow of commerce.

(2) The term “strike” includes any strike or other concerted stoppage of work by employees (including a stoppage by reason of the expiration of a collective-bargaining agreement) and any concerted slow-down or other concerted interruption of operations by employees.

(3) The terms “commerce”, “labor disputes”, “employer,” “employee”, “labor organization”, “representative”, “person”, and “supervisor” shall have the sane meaning as when used in the National Labor Relations Act as amended by this Act.

Chapter Fifteen - Investigations and the Kennedy's

"Every day of the average individual is a matter of survival. If by chance he should go from home to work and have an accident, lose an arm or an eye, he's just like an animal wounded in the jungle. He's out. Life isn't easy. Life is a jungle."

----------Jimmy Hoffa in an interview with David Brinkley, April 1, 1963

Labor racketeers should be thought of as a subset of racketeering - a criminal scheme to extort money for "protection" services. Labor racketeers might take over a union and negotiate a favorable settlement with a business in exchange for a kickback. Or labor racketeers might sell strike-breaking services or use strike funds for loans to friends. These schemes should be a serious source of worry for law enforcement authorities including the FBI, but for better or worse the most serious effort to combat organized crime in the 1950's came from a thirty-two year old attorney and McClellan Committee counsel: Robert F. Kennedy.

The Reuther Shootings

On April 20, 1948, shortly after Walter Reuther arrived home in the evening darkness, a stalker leveled a 12 gauge shot gun through the kitchen window and fired buckshot at Walter from both barrels. He had turned toward the refrigerator as the gunman fired and so the blast hit him in the back and right side almost severing his right arm. On May 24, 1949 at 11:30 in the evening a stalker leveled a double barreled shot gun through the front window at the home of Victor Reuther and fired buckshot into Victor sitting on his sofa reading a book. The blast hit him in the face tearing out his right eye and ripping his face and jaw. Both survived saddled with lifetime disabilities. Following an anonymous tip a powerful dynamite bomb was discovered just before Christmas 1949 in a basement stairwell at UAW headquarters. No one was arrested or charged in these planned assassination attempts.

In his memoir, finished in 1976, Victor Reuther explains why he and Walter had reason to suspect the Detroit underworld in the shootings. Sicilian Santo Perrone operated a strikebreaking service for the Detroit Michigan Stove Works on Jefferson Avenue. The UAW attempted to organize the plant but the Perrone service used threats and physical force to defeat the attempt. As apparent reward the owners allowed Perrone to haul and then sell scrap from the plant, a deal worth $65,000 a year. Santo and his brother Gasper had other underworld businesses including bootlegging that put them in Leavenworth prison for two years. During that time their wives operated their businesses while the UAW had an easy time organizing UAW Local 305 at the Stove Works. After two years the men were paroled to the supervision of John Fry, the president of the Stove Works. Rumors of bribery and intimidation preceded window smashing and several brutal beatings of union members, which eliminated the UAW at the Detroit Michigan Stove Works.

A Grand Jury investigation by Judge George Murphy followed. It came out that John Fry had a close friend, Dean Robinson, who happened to be the son in law of the founder of Briggs Manufacturing, a large Detroit auto parts supplier. Questions by Judge Murphy discovered that Briggs also had a lucrative scrap hauling contract with Carl Renda, the son-in-law of Santo Perrone. Just weeks after their hauling agreement UAW officials at the Briggs local suffered brutal beatings. Nothing came from the Grand Jury investigation: no charges or connections between automobile industry executives and the Detroit underworld. However, it was Walter Reuther that demanded the Grand Jury investigation that uncovered the scrap hauling contracts provided to the Perrone gang.

The assassination attempt attracted national attention and calls to arrest the assassins. The police had evidence for both shootings. For Walter, the neighbors heard the shots and saw a red car they identified as a Ford and there were deep footprints in the dirt at the kitchen window. While the police ordered a thorough investigation they found nothing. UAW attorney Joe Rauh approached U.S. Attorney General Tom Clark to have the FBI join the investigation. Clark agreed to ask J. Edgar Hoover, who refused. Clark quoted Hoover's reply: "He says he is not going to send in the FBI every time some nigger women gets raped."

For Victor, there was more and better evidence. The assassin dropped his shot gun in the bushes and again there were excellent footprints in the garden dirt. Neighbors gave police descriptions of the men they saw prowling the street and the car they drove, matters reported in the Detroit newspapers. However, the police failed to pursue this evidence. When Victor questioned their failure, police Detective Albert DeLamielleure dropped off a box of mug shots for the neighbors to look at and pass around, but that was all.

After a long convalescence Victor pursued the evidence in both cases for the next two decades, efforts recounted in his memoir. Before the shooting Victor remembered police came by his house several times to report neighbors complaining about his dog barking until finally an officer demanded getting rid of the dog. The shooting came only days after the dog was gone. He checked with neighbors but decided they might be too remorseful to answer in truth, but the local precinct did not have any record of noise complaints for the Reuthers. In a personal conversation, Detective DeLamielleure suggested Victor's wife Sophie might be a suspect. These first efforts convinced them the Detroit police were not going to act.

A year after the shootings, the U.S. Senate passed a resolution requesting President Truman to direct the Justice Department and the FBI investigate the Reuther assassination attempts, but the record of the previous year cast plenty of doubt the FBI would conduct a serious investigation. As an alternative the Reuther's had the UAW employ two experienced investigators of the own: Heber Blankenhorn and Ralph Winstead.

Blankenhorn helped plan the LaFollette Committee hearings and played a key role in publicizing the corporate abuses exposed there. Winstead was an experienced federal investigator. They soon discovered the Detroit Police and the FBI blocking their efforts. In a meeting with FBI deputy director, E. G. Conley,

Blankenhorn learned the FBI had done nothing to check the ten leads provided by the UAW. Blankenhorn asked if he didn't feel ashamed of his country that prominent labor leaders could be shot and no arrests made in the case. Conley answered "There is no protection against somebody that wants to shoot you. I know. I've been shot at more than once – you just take it. There is no question they meant to kill; both records make that plain." Blankenhorn suggested FBI inaction put UAW officials in danger if the underworld believed no law enforcement agencies were after them. "Of course, of course" Conley replied, "But the FBI cannot promise to deliver overnight. It may take years."

Shortly after UAW attorney Joe Rauh was able to arrange a meeting between Blankenhorn and Attorney General J. Howard McGrath. McGrath told Blankenhorn he would never interfere with FBI work and then suggested "By concentrating on the commie cases the FBI may break this case with some commie angle."

The Senate authorized Senator Estes Kefauver to investigate organized crime and their connection to corporate America. His Kefauver Crime Committee agreed to look into the Reuther assassination attempts. By February 1951 the committee published a report: "How gangs sap U.S. of Billions." The report included more information about Santo Perrone and the Detroit Michigan Stove Works with evidence that brought convictions for bribery paid to resist union organizing at the stove works. He was fined $1,000, forced to give up his scrap contract but placed on probation without prison time.

It was now 1953 with the statute of limitations about to run out on Walter Reuther's shooting. The UAW continued to finance investigation efforts, which turned up a name, Donald Joseph Ritchie, the nephew of a known Perrone Gang member. They found him in a Windsor, Ontario prison, but a meeting with Wayne County Prosecutor Pat O'Brien took place in Detroit in December 1953. Terms of a written confession described the crime and Ritchie's participation as a Perrone gang member. The confession was made public with Ritchie stashed in a Detroit hotel to await trial while guarded by two Detroit police detectives. On January 8, 1954 Ritchie retired to the bathroom for a shower and then escaped to the alleged amazement of the two detectives.

Several days later a Detroit newspaper reporter Ken McCormick received a call from Ritchie, now in Canada. He said every word in the confession was a lie and he would fight any extradition to the United States. McCormick traced the money to the purchase of a car and a deposit at a Chatham, Ontario bank. The two detectives were found to have neglected their duty and lost 30 days pay.

In December 1957 searchers recovered Ralph Winstead's body from Lake St. Clair, ending any testimony in the cases after eight years of work for the UAW. In 1974 Victor Reuther learned then Attorney General Eliot Richardson might release some FBI records of "historical interest." Attorney Rauh requested FBI records of the Reuther assassination attempts through the Justice Department. After eight months FBI director Clarence Kelley sent 120 pages of summary reports with many names and facts deleted. In spite of the deletions Reuther learned the FBI made no attempt to investigate Detroit police connections to the

Detroit underworld or investigate Detective DeLamielleure's share ownership in a Perrone bar or attempt to extradite Ritchie from Canada.

In a second letter to director Kelley, Reuther had attorney Rauh ask him to justify the failure of the FBI to investigate the Reuther assassination attempts given the violation of federal law and in view of the known connection between the Detroit underworld and two corporate employers, the Detroit Stove Works and Briggs Corporation. The UAW referred to their copy of a memo dated May 26, 1949 from Alexander Campbell, Assistant Attorney General of the Criminal Division, to then Director of the FBI, J Edgar Hoover. The memo outlined the evidence and basis for an order to conduct a federal investigation, which included violation of two federal statutes on firearms.

The existence of the Campbell memo establishes Hoover could defy orders from the Attorney General's office with impunity and Director Kelley would cover up for him after 25 years. Kelley's 1974 reply to Reuther maintained that "All logical investigation was conducted in this matter and results furnished to the Justice Department, which advised in May 1952 that in view of the extensive unproductive investigation, it was suggested that no further action be taken, unless additional information was received indicating further violation of federal statutes." Reuther decided in his memoir the FBI would not investigate corporate connections to organized crime, which sounds like a tax supported protection racket; just a thought. (1)

The McClellan Committee

Congress knew about racketeers in the labor movement, but never managed to make progress against it as Victor Reuther could testify. The post war record suggests Congress and the FBI worried more about communists than racketeers, but in 1953 Congressman Clare Hoffman of Michigan was especially suspicious of Detroit area locals of the International Brotherhood of Teamsters (IBT). The belligerent Hoffman was chair of a special House investigating sub-committee that grilled two Detroit area Teamsters, William Bufalino and James R. Hoffa. Hoffman suspected extortion schemes in the juke box industry, but his tenure ended abruptly when his sub committee voted to replace him with Congressman Wint Smith of Kansas. Hoffa immediately retained attorney and former Kansas Governor Payne Ratner to defend him. After some brief testimony, Congressman Smith announced an end to the hearings. Questioned about it from the press, Smith pointed to the ceiling and responded "The pressure comes from away up there, and I just can't talk about it any more specifically than that."

Then in 1954 Representative George Bender of Ohio took up the cause with hearings in Cleveland in September. Two Teamsters officials, William Presser and Louis Trescaro, testified in two days of hearings to questions they extorted money from tavern owners in a scheme that threatened to halt beer deliveries. Hearings were suspended for several months and then resumed briefly November 9, but ended abruptly after Presser pleaded his fifth amendment right against self incrimination. (2)

The November 1954 elections restored Democratic control of the U. S.

Senate for the 84th Congress starting January 1955. Democratic control allowed Senator John McClellan to take over as chair of the Permanent Subcommittee on Investigations; Robert Kennedy returned to be chief counsel. By 1956 Kennedy and a small staff were active investigating corruption among government contractors taking kickbacks in clothing procurement for military uniforms. As part of this work they encountered some East Coast gangsters like John Ignazio Dioguardi, a.k.a. Johnny Dio, and with it reason to believe racketeers had invaded New York textile and transportation unions.

Then in the fall of 1956 a journalist acquaintance of Robert Kennedy, Clark Mollenhoff, steered the committee toward evidence of labor racketeering in the Teamsters. In late November Kennedy and a forensic accountant Carmine Bellino set out for Los Angeles, Portland, Seattle and eventually Chicago in search of evidence. They took down the stories of many in the labor movement and the journalists who covered it, but their biggest success was a box of financial records, which they obtained via subpoena on a snowy night in Chicago just before Christmas 1956. After looking over the records in their hotel room Kennedy declared "In an hour we had come to the startling conclusion that Dave Beck, the president of America's largest and most powerful union, the Teamsters, was a crook." (3)

Dave Beck had a long and successful career in the Teamsters union going back to the 1920's. He started as a Seattle laundry driver and a rank-and-file Teamster. By 1925 he was president of his Seattle local and from there expanded to organizing all of Seattle, and then all of west coast truck drivers by the mid 1930's. As president of the Western Conference of Teamsters and a member of the AFL-CIO Executive Council he was the logical choice to take over as Teamster's president in 1952, when President Daniel Tobin finally stepped down after serving since 1907.

Uncovering financial irregularities of such an important figure as Dave Beck provided the grist to justify a new investigation of corruption in the labor movement. Objections to jurisdiction from the Committee on Labor and Public Welfare led to a compromise committee of eight with four members from the Committee on Labor and Public Welfare and four from the Committee on Investigations; two democrats and two republicans served from each of the committees with Senator McClellan of Arkansas as chair.

The Senate authorized the new committee as the Select Committee on Improper Activities in the Labor or Management Field on January 30, 1957. During hearings it would be known as the McClellan Committee or occasionally the Rackets Committee. Hearings opened February 26, 1957 and ended September 9, 1959. During that time 1,526 witnesses produced 20,432 pages of testimony in 270 days of hearings. Hearings were televised and covered by the press; findings were published in three Interim reports. Questions about the Teamsters, or questions directed to Teamsters officials, covered 47 percent of the testimony from the hearings. Questions about the UAW local at the Kohler Company in Kohler, Wisconsin covered 9 percent of the testimony. Remaining questions and testimony were scattered among a variety of smaller unions and labor topics. All

the unions questioned were affiliates of the AFL-CIO, pledged by George Meany and his Executive Council to help ferret out corruption in organized labor. (4)

The initial hearings took place on the West Coast at Portland, Seattle and Spokane in testimony from or about the Teamsters. Early testimony established a failure of Western Conference of Teamsters officials to account for union funds. Frank Brewster, head of the Western Conference of Teamsters, at the time could remember signing and handing over blank checks to Dave Beck made out to cash, but not whether they were for loans or personal use. Beck left the country before Kennedy could serve a subpoena, but eventually returned to testify on day 17 of the hearings, March 26, 1957.

Mr. Beck and his three attorneys invoked committee rules to file a complaint with the committee, which read in part "A purpose of this committee under the resolution establishing it is to 'conduct an investigation and study of the extent to which criminal or other improper practices or activities are, or have been engaged in the field of labor-management relations, or in groups or organizations of employees.' Insofar as this purpose seeks to establish, determine, or adjudicate 'criminal practices or activities' the functions of this committee to such end constitute a usurpation of executive and judicial prerogatives not bestowed upon the Congress, the Senate, or this committee under the Constitution . . ."

Beck recognized and identified the compromise of legal rights in adversarial hearings before Congress. Senator McClellan and the committee brushed off his complaint by asserting Congress has the power of investigation, but the constitution establishes specific procedures for accused criminals. Those accused of crimes can expect to be confronted by their accuser, apprised of the accusations against them and granted their right to a trial by jury following a grand jury indictment. No one accused of a crime has to provide evidence for the prosecution as guaranteed by the fifth amendment to the constitution.

In his memoir of the McClellan Committee hearings, The Enemy Within, Kennedy complained "On every pertinent question that we put to Beck, he gave protracted wordy answers, and finally got around to the Fifth Amendment." Kennedy summed up Beck as "cruel, stingy, avaricious and arrogant." AFL-CIO president George Meany had the Executive Council adopt a policy that any trade union official deciding to invoke the Fifth Amendment to avoid scrutiny by a legislative committee has no right to hold union office. Walter Reuther directed UAW locals to remove any official using the Fifth Amendment before a congressional committee. Beck's trail of financial dealings proved he used at least $320,000 of Teamster funds for his personal use, although no law or regulation at the time required union officials to provide the rank and file with an accounting of funds. Eventually he would be convicted of larceny and tax evasion and sentenced to a term in McNeil Island Prison. (5)

Money and the desire for conspicuous consumption played the primary role in the downfall of Dave Beck rather than connections to racketeering, but Beck was essentially gone after 32 days of the hearings. More testimony would link racketeers to the Teamsters and James R. Hoffa, Beck's heir apparent to be President of the Teamsters.

The McClellan hearings were still in the preparation stage when a mutual acquaintance of Kennedy and Hoffa named Eddie Cheyfitz arranged a dinner at his house for the three of them. Cheyfitz was Hoffa's attorney and handled his public relations from the same law firm as attorney Edward Bennett Williams, also a Kennedy acquaintance. Comments from the dinner, which took place February 19, 1957, show Cheyfitz took an active part directing controversial topics of conversation. Kennedy decided Cheyfitz had an agenda for the evening "to implant the thought that after a wild and reckless youth during which he had committed some evil deeds, Hoffa had reformed. He could be a strong force for good in the Teamsters union."

Cheyfitz efforts went for naught partly because Kennedy arrived at the dinner knowing Hoffa had paid $1,000 to a man named John Cye Cheasty if he could infiltrate the McClellan Committee. Cheasty took the $1,000 but went to see Kennedy who later recounted their conversation: "James R. Hoffa had given him a $1,000 cash as down payment to get a job as investigator with our committee. Hoffa wanted him to be a spy and furnish secret information from our files." To Kennedy the offer was a bribe; to Hoffa it was no different than corporate America or the government planting spies in labor unions, as so well documented in the LaFollette hearings.

Kennedy arranged a sting with Cheasty and the FBI. In the evening of March 12, 1957, the FBI filmed Hoffa accepting an envelop of committee documents in exchange for a wad of cash in front of a Du Pont Circle hotel in Washington. The next night Cheasty provided another envelop, but this time Hoffa was arrested by the FBI and indicted for bribery and conspiracy. Given the film and the number of witnesses, the press and the public treated Hoffa as guilty. Kennedy was so confident of conviction he boasted to the press "If Hoffa isn't convicted, I'll jump off the capital."

Cheyfitz retained his friend and law partner Edward Bennett Williams to defend Hoffa at trial. Williams had his sleuths investigate Cheasty and found enough in his background to suggest some racist views to a jury with eight black people. Toward the end of the trial Williams had Hoffa testify. He admitted hiring Cheasty but insisted he hired him as his lawyer to assist preparing for the committee hearings, not to be a spy. The documents turned over were relevant for his legal defense; the cash exchanged was payment for legal work, not a bribe. It took the jury barely four hours to acquit Hoffa, which came July 19, 1957.

The verdict turned out to be an opening salvo in a contest of wills between two people determined to get their way. Acquittal freed the ambitious Hoffa to campaign for Teamsters president for an election at the union's next convention scheduled for September 1957. Dave Beck was Teamsters President from 1952 until shortly after the Hoffa verdict when he announced he would not to run for reelection in 1957. Kennedy went on the offensive scheduling new hearings for the Teamsters and Hoffa that began July 31, 1957. Their contest dominated the remainder of the McClellan hearings, but neither Robert Kennedy nor Jimmy Hoffa cared to recognize the damage they were doing to organized labor. (6)

Kennedy grew up in wealthy and privileged circumstance where family

connections opened doors not always opened to people like Hoffa. James Hoffa was the son of a Brazil, Indiana coal miner who died on 1920 when he was seven. Young Jimmy helped support the family from an early age working in Brazil and later after his mother moved the family to Detroit in 1924. In depression era Detroit he worked unloading boxcars at Kroger Foods warehouse on a twelve hour shift beginning at 4:30 in the afternoon. He was paid partly in Kroger script and only if there was a boxcar to unload. Waiting time went unpaid.

Hoffa was one of the advocates for a union among the warehouse workers. When Kroger had a boxcar of strawberries ready to unload and to sell, or rot, Kroger agreed to negotiate and settle the strike with the men organized as Federal Local Union 19341 of the AFL. Hoffa was elected vice president of the new union. A year later in 1932 he was fired from Krogers, but his experience with the labor union brought an offer from the Teamster organizing chief, Ray Bennett, to be a full time organizer for Joint Council 43 of the Detroit area Teamsters.

Working in depression era anti union Detroit he succeeded in combining the Kroger union with bankrupt Teamsters Local 647 and Local 299 while expanding their membership in spite of shaky finance. In 1935 Bennett offered to promote him to business agent of Local 299. Hoffa and his friend Bert Brennan set out to organize anyone, or everyone, driving or loading trucks. In the process they encountered management's hired thugs. Hoffa recounted his experiences, "Our cars were bombed out. Three different times, some one broke into the office and destroyed our furniture. Cars would crowd us off the highway. . . . There was only one way to survive – fight back. . . . The police were no help. The police would beat your brains in for even talking union." Hoffa gave as good as he got defending picket lines and fighting with strikebreakers and police. He made no secret of a long arrest record and claimed anyone "who didn't get in trouble with the police was either buying them off or wasn't doing his job."

In the aftermath of the 1934 Minneapolis Teamsters strikes the organizers from Local 574 - the Dunne Brothers, Karl Skoglund, and Farrell Dobbs - started experimenting with organizing over-the-road drivers as a North Central Drivers Council. Both Chicago and Detroit Teamsters were invited to join. While Hoffa detested their Communist-Trotskyist politics he would learn and recognize the advantage of area wide bargaining for a master contract with a uniform wage scale.

Hoffa learned from Farrell Dobbs how to pressure companies like those in Omaha that refused to sign. Dobbs had the Teamsters union in Kansas City insist the trucking companies there refuse to take deliveries from the Omaha truckers under threat of a strike to the Kansas City truckers. Recall demanding a boycott by a second business under threat of a strike defines a secondary boycott. In this case, the primary employer in Omaha lost business to and from a secondary employer in Kansas City. Unions with solidarity in the trucking industry have the advantage of bargaining where opportunities for a secondary boycott abound and many small firms do not have the economic resources to withstand a protracted strike.

Dobbs use of the uniform contract worked well, but his success ended in 1940. First Dobbs agreed to move the AFL affiliated Teamsters into the CIO

and then Farrell Dobbs and the officials of the Minneapolis locals were indicted June 27, 1941 in a Smith Act enforcement. Teamsters President Daniel Tobin was furious to learn John L. Lewis brother, Denny Lewis, opened a competition to recruit truck drivers into his CIO locals. The changes opened new opportunities for Hoffa because Daniel Tobin put Denny Lewis in charge of the Central States Drivers Council, which included the Minneapolis locals.

Hoffa and a squad of AFL Teamsters traveled to Minneapolis to halt CIO organizing, which he did in punching, club swinging battles that filled the streets with bleeding and bruised combatants. Hoffa eventually prevailed. Back in Detroit he had contracts to haul cars from Detroit auto plants and did not appreciate having Lewis interfere. Negotiations gave way to pitched battles on the streets that went on for months with no sign the Hoffa forces would prevail. Eventually they did even though Hoffa claimed Lewis hired armed thugs to attack them. By this time, 1941, some evidence suggests Hoffa turned to Santo Perrone and the Detroit underworld for help fending off Lewis.

After Dave Beck became Teamsters president in 1952 he enjoyed expensive travel and relaxation more than work, which allowed the workaholic Hoffa to take over running the Teamsters. He operated as its unofficial president in the late 1940's and 1950's. At the time of the McClellan hearings Hoffa held many positions. He remained as president of Detroit Local 299 and president of Joint Council 43. He was also president of the Michigan and the Central Conference of Teamsters, vice president and negotiating chairman of the Central States Drivers Council, and a vice president of the International Teamsters. He had a national reputation in organized labor being well known for his popularity with the rank and file and successful contract bargaining. (7)

In the summer of 1957 the McClellan hearings turned to 14 days of misconduct by the Bakery and Confectionery Workers and the United Textile Workers, but returned to the Teamsters union and its operations in New York beginning July 31, 1957. Kennedy made an opening declaration prior to calling witnesses. In it he maintained racketeers in the Teamsters union pose a greater threat to the country than other unions because the Teamsters union "is not only the largest union, about 1.5 million members[,] but there is no organization, union or business, that has a greater effect on the community life in this country, a greater effect on our economy than the teamsters union."

Kennedy went on to explain the Teamsters had 58 New York area locals with 125,000 members that belong to a regional ruling body, Joint Council 16, responsible for delivering about 20 percent of the cargo entering the United States. "I would like to stress, Mr. Chairman, and it is about the Joint Council that these hearings and the control of the Joint Council that these hearings will be concerned." His declaration opened 19 days of testimony planned "to spread on the record Hoffa's close ties with racketeers," . . . "and at the convicted killers, robbers, extortionists, perjurers, blackmailers, safecrackers, dope peddlers, white slavers, and sodomites who were his chosen associates."

Kennedy used this new round of hearings to maximize pressure on Jimmy

Hoffa. Convicted labor racketeers were called early and pressured to confirm or deny their relationship with Hoffa. Gangster Johnny Dio replied to all questions with "I respectfully decline to answer the question upon the ground that the answer may tend to incriminate me." In jest or disgust Senator Irving Ives queried "I would like to ask Mr. Dioguardi if there is anything he ever did from the time he was born until the present moment that would not incriminate him?"

Kennedy would not be deterred but read his Dio evidence into the record. When Dio refused to answer the question "Do you know Jimmy Hoffa?" Kennedy responded with "When Mr. Dio was forced to give up the drive on the taxis in the UAW-AFL, Mr. Hoffa at that time attempted to bring Mr. Dio and the organization that he had set up in New York into the teamsters union, according to the information that we have." . . . "Then in 1954, Mr. Chairman, when Mr. Dio resigned from the UAW-AFL, Mr. Hoffa at that time acknowledged him as his friend and said that he could have a job in the teamsters union." (8)

Kennedy continued directing questions to known or suspected gangsters and then beginning August 20, 1957, he turned to four days of questions for Jimmy Hoffa. Questions were crafted to reveal Hoffa's arrest record and to show Hoffa conspiring in a variety of misconduct, especially his relationships to trucking company owners that employed Teamster drivers. Other testimony included questions about cash loans, real estate deals, the use of a secret recording device known as a Minifon, and his relationship to gangsters, especially William Presser, Joey Glimco and Johnny Dio.

In one example, an especially suspicious transaction took place following a strike settlement with a trucking company, Commercial Carriers Inc. Hoffa ended a wildcat strike on generous terms to Commercial Carries without consulting his rank and file. Following the settlement James Wrape, attorney for Commercial Carriers, created a company he named Test Fleet, chartered in Tennessee under his name. Soon after the owner of Commercial Carriers signed a $50,000 note to buy trucks for the new company. Soon after that Wrape transferred ownership to Hoffa's wife and the wife of confidant Bert Brennan and made arrangements for Test Fleet to takeover the profitable hauling and delivery of Cadillac automobiles.

Committee investigators had evidence of many other suspicious deals with companies that employed Teamsters and of Hoffa making or taking cash loans without a promissory note, collateral or anything more than a vague promise to pay later. Kennedy had evidence and questions about suspected misconduct in a Florida real estate investment known as Sun Valley and he suspected Hoffa had purchased and used the Minifons to make secret recordings of grand jury proceedings.

Hoffa did not use the fifth amendment during testimony, but instead kept repeating "To the best of my recollection, I must recall on my memory I cannot remember." The most difficult testimony for Hoffa occurred toward the end of the four day sessions. Recorded phone conversations with convicted gangster Johnny Dio showed Hoffa's intention to take control of Teamsters Joint Council 16 in New York by installing Dio to organize taxi drivers for the Teamsters. They created seven new locals but only two of them had members. The other five,

dubbed paper locals, had officers to provide the votes needed to take over Joint Council 16 and then attend the upcoming Teamsters election as delegates where they could help elect Jimmy Hoffa president.

The phone transcript included Dio reading a statement made by Teamster Vice President "Honest Tom" Hickey showing his intention to organize New York taxi drivers instead of Dio. The two of them sneered at the idea and ridiculed Hickey for his interference. Kennedy understood the exchange and so asked Hoffa "Why were you calling Mr. Tom Hickey a 'stupid son of a' in connection with [his] statement?" Hoffa evaded the question.

Mr. Dio wanted the job for the chance to use the paper locals to generate income from labor racketeering. The Dio-Hoffa collaboration was one among others Hoffa made with gangsters over the years. The gangsters helped him get to the top of the Teamsters in exchange for the gangsters chance to negotiate union deals with corrupt money making schemes. (9)

The first Hoffa testimony ended August 23, 1957, but with a subpoena for him to return on an unspecified date. Despite the damaging television coverage and press reports Hoffa remained certain to be elected president at the Teamsters convention scheduled to begin September 30, 1957. The likely Hoffa election incensed Chairman McClellan among others. He scheduled five days of new hearings beginning September 24. While Hoffa did not appear in these hearings, other testimony brought many new misconduct charges.

Then on September 25, the AFL-CIO Ethical Practices Committee recommended expelling the Teamsters from the AFL-CIO if Hoffa was elected president; the same day a grand jury voted to indict Hoffa on five counts of perjury from allegations he made false testimony in a previous May 1957 grand jury hearing, alleging the illegal use of wiretaps at Teamsters Detroit headquarters.

Add these charges to a lawsuit filed by 13 members of a New York local 10 days before the convention. The 13 plaintiffs retained New York attorney Godfrey Schmidt to charge Teamsters officials violated the union's constitutional procedures for selecting delegates to the convention. The suit charged that as many as 75 percent of delegates were selected by Hoffa to guarantee his election as president. Robert Kennedy and his committee staff supported the suit by providing evidence to attorney Schmidt. Judge F. Dickinson Letts agreed to a temporary injunction to halt the convention. The Teamsters immediately appealed in the D.C. Circuit Court, which reversed the ruling, holding that Letts went "beyond the necessities of the situation."

Hoffa easily won election as president with 1,208 votes; two opposition candidates got a total of 453 votes. The McClellan Committee subpoenaed all the documents of the delegate credentials committee, which they received, reviewed and shared with attorneys for the 13 plaintiffs. They found technical violations of delegate voting rules in the union constitution, which they took before Judge Letts again. Letts suspended the Hoffa election pending resolution of the suit by the 13 plaintiffs.

In November 1957, Hoffa and two co defendants, Bert Brennan and electronics specialist Bernard Spindal, went on trial following grand jury charges

of violating federal law by illegally wiretapping the phone conversations of Hoffa's Detroit office subordinates. The defense claimed Hoffa had Spindal install an internal office eavesdropping system without wiretapping telephones while the government charged Hoffa knew the system monitored incoming and outgoing calls. The chief government witness was a Spindal assistant who swore he was there July 9 when the system was installed and could claim Hoffa knew what the system would do. The defense had indisputable proof Hoffa was in Seattle, Washington July 9. The case ended December 20, 1957 in a hung jury with only 1 vote to acquit. The prosecutor announced he would try the case again in the spring, which he did. The second time the jury voted to acquit Hoffa. The perjury charges from his grand jury testimony had to be dropped as well since the not-guilty verdict made it easy to claim he told the truth. Hoffa successfully fought off all criminal charges during the McClellan hearings, but that success did not make life easier. It antagonized the McClellan Committee enough they would renew the Teamsters inquisition in redoubled fury in the summer of 1958. (10)

December 1957 would be a busy month for Hoffa and the Teamsters. In addition to the wiretapping case the AFL-CIO met in convention in December 1957 where 82 percent of the membership voted to expel the Teamsters after many speeches condemning misconduct. The Teamsters would be an unaffiliated independent union. The trial in the suit of the 13 plaintiffs got underway with Edward Bennett Williams defending the Teamsters against Godfrey Schmidt representing the plaintiffs. During the trial Williams and Schmidt negotiated a compromise. Hoffa agreed to become provisional president subject to oversight by an appointed three person Board of Monitors. To represent its interests, the union picked attorney, Nat Wells Jr.; the 13 plaintiffs named their lawyer, Godfrey Schmidt; the chair would be former Judge Nathan Cayton. The agreement required Hoffa to consider their advice or expect Judge Letts to intervene. Hoffa expected the Board of Monitors to play an advisory role that would end in a year. He turned on the charm and agreed to Board's requests; the Board for its part made constructive but modest proposals and then wrote a favorable report after six months of operations.

Pleasantries ended after chair, Nathan Cayton, resigned May 1958 and Judge Letts appointed former Teamster attorney Martin O'Donoghue to be his replacement. O'Donoghue changed his stance toward the Teamsters and joined with obey the rules member, Godfrey Schmidt, to make specific demands. They had a list of Teamsters officials they wanted removed; they wanted a proper accounting system for finance; they established a procedure for the rank and file to direct complaints to the Board. Worse for Hoffa, they wanted amendments to the union constitution before another election to remove his "provisional" status.

The more aggressive interference infuriated Hoffa and ended his cooperation. He claimed the right to schedule a new Teamsters election and filed suit to have Judge Letts remove Schmidt from the Board of Monitors for conflict of interest; he charged that Schmidt represented employers in current labor negotiations. O'Donoghue responded by insisting Judge Letts clarify the Board's authority, which he decided was "all powers reasonably necessary" in a December

1958 ruling.

Judge Letts refused to remove Schmidt, which brought a court appeal from the Hoffa attorneys. After much delay the appeals court affirmed the Board's authority to make mandatory orders and affirmed the decision of the Board of Monitors to remove Teamsters officials with a criminal record in a mid June 1959 ruling. Appeal was taken with the defiant Hoffa denouncing the ruling as a double standard since some employers had criminal records and "men have walked out of jail and been elected to Congress."

The court also ruled that Schmidt did have a conflict of interest forcing Schmidt to resign. He proposed Terence McShane to replace him, but McShane was a FBI agent who testified against Hoffa in the wire tapping trial. The 13 plaintiffs wanted Lawrence Smith, an attorney in Schmidt's law office. O'Donoghue and Smith fought. Smith refused to sign a report apparently written entirely from McClellan Committee material and with the support of Robert Kennedy. Smith claimed the report exposed their intention to "oust Hoffa as provisional president" rather than carry out the mandate of the Board of Monitors.

Next a frustrated Nat Wells, an original union Board member, resigned. The Teamsters replaced him with William Bufalino, the Detroit Teamster previously accused of racketeering in the Juke box industry. Bufalino fought with everyone and actively harassed O'Donoghue with late night phone calls and pickets at his office. O'Donoghue resigned and Judge Letts nominated Terence McShane to be chairman, which brought another court challenge and a stay of the appointment.

The Board of Monitors continued long after the McClellan hearings ended and more than 40 separate court suits before Judge Letts. One of the last suits established that union presidents could only be removed by a democratic vote of the membership and not by a court. Hoffa's ferocious resistance proved very effective. Hoffa would remain despite Robert Kennedy. The Board accomplished nothing by the time a weary Judge Letts closed it down in 1961. (11)

In March of 1958 the Republican Senators on the Committee diverted the Committee's work from racketeering to the UAW and Walter Reuther where there were no racketeering issues to investigate. It was strictly a partisan move since Republicans, especially Senator Barry Goldwater, did not like Walter Reuther or labor unions of any type. Kennedy reports that he saw unnamed stories appearing in the "press quoting 'unnamed Republican Senators' and 'Republican sources' as calling for an investigation of the UAW." The sources also claimed the Committee did not want to investigate the UAW because Walter Reuther was involved and the Democrats, "especially the Kennedy brothers" were close to Reuther."

As a result of these pressures the committee held 23 days of testimony beginning February 26, 1958 on the UAW strike at Kohler Company in Sheboygan, Wisconsin. The strike that began four years before on April 5, 1954 remained bitter, violent, and divisive during and after the McClellan hearings. Kennedy visited the Kohler plant before the hearings and talked with both union and management officials where he discovered that Kohler attorney Lyman Conger made the decisions in the battle with the UAW. Kennedy also attended a church service and talked with random residents of Sheboygan that he characterized as

"badly hurt by industrial war." He compared his visit with a visit he made to Israel and the Arab states: "The hatred I had felt on that visit to Palestine was just as livid here. Unless you can see and feel for yourself the agony that has shattered this Wisconsin community, it is difficult to believe that such a concentration of hatred can exist in this country."

Since Senator McClellan and Robert Kennedy wanted to avoid partisan charges that would discredit the committee's work, they went along with a UAW investigation by the Republicans. Kennedy would learn the Republicans wanted plenty of time for a Goldwater appointed investigator for the McClellan Committee named Jack McGovern to assemble evidence against the UAW and Walter Reuther.

The National Labor Relations Board provided comprehensive evidence from a previous investigation and hearings that filled hundreds of pages of testimony on the Kohler Strike and the UAW role in it. Judge Harold F. Murphy played several key roles in the NLRB investigation. He was both investigator and a witness with responsibility as a negotiator to help settle the strike. The UAW wanted Judge Murphy to testify at the McClellan Committee hearings, but when Kennedy suggested that to McGovern he claimed his assistant Vern Johnson had interviewed the judge and they doubted he would be a good witness. Kennedy contacted Judge Murphy and found neither McGovern nor Johnson nor anybody else interviewed him. Further Murphy told Kennedy he acted as a mediator in the strike and concluded Kohler had no intention of settling with the union under any terms.

McGovern extracted NLRB evidence against the UAW but none against Kohler ignoring things like Kohler expenditures of large sums to purchase guns and ammunition and Kohler officials practicing shooting at human forms at a company target range. Carmine Bellino documented funds Kohler spent hiring spies to successfully infiltrate union meetings.

Republicans on the committee pressured McGovern to find testimony against the UAW. One witness the Republicans wanted to testify against the UAW was a man name Francis Drury with twenty arrests and ten convictions as a hired burglar. Drury claimed he had burglarized the union offices of the Mechanics Educational Society of America at the request of high UAW officials. Goldwater's investigator McGovern accepted Drury's story that a man named McCluskey hired him, but it turned out Drury had fabricated the name and the story; there was no McCluskey and no UAW burglary. Next McGovern pressured Russell Nixon, a Harvard Professor, apparently with communist sympathies, to name communists among UAW officials. Nixon responded by releasing a public statement that Republican McGovern tried to recruit him as an informant for the committee.

Then UAW attorney Joseph Rauh approached Kennedy with a story that McGovern and his assistant Vern Johnson had picked up and blackmailed a UAW official threatening to expose his communist leanings if the did not testify against Walter Reuther. When Kennedy demanded an explanation McGovern denied the story and then denied it again when the UAW demanded that he testify. Later,

on the morning of scheduled testimony McGovern confessed to Kennedy and admitted the truth of the story and what he had done.

Kennedy reported in his memoir the Enemy Within that he discussed with Senator Goldwater the work of McGovern and the report he made about the UAW to the Republicans: "I told him how dishonest McGovern's report was, and that he would not remain on the Committee staff if he were anybody but a political appointee." . . . "I told him our preliminary investigation had found that the facts were essentially those disclosed in the NLRB report and therefore a new investigation was unlikely to accomplish what he wanted and expected, namely to destroy Walter Reuther."

Kennedy reported the Republicans would not agree to any of their proposals to schedule witnesses: who would testify, or in what order. When committee Democrats wanted Walter Reuther to be the first witness, Republican Senators Barry Goldwater, Karl Mundt and Carl Curtis objected. They claimed if Reuther testified first, he would steal the show; they threatened to leave the committee if Reuther went first. Finally, Senator McClellan decided to stop arguing for the good of the committee's other work and let the Republicans decide the UAW witnesses and set the schedule.

By the end of 1957, before the hearings began, Senator Goldwater realized his scheme to debase Reuther and the UAW would fail. Goldwater wanted to back out and cancel the Kohler-UAW hearings, but Kennedy cited the continuing news stories of a Democratic Party cover up of UAW misconduct as reason to go ahead. The Republicans accepted going ahead but continued looking for ways to prevent Reuther from appearing. Reuther had attorney Joesph Rauh pressure the committee to appear and testify in a total reversal of original Republican intentions.

Eventually 77 witnesses would testify. There would be 9 Kohler Company witnesses including Lyman Conger, 22 that crossed the picket lines, i.e. crossovers, 9 from Kohler Local 833, 7 from the UAW international including Walter Reuther, UAW vice president Emil Mazey, and Allan Graskamp, President of Local 833 in Sheboygan. Various police officials, police officers, the mayor, the county sheriff, and others from local business and labor also appeared.

The Republicans on the committee used the hearings to question union conduct with the same age old complaints: 1. unions are corrupt, 2. unions deny democratic procedures, and 3. unions condone violence

On number 1 Senator Mundt generated the exchange below with Walter Reuther.

> Senator Mundt – "Now I will come to something else. You said a lot of things in this hearing with which I disagree, obviously, but you have said only one thing that I really dislike, and I will call your attention to it. For one reason or another, I have been in this investigating business, and it is hard work."
>
> Mr. Reuther – "It is nasty business."

Senator Mundt – "It is nasty business, but somebody has to do it, But I happen to have been in it longer than any other member of the Senate or House, because I started back with Martin Dies in that committee. It isn't a pleasant business, but I think it can be done properly. You made sort of a shotgun attack a while ago when you said you had never been treated to so much disrespect as had been shown you by the minority members of this committee. That is a kind of blanket charge that earlier you said you didn't believe in. I ask you now to stipulate specifically concerning . . . what it is that you resent in being interrogated as I have interrogated you."

Mr. Reuther - "Well, Senator Mundt, I think I am obligated to say to you just as one person to another, I think when I said that I should have made an exception. I personally think you have treated me a little differently than have Senator Goldwater and Senator Curtis. But maybe I shouldn't even have said it as it relates to them. What has bothered me about this hearing is not that I was the last witness. That really didn't bother me at all. What bothered me was that there was this public campaign about dragging Reuther down here and making him look worse than Hoffa and Beck. These were statements made. . . . I can document this thing that people made their conclusions weeks and weeks and weeks before we came here. . . . I think that there were times when we were going around the bushes together, doing some fancy footwork, but I think you were fair. But I don't think it is fair for a member of a congressional investigating committee to draw conclusions publicly 6 months before you begin to investigate someone. That is what I think is unfair. . . . I don't like to call Senator Goldwater names. I feel sad. I feel as though I am not clean when I do it. But you look at the record, just look at the record, and for every time I have said something nasty about Senator Goldwater, he has trucked it in by the bale."

After this exchange Senator Mundt decided to declare "[O]n the records that we have, there is no evidence before us of corruption insofar as your activities are concerned. We will not be making a finding on something of which we have no evidence."

On matter number 2, democratic procedures, Senator Mundt lectured Reuther. "You and I disagree on [democratic procedures] a little bit, because while you believe in, and apparently to the best of the information we have before this committee have worked out an effective system of democratic procedures as far as electing your union officials is concerned, I am vitally concerned about the fact that there is developing in this country in unionism, . . . whereby money collected by people who have no other choice but to pay off part of their money devoted to causes and candidates who individually they prefer to oppose. To me there is something a little bit un-American about that. There is something about this old thing you quoted so often, taxation without representation, in that. I think a way should be found and could be found so that the union can remain effective in politics, I don't want to deprive them of their political voice, without violating that sacred concept that a man should not be compelled to contribute to something

that he does not want to support."

Reuther explained that UAW policy allowed any member to divert the 10 percent of the dues that goes to political activities to instead go into a charitable fund. Ever the politician, Reuther had the issue covered but he avoided confronting Republican orthodoxy and hypocrisy. Recall that labor law requires union organizers to get a majority vote of a government defined bargaining unit and to represent everyone in the bargaining unit, not just those in the majority but also those in the minority that voted against a union. Labor unions operate under principles of democracy where the majority rules and the minority goes along. Senator Mundt ought to know that taxes violate "that sacred concept that a man should not be compelled to contribute to something that he does not want to support." People that oppose government policy cannot refuse to pay their taxes.

Senator Mundt ought to know that corporations operate the same way as labor unions because the stockholder-owners vote their shares in a democratic election for a Board of Directors and other corporate policy. Stockholders in a minority are forced to go along with the majority and the policy of the majority board. If some stockholders refuse to accept the low rate of dividends or the corporate views on environmental policy they can sell their stocks and invest elsewhere just as those opposed to unions can quit their job and find employment elsewhere. Senator Mundt does not bother to explain why he should defend minorities in labor unions and not mention the oppressed minorities in corporations, except his comments illustrate the corporate double standard.

On matter number 3, union violence, Senator Mundt explained "I don't know who starts and is responsible for it, but violence is still a part of the striking mechanism in this country. I think you should work with Congress and Congress should work with union leaders to find the necessary legislative steps, if that is what is necessary to eliminate that violence. It will never permanently settle anything."

Again Reuther played the consummate politician using mild language: "You look at the record. . . . This is the question that the contest should be between the company and the workers and that the outsiders on both sides should be kept out of it so that the contest can be really a contest between who can get the workers in to sell their labor power or who can persuade them to withhold it. I think that would eliminate ninety-some percent of the violence in labor disputes in America."

Reuther had personal experience with the deliberate use of violence as a union busting strategy from the Ford and G.M. battles from the 1930's. He knows management controls their property whether they bargain or not. During the 1954 Kohler strike fights and vandalism broke out between strikers and strikebreakers, some of it rather ugly for both sides, but Reuther knew it was not a mystery who starts it as Senator Mundt suggested. His comments charge Kohler management with deliberate efforts to incite strikers and strikebreakers to violence as a good union busting strategy, which sadly enough it is. The recorded testimony from the McClellan hearings does not assure Republican Senator Mundt got the point, but he did say "I agree, and you have summarized my feeling on that point in your

words, but I will adopt them. I think that is right."

Reuther was the last to testify for the Kohler segment of the hearings, but just before him Herbert V. Kohler, president of the company since 1937, read a five page statement. Then Chairman McClellan asked a series of questions trying to determine if Kohler Company would return to the bargaining table. Mr. Kohler contended Kohler had at all times bargained in good faith, but informed the committee it would not "review its position and reconsider the position it has taken in the past with respect to the issues at controversy?"

After further Kohler evasions without an answer Chairman McClellan, in apparent exasperation, wanted to know "But are you still ready and willing to sit down at the bargaining table with the union and its representatives, and again review your position with them, and take into account and try to consider their point of view in the hope or with the view that you may possibly reach some amicable settlement?"

Mr. Kohler was seated next to counsel when questions over work in the Enamel Shop. The work there required the men to insert bathtubs into very hot ovens. Kennedy questioned attorney Lyman Conger about the temperature in the shop, which he claimed was 80 to 90 degrees, but the men claimed the temperature ranged from 100 to 250 degrees Fahrenheit. The men wanted a 20 minute lunch period but attorney Conger defended having the men step back from the ovens for 2 to 5 minutes during the baking process and eat lunch. An incredulous Kennedy asked "So you feel they can step back from the oven, take off their masks and have their lunch in two to five minutes?" Attorney Conger responded with "Mr. Kennedy, they have been doing it for thirty-six years to my knowledge and I am sure they can do it."

The temperatures in the Enamel Shop reached levels that could not be endured and so large fans were operated behind the men to blow the hot and dangerous air away from them. A grievance resulted from a management experiment of turning off the fans, which attorney Conger justified as an experiment because they were "kicking up a lot of dirt that was getting into the enamelware." The union gave notice the men would not complete their shift if they became sick from the heat, and they all became dizzy and faint as predicted. Attorney Conger called it "strange that they all became sick at the same time and in accordance with a properly scheduled notice to the company." A Kohler doctor examined the men and some were sent home, but the active union members were sent back to work and fired when they refused.

The McClellan Committee returned to the Teamsters beginning August 5, 1958 with at least some committee members and counsel Robert Kennedy in very bad humor. Chairman McClellan made a re-opening statement where he said in part "If the power and ability of the International Teamsters Union should be improperly directed and misused, then it could become an extremely evil and destructive force in the social, political, and economic life of our country. Obviously, the direction of this international union will depend upon the integrity and the motivation of that leadership." . . . "The affairs of this union and its top officers are so intricate and complex that it may well engage the attention of the

committee here in public hearings for several weeks." . . . "We have a right to expect from [Hoffa] candid and truthful answers." . . . "Any union in which such tremendous power is reposed also bears equal obligation and responsibility to the people and to the Government of the United States. It is unthinkable that the leaders of any such powerful organization should have an alliance or understanding in any area of its activities with racketeers, gangsters, and hoodlums."

Committee subpoenas forced a parade of gangsters Hoffa employed in the Teamsters to appear and testify or use the fifth amendment to remain silent. Silence did not prevent reading their arrest, conviction and prison sentences into the committee record. The television cameras rolled.

Frank Kierdoff negotiated contracts in the laundry business for the Teamsters union. Hoffa hired him in 1945 right after leaving Jackson, Michigan prison where he served 27 months for armed robbery. Hoffa made him business agent for local 332 in Flint where he used threats of violence for a business that refused to accept Teamster representation and dues checkoff. He favored arson for those who would not sign. On August 3, 1958, he burned down a laundry but sustained fatal burns in the process; he got caught in his own fire, which burned 85 percent of his body. He died shortly after when Hoffa was scheduled to testify, which made it convenient for Kennedy to expect Hoffa to justify making him a Teamster official. He answered that Kierdoff was an "experienced organizer" even though everyone present had the complete resume of Frank Kierdoff.

People like these in the Teamsters made poor public relations, but there were others such as Frank's Uncle Herman Kierdorf. Herman also served prison time for armed robbery and Kennedy had Hoffa's letter recommending his parole to the Ohio Parole board. Other Hoffa hires included well known enforcers from the U.S. underworld: Barney Baker, Tony "Ducks" Corallo, Joey Glimco, Glenn Smith, Frank Matula, Paul Dorfman and his stepson Allen. Paul Dorfman had connections to Al Capone; Glenn Smith had burglary and robbery convictions on his resume and so on.

The McClellan testimony continued with Kennedy pressuring Hoffa to justify his choice of gangsters, but he could not make any credible statement to defend them and repeatedly resorted to double talk to fend off questions. Neither would he speak against them and appeared to adopt the code of conduct required in the underworld. Kennedy probed this notion when he asked Hoffa "Are you frightened of these people, Mr. Hoffa? Hoffa responded with a resounding no, but the nature of his gangster relationships remains illusive. As of 1957 his conduct suggests he regarded the gangsters in the Teamsters as friends and his responsibility, but he was gratuitously assassinated in 1975 in a manner leaving no doubt his "so-called" friends from the underworld were involved in his death.

Through all his travails Hoffa remained popular and active in service to his growing membership. He was always available because he was virtually always working and easy to contact by phone at his office. He delivered for his members. Wages tripled in these few years going from $.95 an hour to $2.46 and pay per mile for long haul truckers tripled from 3 cents to 9 cents a mile. Overtime pay started after 8 hours instead of twelve. There were vacations, pensions, health and

welfare funds because of Hoffa; before there were none. Rank and file felt that "Jimmy's always been good to us drivers and that's all we care about." (13)

The McClellan hearings entered their third year in February 1959 with workaholic Robert Kennedy still determined to end the Teamsters career of Jimmy Hoffa. Even though the August 1957 and August 1958 hearings thoroughly publicized gangsters in the Teamsters and plenty of their misconduct, Senator McClellan and Robert Kennedy decided to have him back in the summer of 1959. This time Chairman McClellan and Chief Counsel Kennedy concentrated on Hoffa's failure to remove gangsters or do anything to clean up operations to standards of honesty they could accept.

Kennedy started with a Teamster named Glenn Smith: "During the period of the operation of this committee . . . we have been trying to locate Mr. Smith m Tennessee, but we have been unable to do so." Then he read off his resume. Prior to 1936 he served two prison terms for robbery and burglary. From 1936 until 1949 he served as business agent for Teamsters local 236 in Paducah, Kentucky. In 1949 he was indicted for malicious destruction property in a dynamite explosion, but avoided prosecution by moving to Chattanooga, where he served as business agent of local 515. In 1951, he was indicted with eleven others on charges they conspired to settle a labor dispute with dynamite. Smith took $20,000 of union funds to successfully bribe the judge in the case, eventually dropped. Instead he was charged and convicted with income tax evasion for not reporting the $20,000 as income. Funds from Teamsters local 515 paid Smith's attorney.

Kennedy demanded that Hoffa justify union payment for Smith's attorney fees: "Do you approve of such expenditures?" Hoffa answered "I absolutely do." He defended the expenditure as "a right of the union executive council to spend money as they want the same as any institution in the United States . . . and our members having the same rights as stockholders and owners and boards of directors, have a right if they desire to expend moneys in their treasury for the defense of an official."

Chairman McClellan: Let me inquire, Mr. Hoffa, do you approve or condone the action of the use of $20,000 or several thousand dollars of union funds for the purpose of undertaking to fix a judge?

Mr. Hoffa. No, I do not.

The Chairman. You disapprove of it?

Mr. Hoffa. I disapprove of money being used for the purpose of bribing or trying to fix a judge.

The Chairman. Then why do you approve of the use of union funds to defend the man who is charged with not paying income tax on money he took for that purpose?

Mr. Hoffa. The man who was charged, Senator, he was charged with an income tax violation not involving the question of bribing a judge.

The hearings were winding down by this time, June 1959, but Hoffa was forced to return in July for a fourth string of testimony. Perhaps Kennedy realized the two-year old Hoffa-Kennedy competition was lost and wanted one more crack at the defiant and resourceful Hoffa. Kennedy had a staff of one hundred including thirty-five investigators and forty-five accountants that collected 130,000 documents. Testimony and documents filled 46,150 pages, but Hoffa remained as the very popular Teamsters President.

Kennedy resigned as counsel for the McClellan Committee September 10, 1959 to be campaign manager for his older brother's presidential election, the same day as the last committee testimony. The final report of the McClellan Committee came in the spring of 1960 after the hearings ended. (14)

The saga of the McClellan hearings allowed plenty of time for Robert Kennedy to suspect America had an inexhaustible supply of corrupt racketeers. Recall Congress authorized the subcommittee to investigate improper activities in labor, or management. While Kennedy devoted the greatest portion of the hearings to organized labor, the committee exposed plenty of evidence of "improper activities" in corporate America. In his memoir Enemy Within he found "many businessmen were willing to make corrupt 'deals' with dishonest union officials in order to gain competitive advantage or to make a few extra dollars." He added "By and large, little or no accurate information came to us from the business community. . . . "Certainly no investigation was touched off by any voluntary help we received from management." . . . "Not one firm has been barred from any business organization for any wrongdoing that officials of the firm often admitted existed." The Kennedy revelations intimate business could take official protection for granted.

Kennedy expressed more frustration with the Justice Department. He wanted them to prosecute the misconduct uncovered by committee investigators and revealed in the testimony from the hearings. With only a few exceptions they would not, partly because they saw congressional hearings as interfering with the prerogatives of the executive branch to prosecute cases, and because his repeated show of indignation revealed a biblical sense of justice much different than enforceable criminal law. Kennedy also hoped for new legislation to pressure union officials to inform the rank and file and respond to them in a democratic way. In this he would succeed but not in the way he hoped as we shall see. (15)

Labor, the NLRB and the Courts

After 1947 when Congress added the Taft-Hartley Amendments to the Wagner Act, the NLRB had to resolve labor disputes with longer and more complicated labor law. Corporate America convinced Congress to write amendments that increase their rights to oppose union organizing and to eliminate sources of union economic power while attempting to maintain some semblance of first amendment rights, a task requiring lots of wordy and awkward phrasing. The new amendments helped reduce violent confrontations while expanding the employment of legal counsel. The many new titles and sections in the law brought repeated legal challenges probing the new phrases for better rulings.

The National Labor Relations Board has two primary responsibilities: 1. conduct union certification or de-certification elections and 2. receive and process unfair labor practice (ULP) claims. It receives requests to conduct elections from union organizers and receives allegations from labor and management for claims of unfair labor practice misconduct. In a typical year the Board receives thousands of unfair labor practice allegations, which regional staff evaluate. The regional directors decide if a case should proceed. Their decision usually prevails although after 1947 the independent General Counsel has final authority to decide if a case should be dismissed or a complaint pursued further.

Complaints can be settled by negotiation, but recall unsettled disputes move to a hearing before an Administrative Law Judge(ALJ). The losing side can appeal to the full Board for review; the losing side after Board review can appeal to a federal circuit court and then request the Supreme Court to hear the case with a petition for a writ of certiorari. Not many cases continue to the Supreme Court as a practical matter the justices rarely take more than a few labor cases in a single year while the Board typically processes thousands of ULP complaints.

The 1952 election of Republican Dwight Eisenhower and inauguration as President in January 1953 soon showed the difficulty of enforcing laws like the National Labor Relations Act. The appointment of Board members and the General Counsel by the President with the advice and consent of the Senate assures labor law enforcement depends on partisan politics. Corporate America expects Republican presidents to nominate National Labor Relations Board members that favor corporate America's opposition to labor law while the Democrats nominate people more favorably disposed to labor relations.

From 1945 to 1952 President Harry Truman made six appointments to the National Labor Relations Board. From 1953 to 1960 President Eisenhower made eight appointments to the National Labor Relations Board. They were all men, but as different as summer and winter. President Truman appointed Paul M. Herzog to the Board July 5, 1945. It was Truman's first appointment and he served as Board Chair until June 30, 1953. During his tenure the National Labor Relations Board would be known as the "Herzog Board." Corporate America did not endure eight years of the Herzog Board in silence; they attacked Herzog, his Board, and virtually everything they said or did, mostly claiming he ignored the Taft-Hartley Amendments after June 1947.

Relief in the minds of corporate America came with Eisenhower appointments. His first came with the July 13, 1953 appointment of Guy Farmer to be the new chair. Farmer was an attorney from Washington, D.C. but with earlier experience as a NLRB regional office attorney. He believed the Taft-Hartley Act should be used to protect employees and employers from big unions that were too powerful. A second Eisenhower appointment came the next month on August 28, 1953 and the third came March 2, 1954, which put Republican appointments in the majority for the first time ever.

The second appointment, Philip Ray Rodgers, was not an attorney but a political science professor with experience as staff director of the Senate Labor Committee. He supported the Taft-Hartley Act and "thought of himself as the

employer's representative on the Board." The third appointment, Albert Beeson, was not a lawyer either. Instead, he had experience as director of industrial relations at the National Radio Corporation where he bragged to committee members he had defeated a union organizing drive. He said "Now, you could say, if you like in that instance, that I was a union buster." Some did agree he was a union buster, but his approval by the committee and Congress to administer labor law and serve as an impartial member of the National Labor Relations Board represents some of the changes to come in Board rulings. (16)

During the debate in Congress over Taft-Hartley amendments those representing corporate America insisted the National Labor Relations Law as originally passed in 1935 was out of "balance." Recall the term balance used in these 1947 Taft-Hartley debates came from the 1935 debates. Senator Robert Wagner drafted the original law and promoted the bill as a way to achieve a balance of economic power between a corporation and a labor union that would pressure both sides to negotiate a contract instead of resorting to economic warfare with strikes and lockouts.

During the 1947 labor law negotiations corporate America had some legitimate grievances against union abuses. One example occurred when some unions refused to respect a collective bargaining contract of another union. Attempts to organize the rank and file of a union already working under a signed contract disrupt the labor relations of a corporation in compliance with labor law. However, those in corporate America that wanted to curtail unions dominated the 1947 debate and pushed amendments that went far beyond correcting union abuses.

Senator Robert Wagner understood that a balance of economic power will require one-on-one negotiations between a corporation and a union. Corporate officials representing stockholders negotiate with union officials representing the rank and file. All of the unfair labor practices of employers in Section 8 of the original 1935 law attempted to prevent corporate America from subverting one-on-one negotiations by preventing management from interfering, restraining or coercing individual employees and union members separately, and by preventing discriminatory reprisals against them.

Economists call one-on-one negotiations bilateral monopoly. Reluctantly, they concede the economic outcome depends on the bargaining skills and economic powers of the two sides rather than the impersonal market driven laws of supply and demand. Supply and demand requires many buyers and sellers acting independently to bring competitive wages and prices. Since market determined wages do not assure subsistence much less a reasonable standard of living, one-on-one negotiations provide an opportunity to raise wages above a market wage, or for the semiskilled or unskilled, wages above a subsistence wage. Therefore, the balance in balanced negotiations has two parts. The first part requires one-on-one negotiations. The second part requires that a union be able to use the economic power of strikes, boycotts and picketing to counter the economic power of industrial combinations. The Taft-Hartley Act attacks both parts, in effect dropping a two-ton lead weight on the balance scale.

The case can be made that the original law struck a reasonable balance of economic power, but the balance scale started tilting first with the MacKay ruling. The original law protected the right to strike, but the MacKay Radio ruling allows corporate America to identify and fire strikers one by one as individuals, or as a selected group. It severely reduces a union's economic power in negotiations and defeats the intentions of Senator Wagner to encourage collective bargaining.

The 1947 Section 7 amendments put individual conduct on a par with collective conduct and the Section 8(b) and 8(c) additions applied to labor organizations subverts one-on-one negotiations by allowing management to actively pressure individuals to divide employees and work against union solidarity. Recall the new Section 8(c) - free speech section - allows management to compel individual employees to listen to management's anti union views and beliefs without the knowledge or presence of union officials. While the original Section 8(a) and the new Sections 8(b) and 8(c) come under the Title, Unfair Labor Practices, the new Section 8(b), in particular 8(b)(4), and 8(c) subverts what Section 8(a) attempts to protect. If management can evade one on one negotiations, collective bargaining and unions fail.

The new Section 8(d), known as the good faith section, does not define good faith. Instead, it attempts to define a bargaining process for wages and hours and added "other terms and conditions of employment" but does not compel agreement or arbitration. It allows negotiations to deadlock and be at an impasse. Remember that term, impasse.

The Section 7 and Section 8 changes give the primary anti-union sections of Taft-Hartley Act. Although there are changes in other sections and additional sections, they all permit management to intervene in their employee efforts to organize a union, or to have the government intervene in their employees "concerted activities" such as a strike or boycott. Taft-Hartley changes were anti-union amendments; nothing in Taft-Hartley favors unions. (17)

The transition from the original 1935 National Labor Relations Act following the passage of the Taft-Hartley Act amendments to the National Labor Relations Act began with disputes brought to the National Labor Relations Board from the summer of 1947, which continued into the 1950's and beyond. The hazy and confused language guaranteed a large increase in the NLRB case load. The essence of the new law and its troubled administration can be illustrated with a sample of cases from the Eisenhower Era covering free speech, secondary boycotts and good faith bargaining.

Free Speech

Recall the 1941 Supreme Court decision in NLRB v. Virginia Electric Power where the justices allowed management to speak against unions to employees as individuals or as a group as long a they were "not too coercive." Corporate America claimed their first amendment rights to free speech in the constitution should allow them to do or say whatever they want as part as part of efforts to discourage their employees from voting to join a union.

The early years of NLRB enforcement and federal court review established

that corporate America should no longer expect to beat up, fire and black list employees to get rid of unions. While these tactics did not entirely disappear, the Board received a variety of other complaints of employer unfair labor practices during efforts to conduct a union organizing campaign and to win a secret ballot representation election. Evaluating union elections left the NLRB to review the facts and take testimony from both sides and decide if a representation election reflected the will of the majority in the bargaining unit or whether the corporate campaign strategies to defeat the election would justify overturning the vote and ordering another.

Recall the Section 8(c) free speech amendment to Taft-Hartley allowed management to make anti-union arguments as long as they did not make threats of reprisal or offers of benefits. In practice that defined only a small subtotal of the anti-union practices designed to defeat an election under the guise of free speech; there continue to be many others. Other practices to defeat union elections have different names and vary some in their application. Take for example captive audience speeches where management herds their employees into a meeting room during working hours to inform their employees of the evils of unions. Union organizers typically ask for equal time, which employers routinely deny. No solicitation rules deny union organizers the opportunity to speak to their employees on company property during the working hours, and sometimes non-working hours as well. Since the law makes clear that employees have the right of self organization, free speech allows them to talk among themselves, but that has not kept employers from keeping union literature out of the workplace or union buttons off employees. Access to parking lots, or other company grounds have brought disputes similar to no solicitation disputes.

Captive audience speeches apply to employers speaking to a group, but some employers call individual employees into their private office quarters to question them individually about their union beliefs and to demand they inform on others about their beliefs. These practices make it difficult to decide when free speech becomes interrogation and an unfair labor practice. Nor does free speech defined in Section 8(c) allow for corporate America, or union organizers, telling tall tails or fabricating lies to win an election.

All of these varied activities come under the broad umbrella of free speech, or not. Free speech violations leave the Board to fashion a remedy within the confines of authority in Section 10 of the NLRA. Sometimes they found abuses they did not believe allowed for a valid election and so ordered the employer to cease and desist their unfair labor practices and scheduled a second or third election.

Elections established one path to union recognition, but the original NLRA allowed the use of signed authorization cards. Union organizers often tried to get an idea whether a potential union drive would succeed by getting employees to sign cards authorizing a union to represent them. If a majority would sign that suggests there would be a majority vote in a Board supervised election. The original National Labor Relations Act of 1935 had Section 9, entitled Representatives and Elections. It had four brief sub section paragraphs 9(a) through 9(d). Wording

in 9(a) requires representatives designated by a majority of the employees in a bargaining unit to represent all employees. It also allowed in 9(c) that if there should be a question of representation of employees the Board may investigate to determine representation. An investigation could include a hearing to determine union recognition and the Board "may take a secret ballot election of employees or utilize any other suitable method to ascertain such representatives."

Notice especially the word "may" as in "may take a secret ballot election." After the Taft-Hartley revisions, Section 9 more than tripled in length along with substantial rewording, especially in 9(c) where Congress eliminated the word "may". The new Taft-Hartley 9(c) requires the Board to hold a hearing if employees or an employer files a petition questioning representation. When a question of representation exists, the Board "shall direct an election by secret ballot and shall certify the results thereof."

Before the change in the wording the Board could establish a majority with signed authorization cards. The cards could be signed without management knowledge thereby eliminating their free speech demand to campaign against the union. After the courts made it less acceptable to use violence against labor unions, employers wanted time to campaign against them during an organizing drive. Hence, the corporate need for a petition to require an election and eliminate authorization cards. Even so unions continued to get signed authorization cards and when they had a majority they would often request for management to recognize the union. Invariably management would claim the cards did not represent the will of the majority and so demand an election and launch an anti union campaign. When anti union tactics turned a card majority into an election minority, it turned union recognition into a free speech battleground.

The hundreds and hundreds of election disputes that went to the Board and then onto the courts have continued for decades. They keep coming back in varied form but a few examples will serve to give the flavor of these so-called free speech disputes.

In 1946 **Clark Brothers**, a gas engine and compressor manufacturer, had a shop rule banning solicitation that included union organizers. An hour before a union certification election management suspended work to broadcast a speech through the plant opposing the certification of the UAW. The Board found Clark Brothers conduct an unfair labor practice and banned compulsory attendance at an anti-union speech on company premises during working hours without equal time for the union. The Board had to petition the Second Circuit Court to enforce their order, which affirmed the ban by writing "An employer has an interest in presenting his views on labor relations to his employees. We should hesitate to hold that he may not do this on company time and pay, provided a similar opportunity to address them were accorded representatives of the union."

In the 1948 case of **General Shoe** the company had 16 production plants in four southern states including Pulaski, Tennessee where 600 employees petitioned for union representation on June 19, 1946; the Board scheduled an election July 31. Managers launched a steady anti-union campaign that included distributing leaflets and personal letters to employees, full page advertisements in local papers,

and reading a prepared speech 25 times to groups of employees during working hours. The material vilified unions in especially bitter terms. Claims included America soldiers in WWII were "killed because materials and ammunition did not get to them because of strikes." There were no examples given.

The Board majority voted to set aside the election they justified in a carefully worded opinion. The opinion acknowledged the anti-union campaign did not threaten reprisal or promise benefit as the sole limit on free speech allowed by the new section 8(c), but they demanded what they called laboratory conditions. "Conduct that creates an atmosphere which renders improbable a free choice will sometimes warrant invalidating an election, even though that conduct may not constitute an unfair labor practice." . . . "In election proceedings, it is the Board's function to provide a laboratory in which an experiment may be conducted, under conditions as nearly ideal as possible, to determine the uninhibited desires of the employees." . . . "It is our duty to establish those conditions; it is also our duty to determine whether they have been fulfilled. When . . . **laboratory conditions** are not present and the experiment must be conducted over again. That is the situation here." The Sixth Circuit Court enforced the Board ruling and the Supreme Court denied a writ of certiorari. (18)

In a 1951 case **Bonwit Teller**, a retail department store in New York, had a no solicitation rule forbidding union organizers from soliciting on their selling floors, during working hours, and as a special case for department stores, non-working hours as well. In a union certification election none of the three choices received a majority. Six days before the runoff election the president of Bonwit-Teller closed the store early to make an anti union captive audience speech to employees assembled in the store and did not answer a request by the union to reply. One of the unions, Retail Clerks International Association (RCIA), filed a complaint alleging an unfair labor practice violation of Section 8(a)(1) - to interfere with, restrain, or coerce employees in the exercise of their rights.

The Board majority concluded an otherwise valid no-solicitation rule violates labor law where it is enforced and applied in a discriminatory manner, such as where it is enforced against union solicitation although other forms of solicitation are permitted such as the president of Bonwit Teller's anti union solicitation. To justify their ruling, given the new Section 8(c) that allows employers to make anti union speeches, they wrote "a rule against union solicitation gives rise to an equal obligation to assure that such rules are enforced with an even hand."

Bonwit Teller appealed the ruling to the Second Circuit Court where a majority affirmed the Board ruling by concluding, "The violation here was the discriminatory application of the no solicitation rule." In addition, they wrote a narrow qualification. "If Bonwit Teller were to abandon that [no solicitation] rule, we do not think it would then be required to accord the Union a similar opportunity to address the employees each time [a company official] made an anti-union speech. Nothing in the Act nor in reason compels such 'an eye for an eye, a tooth for a tooth' result so long as the avenues of communication are kept open to both sides." The Supreme Court denied a writ of certiorari.

The added phrasing suggests employers can make anti union speeches

without allowing the union to reply unless a no solicitation rule bans access to union organizers after and during working hours. In that case the union could expect to get a chance to reply. The Bonwit Teller doctrine would last until the Board had a majority of Eisenhower appointees.

In the 1953 case of **Livingston Shirt Co**, a Tennessee manufacturer of men's and boy's shirts, the Amalgamated Clothing Workers union lost two representation elections. The day before the first election May 22, 1952 the president of Livingston Shirt made a speech against the union to assembled employees during working hours. The union asked for a chance to reply, which management denied. The NLRB regional director set the first election aside abiding by the Bonwit Teller ruling and scheduled a second election for July 24, 1952. The Livingston President spoke against the union on July 21 and refused to allow the union any reply. An Unfair Labor Practice complaint ended with a Board review, but now before a majority of Eisenhower appointments.

Livingston Shirt had a no solicitation rule: "Activities for or against any union must not be carried on during working hours." The Board majority tossed out the Bonwit Teller ruling and refused to agree a no solicitation rule created an "equal obligation" to allow the union to reply. They said "Section 8 (c) of the Act specifically prohibits us from finding that an un-coercive speech, whenever delivered by the employer, constitutes an unfair labor practice. Therefore, any attempt to rationalize a proscription against an employer who makes a privileged speech must necessarily be rested on the theory that the employer's vice is not in making the speech but in denying the union an opportunity to reply on company premises."

Abe Murdock, a Democratic appointee now in the minority, wrote a dozen pages of dissent but his first point went directly to a problem in Section 8(c). "I cannot believe that the majority's action in holding that an employer may lawfully monopolize the most effective forum for persuading employees is consistent with the declared congressional policy which is not that of neutrality but of 'encouraging the practice and procedure of collective bargaining.' Practically every employer speech on company time and property is designed to perpetuate individual bargaining and to discourage collective bargaining."

Even so the Eisenhower Board majority read the words in Section 8(c) literally. It allows management the right to make anti union speeches to their employees to discourage their collective bargaining, but that part of the law acts in opposition to the law's specifically stated intention to encourage collective bargaining. The majority Board opinion argued that organized labor does not need to be at management's place of business to reply to anti union speeches because union organizers can assure employees "hear both sides under circumstances which approximate equality." The approximate equality for collective bargaining they argued comes from "time honored" and "traditional" organizing that can take place somewhere else than their employee's work place. Their view denies employees the right to have representatives bargain for them and substitutes bargaining directly with employees, a decidedly anti union view.

Congress created the NLRB as an administrative law agency much as they

had done over twenty years before in creating the Federal Trade Commission. As cases come before the NLRB and the appointed make up of the Board changes a new Board has authority to overrule previous Board decisions. Since the cases and Board rulings need to establish settled law for the future, Boards should not overrule precedent without good reasons.

Since the NLRA allows for judicial review of Board rulings, the 13 circuit courts can review and overrule the Board, or affirm a Board ruling, or modify a Board ruling and remand [send back] the case to the Board for a new ruling consistent with the court's modifications. Losers at the circuit court can petition the Supreme Court for a final review, which should make Supreme Court rulings established and settled law. However, notice the Second Circuit Court affirmed the Bonwit Teller ruling. Since the Supreme Court declined to hear a petition for certiorari the ruling establishes precedent for future Board rulings of solicitation disputes, except the Board ruling in Livingston Shirt explicitly overruled Bonwit Teller precedent. Maybe the path to settled law is tougher than we think. (19)

In the Bonwit Teller and Livingston Shirt cases management used their Section 8(c) right to free speech to speak to employees in a campaign against union representation. Read Section 8(c) several times and it keeps allowing management to speak to employees. It does not say management can single out individual employees to probe their views on labor relations and demand answers to an interrogation of their union views. Many people associate actions of that type with police and prosecutors probing accusations of misconduct in a crime. The criminal law requires individuals to be advised of the right to remain silent, but in labor relations management want interrogation included in their free speech rights as occurred in the case of Blue Flash Express.

In the 1954 case of **Blue Flash** the NLRB General Counsel filed an ULP complaint alleging Blue Flash violated NLRA Section 8(1)(a) - to interfere with, restrain, or coerce employees in the exercise of their rights - after finding Teamsters Local 270 sent a letter to notify Blue Flash general manager, John Golden, that union organizers had proof of a card check majority authorizing union representation. Golden had his plant superintendent send each of his employees to his office separately. He wanted to know if they signed union cards. Golden told them that "it was immaterial to him whether or not they were union members, but that he desired to know whether they had joined so that he might know how to answer the letter." Each employee denied his membership to Golden. No other allegations were proved beyond the interrogation.

The Eisenhower Board review found the interrogation to be of an "isolated nature" that did not show any threat of reprisals or other "anti-union animus" even though all the employees gave false answers. The Eisenhower majority treated management's "systematic inquiry" as a legitimate way for management to discover their legal obligation to bargain with the union and refused to find anything "coercive" in it.

The two Truman appointees, now a minority, found the questioning a violation of Section 8(1)(a). They said "When an employer inquires into organizational activity whether by espionage, surveillance, polling, or direct

questioning, he invades the privacy in which employees are entitled to exercise the rights given them by the Act." The Truman appointees interpreted the false answers as employee fear there would be reprisals. The ruling reverses Truman era precedent that interrogations violate labor law.

An example of precedent from the Truman Board of 1949 declared "Our experience demonstrates that the fear of subsequent discrimination which interrogation instills in the minds of employees is reasonable and well-founded. The cases in which interrogated employees have been discharged or otherwise discriminated against on the basis of information obtained through interrogation are numerous. These cases demonstrate conclusively that, by and large, employers who engage in this practice are not motivated by idle curiosity, but rather by a desire to rid themselves of union adherents." (20)

Recall the case of Republic Aviation from 1945 when the Supreme Court made a no-solicitation rule on company property a "clear derogation of the rights of its employees guaranteed by the [NLRA]." At Babcock and Wilcox, a manufacturer of boilers, management cited their rule that prohibits a union organizer from distributing union literature on company-owned parking lots. The plant was isolated on a 100 acre fenced parcel and employees all drove to the plant, which made the sidewalk from the parking lot to the entrance gate the only safe and practicable way to contact employees. The NLRB treated the denial as an unfair labor practice violating Section 8(a)(1) of the NLRA - interfering with employees right to organize a union under Section 7. The Fifth Circuit Court reversed because they could not find the NLRA provided for access to property where no employee was involved. The Supreme Court reversed the Circuit Court.

In the case of **NLRB v. Babcock & Wilcox** the Supreme Court majority ruled "an employer may validly post his property against non-employee distribution of union literature if reasonable efforts by the union through other available channels of communication will enable it to reach the employees with its message." The justices made clear union access would be allowed, or not, as a balance of rights: "Organization rights are granted to workers by the same authority, the National Government, that preserves property rights. Accommodation between the two must be obtained with as little destruction of one as is consistent with the maintenance of the other."

The restriction did not apply to employees, only non-employees: "No restriction may be placed on the employees' right to discuss self-organization among themselves unless the employer can demonstrate that a restriction is necessary to maintain production or discipline. But no such obligation is owed non-employee organizers. Their access to company property is governed by a different consideration."

The justices decided the different consideration for non-employee union organizers resulted because "The right of self-organization depends in some measure on the ability of employees to learn the advantages of self-organization from others. Consequently, if the location of a plant and the living quarters of the employees place employees beyond the reach of reasonable union efforts to communicate with them, the employer must allow the union to approach his

employees on his property."

The ruling by the Supreme Court in Babcock and Wilcox should establish precedent for settled law since all other courts or tribunals are below. As the last stop it sets precedent unless new justices decide to overrule the rulings of previous Supreme Courts, which they should be reluctant to do. (21)

Secondary Boycotts

Recall the Taft-Hartley Section 8(b)(4)(A) intends to limit a union's collective action to employees of a single employer in a single bargaining unit. Corporate America wanted to confine a strike and bring a halt to efforts by union members to spread a strike to other employers or employees of other employers. The disputes in secondary boycott cases differ from free speech disputes in that management wants to limit the freedom of action for union members, whereas in free speech disputes management wants to halt any limit on its freedom of action. One is the mirror image of the other, but both favor management in collective bargaining.

In practice, legal enforcement requires at least two employers, which enforcement officials soon started referring to as the primary employer and the secondary employer or employers. Once they are identified, a case can proceed for or against violation by deciding if one or more secondary employers could be an involuntary victim of a strike spread to it from a primary employer.

To be an illegal secondary boycott union officials must attempt to induce or encourage employees of another secondary employer to strike or to cease doing business with a primary employer. Enforcement after 1947 and into the early 1950's soon showed inducing and encouraging mean different things to different people.

In the case of **International Rice Milling** the Teamsters union set up a picket line at the International Rice Milling Company, Inc. and Kaplan Rice Milling Company to publicize their effort to organize a local union and gain recognition. During business hours two men in a truck arrived at the Kaplan Mills to pickup an order of rice or bran for their employer known as the Sales House. Picketers blocked the road into the plant. When the truck stopped, the picketers approached the driver to explain their dispute with Kaplan Mills and told the two men they would have to leave without making a delivery.

Even though the drivers found a way to make the delivery the two companies filed an Unfair Labor Practice complaint alleging the union violated the secondary boycott restrictions in Section 8(b)(4)(A). The Board majority ruled the Teamster's picketed a primary employer and restricted all their picketing to the vicinity of the plant. They treated the Sales House as a customer of the Kaplan Mills rather than a secondary employer.

The Board case moved to the federal courts until the Supreme Court took the case on a writ of certiorari where the justices affirmed the Board ruling. In their opinion the Justices agreed the Teamster's picketers did "encourage two employees of a neutral employer to turn back from an intended trip to the mill, and thus to refuse, in the course of their employment, to transport articles or

perform certain services for their employer." They decided further the objective of the picketing was "to force Kaplan's customer to cease handling, transporting or otherwise dealing in products of the mill," . . . and so "add to the pressure on Kaplan to recognize the union."

However, they decided these conditions fit only part of the wording in the law because they wrote "the applicable proscriptions of Section 8(b)(4) are expressly limited to the inducement or encouragement of concerted conduct by the employees of the neutral [secondary] employer." The justices decided the Sales House truckers could be treated as customers subject to traditional picketing in a legal strike of a primary employer. Since the law only prohibits "concerted refusals" the justices did not see how two employees arriving as a normal part of their work could be part of a "concerted refusal." Their conclusion is confirmed in their statement that "A union's inducements or encouragements reaching individual employees of neutral employers only as they happen to approach the picketed place of business generally are not aimed at concerted, as distinguished from individual, conduct by such employees."

The ruling disgusted corporate America and Congress. They did not want secondary picketing or secondary boycotts evaluated for any moderating language. In their minds the two truck drivers were not employed by International Rice Milling or Kaplan Mills, but employees of Sales House. They wanted them treated as secondary employees of a secondary employer that could not be lawfully picketed under Section 8(b)(4)(A). Notice the dispute and the ruling here allows those sympathic to unions to treat the Sales House as a customer to be picketed as part of free speech while those hostile to unions can treat the Sales House as a secondary employer protected against picketing by a union. Virtually all strikes will affect more than one employer. Labor law is never just labor law.

The trucking industry created significant problems for enforcing the Taft-Hartley Section 8(b)(4) ban on picketing at secondary employers during strikes. For example, in the case of **Schultz Refrigeration** their drivers were members of Teamsters Local 807 for 12 years before their contract expired August 12, 1948. Drivers made deliveries to New York locations from Schultz New York Terminal, but ten days after the contract expired Schultz moved their terminal to Slackwood, New Jersey, hired new drivers, and refused to negotiate a new contract with Local 807.

Local 807 drivers now out of a job began following Schultz trucks to delivery sites where they set up picket lines around the trucks. Schultz filed an ULP complaint alleging that picketing could only take place at the employer's primary place of business and not at the premises of another employer; they insisted their delivery sites be treated as secondary employers. Since the Slackwood, New Jersey warehouse was isolated from delivery sites of customers, picketing there would go unnoticed. The Herzog Board majority decided picketing at another employer's site did not necessarily make it secondary picketing. They treated picketing Schultz trucks as primary picketing of a customer and not secondary and therefore not an unfair labor practice of a union.

In the case of **Conway's Express** the NLRB found that employer Henry

Rabouin refused to honor a Teamsters Union contract known as the "Albany Area Agreement" negotiated by the Highway Transport Association of Up-State New York in which he was a member. Notice the Highway Transport Association is a union, or cartel, of employers just like the Teamsters is a union of employees. The union called a strike at Rabouin's Conway Express trucking company. The union contract had a "hot cargo" clause, which reserved to the union the right to refuse to handle goods or freight of any employer involved in a labor dispute. Union shop stewards at other, secondary, trucking companies ceased handling Conway's freight or making deliveries after being advised by union officials that the Conway strike 'was on.' " Each of the employers had previously and voluntarily agreed by contract to allow its employees' to engage in a secondary boycott by refusing to handle the "hot" cargo.

Rabouin petitioned the NLRB to declare the "hot cargo" clause an unfair labor practice under Taft-Hartley Section 8(b)(4)(A). Instead, the Board majority ruled a "hot cargo" clause to be a lawful contract. Their majority opinion asserted that Conway signed the contract with the "hot cargo" clause and so consented to allow their employees to refuse to handle shipments of another employer involved in a labor dispute. The Teamsters union "employees' failure to deliver freight or accept freight from Conway trucks was not in the literal sense a 'strike' nor a 'refusal' to work."

The Board ruling moved to the Second Circuit Court as **Rabouin v. NLRB**, which ended March 24, 1952. The majority in the ruling accepted the Board opinion as a valid interpretation of a "hot cargo" clause. The Second Circuit Court opinion agreed that "The embargo on Rabouin's goods was the product solely of requests addressed to management or supervisory personnel. ... The union thus did not 'encourage the employees.' " . . . as required in the wording of the law. . . . "Consent in advance to honor a hot cargo clause is not the product of the union's "forcing or requiring any employer . . . to cease doing business with any other person." In other words, the justices decided an employer signing a contract with a "hot cargo" clause must have done so willingly or voluntarily. The law requires some form of coercion, which the justices did not find given Rabouin signed the Albany Area Agreement voluntarily without evidence of the coercion written in the law.

Corporate America and Congress scoffed at the idea a trucking company would voluntarily agree to a hot cargo clause. They knew the Teamsters had the economic power to pressure the trucking companies to go along because the industry had many small trucking firms that could not withstand a strike for more than a day or two. The Teamsters had the economic power to get a hot cargo clause but Corporate America wanted hot cargo agreements banned. (22)

These secondary boycott examples all came before June 30, 1953, which means the Board Chair, Paul Herzog, and a majority of Board members were appointed by Democrat Harry Truman. These next several cases were decided after June 30, 1953, which means a new Board Chair, Guy Farmer, and a majority of Board members were appointed by Republican Dwight Eisenhower.

In the case of the **Washington Coca-Cola Bottling Company** the Teamsters

Joint Council 55 of Washington, DC attempted to gain union recognition for delivery drivers at their plant located in Southwest, Washington, D.C. On January 27, 1953, 44 of 54 delivery drivers left work in a strike followed with a picket line at the plant and then about a week later pickets followed trucks to delivery sites, similar to Schultz Refrigeration. Picketers carried signs that read "On strike" but beginning February 14, picketers at delivery sites began to carry signs that read "Friends, when you shop at this store please do not ask for Coca-Cola."

Evidence admitted to the initial administrative law hearing showed Joint Council officials instructed picketers at delivery outlets to appeal only to consumers not to buy Coca-Cola, but not to speak to drivers of neutral suppliers making deliveries or to employees at delivery outlets. Union officials knew if other suppliers refused to cross a picket line the union risked charges of violating Section 8(b)(4) as a secondary boycott. Otherwise picketers were advised to allow everyone to pass through a picket line.

In general, the picketers at delivery sites asked the store manager not to buy Coca-Cola. If the store manager refused picketers stayed to picket customers, but they left if the manager agreed. The Board majority complained Teamster picketing could not be just consumer picketing because neutral delivery drivers and employees used the same doors as customers; all would be subjected to picketing. They made mixing customers, employees and neutral delivery drivers at the same door to be evidence of a secondary boycott in violation of Section 8(b)(4)(A).

These distinctions the Eisenhower Board declared for this case justified reversing earlier rulings such as the nearly identical case of Schultz Refrigeration. The Board majority in Coca-Cola Bottling wrote "the fundamental principle has been established that this Section [8(b)(4)] proscribes picketing at the separate premises of employers who are not a party to the picketing union's primary labor dispute." However, given that management can decide to have deliveries, employees and customers routed through the same door, the ruling amounts to a directive to end picketing except at a single place of business. It is reasonable to wonder about free speech and free assembly. Notice the complete reversal of the ruling between the Truman Board and the Eisenhower Board.

In the case of **McAllister Transfer Inc.** of York, Nebraska their general manager Marvin Grebe agreed to meet with Stanley Swaney and Albert Parker of Teamsters Local 554 and William Noble of Teamsters Local 784 on February 4, 1953. The Teamsters officials wanted Grebe to recognize the Teamsters union as their employees bargaining agent and presented him with a union contract to sign. Grebe stalled but was told he had to sign the contract or be shut off from interlining freight with other carriers in a secondary boycott.

A week after the February 4 meeting the Teamsters Locals notified officials at Union Freightways, Watson Bros. and Red Ball Express of the their Iowa-Nebraska Motor Freight Cartage contract that included a "hot cargo" clause allowing the union's rank and file to refuse to transfer McAllister freight without fear of dismissal.

An Unfair Labor Practice(ULP) complaint alleged the Teamsters union

induced and encouraged, the employees of Freightways, Watson Bros., and Red Ball, to engage in, strikes and concerted refusals to transport or handle goods, in violation of Section 8(b)(4)(A). A hearing followed in which the administrative law judge (ALJ) dismissed the complaint citing the Board and circuit court rulings allowing hot cargo contracts like the one in the Conway Express Case.

The Eisenhower Board voted 3 to 2 to reverse the ALJ. The majority opinion declared "In enacting these [Section 8(b)(4)] provisions of the Act, it is clear that Congress declared a public policy against all secondary boycotts, without distinction as to type or kind." Since only management and union officials, but no employees at McAllister Transfer or the other three carriers had anything to do with the hot cargo contract as required in the wording of Section 8(b)(4), the Eisenhower majority decided they would defy the precedent of the Second Circuit Court from Rabouin v. NLRB.

In dissent, the two Truman holdovers on the Board, Peterson and Murdock, questioned the authority of the Board majority to reverse the Second Circuit Court, a higher court ruling that honored a signed hot cargo contract. Also, they argued the wording in the Section 8(b)(4) amendments do not require secondary employers like Union Freightways, Watson Bros and Red Ball Express to give up hot cargo contracts since they might find advantage in them if employers like McAllister gain a competitive advantage paying low wages.

The ruling in the McAllister case came from an Eisenhower Board majority while the reverse ruling in Rabouin came from a Truman Board majority. These hot cargo cases reveal the thinking of the corporate mind because corporate officials always assume union officials coerce their rank and file and their employers. They take coercion for granted and do not regard it as something necessary to prove. Since corporate America wrote the law for Congress, they had no reason to be indignant when some of the National Labor Relations Board and judges on the federal bench read the law literally and would not abandon the sanctity of signed contracts, contracts being an essential element in capitalism. Chairman Farmer complained there was a hot cargo loophole and he wanted to close it. Congress would oblige and remove the loophole in 1959 as part of the Landrum-Griffen Act. (23)

The Duty to Bargain in Good Faith

The 1935 NLRA Section 8(5) made it an Unfair Labor Practice for an employer to refuse to bargain collectively with a certified union. Section 9(a) defined a certified union – a majority of employees in a bargaining unit representing all employees – and a list of bargaining subjects - rates of pay, wages, hours and other conditions of employment. By 1947, labor law enforcement established an employer could expect to be guilty of an unfair labor practice to refuse to recognize a certified union, to refuse to meet with union officials, or attach conditions on a meeting.

The Taft-Hartley Act changed the label of Section 8(5) to Section 8(a)(5) and added another list of unfair labor practices for unions labeled as Section 8(b). The parallel entry to Section 8(a)(5) duplicates the wording but as Section 8(b)

(3) but now applied to a union - to refuse to bargain collectively with an employer provided it is the NLRB certified representative of his employees. None of the original Section 8(5) wording, nor Section 8(a)(5) or Section 8(a)(3) use the words good faith.

The new Taft-Hartley Act, Section 8(d) introduced the words good faith, which would be the "mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith." They added a second version of bargaining topics to be "wages, hours, and other terms and conditions of employment." Next, they provided a means to require a written contract by adding "or the negotiation of an agreement, and the execution of a written contract if requested by either party." Finally, to avoid any doubt of corporate intentions, Congress added "the obligation [to bargain in good faith] does not compel either party to agree to a proposal or require making a concession."

The new Section 8(d) clarified bargaining as a method of negotiating, a process, but it remains quite possible for an employer to meet while going through the motions of bargaining without intending to reach agreement. Unilateral decisions and stalling by rejecting repeated union proposals or making preposterous or frivolous counterproposals hardly differs from refusing to recognize a union. Stalling might provoke a strike but employers know a recently certified union can often be "talked to death" as a union busting tactic.

Reviewing the evidence of good faith or bad faith in an administrative law hearing required deciding whether officials on either side are "serious" in their negotiations. The law requires management to discuss the subjects defined in Section 9(a) and Sections 8(d) and explore in good faith the possibility of reaching an agreement. Since the list of subjects includes "conditions of employment" rather than something definite, the Taft-Hartley amendments left National Labor Relations Board members to weigh bargaining practices against the requirements to bargain written in the law. The always-malleable English language allows a wide range of discretion and exposes Board decisions and the courts to more partisan politics such as a Truman Board or an Eisenhower Board, or Republican judges or Democratic judges.

An early test of good faith occurred in the case of the **Inland Steel Corporation**, where Inland Steel officials refused by unilateral decision to bargain over a new clause in their pension plan that called for compulsory retirement at age 65. The United Steel Workers objected but Inland Steel refused to respond, claiming the law does not provide a union a right to bargain over pension plans. The United Steel Workers union filed an unfair labor practice complaint alleging violation of Section 8(5) - to refuse to bargain collectively with the representatives of his employees of a certified union.

The Administrative Law Judge decided pension plans to be a mandatory subject of bargaining, which come under the requirement to bargain with "respect to rates of pay, wages, hours or other conditions of employment." Therefore, Inland Steel management could not make unilateral changes in a pension plan and claim to be bargaining in good faith. The case moved to a full Board review

where Inland Steel attorneys argued that pension benefits were not wages and not an appropriate subject for collective bargaining. The Board rejected that view and decided "wages must be construed to include emoluments of value, like pension and insurance benefits[.]" Appeal was taken to the Seventh Circuit Court where Inland Steel attorneys again argued pension benefits were not wages, which the circuit court also rejected with "there is, in our opinion, no sound basis for an argument that such a plan is not clearly included in the phrase, 'other conditions of employment.' "

The original National Labor Relations Act of 1935 did not give power to determine the subjects of bargaining beyond wages and the phrase "other conditions of employment." In the often quoted words of its sponsor Senator Wagner "The law does not go beyond the office door. It leaves discussion between the employer and employee, and the agreements they may or may not make, voluntary."

Notice the decision in this Inland Steel case interferes with voluntary bargaining. Once the Board and the Courts start evaluating the subjects of bargaining proposals as required subjects, or not, they go beyond the office door and sit at the bargaining table as government regulators, and do so in a way never intended by Senator Wagner. The law as defined should allow Inland Steel to say no to any proposal made by the union and allow the union to make any counterproposal they want. Voluntary bargaining requires both sides to test their economic power and weigh the costs and benefits of strikes and boycotts.

The Inland Steel decision opened a whole new line of legal disputes for profit sharing, merit pay, sub contracting, plant relocation or closures and quite a few more. In the 1946 case of **J.H. Allison & Co.** management refused to bargain over merit pay increases by arguing they are exclusively management functions that allow them unilateral action, but the Board made that refusal a Section 8(5) unfair labor practice; the Sixth Circuit Court enforced the order on appeal. Merit pay allows management to treat employees individually, which evades union representation and collective bargaining

The Inland and Allison cases came before the Taft-Hartley Amendments. Congress had a chance to redefine bargaining as it was in Section 8(5) and 9(a) but repeated them almost exactly in Section 8(d). Since they left them in, they apparently agreed with the Board the subject matter for good faith bargaining should not be left to labor and management alone. Voluntary agreements in one on one negotiation resemble free markets, but Congress opted for regulation by appointed members of the NLRB and appointed judges in the courts. Regulating the subjects of bargaining did not rule on the question of what happens when one or the other of management or labor cannot, or will not, agree. The last sentence of Section 8(d) makes clear the law does not require either side to agree, nor does it require arbitration by the government or any other party if management or labor do not want it. Disagreement can reach an impasse.

At the American National Insurance Co. the Office Employees International Union, Local 27, began bargaining for a new contract November 30, 1948. The union wanted a clause in their contract with a grievance procedure ending with

binding arbitration. Management objected to a proposal for unlimited arbitration. On January 10, 1949 management made a counterproposal for a management functions clause that listed management functions excluded from arbitration. The union asserted some of the management functions included "matters subject to the duty to bargain." On January 17, 1949 management made counterproposals insisting that a "Functions and Prerogatives of Management" clause be included that left selected grievances to be settled by "top management officials" and not an arbitrator.

The union filed an ULP complaint in 1950 arguing management had failed to bargain in good faith by insisting on a management functions clause in the contract. After hearings before an administrative law judge and a full Board review, the Board held, among other things, "that management's action in bargaining for inclusion of any such [management functions] clause constituted a per se [automatic] violation of Section 8(a)(5) and 8(a)(1)." The Board decision moved to the Fifth Circuit Court, which reversed the Board by finding "that the evidence does not support the view that [management] failed to bargain collectively in good faith by reason of its bargaining for a management functions clause." The case moved to the Supreme Court on a Board petition for a writ of certiorari.

In **NLRB v. American National Insurance Co.** the Supreme Court cited that part of Section 8(d), which does not require bargaining in good faith to compel an agreement. They wrote "[I]t is now apparent from the statute itself that the [Taft-Hartley] Act does not encourage a party to engage in fruitless marathon discussions at the expense of frank statement and support of his position. And it is equally clear that the Board may not, either directly or indirectly, compel concessions or otherwise sit in judgment upon the substantive terms of collective bargaining agreements." The justices accused the Board of attempting "to disrupt collective bargaining practices" by intervening in management functions.

Corporate America successfully prevented the NLRB from pressuring either side to accept terms of a settlement; they wanted labor law to be a process for settling disputes as private disputes without the government. When both sides in a labor dispute meet their legal obligation to confer and bargain, but fail to agree on the wording for terms and conditions of a contract, they reach impasse.

The justices allowed management to make several counter proposals and then impose their final offer on the union when union bargainers would not agree to management's counter proposals. Management went through the process of offering some slightly different counter proposals to fulfill its obligation to bargain, but the justices decided management could have its last counter proposals imposed on the union. Management got its way by holding out in a unilateral agreement opposed by the union.

Nothing in the ruling suggests why union bargainers could not make the last offer and have the justices impose the union counter proposal as a result of an "impasse." People negotiate over the price of house or a car and if they cannot agree, nothing happens; the two disagree as equals. No legal explanation appears in the opinion here to suggest why labor-management negotiations should favor

management's last offer over the union's last offer. It appears an invention of the legal mind. (24)

Other Unfair Labor Practice complaints during this 1950's era charged management with acting in bad faith in their collective bargaining in violation of Section 8(d). If the facts presented during administrative law hearings proved bad faith to the administrative law judge and the Board's satisfaction, then they would draft a cease and desist order and send the dispute back to the bargaining table: bargain some more. Three of the many cases from the era provide good examples of this Section 8(d) effect: Southern Saddlery, Jacobs Manufacturing and Truitt Manufacturing.

In **Southern Saddlery** the United Leather Workers International Union, Local 109, asked for a wage increase. Southern Saddlery explained they could not afford a wage increase but refused to provide any financial evidence to support their claim. As negotiations continued Southern Saddlery admitted to raising prices and paying dividends to stockholders, but continued to claim an inability to pay. The Board decided "[T]he validity of the Southern Saddlery's position depended upon the existence of facts peculiarly within its knowledge. . . . [B}y maintaining the intransigent position that it was financially unable to raise wages and, at the same time, by refusing to make any reasonable efforts to support or justify its position, erected an insurmountable barrier to successful conclusion of the bargaining." Good faith as of July 1950 required management to prove its claims.

In **Jacobs Manufacturing** management refused to reopen negotiations as allowed in their union contract with United Auto Workers (UAW) local 379. They refused to discuss several issues including pensions and insurance and a refusal to consider an increase in wage rates. Union negotiators refused to accept the "mere statement" that Jacobs was "in no position to pay an increase." Jacobs argued an increase was in their "business judgement alone and so opening the books was "definitely out." The Board found it an unacceptable violation of good faith bargaining for Jacobs to refuse to provide any information to substantiate its claims. The ruling left open what information might be satisfactory to meet the 8(d) requirements of good faith bargaining.

In **Truitt Mfg** union officials asked for a wage increase of 10 cents per hour. Truitt replied "it could not afford to pay such an increase, it was undercapitalized, never paid dividends, and any increase over 2 1/2 cents per hour would put it out of business." The union asked for proof but the company refused numerous requests. The NLRB treated the refusal as a failure to bargain in good faith in violation of Section 8(a)(5). The Board ordered the company to supply the information that would "substantiate [Truitt's] position of its economic inability to pay the requested wage increase." The Fourth Circuit Court refused to enforce the order and the Supreme Court took the case on a writ of certiorari.

The Supreme Court majority decided "Good faith bargaining necessarily requires that claims made by either bargainer should be honest claims. This is true about an asserted inability to pay an increase in wages. If such an argument is important enough to present in the give and take of bargaining, it is important

enough to require some sort of proof of its accuracy." . . . "We agree with the Board that a refusal to attempt to substantiate a claim of inability to pay increased wages may support a finding of a failure to bargain in good faith." . . . "We see no reason to disturb the findings of the Board. We **do not** hold, however, that, in every case in which economic inability is raised as an argument against increased wages, it automatically follows that the employees are entitled to substantiating evidence. Each case must turn upon its particular facts. The inquiry must always be whether or not, under the circumstances of the particular case, the statutory obligation to bargain in good faith has been met."

Three wrote a separate opinion while concurring with the majority. They decided "A determination of good faith or of want of good faith normally can rest only on an inference based upon more or less persuasive manifestations of another's state of mind." Neither opinion argued for a predictable standard of good faith. They supported honesty in bargaining but left good faith to depend on the "circumstances" or "another's state of mind." So much for settled law. (25)

These Section 8(a)(5), Section 8(d) "good faith" cases, and the rulings from them, imply good faith in bargaining improves the chances of generating a negotiated settlement even though Section 8(d) does not compel concessions or agreement. Rulings like these encourage corporate America to simulate good faith while refusing to accept union proposals and saying as little as possible on the way to deadlock and impasse. Union negotiators want to make proposals and counter proposals while avoiding deadlock. Management negotiators have the incentive to contrive proposals they expect to be rejected until the appearance of bargaining justifies declaring impasse. The American National Insurance ruling helped make collective bargaining a game of charades as occurred in another case of the NLRB v. Borg-Warner. In this case discussed below, management made a union busting proposal they knew would be rejected by the union apparently hoping to get to impasse. The Supreme Court justices invented some rigmarole to frustrate them but only temporarily.

In case of **NLRB v. Borg-Warner** the NLRB certified the UAW for collective bargaining at the Wooster (Ohio) Division of the Borg-Warner Corporation late in 1952. During contract negotiations the company refused to have a "recognition clause" for the International UAW and then insisted on having a clause called the "ballot clause." The "ballot" clause "provided that as to all nonarbitrable issues, there would be a 30-day negotiation period, after which, before the union could strike, there would have to be a secret ballot taken among all employees in the unit (union and nonunion) on the company's last offer. In the event a majority of the employees rejected the company's last offer, the company would have an opportunity, within 72 hours, of making a new proposal and having a vote on it prior to any strike."

The unions' negotiators announced they would not accept the changes "under any conditions." The company announced it would not accept any contract that did not have the "recognition" clause and the "ballot" clause. Both sides continued talking over other contract issues, but the company would only agree to a contract "package" that included both clauses rejected by the union. The

union voted to strike March 15, 1953 and went on strike March 20, 1953 when the company refused to sign a contract. Negotiations continued until May 5, 1953 when the union gave in and signed a contract with the two clauses.

In the mean time, the union filed an unfair labor practice complaint with the NLRB charging the company with an unfair labor practice for refusing to bargain collectively in violation of Section 8(a)(5). The Board adopted the findings of the administrative law judge that "the controversial clauses w[ere] outside of the scope of mandatory bargaining as defined in Section 8(d) of the Act, the company's insistence upon them, against the permissible opposition of the unions, amounted to a refusal to bargain as to the mandatory subjects of collective bargaining." The Fifth Circuit Court upheld the Board's order for the "recognition" clause, but permitted the company to insist on the "ballot" clause requiring a vote to strike. The case moved to the Supreme Court on a writ of certiorari where the majority of the Supreme Court affirmed the ruling on the recognition clause but reversed the circuit court and made insistence on the ballot clause an unfair labor practice.

The Supreme Court majority opinion agreed the duty to bargain defined in Section 8(d) as wages, hours and other conditions of employment, defines mandatory subjects, and for these [mandatory subjects] "neither party is legally obligated to yield. As to other matters, however, each party is free to bargain or not to bargain, and to agree or not to agree."

However, they wrote bargaining in "good faith does not license the employer to refuse to enter into agreements on the ground that they do not include some proposal which is not a mandatory subject of bargaining. … That would be, they declared mysteriously, "a refusal to bargain about the subjects that are within the scope of mandatory bargaining." The justices made bargaining lawful for all subjects, mandatory or non-mandatory, but then added that, "it does not follow that, because the company may propose [non-mandatory a.k.a. permissible] clauses, it can lawfully insist upon them as a condition to any agreement."

Thus, the Supreme Court majority in Borg-Warner declared neither the "recognition" clause nor the "ballot" clause could be mandatory subjects. First, they reasoned, the Board grants recognition, which cannot be further negotiated at all. Second, the "ballot" clause "relates only to the procedure to be followed by the employees among themselves" and so interfered with internal union relations, which could not be a mandatory subject. Because Borg-Warner officials insisted on the non-mandatory "ballot" clause as a condition to sign any contract the Supreme Court decided that to be bad faith and a management unfair labor practice.

The idea that neither side in union contract negotiations can "insist" on non-mandatory subjects without engaging in bad faith bargaining over mandatory subjects can only be an invention fabricated from the judicial mind. The phrasing in the law does not even hint at such a conclusion. Under the ruling if the union says yes to the ballot clause without any objection, then presumably the company could not be charged with bad faith by insisting. But if the union says no, as it did here, then management cannot refuse to sign "any agreement" by holding out for a non-mandatory subject like the ballot clause.

The Borg-Warner ruling expects to limit labor and management to

negotiating over mandatory subjects, but the NLRB and the courts can hardly prevent negotiators from making concessions over mandatory subjects in order to gain a concession over non-mandatory subjects. However, if management refuses to sign any agreement while insisting on a court defined non-mandatory [permissive] subject it risks an unfair labor practice ruling and will lose the opportunity to declare impasse.

All such "good faith" cases ultimately reflect a hopeless judicial groping for a means to settle labor disputes when Section 8(d) does not require agreement, or even concessions. The Borg-Warner ruling favored the union, but defining and excluding non-mandatory subjects for bargaining has mostly worked against unions. In practice, management has pursued an aggressive effort to define management prerogatives as non-mandatory subjects to be excluded from negotiations. If a union wants to negotiate over rates of production, plant closure or relocation, use of new technology, the evaluation of supervisors, then management can exclude them as their prerogative with little risk of bad faith charges. A union that insists on discussing these non-mandatory subjects while stalling in "fruitless marathon discussions" will be charged with acting in bad faith, which will permit management to declare impasse and impose its last offer on the union and hire permanent replacements.

The Supreme Court accepted that labor law expects to prevent government or the courts from imposing a labor-management agreement, but the justices wanted a collective bargaining process that ends in a resolution when the two sides deadlock and cannot reach agreement. They adopted the name for such a resolution used in NLRB v. American National Insurance case: impasse. The method in these early 1950's cases defined a process of negotiations that must take place before declaring impasse and imposing management's last offer on the union. Management should appear to be bargaining in good faith, otherwise the Board and the courts have an opportunity to conclude management has not given the negotiating process a legitimate chance to bring a resolution of differences and a settlement.

A strike as a result of management's bad faith bargaining protects the rank and file from impasse and permanent replacement of strikers and it subjects the employer to the expense of back pay, but only if management loses in the unfair labor practice dispute sure to follow. Management's bad faith will depend on how the Board and the courts define good faith and bad faith and mandatory and non-mandatory subjects over time in disputes brought to them. If management makes proposals and counter proposals over mandatory subjects and then prevails against a union's unfair labor practice charges of bad faith, then it can impose its final offer on the way by declaring an impasse. Few unions can survive permanent replacement of the rank and file following an impasse. The 1995 Detroit Newspaper Strike is a good example of how that works in practice, as we shall see. (26)

The Landrum-Griffin Act

Robert Kennedy wanted to amend labor law following the McClellan hearings to expand the rights of union rank and file and to guarantee democracy

in union affairs. Since Senator John F. Kennedy was a member of the McClellan Committee he helped sponsor a bill with Senator Irving Ives to assure elections by secret ballot and an accounting of union funds. The bill passed the Senate 88 to 1 with Republican Barry Goldwater of Arizona casting the sole dissenting vote. However, Robert Griffin of Michigan and Philip Landrum of Georgia sponsored an alternative bill submitted in the House of Representatives. Their bill included sections to further limit the economic power of unions in collective bargaining. While both Kennedy's fought against the changes, the Kennedy-Ives bill disappeared from consideration in favor of the Landrum-Griffin Bill.

President Eisenhower signed the Landrum-Griffin Act, a.k.a. the Labor-Management Reporting and Disclosure Act (LMRDA), on September 14, 1959. The law reflected a renewed congressional effort to regulate democracy in the internal affairs of unions. Previous efforts after 1947 failed for lack of interest by labor and business; labor wanted to repeal the Taft-Hartley amendments, but by the late 1950's the revelations of internal union misconduct and racketeering during the McClellan Committee testimony provided excellent public relations to attack labor unions. Corruption revealed during testimony provided the political pressure to correct for legal loopholes allowed by the courts as part of amending the original law and adding a few more restrictions. As the last days of the Eisenhower administration rolled by, both sides decided to go ahead and lobby Congress for the changes they wanted.

Congress hoped to bring honesty and democratic processes to the conduct of union officers. Titles I to V define a bill of rights for union members with procedures to encourage union democracy. Title II, included a Section 201(d), repealing the communist oath and its enforcement provisions inserted into the Taft-Hartley Act in 1947. Title VI, entitled Miscellaneous Provisions, made assorted additions to labor law. Title VII added and amended sections of the Taft-Hartley Act included in the National Labor Relations Act. While Title VII had no connection to the union democracy safeguards and no logical reason to be in the law, Congress put in the additional changes anyway.

Corporate America with the support of President Eisenhower proved they had the political clout to get two additional amendments to unfair labor practices of unions. They argued the McClellan Committee revelations of racketeering and internal corruption justified further restrictions on secondary boycotts in a reworded Section 8(b)(4) and a new section 8(e), banning the "hot cargo" contract from the trucking industry, and a ban on organizational picketing in a new Section 8(b)(7). The solidarity needed for picketing and boycotts are a source of economic power in union negotiating, but corporate America got Congress to agree unions had so much economic power that negotiations continued to be out of "balance." The out of balance argument went with a successful publicity campaign to convince the public boycotts and picketing should be banned as corruption.

Reference Guide for the Landrum-Griffin Act – provides a comprehensive listing of the Landrum-Griffin Act amendments and additions to the National Labor Relations Act. Some explanation and elaboration of key changes follow as the Landrum-Griffin amendments and additions to the National Labor Relations

Act.

Federal and State Court Jurisdiction--------- The Landrum-Griffin Section 701(a) added a Section 14(c) that adjusts the NLRB federal and state court jurisdiction. The Board has always had authority to deny jurisdiction to business firms considered too small in their revenue and employment to justify protection by the National Labor Relations Act. Some unions sought jurisdiction in state courts as an alternative until the matter ended with a Supreme Court ruling eliminating state court jurisdiction for National Labor Relations Board enforcement. The ruling by the Supreme Court left cases refused by the NLRB without a remedy if state courts could not take jurisdiction. The new section allows state courts to hear cases where the NLRB declines to exercise their federal jurisdiction. The new Section 14(c) guarantees the NLRB full discretion to hear cases, or not, as long as they do not decrease the standards applied for cases before August 1, 1959.

Delegating Powers---------The Landrum-Griffin Section 701(b) allows the five member Board to delegate its powers to any three Board members to act as a quorum, and allows regional directors to determine a bargaining unit.

Economic Strikers------The Landrum-Griffin Section 702 amendments made a concession to organized labor by changing the second sentence of Title I, Section 9(c) (3) so that striking employees not entitled to reinstatement could vote in de-certification elections. Employees engaged in an economic strike who are not entitled to reinstatement can be eligible to vote in any election conducted within twelve months after the commencement of a strike.

Temporary Appointments ---------The Landrum-Griffin Section 703 amendment allows the President to make a temporary appointment to be General Counsel for up to 40 days.

Secondary Boycotts and Hot Cargo----------The Landrum-Griffin Section 704(a) revisions included three substantial changes to the Taft-Hartley Section 8(b). A revised Section 8(b)(4), a new section 8(e), banning hot cargo agreements, and a new Section 8(b)(7) banned recognition and organizational picketing.

Changes in 8(b)(4) intended to further restrict boycott practices came in response to corporate and Congressional discontent with the Board and Federal Court rulings in International Rice Milling and Conway Express cases already reviewed. The 1947 wording banned a union from inducing or encouraging the "employees of any employer" to engage in a strike, or "concerted refusal" in the course of their employment. The new 1959 Landrum-Griffin wording eliminated "concerted" and left refusal in response to the International Rice Milling Ruling. The "employees of any employer" was replaced with "any individual employed by any person" in response to the Conway Express ruling allowing hot cargo agreements. The revised 8(b)(4) wording from the 1947 law was labeled (i) and Congress added a part (ii) ban that reads "to threaten, coerce, or restrain any person engaged in commerce."

Congress and corporate America also made substantial alterations and additions to the objectives in 8(b)(4)(A), 8(b)(4)(B), and added a publicity proviso; 8(b)(4)(C) and 8(b)(4)(D) remained unchanged. Section 8(b)(4)(A) threw out the original phrase Congress used to define a secondary boycott and in its place banned hot cargo agreements by reference to the hot cargo agreements defined and banned in Section 8(e).

Congress and corporate America moved the 8(b)(4)(A) ban on secondary boycotts into 8(b)(4)(B). Since Congress regarded Board and federal court decisions in secondary boycott disputes as too lenient, they wrote expanded verbiage to further restrict strike options for unions. They replaced "other employer" with "person to cease using, selling, handling, transporting, or otherwise dealing m the products of any other producer, processor, or manufacturer, or to cease doing business with any other person, or forcing or requiring any other employer" . . .

Since every strike affects some other employer, or employers, it would be quite possible for corporate America to claim a secondary employer violation in every labor dispute. Some of the labor defenders in Congress that included Senator John F. Kennedy recognized this potential and persuaded enough of the Senate to go along with adding two provisos in 8(b)(4). One came at the end of 8(b)(4)(B), which reads nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing. And at the end of 8(b)(4) a lengthy "publicity" proviso that nothing prohibits publicity, other than picketing, for the purpose of truthfully advising the public that a product or products are produced by an employer in a primary dispute and are distributed by another employer, as long as these other employees are not encouraged to strike as well.

Hot Cargo Agreements…….The Section 704(b) banned hot cargo agreements defined as "any contract for the employer to cease or refrain from handling, using, selling, transporting or otherwise dealing in any of the products of any other employer and any contract or agreement entered into hereafter shall be unenforceable and void," . . .

Recognition and Organizational Picketing ----------The Section 704(c) picketing provisions inserted into the list of unfair labor practices as Section 8(b)(7) also resulted in part from Teamsters organizing practices uncovered in the McClellan hearings. Teamsters organizers like the notorious Barney Baker of McClellan hearing fame did not bother organizing truck drivers so much as trucking companies. Baker would show up at small midwestern trucking company and present the owner with a Teamsters standard contract and expect him, or possibly her, to make his employees members of the Teamsters and start dues check off. If the owner balked Mr. Baker would threaten to have truckers from other locals show up to picket and also engage in a secondary boycott of his shippers. Given the thin profit margins of these truckers they complied. The terms recognition and organizational picketing derived from these union practices.

Congress added Section 8(b)(7) to make it an unfair labor practice for unions to "picket or cause to be picketed, or threaten to picket or cause to be

picketed" any employer where pickets picket intending to organize a union in the coercive Barney Baker manner. Further wording in 8(b)(7)(A) did not entirely ban organizational picketing unless the employer already had a lawfully recognized labor organization certified in accordance with the representation and elections procedures of Section 9 of the National Labor Relations Act. Section 8(b)(7)(B) prohibits organizational picketing to replace the certified union for 12 months following an election. Section 8(b)(7)(C) allows 30 days of organizational picketing by a union after their valid election petition is filed with the NLRB, on condition the challengers can verify their substantial interest in joining a union, and the picketing has the purpose of "truthfully" advising the public an employer does not have a labor contract. Ridding corporate America of picketing in a country with a constitution that guarantees freedom of assembly walks a fine line of constitutionality needing delicate verbiage.

Building and Construction Industry Relief from Section 8(a) & 8(b)-----Section 705 adds Section 8(f) exempting the building and construction industry from unfair labor practices. The Taft-Hartley ban on the closed shop worked so poorly in the construction industry that labor and management had to collaborate to ignore it. The craft union skills of union members – electrician, plumber, carpenter and so on – and their short-term employment among many employers make the normal measurement of seniority impossible. The hiring hall and the closed shop allow the union to establish employment priority based on years of experience in their trades and assure a qualified pool of labor for building contractors. New entrants get jobs after the veterans are employed. The 1947 Taft-Hartley Act wiped out these arrangements but made no attempt to substitute anything else. After 12 years of management and labor objections they got official relief from this mistake of 1947. The exemption applies even if the majority status of the union has not been established under Section 9 of the act, even if the contract requires membership in the union in 7 days after employment, even if the contract requires notice to the union of employment opportunities, or even if the contract requires minimum qualifications for employment. (27)

RFK and the Get Hoffa Squad

Robert Kennedy continued to make public comments condemning Hoffa as a "conspiracy of evil" following his departure from the McClellan Committee and as manager of the 1960 presidential campaign. Shortly after the 1961 presidential inauguration President Kennedy made his brother Attorney General of the United States. The new Attorney General organized a distinct and special group of twenty lawyers to prosecute Jimmy Hoffa for the misconduct allegations uncovered by the McClellan Committee. One of his staff from the McClellan hearings, Walter Sheridan, would be in charge of the group, known as the Get Hoffa Squad. The Kennedy-Hoffa competition, or vendetta as some started calling it, would continue under different conditions. (28)

Attorney General Kennedy inherited a Hoffa indictment from the end of the Eisenhower Administration because a Federal Grand Jury indicted Hoffa and

two others for fraud in a Florida land development project known as Sun Valley, a topic of extensive testimony in the McClellan hearings. The indictment charged Hoffa and two others, Henry Lower and Robert McCarthy, both of Detroit, with fraud in a scheme to build the "Teamsters Model City of Tomorrow" on 2,475 acres of land in central Florida. They deposited $500,000 of Teamster funds in a Florida bank account in exchange for a loan to Sun Valley Incorporated. They promoted their lots as a haven for Teamster retirees and started selling them for $150 to $1,000 each. The fraud charges resulted from promoting and selling building lots too wet and too swampy for building: lots literally underwater. The original March 1961 Sun Valley trial date had to be postponed after defense attorneys challenged the indictment. The selection of members for the grand jury violated federal rules and Attorney General Robert Kennedy chose a prosecutor from a law firm that divided a legal fee with a county judge.

From 1957 to 1961 Hoffa beat back all the challenges of Senator McClellan, Robert Kennedy and Judge Letts to name just a few of his opposition. Finally, an unobstructed Teamsters convention would take place at the Deauville Hotel in Miami, Florida in the first week of July 1961. He had the votes to be president without interference or provisos and the sense to follow convention voting procedures to the letter. His sole opponent got only 15 votes among 2,000 delegates. The delegates approved a raise in Hoffa's salary from $50,000 to $75,000 a year, a dues increase and changes in the union constitution that centralized authority in the president. Now all union officers would automatically be delegates to future conventions assuring less participation by the rank and file. Other amendments allowed the union and its locals to pay legal expenses for its officers. Since the AFL-CIO expelled the Teamsters they had no reason to accept jurisdictional limits. The Teamsters started organizing a whole range of office, production and retail workers. In his acceptance speech Hoffa argued "all of the forces of "wealth and privilege" opposed the Teamsters because they were doing the best job raising wages and incomes and organizing new members. (29)

In the meantime, the Get Hoffa Squad went to work in search of evidence to make a criminal charge against him. Their first charge came May 18, 1962 using evidence from the McClellan Committee. A Nashville, Tennessee Grand Jury indicted Hoffa and his friend Burt Brennan for taking money paid by Commercial Carriers to Test Fleet Corporation. The charge claimed a criminal conspiracy to violate Title III, Section 302(b) of the Taft-Hartley Act. That section puts restrictions on payments to employee representatives – union officials - to prohibit any representative of any employees to receive or accept money or anything of value from any employer. The law expects to limit potential conflict of interest for union representatives who might compromise their duties to the rank and file. Conviction carried a fine of $10,000 or a year in prison or both.

Both sides had teams of attorneys that turned the trial into a wrangle of motions and objections. Attorney General Kennedy spared no expense and sent Walter Sheridan to live in Nashville to provide overall supervision of attorneys for the trial that lasted two months. Hoffa made no secret of what he did but denied there was conflict of interest: "Leasing trucking equipment to truckers was

no more ominous, to me, than selling gasoline to truckers or selling cigarettes to truckers." There were no Teamster negotiations involving Test Fleet.

The case went to the jury December 21, 1962, which could not reach a decision after two days of talking. Judge William E. Miller declared a mistrial, but it was only a reprieve for Hoffa. Charges of jury tampering plagued the case even before the trial started. Prospective jurors received phone calls from anonymous "journalists" asking questions about their knowledge of the case. Another prospective juror, James Tippens, also had to be disqualified after receiving a phone call with an offer of $10,000 cash for a not guilty verdict.

After the trial got underway, FBI agents followed a Nashville Teamster official named Ewing King on a tip from an informant from the Hoffa Squad. They saw him trade cars with a Tennessee highway patrolman named James Paschal and then drive 80 miles to the patrolman's home to speak to his wife, Betty, a member of the Hoffa jury. The judge questioned the officer who pleaded the Fifth Amendment. The same Hoffa squad informant told the Get Hoffa Squad he heard Hoffa say he has "the colored male juror in my hip pocket."

The jury tampering infuriated Judge Miller who ordered another grand jury to investigate the jury tampering evidence and he ordered all trial evidence be available to the Get Hoffa Squad. On May 9, 1963 the grand jury indicted Hoffa on five counts of "unlawfully, willfully and knowingly" attempting to influence the Nashville jury. The indictment named six co-conspirators including Ewing King, four others with Teamster connections and a Nashville businessman. Conviction on each count carried five year prison terms. (30)

Next on June 4, 1963 a federal grand jury in Chicago indicted Hoffa and seven others on charges of using $20 million of the Central States, Southeast, and Southwest Area Pension Funds to make loans resulting in "fraud, deceit, misrepresentation" and overreaching" in the management of the fund. Hoffa negotiated the new fund as part of the 1955 Teamster contracts. The fund had an equal number of employer and union board members as required by the Taft-Hartley Act. About $5 million a month went into the fund initially managed by banks that tended to invest in common stocks. Hoffa took over management in 1957 by investing in real estate, especially in Las Vegas. Hoffa denied the charges and commented he was just one of sixteen board members with eight employers on the board. (31)

In the meantime proceedings for the jury tampering trial began January 20, 1964. Judge Miller moved the trial to Chattanooga citing doubt there could be an impartial jury in Nashville. This time the jury would be sequestered. Prosecution witnesses told the court they spoke with one of the accused that made a pitch to trade money for their vote to acquit Hoffa. None of this early testimony mentioned Hoffa or linked him to jury tampering, but that changed on the afternoon of February 4th when Edward Grady Partin was introduced as a surprise witness.

Partin was secretary-treasurer and business agent for Teamsters local 5 in Baton Rouge, Louisiana. He went to Nashville during the Test Fleet trial where he received insider access to Hoffa and to planning sessions with lawyers in his hotel suite. In Chattanooga, he told the court his information came directly from

discussion from Hoffa, but defense attorney's immediately objected. Partin had been released on bail stemming from state criminal charges. After release he called Hoffa several times before the trial and eventually arranged to meet with him in Nashville on October 18. During this time he contacted federal authorities, telling them Hoffa might try to influence the jury for the up coming trial. In response, Walter Sheridan made him an informant and started paying his wife's child support payments of $300 a month and dropped other federal charges against him. Partin had a long history of crimes: embezzling union funds, breaking and entering, a bad conduct discharge from the marines in addition to indictments for rape, forgery and manslaughter. The FBI refused to work with him, but Sheridan found him to be the "perfect informant."

Judge Miller ruled Partin could testify under the rationale that Hoffa had trusted him with access. Partin's testimony provided quotes and damaging charges of Hoffa's involvement in jury tampering. Defense attorneys had a parade of witnesses to characterize Partin as a liar, a cheat and a scoundrel, and made repeated motions for a mistrial. It was to no avail. On March 4, 1964 the jury found Hoffa guilty on two counts of jury tampering; three of the other defendants were also guilty; two were acquitted. Judge Miller sentenced Hoffa to 8 years in prison and a $10,000 fine. Kennedy and Sheridan celebrated, although not all the Get Hoffa Squad attorneys joined the celebration. (32)

The pension fraud case began in Chicago April 27, 1964. Judge Richard Austin sequestered the jury in what turned out to be a three month trial. The prosecution relied on evidence from the McClellan hearings and Hoffa's connections to allegations of fraudulent loans made to his friends from the Teamsters Pension Funds. The Hoffa Squad prosecutors tied the charges from the long delayed trial for the Sun Valley project to fraudulent loans in the Pension Fund trial, but that was only one of 14 loans under scrutiny at the trial.

In testimony, witnesses came forward to describe pension fund loan deals made by one of Hoffa's friends, Benjamin Dranow. His loan proposals included six figure finders fees and other kickbacks as well as efforts to sell Hoffa's interest in the Sun Valley project as a condition for a Pension Fund loan. Both Dranow and Hoffa denied the allegations, but Dranow had little credibility as a convicted felon serving time in federal prison on previous fraud charges. On July 26, 1964 the jury convicted Hoffa on one count of conspiracy and three counts of fraud. He was acquitted on the 17 remaining counts. Judge Austin served sentence on August 17, 1964 to be four 5 year terms served concurrently and a $10,000 fine.

Hoffa remained free on bail while continuing to be president of the Teamsters. Requests for a new trial were denied and the appeals courts refused to reverse the jury tampering conviction. Hope to avoid prison came January 31, 1966 when the Supreme Court granted a writ of certiorari to review Edward Partin's testimony. Petitioner Hoffa claimed Partin's testimony violated his fourth, fifth and sixth amendment rights.

The court delay allowed him to run for reelection as president at the Teamster convention in Miami in July 1966, which he won easily. He had the bylaws changed to allow him to name an acting president should that be necessary.

He named current Detroit Teamster local 299 president Frank Fitzsimmons. It surprised many on the Teamsters Board; one called him "Hoffa's gofor" another the "least respected of all executive board members." Hoffa would live to regret it. (33)

The case of **Hoffa v. United States** came before the Supreme Court October 13, 1966, more than two years after his conviction and sentencing. In a vote of 4 to 1 the justices affirmed the conviction of Hoffa and his codefendants in a decision announced December 12, 1966. Two justices withdrew because of conflict of interest and two justices wrote a separate concurring opinion. Chief Justice Earl Warren wrote an angry and articulate dissent.

The majority opinion included an admission the guilty verdict depended on Partin's testimony. The majority accepted the government's contentions that "Partin went to Nashville on his own initiative to discuss union business and his own problems with Hoffa, that Partin ultimately cooperated closely with federal authorities, only after he discovered evidence of jury tampering in the Test Fleet trial, that the payments to Partin's wife were simply in partial reimbursement of Partin's subsequent out-of-pocket expenses, and that the failure to prosecute Partin on the state and federal charges had no necessary connection with his services as an informer."

The majority opinion dismissed the Fourth Amendment claims against unreasonable search and seizure because Partin was in Hoffa's suite by invitation. The majority dismissed the Fifth Amendment claims "as without merit" and the majority dismissed the Sixth Amendment claims of violating the right to counsel by accepting Partin's testimony as the "clinching basic fact" that he did not hear or was not present at attorney client discussions.

Justice Earl Warren's dissent, excerpted below, rejected the majority's version of the evidence and their benign view of Partin's conduct and motives.

"Edward Partin, a jailbird languishing in a Louisiana jail under indictments for such state and federal crimes as embezzlement, kidnapping, and manslaughter (and soon to be charged with perjury and assault), contacted federal authorities and told them he was willing to become, and would be useful as, an informer against Hoffa, who was then about to be tried in the Test Fleet case." . . . "In the four years since he first volunteered to be an informer against Hoffa he has not been prosecuted on any of the serious federal charges for which he was at that time jailed, and the state charges have apparently vanished into thin air. Shortly after Partin made contact with the federal authorities and told them of his position in the Baton Rouge Local of the Teamsters Union and of his acquaintance with Hoffa, his bail was suddenly reduced from $50,000 to $5,000 and he was released from jail. He immediately telephoned Hoffa, who was then in New Jersey, and, by collaborating with a state law enforcement official, surreptitiously made a tape recording of the conversation. A copy of the recording was furnished to federal authorities. Again on a pretext of wanting to talk with Hoffa regarding Partin's legal difficulties, Partin telephoned Hoffa a few weeks later and succeeded in making a date to meet in Nashville, where Hoffa and his attorneys were then preparing for the Test Fleet trial. Unknown to Hoffa, this call was also recorded,

and again federal authorities were informed as to the details."

"Upon his arrival in Nashville, Partin manifested his "friendship" and made himself useful to Hoffa, thereby worming his way into Hoffa's hotel suite and becoming part and parcel of Hoffa's entourage. As the "faithful" servant and factotum of the defense camp which he became, he was in a position to overhear conversations not directed to him, many of which were between attorneys and either their client or prospective defense witnesses." . . . "Partin became the equivalent of a bugging device which moved with Hoffa wherever he went. Everything Partin saw or heard was reported to federal authorities, and much of it was ultimately the subject matter of his testimony in this case."

"Given the incentives and background of Partin, no conviction should be allowed to stand when based heavily on his testimony. Thus, although petitioners [Hoffa] make their main arguments on constitutional grounds and raise serious Fourth and Sixth Amendment questions, it should not even be necessary for the Court to reach those questions. For the affront to the quality and fairness of federal law enforcement which this case presents is sufficient to require an exercise of our supervisory powers." (34)

Objecting to the prosecution's conduct in the conviction of Hoffa does not constitute a defense of his involvement with racketeers. Whatever that involvement, Hoffa was primarily an ambitious labor union president, which Robert Kennedy refused to recognize. By attacking him so publicly he was attacking the working class and organized labor. Hoffa's continued success, popularity and defenders among the rank and file establishes that. His identity as an active labor leader could not be separated from Kennedy's determination to hold him accountable for his connections with racketeers. Labor leaders did their best to separate the Kennedy attacks from the rest of labor, but corporate America and their friends in television and the press would not allow that in the 1960's anymore than they ever would.

Both Chief Counsel Kennedy and Senator McClellan grossly exaggerated Hoffa's power in public comments, which they continued to do after Kennedy became Attorney General. Hoffa was not and could not be the destructive force in the economic life of the country they so frequently asserted. No labor leader ever had the power to bring down the economy when every labor leader knew the federal government would twist the law if they needed and apply brute force to break any union that tried.

During his time as chief counsel of the McClellan Committee, Kennedy campaigned to then Attorney General William Rogers and the Chief of the Organized Crime Division at the Department of Justice, William Hundley, to prosecute more of the McClellan witnesses as criminals. Hundley was not impressed with Kennedy's work; he told the press the committee's cases "required further investigation to produce evidence admissible in courts and that many involved deeds which however reprehensible morally, were not violations of federal law."

Kennedy did not take the Hundley hint even though all three cases against Hoffa before 1961 ended in acquittal or hung juries. Once he became Attorney

General he renewed the hostile competition with Hoffa, but he would finally find out Hoffa would not be an easy conviction. After over a year of investigation by Hoffa Squad attorneys and investigators all they had to get the wily Hoffa was a ten year old Test Fleet corporation violation of the Taft-Hartley law.

Eventually Kennedy prevailed and won the competition with two convictions. Hoffa's avenues of appeal finally ran out December 12, 1966. He was forced to enter Lewisburg, Pennsylvania prison March 7, 1967 where he spent the next 58 months. Kennedy gave no sign his opportunistic use of Edward Partin in the Chattanooga conviction might have compromised his ethical principles, or damaged the integrity of law enforcement. Chief Justice Warren doubted Justice Department priorities for investigating the criminal rather than the crime.

When Robert Kennedy took over at the Justice Department he announced a general crackdown on organized crime. He had a long list of names of possible indictments from the parade of gangsters that took the Fifth Amendment before the McClellan Committee. Many were indicted, quite a few were convicted and a small number went to prison, but they were primarily gangsters exploiting the labor movement for its racketeering opportunities.

One of Kennedy's indictments was Anthony Provanzano, president of Teamsters Local 560 in New Jersey and president of the Joint Council 73. He used the Fifth Amendment 44 times during the McClellan hearing testimony. As Attorney General Kennedy had the Get Hoffa Squad make the case against him for charges of extortion. Two key witnesses could not testify. One, named Anthony Castellito, had disappeared without a trace before the trial; the second, Walter Glochner, was gunned down in his driveway two days after the trial started.

Kennedy got a conviction and Provanzano served 4 ½ years in Lewisburg prison, but he remained free on bail until 1967. During that time he continued as president of Local 560 and Joint Council 73 with a combined salary of $113,000, more than President Kennedy or Jimmy Hoffa. During that time his thugs beat up a local 560 dissident named George Phillips; Phillips spent two weeks in a hospital and left with permanent disabilities. After Provanzano entered prison he continued to direct operations of Local 560 through its acting president, Sammy Provanzano. How the Provanzanos ran the Teamsters in New Jersey after 1965 was moot; no one ran against, or objected to, a Provanzano after the Phillips beating. Anthony Provanzano would be indicted in 1976 for the murder of Castellito 15 years before, but a Federal Judge dismissed the case with the claim the statute of limitations would still apply with the death penalty no longer in use.

Hoffa and Provanzano did favors for each other during Hoffa's rise in the Teamsters and Provanzano's rise in organized crime. Hoffa acted voluntarily at first, but once he got hooked up with people like Provanzano none of the many students of Hoffa has determined how much he wanted to continue and how much he had to. Tony Pro, as he was known, was part of the Genovese crime family and primarily a gangster, not a labor leader.

Frank Fitzsimmons took over as acting president of the Teamsters when Hoffa entered prison but the gangster elements did not disappear from the Teamsters or organized labor after Hoffa went to jail. Fitzsimmons served the

gangsters so well they wanted him to remain and become the elected Teamster president. Hoffa hoped to return after Nixon agreed to his parole in exchange for a Teamster endorsement for the 1972 election. To return as president he needed delegate votes from some of the gangster-controlled locals, the same votes he got back in 1957. Once he looked like a serious candidate, he was lured by at least two gangsters after a promise of negotiation, but assassinated in the afternoon of July 30, 1975. Provanzano's thugs surfaced during investigations.

In his memoir, the Enemy Within, Kennedy cited misconduct by corporate America in the same self-righteous terms as labor but he was hardly uncovering something new. Maybe he was unaware of the corporate misconduct exposed during the LaFollette hearings. Here was an ethical man, a great liberal of the Democratic party, but he showed no sign of realizing his prosecution of Hoffa would be a boost for corporate America in their ceaseless attacks on organized labor and the working class. (35)

Franklin Roosevelt appointed four Attorney Generals starting with Homer Cummings in 1932; Truman and Eisenhower appointed five more, but they all looked the other way. Kennedy was the first to express personal indignation at the corruption he uncovered but making Hoffa a public priority in his pursuit of justice came with significant damage to law and order and the American labor movement.

Reference Guide for the Landrum-Griffin Act

The Landrum-Griffin Act

Title I - Bill of Rights of Members of Labor Organizations

Defines a union member's right to participate in union meetings, to nominate candidates for office, and vote in elections and referendums on an equal basis subject to reasonable rules and regulations. Raising dues and fees requires a majority vote of members.

Title II - Reporting by Labor Organizations, Officers and Employees off Labor Organizations, and Employers

Section 201(a) - requires labor organizations to have a constitution and bylaws and to file them along with other administrative and operational information with the Secretary of Labor.

Section 201(b) - requires a detailed accounting of union financial transactions and financial condition, while section 201(c) requires officers make it freely available to the rank and file. Section 201(d), 201(e) repeal the non-communist oath from the Taft-Hartley amendments of 1947.

Title III -Trusteeships

Establishes the rules and procedures for international union officers to take over operation of a local union by establishing a Trusteeship

Title IV - Elections

Regulates union elections and union campaigns for elected office. Unions must elect officers by secret ballot at least once every three years. Union officers can be removed after prescribed notice and hearing.

Title V - Safe Guards for Labor Organizations

Establishes standards and procedures for handling union funds.

Title VI - Miscellaneous Provisions

Section 601(a) – Investigations - Provides the Secretary of Labor with the power to conduct an investigation to determine if any person has violated this Act; allows the Sec'y investigative authority of the Federal Trade Commission Act

Section 602 - Extortionate picketing - Makes it unlawful to picket any employer as part of a plan for personal profit of an individual or taking any money or thing of value against the will or consent of the employer. Violators face fines and prison.

Section 603 - Retention of rights - Nothing in this Act limits the responsibilities of any labor organization or its personnel under any other Federal law or under

any State law and nothing, not specifically excepted in this Act, will take away any right or bar any remedy for members of a labor organization under other Federal law or State law. Nothing in this Act effects any part of the Railway Labor Act.

Section 604 - Nothing in this Act diminishes state criminal law.

Section 605 - For this Act summons or subpoena on a labor officer will be service on a labor organization.

Title VII – Additions and Amendments to the Taft-Hartley Act and NLRA

Federal-State Jurisdiction

Section 701(a) - Added Section 14(c)(1) & (2). Section 14(1) that allows the NLRB to decline to take a case if it decides it is insignificant. Section 14(2) allows state courts to take cases declined by the NLRB

Section 701(b) - Added to Section 3(b) for the NLRB to delegate its powers to any three directors and allowed the NLRB to delegate powers to determine a bargaining unit to any of its regional directors.

Economic Strikers

Section 702 - Amended Section 9(c)(3) by adding the phrase "Employees engaged in an economic strike who are not entitled to reinstatement shall be eligible to vote . . . in any election conducted within twelve months after the commencement of the strike."

Vacancy of Office of General Counsel

Section 703 – Amends Section 3(d) to Allow the United States President the right to fill a vacancy for the General Counsel for no more than 40 days unless submitted to the Senate.

Boycotts and Recognition Picketing

Section 704(a) – Amends Section 8(b)(4) by dividing it into two parts (i), & part (ii) and revising sub parts (A) and (B), but not (C) and (D) from the Taft-Hartley Act

(i) It shall be an Unfair Labor Practice for a labor organization or its agents to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or **(ii)** to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is-

(A) forcing or requiring any employer or self-employed person to join any labor or employer organization or to enter into any agreement which is prohibited by section 8(e);

(B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing m the products of any other producer, processor, or manufacturer, or to cease doing business with any other person, or 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 under the provisions of section 9: Provided, That nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing;

(C) Unchanged, same as Taft-Hartley Act

(D) Unchanged, same as Taft-Hartley Act,

Provided - that nothing contained in this subsection (b) shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a certified union.

Provided further - that nothing in this section 8(b) shall be construed to prohibit publicity, other than picketing, for the purpose of truthfully advising the public, including consumers and members of a labor organization, there is a strike of a primary employer. Publicity must not encourage employees at a secondary employer from delivering or transporting goods or providing services.

Section 704(b) - Added Section 8(e), the "hot cargo" clause that makes it an unfair labor practice for any labor organization and any employer to enter into any contract for the employer to cease or refrain from handling, using, selling, transporting or otherwise dealing in any of the products of any other employer and any contract or agreement entered into hereafter shall be unenforceable and void, except for two exclusions. Contracts between a construction industry employer and a union were exempted and also contracts between an employer and a union in the textile or apparel industry were exempted from 8(e)

Section 704(c) - Added a new Section 8(b)(7) to the list of unfair labor practices of unions. The new section 8(b)(7), makes it an unfair labor practice for a union to picket an employer to gain certification where

(A) the employer has "lawfully recognized" another union;

(B) a valid NLRB election has occurred within the proceeding 12 months;

(C) picketing takes place without filing a petition for a certification election with the NLRB "within a reasonable period of time not to exceed thirty days from the commencement of picketing.

(C) Proviso – Included two provisos limit (C) by requiring (1) an expedited election under (C) above and (2) a proviso that allows picketing or publicity "for the purpose of truthfully advising the public that an employer does not employ members of, or have a contract with, a labor organization . . . ."

Section 704(d) - Added a proviso at the end of the enforcement Section 10(l), which prevents legal enforcement of Section 8(b)(7) restrictions on organizational picketing if an unfair labor practice charge is pending.

Section 704(e) - Amends Section 303(a) to make it compatible with the new Section 8(b)(4) - It shall be unlawful, for the purpose of this section only, in an industry or activity affecting commerce, for any labor organization to engage in any activity or conduct defined as an unfair labor practice in section 8(b)(4) of the National Labor Relations Act, as amended.

Section 705(a) - Adds section 8(f), in the unfair labor practices section, which exempts the building and construction industry from unfair labor practices defined in the amended Section 8(a) and (b).

Section 705(b) - Nothing contained in the amendment made by subsection 705 (a) shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law.

Section 706 - Adds Section 10(m) to the prevention of unfair labor practices, which allows that whenever it is charged that any person has engaged in an unfair labor practice within the meaning of section 8(a)(3) or of section 8(b)(2), such charge shall be given priority over all other cases except priority cases already filed.

Section 707 – Amendments shall take effect sixty days after the date of the enactment of this Act.

Chapter Sixteen - Assassinations, Riots, War, Union Upheavals and Related Protest

The United States has had the bloodiest and most violent labor history of any industrial country in the world. Labor violence was not confined to certain industries, geographic areas, or specific groups in the Labor force, although it has been more frequent in some industries than in others. There have been few sections and scarcely any industries in which violence has not erupted at some time, and even more serious confrontations have on occasion followed.

----------Hugh Davis and Ted Gurr, Violence in America: Historical and Comparative Perspectives, 1969

In the summer of 1787 aged white men assembled in Philadelphia to revise the failing Articles of Confederation. The smarter ones – Washington, Madison, Hamilton – wanted an entirely new structure of a national government based on democratic principles. In the exhausting debate that followed they had to compromise or abandon some of their ideals, but at summers end 37 of the delegates signed and endorsed a new U.S. Constitution. In it the founding fathers created ways to entrench power for the wise and benevolent white men they expected to fill the legislative, executive and judicial posts they created. They devised an Electoral College to protect the presidential election from citizen voters and created lifetime tenure for Supreme Court justices and the federal judiciary. To make sure it would be extremely difficult for popular sovereignty to control the Congress our founding fathers created a bicameral legislature with the ability of a small minority to block legislation. They created amendment and impeachment procedures that require action by a super majority to alter the constitution or to remove a President or any sitting federal judge serving a lifetime appointment.

Our founding fathers created a separate class of people with no civil or political rights in contradiction to the lofty ideals in the Declaration of Independence; the special class would be slaves based solely on their race. Women did not get to vote or enter political discussion, but like the slaves they were counted to increase white male representation in Congress. As a legacy of these lingering disadvantages, the 1960's turned into a period of protesting challenges to established and entrenched authority in the control of civil rights, women's rights, and the Vietnam War. A diverse cast of activist leaders and activist groups demanded the country do away with discrimination and live up to the ideals written in the Declaration of Independence and the supposedly equal protection of the laws in the U.S. Constitution, especially the Bill of Rights.

Each of the civil rights, women's rights and Vietnam protests of the 1960's overlap with labor rights. Remember slaves are cheap labor, the same as military conscripts. The custom of limiting women to work in "women's occupations" – nurse, school teacher, secretary, waitress, maid, child care – created a surplus of labor for women while restricting competition with men in all other occupations.

As the 1950's progressed the friendly smile of President Dwight Eisenhower enabled a false sense of peace and tranquility in contrast to the protests of the

1960's that returned to a dangerous time. Recall the police confrontations at the Chicago Democratic convention, the rioting and deaths in California (Watts), Detroit, Newark, Washington, D.C and elsewhere.

Recall assassinations of public figures like civil rights activist Medgar Evers, assassinated June 22, 1963, followed by President John F. Kennedy assassinated November 22, 1963, then his accused assassin Lee Harvey Oswald, assassinated in FBI custody November 24, 1963, James Chaney, Michael Schwerner, and Andrew Goodman arrested June 22, 1964 during Freedom Summer, delivered by police officials to the Ku Klux Klan for assassination, Malcolm X assassinated February 15, 1965, and then Martin Luther King, April 4, 1968 and then Presidential candidate Robert Kennedy, June 6, 1968. Black Panther members Fred Hampton and Mark Clark assassinated during an FBI raid while they slept December 4, 1969. UMW president Tony Boyle's hired thugs assassinated United Mine Worker's candidate Jock Jablonski and his wife and daughter in the sanctity of their home December 31, 1969. It was a violent time, but notice from the Violence in America quotation above Davis and Gurr refer to all of U.S. Labor History; the 1960's looked like more of the same.

Organizing Innovations in Relation to Civil Rights, Women and War

In civil rights, August 1963 was the date of Martin Luther King Jr's "I have a Dream" speech on the steps of the Lincoln Memorial. Congress passed the Equal Pay Act in 1963 and then the Civil Rights Act of 1964, which included Title VII prohibiting discrimination in employment on the basis of sex and race, creed, color, religion and national origin, and created the Equal Employment Opportunity Commission.

Martin Luther King Jr. understood as well or better than anyone that civil rights would not bring equality for the black community without better job rights and job opportunities for the working class of all race, creeds and colors. In March of 1968 just weeks before he was assassinated in Memphis he toured Mississippi to promote his Poor People's Campaign. He spoke at small places like Batesville, Marks, Clarksdale, Greenwood, Grenada and Hattiesburg. At Clarksburg on March 19, 1968 he told his audience that "Widespread white poverty should demonstrate to Mississippi whites that you can't keep me down unless you stay down yourself. Now, by trying to keep black people down, white folk have kept themselves down. So they're poverty stricken too. They are half educated too." King correctly predicted progress could only come from a united working class.

In women's rights, the early 1960's brought publication of Helen Gurley Brown's Sex and the Single Girl and Betty Friedan's The Feminine Mystique. The President's Commission on the Status of Women published their "American Women" Report. Women organized their own National Organization of Women (NOW), which took up job rights that organized labor mostly ignored.

In Vietnam, 80 percent of troops came from working class and poor backgrounds while the children of the more well-to-do headed off to college. It was a working class war primarily fought by the 19 year old sons of parents working in mining, construction, manufacturing, transportation, sales, and

farming. These draft age cheap labor organized their own anti war protest.

In the 1960's George Meany dominated the AFL-CIO. He would not devote resources to organizing and his Executive Board went along. Walter Reuther remained as his primary opposition in the labor movement. Reuther wanted organized labor to be involved with social change and so supplied United Autoworkers (UAW) funds to support groups organizing themselves to fight for civil rights, women's rights and labor rights. Some of his efforts and UAW funds went for California farm workers and Memphis sanitation workers. (1)

Cesar Chavez and the Long Road to Delano

Cesar Chavez worked as a community organizer in California from 1952 until 1962. He learned Saul Alinsky style organizing from Fred Ross, assisted by two priests: Father Donald McDonnell and Father Thomas McCullough. Ross directed migrant labor camps and helped resettle the interned Japanese after WWII before founding the Community Service Organization (CSO) in Los Angeles. The CSO directed voter registration drives for Mexican Americans and aided in the battle against discrimination and deportation.

The two priests were childhood friends who shared a drive for social justice. They got permission for Catholic higher ups to minister to the needs of Mexican Americans in California. In the process they met Fred Ross and helped him schedule neighborhood meetings to recruit for his CSO, where he met Cesar Chavez. Ross always claimed he discovered the perfect person to learn and apply the Alinsky home meeting methods. The first result was a San Jose chapter of the CSO with Chavez and a close friend as the leaders.

After Chavez success as a volunteer in San Jose, Ross offered him a paid job as a CSO organizer. The job required weeks on the road and several moves, but with Ross as mentor, help from the priests and on-the-job experience, he succeeded organizing new chapters especially in rural areas with farm worker populations; places like Brawley and Salinas. His success brought another promotion and a move to the national CSO. His mentor Ross had connections to Saul Alinsky who got funding from the United Packinghouse Workers of America (UPWA) to organize in Oxnard and address the problems in farm work caused by the Bracero program.

The Bracero program started in WWII to relieve the shortage of farm workers by importing Mexicans as temporary help to fill the need for pickers lost to the military draft. After the war industrial agriculture convinced Congress to continue the program, which would not officially end until December 31, 1964, 19 years after the war ended. The low bracero wages exceeded Mexican wages, but the braceros displaced American workers by working far below wages necessary to live in the United States. The regulations for the law allowed hiring braceros if and only if Americans were unavailable, but the rule remained un-enforced until Cesar Chavez got involved.

His determination and dogged persistence brought a federal investigation and change in Oxnard. Chavez successfully challenged corporate growers, which brought relief from Bracero abuses. The United Packinghouse Workers funding

ended in 1959 and so he moved to Los Angeles to be national director of the CSO putting his interest to organize farm workers on temporary hold. In Los Angeles, he spent more time shoring up shaky finances than organizing and could not interest the CSO executive board in organizing and serving farm workers. The two priests, McDonnell and McCullough, tried to fill the need; they founded an Agricultural Workers Association (AWA) after failing to persuade George Meany and AFL-CIO to act. They wrote a constitution and by-laws and got a local operating in Stockton until in May 1959 Walter Reuther pressured Meany to finally authorize an AFL-CIO sponsored Agricultural Workers Organizing Committee (AWOC). He provided a budget and sent an auto union organizer, Norman Smith, to California to takeover the AWA and get started.

Smith called a strike in the Imperial Valley lettuce fields in 1961, which failed and angered Meany and the higher ups in the AFL-CIO; they cut funds. Father McCullough made an appearance on the picket line to lead a prayer and Father McDonnell led them in the singing of "Solidarity Forever," which brought an angry denunciation from corporate growers.

By now, Chavez considered community organizing a low priority compared to organizing farm workers. He grew up on a rural tract the family owned near Yuma, Arizona during the depression of the 1930's. He lived in a house without electricity and running water, but even this meager circumstance collapsed when his father lost the property for inability to pay back taxes. After that the family joined the ranks of migrant labor, eking out a life on piece wages picking cotton or fruits and vegetables. Chavez lived the plight of farm workers and must have realized 1960 farm work remained unchanged from decades past.

Chavez started talking and planning ways to battle agribusiness with a new union of farm workers. By the time of the Ninth Annual CSO Convention March 16, 1962 in Calexico, California, he was mentally ready to quit his CSO job and a steady paycheck for the unknown world of farm worker organizing. At the Sunday session Chavez announced he would resign effective March 31, 1962 even though the convention approved a plan to assist in the plight of farm workers. He claimed he did not want the restrictions of what he described as a divided executive board. Conventioneers were quite surprised. AWOC officials fretted there would be conflict. (2)

United Farm Workers Association--------Immediately after resigning he moved his family of ten to Delano, California at the southern end of the San Joaquin Valley. Within days he started conducting house meetings among an endless supply of impoverished farm workers. In correspondence to his mentor Fred Ross, now working out east, he closed with the salutation, "Viva La Causa."

After three months of relentless effort, he set a date for an organizing convention for September 30, 1962 in Fresno. About 150 attended. They discussed dues, picked officers, board members, and approved a name, United Farm Workers Association, (NFWA) and a flag with a centered black eagle. Chavez would be the director with a salary of $75 a week, except they had no money. The salary would have to wait.

He had help from the start from family members and people he met as part of his CSO work. His wife Helen, brother Richard Chavez and nephew Manual Chavez shared his vision. Delores Huerta and another CSO recruit, Gilbert Padilla would be on the executive board. Reverend Chris Hartmire, the 33 year old head of the California Migrant Ministry, and his associate Jim Drake would be loyal and tireless aids who would bring in other recruits. Gradually there would be an abundance of idealistic volunteers: LeRoy Chatfield, Marshall Ganz and Jerry Cohen. Chatfield left his job as a Catholic high school principal to work full time for La Causa. Ganz a graduate of Bakersfield High School, dropped out of Harvard to work in the Mississippi Freedom Summer in 1964, but shortly found a civil rights fight close to home. Jerry Cohen, a young attorney with experience from the War on Poverty took over as legal counsel. There would be many young volunteers fresh out of college.

In order to justify dues, they were able to arrange for life insurance and credit union services for members. After a year UFWA had 300 people willing to pay dues, which allowed paying $50 of that $75 salary and opening an office in Delano. A young volunteer, Bill Esher, with experience from Mississippi civil rights battles, arrived to establish a movement newspaper, El Malcriado, which proved to be a good publicity tool. Esher had no shortage of abuses to write about.

The Grape Strike Begins----------Gilbert Padilla and Jim Drake organized a successful rent strike against deplorable migrant housing and a brief strike in the Coachilla Valley. Growers there insisted they needed guest workers to pick their grape harvest. Government officials obliged but set a minimum wage of $1.40 an hour, which the growers refused to pay. A strike followed. El Malcriado followed the story and the growers gave in rather than lose a grape harvest. (3)

Many pickers from Coachilla moved north to the vineyards of Delano. They were mostly Filipino members of the Agricultural Workers Organizing Committee (AWOC) and they expected $1.40 an hour pay, which Delano growers also refused to pay. On September 8, 1965 they left work. After a few days the growers started hiring scabs; Larry Itliong at the AWOC office in Delano asked Chavez for help, which he could not refuse in spite of a lack of funds and preparation. Chavez organized pickets and picketing, no easy task for such a large area. Growers responded with intimidating armed guards that drove trucks through picket lines, no doubt hoping for a violent response.

The state courts combined with the sheriff to support the growers by writing injunctions to limit picketers and picketing, which allowed sheriffs to arrest picketers with age old charges of unlawful assembly and disturbing the peace. In an incident October 19, 1965 the sheriff arrested 44 picketers for shouting “Huelga” at the gates of a Delano vineyard. Those arrested were eight women including Helen Chavez, a dozen ministers and assorted farm workers. Union strategists had the media on hand to watch. They saw Chris Hartmire dragged to a police van. The union refused to post bail after they arrived at the Bakersfield jail. Another of the migrant ministers Jim Drake led a prayer vigil at the jail.

Later the next spring of 1966 Senator Harrison Williams convened his

Subcommittee on Migratory Labor for three days of hearings at Sacramento, San Francisco and Delano. Senator Robert Kennedy attended the Delano hearing as a member of the committee and asked why sheriff Leroy Galyen arrested the 44 pickers. Galyen explained he had reason to believe the picketers were going to cause a riot, which made it his duty to arrest them even if they were not rioting. Galyen justified the arrests as protection by explaining the scabs told him "If you don't get them out of here we're going to cut their hearts out." Kennedy mocked his answer to the delight of the farm workers, but the sheriff was so used to doing the grower's business he did not realize the joke was on him. He replied "They're ready to violate the law" making assembly unlawful in Delano, California.

Between 500 and a 1,000 left work in the Delano strike, from both AWOC and UFWA, but the strike stalled within weeks. Either strikers left the area looking for other work, or gave in for lack of funds and returned to work. Growers had to raise pay to $1.40 an hour to find enough pickers, but refused to recognize either union or engage in collective bargaining.

News of the strike spread in spite of its failures. Chavez characterized his effort as a movement for civil rights, which attracted mostly young volunteers that showed up in Delano ready to work hard and sleep on the floor. In December, Walter Reuther chartered a bus from the AFL-CIO convention in San Francisco to travel to Delano. He invited his fellow conventioneers including George Meany and the national press corps; Meany refused to go. Reuther suggested a march through Delano, which took place December 16, 1965 without a permit. In an address at Filipino Hall, Reuther promised UAW support with words of encouragement: "You're going to win this strike. "And we're going to stay with you till you do." Reuther pledged $5,000 a month to be equally divided between NFWA and AWOC. Viva La Causa finally had funding although Chavez feared funding would bring interference.

Discussion for a march developed into a plan to hike the 280 miles from Delano to Sacramento through the San Joaquin Valley. About fifty marchers left Delano March 17, 1966 marching fifteen to twenty miles a day, mostly single file, on a route through many cities and towns. Crowds turned out and lined their route, offering support, food and drink. In one interview Chavez explained "There is now a movement throughout the state. See in the past the only time workers were organized was only in those cases where paid organizers came in and got them organized. Now that is not the case. Now the people are striving for organization and they are making this organization themselves." Many supporters along the route were Mexican and Catholic, suggesting many saw the hardship of the march in religious terms. The weary troupe marched into Sacramento Easter Sunday, April 10, 1966. (4)

The Boycotts----------When the strike stalled and the harvest ended Chavez and his supporters discussed a boycott and a march as an off season way to keep their members involved and avoid having them drift away. The idea for a boycott came first from Reverend Jim Drake. Drake suggested a boycott of branded products containing grapes. They targeted Schenley Industries, DiGeorgia Corporation, and Perelli-Minetti Company.

Chavez had Gilbert Padilla meet with Herman Levitt, the director of the Los Angeles Central Labor Council, to discuss their cooperation in a refusal to deliver branded products in sympathy with the plight of farm workers. Schenley Industries based in New York had vineyards in the San Joaquin Valley to make their Roma Wines, although they were better known for Cutty Sark and Seagram's Seven. Schenley made their primary profit selling to urban restaurants that required deliveries for mostly unionized workers in the wholesale and delivery business. A union supported boycott brought a sharp drop in sales for Schenley and bad publicity to go with it.

Schenley officials retained attorney Stanley Korshak to negotiate a settlement. At a meeting at his Beverly Hills home April 3, 1996, Korshak agreed to raise wages for Schenley grape pickers to $1.75 an hour, use a union hiring hall, and negotiate for a NFWA contract in exchange for a quick end to the boycott. (5)

After the boycott success at Schenley, DiGeorgio Industries agreed to recognize the union April 7, but only after a secret ballot election. Chavez had to go along, but a battle erupted over election rules and procedures. DiGeorgio tried to split the vote by having AWOC and their company union on the ballot. NFWA organizers encountered Teamsters in the fields circulating pledge cards to add to the confusion. There were no employee lists to assemble a voter list in a very transient population of migrants; worse NFWA was barred from entering the vineyards to recruit. To evade injunction restrictions against picketing, Richard Chavez set up a Catholic alter in the back of his station wagon at one of the entrance gates. He conducted prayer vigils and coincidentally handed out union pledge cards and campaigned.

The struggle to win a majority went on until DiGeorgio made a unilateral announcement for an election, June 24, 1966. Many hastily organized UFWA protestors were able to persuade many voters to leave without voting. With political pressure building on California Governor Pat Brown he appointed a mediator to set rules for another election that took place August 30. During the campaign period each union received an hour to be in DiGeorgio vineyards to make their case, but DiGeorgia took sides and campaigned for the Teamsters. Their leaflets had a message that "Teamsters do not want support from beatniks, out-of–towners, or do-gooders." In an effort to divide the vote they maintained separate camps for Mexican, Filipino, black, Anglo and Puerto Rican men; women lived in separate camps as well.

The DiGeorgio effort to divide the union vote ultimately ended in a merger of UFWA and AWOC to be called the United Farm Workers Organizing Committee(UFWOC). Chavez and AWOC's Bill Kircher completed a joint agreement August 19, 1966, soon enough to be on the ballot for the August 30 election. The results were announced at the Filipino Hall in Delano on September 1, 1966: UFWOC 530 votes, Teamsters 331 votes. Chavez knew a lost election would end his effort. Eventually Perrlli-Minetti, Gallo and Paul Mason wines would agree that a targeted boycott of their branded products was not worth the expense to fight it out. (6)

Companies like DiGeorgio that had vertically integrated farms to assure a

steady supply of grapes made up only a small share of California grape growers. Many farms produced grapes for sale in fresh markets to grocery stores or to independent processors. A boycott of branded products had a limited effect for these growers. Several of the producers owned vast acreage, but most tended to be smaller, family owned farms, determined to resist losing control over their pickers to a hiring hall or a union contract.

Independent farmers joined local farm organizations to organize a collective resistance just as Chavez was trying to do for their pickers. The California Council of Growers(CCG) announced that growers like Schenley were "not representative of California agriculture, where growers steadfastly refuse to sell out the employees and force them into a union, which does not represent them." The president of the South Central Farmers Committee(SCFC), Martin Zaninovich, denied any labor problems. Speaking to a gathering of San Francisco journalists he said "Over the years, we have developed and maintained a keen personal interest in each and every one of our employees. . . .Many growers provide superior housing free of charge."

The independent producers would not see the Chavez movement as an economic matter like the larger corporate operators did. They adopted the paternalistic views of a hundred years of predecessors, insisting their pickers were happy and contented under their devoted care. Many were especially angry to have college students showing up to volunteer in the Viva La Causa movement; they were the proverbial outside agitators to be patronized as too young and too stupid to understand the real world. In their resistance the farmers made an economic negotiation a personal insult in a class war.

Pressuring the growers of unbranded grapes to the bargaining table would take a new strategy. Striking local growers at their farms looked hopeless. There were too many pickers and their commitment depended too much on shaky union and personal strike funds: Once the group learned as much as 50 percent of fresh market grapes were sold in large urban markets, they decided to target an unbranded boycott to places like New York, Chicago and Detroit. To draw attention to the plight of farm workers Chavez drafted the most committed to the cause to move to key cities to establish a "boycott house" as a base of operations to promote a consumer boycott and often a secondary boycott. In a secondary boycott of grapes organizers attempted to convince grocery store managers not to sell grapes. Since the Congress excluded farm workers from the National Labor Relations Act, it could not be an unfair labor practice.

Strategies varied from city to city based on the differences in grocery store chains and the management response. The differences required improvising and adjustments in practices along the way. In New York, Dolores Huerta explained "In each of the five boroughs, we organized neighborhood coalitions of church, labor, liberal and student groups. Then we began picketing A&P, the biggest chain in the city. For several months we had picket lines at about 25 to 30 stores and turned thousands of shoppers away. A lot of the managers had come up through the unions and were very sympathetic to us. In response to consumer pressure the store managers began to complain to their division heads, and soon they took the

grapes out of all of their stores, 430 of them." Other smaller chains eventually went along.

In Los Angeles, LeRoy Chatfield and Joe Serda found the biggest grocery chain there, Safeway, less amenable to store front demonstrations. Safeway purchased full page advertising in the LA Times advising that demonstrators do not speak for workers in the fields. Joe Serda reported shoppers shouting out of car windows "to go back to Mexico."

Chatfield recruited his friend and fellow Bakersfield native, Marshall Ganz, to work for UFWA and the boycott The Toronto boycott took place in a grocery market dominated by four firms; one was Steinbergs. The owner Sam Steinberg had a reputation of respect for unions. Ganz persuaded Steinberg to do his own investigation. His investigators described feudal conditions in the fields, which proved to be enough for Steinberg to stop selling grapes. Other Canadian chains were not so friendly and refused to meet with Ganz defending a consumer's right to choose. Canadian law prohibited picketing in store parking lots. As an alternative boycott staff released helium filled balloons inside stores emblazoned with "Don't Eat Grapes."

It took years of dedication before the boycott started to show noticeable results. There were many more boycott houses and most reported success in recruiting local volunteers to picket and demonstrate. Shipments of grapes to New York in 1968 dropped 801 car lots from 1967. Chicago dropped 360 car lots; Boston 327. In Boston, the boycott house held a "Boston Grape Party" to attract publicity. To "liberate the farm workers from the tyranny of the growers" they dumped cartons of grapes into Massachusetts Bay. Some cities in the south and in Houston, Denver and Kansas City had slight increases reflecting producer efforts to move to new markets, but the overall total declined.

By 1969, the grape boycott became part of regular news coverage around the country and a variety of groups decided to take positions. In Toronto, the mayor declared November 23, 1968 as "Grape Day." In Chicago Mayor Daley recognized the boycott house organizer, Eliseo Medina, as Chicago "Man of the Year." In Cleveland, Mayor Carl Stokes, ordered all government facilities to stop serving table grapes. The San Francisco Board of Supervisors endorsed the boycott, but five agribusiness trade associations canceled their conventions. The mayor of Delano offered a resolution requesting mayors to remain neutral in the boycott battle, but it was voted down.

Chavez reported funds running short but not solidarity among boycott house workers getting $5 a week spending money. Their determination continued much to the surprise of growers. In Los Angeles, Chatfield continued to battle Safeway after they sued and obtained an injunction limiting picketers to four. Rather than defy the court Chatfield recruited 60 more local volunteers and assigned them to 30 stores where they stayed for hours cajoling customers. Chatfield was able to persuade a competing chain to drop grapes altogether. Between 1966 and 1969 grape shipments to Los Angeles dropped 377 car lots, or 16 percent.

In Detroit, California grapes arrived at a central fruit terminal, but the terminal manager would not cooperate in boycotting grapes. Hijingo Rangel

arrived in December 1968 to try new strategies. He organized protests at Kroger outlets that filled the stores. Police arrived and made enough arrests to fill local jails. Local unions provided legal counsel and charges were dismissed, but the effort wore down Kroger management. They agreed to stop selling grapes at 25 locations. Chavez predicted success once store managers could be convinced it would be more profitable to give in than resist. At UFWOC they called it capitalism in reverse. (7)

The Settlement----------In May of 1968 one of the Coachilla Valley growers, Lionel Steinberg, recognized the boycott was doing enormous financial damage to area growers. As president of the Desert Growers Advisory Board he suggested board members should authorize negotiations with Chavez and the farm workers, but he was voted down 8 to 1.

Steinberg was right. From 1966 to 1969 U.S. Department of Agriculture data showed an overall drop of 2,748 car lots of shipments to 8 mostly eastern cities, plus San Francisco and Los Angeles; it was a 24 percent decline. Boston had the biggest drop, 41.2 percent; New York was 16.0 percent.

The Coachilla Valley specialized in an early variety of Thompson grapes harvested before San Joacquin valley, 80 miles to the north. The early harvest made growers there especially vulnerable to a successful boycott as the only fresh grapes in stores. Shortly after the 8 to 1 vote and the start of the boycott, Steinberg got a call from his Congressional representative, Philip Burton, offering to arrange a meeting with Chavez. They met at a chain restaurant and then went to Steinberg's house for a sociable look at his art collection, but there would be no agreement to relieve the boycott still going strong. In his memoir Chavez scorned the meeting with a hostile ridicule.

After two seasons of boycott, 33 of 85 Coachilla growers stopped growing grapes and many others confronted financial losses. One of them, Kelvin Larson and his wife asked their Methodist Minister, Lloyd Saatjian to help them start negotiations. Catholic clergy followed the struggles until some of them organized an Ad Hoc Committee on Farm Labor. In early 1970 a group from the Ad Hoc Committee met with groups of growers. Giumarra Orchards, with over 12,000 acres under cultivation, sent eleven people. After lengthy conversation the church leaders commented "There was no disposition to do anything that would in any way recognize the existence of the union."

Bishop Joseph Donnelly expressed surprise so many growers had never met Chavez. He commented "As in the early days of the industrial organization they are convinced that their workers are very happy and do not want a union." Another from nearby Fresno Monsignor Roger Mahoney advised "I don't like to use the word racism, but a feeling really exists between the growers and their Mexican American workers. ... They're not used to dealing with workers on an equal plane."

The clergy arranged for a group meeting for March 23, 1970, but only Steinberg showed up. Chavez wanted all the growers to sign a contract out of fear it would be difficult to enforce a partial boycott of selected growers. Steinberg

and Larson argued it would help to have union grapes available at stores as an alternative to no grapes.

Eventually Steinberg took the lead and with help from Monsignor George Higgins UFWOC agreed to a contract with Steinberg. Marshall Ganz admitted "We were very nervous about signing with Steinberg because it wasn't clear that you could boycott some grapes and not others." Steinberg had them stencil the black eagle and union grapes on the boxes packed for shipment.

The Larson's asked Reverend Saatjian to supervise a union vote of his pickers; it ended with a 78 to 2 vote for the union. Kelvin Larson would be the second to sign with UFWOC. He admitted he would be out of business if the boycott continued. (8)

Negotiations moved to other Coachilla Valley growers, some of them with acreage in San Joaquin Valley. Chavez got four more of the largest growers to agree to the $1.75 hourly wage and terms of the Steinberg and Larson contracts. One of them admitted "In the beginning I didn't think the conflict would last three weeks. But it lasted three weeks, then three months, then three years and it was still going on. It was a lot like Vietnam. It kept escalating and it was jungle warfare." Another San Joaquin Valley grower agreed to the Chavez contract and admitted "I learned to like Chavez and I found that a lot of things we had been told about these people were not true. . . . I had been told they were Communists, and I had been advised never to talk to them in person. . . . Now I don't think we could have been any more wrong."

By the end of June 1970 Chavez had well over half the workers in Coachilla and at least 20 percent around Delano under contract. Now he sensed he could hold out for all the remaining growers to sign contracts as one. Philip Feick, the attorney for the Delano growers, persuaded Catholic clergy from the Ad Hoc Committee to join a July 15 negotiation. At noon the Ad Hoc Committee delivered a written agreement to UFWOC that instructed attorney Feick to negotiate on behalf of 25 growers listed on the agreement.

Several days of negotiations followed but did not bring agreement despite the effort of Monsignor Mahoney. Negotiations stalled and ended talks for several days. The boycott in Los Angeles continued to cut into Giumarra sales, its primary market, while Chavez was helping the growers already under union contract sell their grapes at a premium price. After several more days John Giumarra signaled to UFWOC attorney Jerry Cohen, he was ready to settle. When the two sides met Chavez insisted Giumarra's status as the biggest grower required him to settle for the whole industry. The final details were worked out for a signing ceremony between all 26 growers and the UFWOC. The contract set the wage at $1.80 an hour. There would be $.10 an hour going into a Robert Kennedy Health and Welfare Fund. The union got a hiring hall. The signing ceremony took place in Delano on July 29, 1970. The strike that started September 8, 1965 finally had a settlement; it came after just short of five years. (9)

The Aftermath---------The settlement signed in Delano proved boycotts can generate enough economic power to win union recognition and a contract that

raises wages and improves working conditions. The National Labor Relations Act of 1935 excluded farm and domestic workers principally because Robert Wagner had to bribe southern Democrats to get enough votes to pass the bill. Southerners leveraged their votes to continue having their cheap farm and domestic labor. For all other unions the secondary boycott was illegal after 1947 when Congress passed the Taft-Hartley Act Amendments. The southern insistence on cheap labor and their racist ways finally allowed farm workers a measure of revenge in 1966.

The boycott of branded products like DiGiorgio worked well because the secondary boycott acted much quicker on their most important market at restaurants. The primary boycott effort for unbranded grapes took much more work and time. Selling in generic store brand markets as occurs with cereal and especially textiles make it difficult for consumers to identify boycott products. The 1970's boycott of textile giant J.P. Stevens did not work well for that reason, but grapes could not be disguised as store brand produce. It was possible to successfully campaign against consuming all table grapes.

Notice also the five years of astonishing effort and solidarity their success required: individuals and families living in strange cities for years at a time in inexpensive, communal housing with $5 a week spending money. The Delano contract derived from the personal energy generated from a movement for social justice and the demand for equality. Winners in a sports competition enjoy the moment and then go on to the next competition, but the triumph in Delano did not need more competition, it needed contract administration.

The Delano contract called for growers to accept getting their labor force through hiring halls. Unions want hiring halls for members doing seasonal and occasional work to control access to labor. Recall the shape up on the San Francisco waterfront where labor contractors or employers conducted a daily auction with jobs going to the lowest bidders. That so many growers agreed to a contract that included hiring halls provides proof of the economic losses imposed by the boycott, but much more work was needed to translate economic power into benefits for farm workers.

The United Farm Workers (UFWOC) needed to administer two hundred contracts for more than 50,000 jobs at multiple California locations operated through the new hiring halls; Cesar Chavez needed to work with the growers and show them they could deliver the pickers and harvesters as needed. He continued to demonize the growers rather than work with them. He left crucial contract administration to his brother Richard working from an office in Delano, but without giving him the resources and authority he would need to do a difficult job. The contract called for growers to request a labor force from a hiring hall, which would send card holding union members in seniority order. Seniority depended on years of union membership and a union card costing $3.50 a month in dues twelve months a year. The seniority rule put some workers at the end of the seniority list who had come back to the same farms for years; paying dues in the off season antagonized others. Some of the migrant work force showed up without knowledge of a union and needed help to understand it. Worse some of the hiring halls were not able to provide essential crews on time.

Richard Chavez and a growing list of others saw trouble developing but none of them could get through to Cesar to address them. The organizing methods Chavez learned from Saul Alinsky and Fred Ross put the organizer at the back of the room. In their scheme Chavez should be a mentor and advisor for those in the group learning to be leaders, also the method of the IWW decades before. Chavez role was to guide and inspire others. When he started his effort to organize farm workers in 1962 he played the role Fred Ross played for him in Oxnard, but gradually he took both roles, mentor and chief organizer.

Slowly but surely as the years passed he began acting like an imperious corporate C.E.O. He gave orders and expected them to be carried out; he chastised and sometimes fired those who disagreed. He still had the charisma and charm to captivate an audience and attract volunteers and donations, but he could be hostile to insiders as his brother Richard and his family knew well.

After the success in Delano he appeared to lose focus on what he achieved and the union he created. The union had its administrative offices on a forty acre site in Delano, where Chavez complained the many workers arriving all wanted to meet with him. To relieve stress and fatigue he was spending more of his time and energy at a retreat 30 miles east of Bakersfield in the Tehachapi Mountains near Keene, California, a 180 acre site of a former tuberculosis sanatorium. He purchased the site for the union in April 1970 and renamed it La Paz.

At La Paz he began discussing what union staff and visitors described as plans for a peace movement with a religious theme. He discussed planning retreats of farm workers with reverend Chris Hartmire to help people appreciate a life of sacrifice: “In other words, instead of being all that competitive, instead of being all that worried about the new house, the new car, the new clothes and all those things, sort of talk to them about the other things that are important. Things like concern for people who suffer. Concern for people who are discriminated against. Concern for social justice. These kind of things that are really important in life. And not the other stuff. So we call that education: learn how to be people.”

Chavez worried unions that succeed moving people into the middle class will no longer work to help those less fortunate. He did not like it that boycott volunteers wanted a raise after years on a $5 a week salary. He opposed paying wages and wanted volunteers to move to La Paz where there would be communal living.

His brother Richard did his best to get Cesar to listen to the administrative problems in the Delano contracts. “I started telling Cesar, ‘Look Cesar, this and this is happening in the office, you know. We do not have the qualified people to enforce those contracts. The membership is getting a little, ah, disturbed at us, you know. They’re starting to raise complaints, and we have to do something about it.’ ” Richard fought with Cesar but he did not make the shift from movement organizer and chief strategist to contract administration. Cesar expected to impose decisions while brushing off everyone’s concerns. (10)

The successful Delano contracts turned out to be the high point for a union of farm workers. Cesar Chavez bears some of the responsibility for decline, but there was barely a pause before more trouble started: the Teamsters Union

started organizing farm workers in competition with the UFWOC. There would be immediate disputes over organizing lettuce workers in Salinas and violent confrontations as the three year Delano contracts neared their 1973 renewal dates, along with other problems, internal and external, as we shall see.

Memphis Sanitation Strike

Henry Loeb took office as mayor of Memphis, Tennessee in January 1968, but he was not new to Memphis, Memphis politics, or the mayor's office. He grew up in Memphis, won a seat on the City Council in 1955 and then the mayor's office in 1959. He skipped a term to run his family's laundry business before winning the mayor's office again in the November 1967 elections.

Loeb managed the Public Works Commission during his term as city commissioner and so knew the grievances of the city's black sanitation workers: low pay, irregular hours, old, dilapidated and dangerous equipment. Two sanitation workers were violently and unnecessarily killed February 1, 1968 as a result of a defective trash compactor. On February 12, 1968, 930 of 1,100 sanitation workers left work along with 214 of 230 sewer and drainage workers. The few that showed for work confronted angry strikers demanding they quit; most did. (11)

Many blacks came to Memphis from share cropping in rural agriculture, but they worked without civil service protections as unclassified day laborers. White supervisors did the hiring, made job assignments and followed their own rules: "If they wanted to pay you they did, if they didn't want to they wouldn't." … "You had to stay out there as long as it would take you. You'd work ten, twelve hours a day. But you didn't get paid but for eight." … "You work two weeks, and payday your money ain't right. You go in there and tell the man, 'Look, I worked eighty hours this payday, how come I ain't got but sixty?' … 'Get out of here you don't know what you're talkin' about.' " … "Sanitation was the worst job I ever had. The job wasn't really as bad as the folks you were workin' for."

As early as 1963 while still in Henry Loeb's first term, the culture of 1960's civil rights and anti-war activism emboldened a core of sanitation workers to find allies and seek change. At a meeting June 16, 1963 public works employees turned out to ventilate over dangerous and broken down equipment, the need for work clothes, gloves, raincoats, a locker room, wash room, bath room, lunch room. Organizers called themselves the Independent Workers Association, but Loeb vowed never to recognize a union. City officials infiltrated the union and then fired 33 people on June 27, calling them "inefficient."

One of those fired, a man named Thomas Oliver, "T.O." Jones, did not give up. He got the local Memphis Labor Council, AFSCME's Jerry Wurf and James Farmer involved. They drew up a charter for AFSCME Local 1733. After Loeb left office the first time, a new mayor and public works commissioner made a few concessions: a standardized pay scale and sign up for Social Security. Unimpressed, the men voted to strike, but the mayor had little trouble getting a state court injunction two days later, August 20, 1966. In dictatorial wording it threatened organizers with jail for striking or picketing.

The strike failed and it divided the black community because the new

mayor, William Ingram, promised relief from segregation, which the larger black community did not want to jeopardize with a sanitation strike. The Public Works Commissioner made a few more improvements: ten cents an hour raise and raincoats. It was enough for the moment, but only deflected protest until the next strike February 12, 1968. (12)

The February 12 strike started because the men reached the end of their tolerance, not because they had a plan or a strategy ready to go. Experienced AFSCME organizers called into help did not like surprises and knew angry demands for justice did not win strikes. The local papers gave the strike two or three days and Mayor Loeb expected strikers would blow off steam and go back to work.

Even though AFSCME did not authorize the strike, AFSCME International President Jerry Wurf sent four organizers from the International: two black men, Bill Lucy and Jesse Epps, and two white men, P.J. Ciampa and Joe Paisley. The AFL-CIO also had a labor hall and officials in Memphis that joined the effort. A first meeting took place in Leob's office the morning of February 13 where AFSCME officials offered to return to work if he would recognize Local 1733. He would not, claiming they were breaking the law with an illegal strike, but he remained amicable and then said "Any men you want to bring down to talk to me, I'll talk to them."

The same afternoon P.J. Ciampa and Bill Lucy took up Mayor Loeb's offer and arrived with a crowd so big it had to be moved into a city auditorium. Since Loeb insisted negotiations be in public the television camera crews arrived to film the proceedings for the local news. Loeb informed them "City employees can't strike against their employer. This you can't do!" Loeb expected to lecture them as a bunch of wayward boys and so became offended when the men responded with derisive hooting and contempt. While Bill Lucy, who happened to be a Memphis native remained calm, Ciampa lost his temper at Loeb's patronizing. Loeb kept telling them they were breaking the law, but Ciampa wanted to know what crime they had committed. "They are saying they don't want to pick up stinking garbage for starvation wages. Is that a crime.?" To white Memphis, the strike was rebellion.

In 1957 the Tennessee Supreme Court affirmed a ban "from striking or picketing to compel a municipality to bargain collectively" but did not rule against recognizing a union of municipal employees. Nashville, Chattanooga, Clarksville and Elizabethton, Tennessee all had dues check off for municipal unions, but Loeb insisted he would never recognize a union or allow dues check off.

After the failed conference of February 13 Loeb claimed to the news media on the morning of February 14 that AFSCME negotiators were only interested in dues check off and the money it would bring and then announced to reporters in his office he was breaking off negotiations. AFSCME negotiators left repelled by what they regarded as bad faith, but they were in for more surprises. Loeb had a prerecorded statement telecast over the evening's news: "If work is not resumed by 7 a.m. Thursday, February 15, 1968 – the next morning – we will immediately begin replacing those people who have chosen to abandon their jobs and their

rights."

On February 15, a mass meeting of over a thousand strikers voted to continue the strike; no one dissented. Loeb recruited strikebreakers as promised, which served to emphasize the racist nature of the strike because he could not find whites willing to be sanitation workers. With 30 white supervisors pressed into service, 20 black scabs and 40 non-strikers, he had less than a hundred to do the work of 1,300 people. Service would have to be reduced, although white neighborhoods got what there was while black neighborhoods piled their rubbish at the curb to rot: a symbol of racial solidarity. (13)

Friday, February 16 turned into a busy day. AFL-CIO, AFSCME and Memphis Labor Council officials spoke before the 13 member city council while upwards of a thousand sanitation workers met elsewhere to hear NAACP speakers. The same afternoon Mayor Loeb met for hours with Taylor Blair and Frank Miles who tried to get him to settle the strike.

At the council meeting the president of the Memphis Labor Council, Tommy Powell, tried to persuade the council to take the initiative away from Leob to settle the strike. One of the white men on the council regarded labor unions as out to exploit their members and taunted Powell for the lack of blacks in labor unions. Another offered his personal concern about striking sanitation workers and what it would mean for the city since they "are not qualified to do anything else." The only women on the council thought the "ultimate destruction of the country could come from municipal unions."

At the union meeting the NAACP officials that spoke called for civil disobedience to block scab operated trash trucks and charged the "city with racial discrimination in the treatment of the sanitation workers." Blacks introducing race infuriated the white community that insisted on making the strike nothing but a labor issue.

Taylor Blair, an IBEW [International Brotherhood of Electrical Workers] member, worried Memphis could burn like so many other cities of the last few years. Frank Miles, long time resident and former bus driver, believed in "God and Country" and 100 percent Americanism" but also feared a prolonged strike would bring violence. After hours of talking, Loeb offered to stop hiring scabs if he could park trash trucks at shopping centers and let people dump their own trash. Miles relayed the proposal to AFSCME, but they countered with "You take the scabs off the streets and we'll collect the garbage at hospitals and schools and we'll do it for free." Loeb refused.

The next day, Saturday, Loeb met with black ministers but warned them he would not compromise; he would allow them to bring him AFSCME messages as long as they all understood it was not mediation, which he insisted he would not do. Saturday evening several thousand strikers and supporters listened to more speeches of black ministers and labor officials. Memphis newspapers consistently alleged the "ultimate aim" of unions is "to collect dues from workers" but a reporter covering the Saturday evening speeches published names and addresses of several white Memphis State University students that attended the rally. No one black or white doubted what that meant.

Council member Fred Davis, one of three black council members, organized a secret meeting of the city council at his house. The majority expected to defer to Mayor Loeb, but they agreed to propose a settlement to him. It was a ten cents an hour raise with five more cents in July, which a majority believed could end the strike without having to recognize the union. Loeb denounced their interference: "The city is going to beat this thing."

International President Jerry Wurf arrived to join the fray late in the evening of February 18. An experienced, veteran, negotiator he found Loeb played to the T.V. cameras while "wallowing in confrontation" and swayed by his personal bitterness toward the strikers. Wurf read the press as "absolutely, totally irresponsible." They blamed the strike on outsiders and refused to discuss grievances. He found intense police surveillance including an FBI presence and the white community blaming the union for accepting support from the NAACP and the black ministers. The white power structure insisted the strike be solely a labor issue. Wurf commented "I didn't make it a racial issue nor did Loeb make it a racial issue. … It was."

In their first meeting, Loeb claimed any form of negotiation was a violation of the law. He claimed he inherited the budgetary problems from his predecessor that prevented raising wages. Wurf replied "Sir, let me say this. I have represented public employees almost all of my life and I have never found a public budget that was not on the verge of going out of balance." Wurf proposed using the sanitation department credit union for dues check off since it was not a city agency and it already deducted a variety of other payments like the United Fund from paychecks, but Loeb rejected that announcing the city would not do union business. After hours of fruitless wrangling Loeb announced Wurf should admit defeat and get out of town. Wurf told him "I am not getting out of town. I'm going to fight you." . . . "And in the long run you've got to live with us. Why don't you knock it off.?" . . . "You've got to understand that we cannot walk away from these men. We just can't. I can tell you it's a moral issue, I could tell you it's a pragmatic political issue I'm just telling you this is it." Wurf decided AFSCME should work through the city council. Loeb and Wurf did not meet for six weeks. (14)

Councilman Davis tried to go around Loeb with a hearing before his Committee on Housing, Building and Public Works for February 22. Other Council members came to be informed of what might be decided. Davis wanted one of the five sanitation workers in attendance to speak. After T.O. Jones spoke with the men and told the meeting none of the five were "equipped to come here and speak" councilmen Davis would not be satisfied and insisted sanitation workers speak to the council. Since the sanitation workers were meeting at a union hall nearby, Mr. Davis had his wish; a boisterous and unmanageable crowd of 700 showed up. The meeting turned into a loud and confused ramble without council leadership and councilman Davis announced the meeting would be adjourned.

The group of 700 did not disband but instead an impromptu sit-in followed. Rev. Baxton Bryant, Director the Tennessee Council of Human Relations found volunteers to go out and buy enough bologna, ham, cheese, bread and condiments for a lunch while the crowd demanded action from the council and began singing

"We shall not be moved." Police responded by surrounding the city hall with a force that filled 30 squad cars, but did not attempt to remove sanitation workers. Strikers began singing "God Bless America" while a cadre of speakers and black ministers infuriated the white council members making inflammatory speeches. Memphis used a slogan "City of Good Abode" on an insignia with images from the slave era, which drew black comparisons to the city's history of exploitation. The black ministers often had family connections going back several generations and expressed anger at the same racism continued today.

Late in the afternoon Davis arranged with the other two committee members for a 2 to 1 vote on a resolution to recognize the union and allow dues check off, which he proposed to bring before the full council the next day for discussion and debate. Many in the crowd doubted a strike settlement would result from the committee's 2 to 1 vote once it went to the full council, but at 5:30 councilman Davis told the crowd that his committee voted to recommend the city accept collective bargaining and dues check off for the union with the announcement their recommendation would go before the full council the next day.

The full Council met the next day, February 23 in a closed door meeting and rejected the Davis proposal and then drafted their own settlement recommendations as nine points of resolution. The draft included recognizing the union but left out a written contract, pay raises and dues checkoff. Mayor Loeb spoke at the secret meeting where he disapproved of council action. Since some on the council disapproved of the council taking a position an amendment was added at the end of the new resolution: "The council recognizes that the mayor has the sole authority to act in behalf of the city as its spokesman."

Later in the afternoon the Council met in the city's auditorium filled to capacity to read the resolution and conduct a roll call vote. The crowd knew immediately the council had abandoned the Davis resolution and without discussion voted to defer to Loeb in a resolution passed by a nine to four vote.

The angry crowd organized a protest for 4:00 p.m. that afternoon with a three mile march to Mason Temple, which Jerry Wurf convinced police to allow as long as they stayed on one side of the street. After the march got underway police arrived in cars with five to a car visibly armed with rifles and billie clubs. Police deliberately rolled their cars forward bumping into marchers. One car stopped with a tire pinning someone's foot. When marchers pushed the car the police attacked marchers with mace, almost all of it sprayed into peoples faces. The mace attack successfully ended the march although about 70 of the thousand marchers pressed on to Mason Temple as a show of determination.

The next day Reverend James Lawson responded to an infuriated black community with public comments that defined the Memphis Sanitation strike. He said, Mayor Loeb "treats the workers as though they are not men, that's a racist point of view. For at the heart of racism is the idea that a man is not a man, that a person is not a person." . . . "You are human beings, You are men. Your deserve dignity."

Many in the black community arrived in Memphis from rural areas in the south and identified Loeb and Memphis officials as people with a "Plantation

Mentality." Many blacks recognized the patronizing dictums, paternal put-downs and refusal to treat men as adults as part of plantation life from another era. In Bill Lucy's first address to strikers he said "He's treating you like children and this day is over because you are men and you must stand together as men and demand what you want." As of February 23, marchers and picketers had posters, placards, signs, and circulars that carried the message: "I am a man." It carried a much broader meaning than it sounds; thousands of black women joined in support of "I am a man." (15)

As the strike approached the end of February Mayor Loeb confidently refused negotiations because this is a "nation governed by laws." Published newspaper comments expressed the decades old sentiment among the white well-to-do that nothing but money motivates union organizers. They are "outsiders sent in here to stir up trouble in order to enlarge their union kingdom and enrich their pocket books." Police chief Frank Holloman announced police would have leave and vacations canceled and begin working 12-hour shifts, seven days a week with police patrols to escort garbage trucks and guard Mayor Loeb. Police and the FBI deployed informants to spy and infiltrate.

Loeb pronouncements and police threats served to expand involvement to all the Memphis black community. Officials underestimated the fury of black ministers who wore they clerical collars during the February 22 march. They organized a new group, Community on the Move for Equality (COME). The new group had no reason to defer to restrictions in a labor injunction; the ministers made a special effort to involve younger people and students from Memphis State University.

The ministers tended to be older and preached non-violence. As younger men and women got involved non-violence could not be assured; black and some white youth were ready to up the ante in a potentially violent gamble. As the strike and the protest dragged into March more of those involved refused to accept official orders. By now meetings, marches, and speeches turned into daily affairs and confrontations. Many of those arrested joined in defiant protest, not just for union recognition but as part of the broader demand for their personal civil rights symbolized in the "I am a man" signs so many protesters carried.

On March 5, Reverend Ezekial Bell adjourned a group of almost 500 to attend a city council meeting where many spoke in angry protest while 200 police guarded an unresponsive city council. The meeting turned into a daylong sit-in until the police chief arrived about 5:30 to inform them they could walk out or be carried out. Police arrested 121 who refused to cooperate. That evening a different group of protesters filled the streets distributing printed material with a black raised fist and a black power thesis. The Memphis Commercial Appeal published threats by a White Citizens Council to do "whatever it takes to stop this." More demonstrations organized by black and white Memphis State University students followed on March 6.

Robert Hoffman, the judge who wrote the 1966 injunction, demanded Jerry Wurf and seven others appear at a hearing where he told them those "officers, agents or members" of the union who march, picket or make public speeches

will be arrested. In a court proceeding Hoffman sentenced twenty-three AFSCME officials to ten days in jail and a $50 fine with Wurf's bail set at $1,000 before telling him he could purge himself of contempt by calling off the strike. Wurf ignored the injunction, which brought the city attorneys back to court demanding a contempt citation against Wurf for engaging in union activities and speaking to the city council. Judge Hoffman found them in contempt, but AFSCME attorneys had an appeal ready; Wurf was released on bond and ultimately paid a fine to appease the court, but the strike continued.

As the strike entered its fifth week, March 11, the city had enough strike breakers to operate 80 of 180 garbage trucks with at least 150 scabs. The city council repeated their refusals to vote for dues check off, but daily protest continued with a more active role from a high school group known as the "Invaders" and other more militant protest in response to scabs. Protest now included sporadic blocking of garbage trucks.

Both Bayard Rustin and Roy Wilkins arrived March 14 to speak at the Mason Temple and both counseled orderly, persistent but non-violent protest, but youth involvement moved into bottle throwing, setting garbage fires, and more pickets and marchers shouting "Burn Memphis, Burn." (16)

Martin Luther King Jr. took time away from working on his Poor People's Campaign to arrive and speak in Memphis. He arrived to be the featured speaker for a mass meeting at Mason Temple in the evening of March 18. The evening featured more than an hour and a half of warm up speakers and a customary amount of music. King spoke of the Memphis strike as part of a need for national unity in combination of the labor movement, civil rights and religious denominations. King spoke to the I am a man theme now a regular part of protest. "We are saying we are determined to be men. We are determined to be people."

He urged unity beyond class lines; he treated inequality as a crime. "You are reminding . . . the nation that it is a crime for people to live in this rich nation and receive starvation wages. And I need not remind you that this is our plight as a people all over America." King spoke as a preacher of the black social gospel in a back and forth interaction while politicizing wealth and inequality and the political power structure that ignored it. He did not forget to connect civil rights to the labor movement and union power. "Let it be known everywhere that along with wages and all of the other securities that you are struggling for, you are also struggling for the right to organize and be recognized."

Some of the officials in the audience, Jerry Wurf of AFSCME was one, noticed how King and the crowd played off each to energize the other. At the end King made an unplanned suggestion for his Memphis audience. "I tell you what you ought to do, and you are together here enough to do it: in a few days you ought to get together and just have a general work stoppage in the city of Memphis!" The suggestion carried by acclamation. In the immediate aftermath of the speech King and everyone around him realized he would have to come back and lead a march in a day long strike. It was set for Friday March 22, 1968.

White Memphis condemned the protest without recognizing their views as an exact copy of a hundred years of taunts toward equal rights protests. The

Commercial Appeal declared King came to get "a spot on the evening television broadcasts" and use other people for his own gain. They reminded readers of the 1932 Bonus Marchers beaten and routed by federal troops. The FBI called King's speech "a series of demagogic appeals to the baser emotions of the predominantly Negro audience." Recall J. Edgar Hoover continued as Director of the FBI. No one mentioned if a strike for higher wages would be universally demagogic if by white strikers. (17)

When March 22, arrived a truly rare snowstorm dumped 16 inches of snow; the march had to be postponed until March 28, but more would go wrong than snow. The morning of the 28th a great throng of people crowded around Clayborn Temple waiting for Martin Luther King, expected to arrive in time for the 10:00 a.m. start. The march would eventually include virtually all of Memphis school students as well as Memphis State University students, ministers, nuns, families and children with an estimated 10 percent whites. Many carried posters on sticks handed out by COME and inscribed with "I am a Man" and other references to jobs and unions.

The police kept back and did not intervene in the initial hours while people assembled before the march. King arrived late which created lots of excitement with pushing and shoving that delayed the start even more. The march finally got going at 11:05 a.m. with King out front among an entourage of supporters from the local and national civil rights movement. A reporter on the scene wrote later "It began like a carnival."

The march moved forward turning several times before turning onto Main Street when those at the front heard the unmistakable sound of breaking window glass. Reverend Lawson noticed before the march "There was an element in the crowd that we couldn't get rid of at that time." Now they were on the sidewalks breaking into storefronts. The march came to a halt, amid fear and confusion, although many in the rear had no idea why the march stopped. Reverend Lawson wanted King removed immediately recognizing him as a certain target if marshals could not maintain order. Lawson had a car flagged down and King and several others were whisked away. Lawson used a bullhorn directed back over the march: "I want everyone who's in the march, in the Movement, to turn around and go back to the church."

At 11:22 a.m. just 17 minutes after the start of the march police officials ordered motorcycle police to clear people out. Reverend Lawson concluded then and later the police got permission to get tough because all restraint ended. Police attacked marchers, looters and reporters alike with clubs, mace, and tear gas grenades shot through the air and rolled along the ground. Many reported police yelling at them as "niggers," "bitches," and "motherfuckers." A one sided riot ensued. Looting pawnshops, retail and liquor stores spread in and around downtown. A car was set on fire and destroyed. Although black teens would not be passive under police attack, the majority of marchers tried to get away rather than fight, often with police in pursuit. Police entered restaurants and bars clubbing people and forcing them into the streets. The battered and bleeding were left in the streets. Many eventually made it to hospitals; private ambulances would not

go into downtown.

At 11:32 a.m. ten minutes into the rioting, Mayor Loeb asked the governor to declare a state of emergency and send the National Guard. Troops arrived by that evening but police continued to range about attacking through the afternoon and beating anyone who could not get away fast enough.

As many as 1,500 made it back to Clayborn Temple, regarded as a place of refuge, but police insisted protestors outside leave the area and clear off the streets, which they would not do. The Temple was stuffed with people, many injured, but police used tear gas, mace and clubs to enter by force. Tear gas created havoc; those who could get to windows jumped out while others got down on the floor. A back and forth of rock throwing and tear gas attacks continued into the afternoon at the Temple, but there was other violence including the death of 16 year old Larry Paine shot by a white policeman at point blank range with a 12 gauge shot gun after he surrendered from a basement hiding place. What started as a carnival ended as a horror.

King hoped the Memphis march could be a boost for his planned SCLC Poor People's Campaign, which made the failure more depressing. The press attacked him as a coward for leaving the march. He said he left the march because "I have always said that I will not lead a violent demonstration." The political consensus doubted King could lead a peaceful march.

Reporters demanded that he guarantee an end to violence, he answered "I cannot guarantee that Memphis or any other city in the country will not have a riot this summer," … when our government does nothing … "about removing the conditions that brought riots into being last summer." When reporters continued to insist he could prevent violence he told them he did not appreciate the way they depicted black protesters as violent. "If you look at the record, you will see that rioters have not been violent toward persons. And nobody can tell me that Negroes can't shoot white people. Some of them are master marksmen, they've been hunting enough to know how to shoot people down."

King gathered with a large group of SCLC executive staff to hash out their next moves. It would be a contentious meeting where King insisted on a return march in Memphis. Everyone else, more than a dozen staff opposed him. Andrew Young wrote later "It was obvious from the beginning that Martin was in an agitated mood. Never before had I seen him so aggressive in dealing with us. He wanted everyone to drop what they were doing and return to Memphis." The back and forth continued until King got angry enough to walk out, but ultimately his opponents accepted a return to Memphis. Another in attendance, James Orange, decided "Dr. King saw something as far as the coalition with labor and civil rights that a lot of the staff didn't see." Ultimately Orange accepted King's position to return to Memphis to win the strike. Young wrote "As somberly and seriously as we had ever done anything, we decided we would support Martin in any way he needed us. We would all return to Memphis the next week."

Post riot Memphis remained tense. The Tennessee Legislature voted expanded powers to declare martial law, which Mayor Loeb immediately used to bring in 4,000 National Guard troops added to 600 sheriffs and police.

Troops enforced an all night curfew. The head of Memphis law enforcement, Frank Holloman, declared police protect "against anarchy and chaos" and "the revolutionists who would have anarchy in Memphis."

Undeterred by personnel carriers with mounted machine guns and two truck loads of armed guardsmen, the striking sanitation workers marched the next day from Clayborn Temple to their union hall, Friday, March 29. The single file line stretched over a mile. On Sunday, March 31, the Washington Post editorialized that blacks "are beginning to see the basic immutability of their lives, unless they act. They have extrapolated the city's attitude in the garbage strike to everything else, housing, welfare, jobs, education, police."

A few people in the white business community were feeling the pressure of economic boycott; downtown business was off 25 percent. One of the City Council had enough white business support to get mediator Frank Miles into negotiations to settle the strike while Mayor Loeb had city attorneys declare "We've won the strike. Nothing more needs to be done." Loeb could only see a competition with him as winner.

King returned on April 3 to newspaper attacks he could not control another march. A swarm of FBI agents followed his every move and took reports from informers planted in SCLC and the civil rights groups in Memphis. King spoke to a mass meeting at Mason Temple the same evening, as the last and featured speaker. A ferocious electric storm with high winds thrashed outside when King stepped to the podium at 9:30 p.m. He did not read a speech but spoke what he felt. He spoke for black determination and unity using non-violent protest as part of their rights of free speech. Unity included an economic boycott of downtown Memphis and labor organizing for sanitation workers. He told the story of the Good Samaritan and the question for him: "If I don't stop to help the sanitation workers, what will happen to them? He spoke of danger and some of the attacks he endured on the road to Memphis including a stabbing in New York in 1958. Here he ended by showing his fears after a decade of arrests, bombings and attacks. "We've got some difficult days ahead. But it really doesn't matter with me now. Because I've been to the mountain top." (18)

Andrew Young among others believed the swarms of FBI, military intelligence personnel, and police informants intended to be provocateurs to disrupt the second march. They went everywhere King went, which on the early evening of April 4, was at the Lorraine Motel where King and many others from civil rights groups gathered to talk in room 306. About 6:00 p.m. King stepped onto the balcony where he was killed with a high powered rifle fired from 200 feet. In spite of swarms of police and massive surveillance, the assassin, James Earl Ray, got to his car and drove out of the city.

After the horror of assassination and the announcement of King's death, all race, creeds and colors calculated the varied response ahead from his anguished and enraged followers. There were many other fine and capable leaders in the civil rights movement, many of them in the Lorraine Motel room with King, but none had his ability as a speaker and a preacher to stir and unify an audience to relentless and non-violent protest. The black community knew instantly what they

had lost.

In Memphis, black youth took over the streets, some armed. Within minutes of the assassination Loeb invoked martial law, called for the National Guard and set a curfew. As many as 800 police, highway patrols, sheriffs deputies and 3,800 National Guard spread out hoping to control the streets. Reverend Lawson and some other ministers counseled against violence or revenge. Jerry Wurf and other AFSCME officials did the same, but it was not safe to be on Memphis streets.

Rioting in Memphis left at least two dead along with random property burned and looted, but riots there did not compare with much worse in Washington, D.C. and eighty other cities. Washington riots started within several hours of King's death; the city shut down and emptied out amid clouds of smoke from hundreds of fires. The next day, April 5, President Johnson ordered the use of federal troops while he advised Americans to unite behind King's hopes of equality for all; it appeared a faint and tardy gesture. By April 11 43 were dead and 20,000 arrested in 125 cities.

Rioting dominated national news but some comments from the civil rights movement filtered through. From James Meredith "This is America's answer to the peaceful, nonviolent way of obtaining rights in this country." From Julian Bond "Brotherhood was murdered in Memphis last night. Nonviolence was murdered in Memphis last night. All that is good in America was murdered in Memphis last night." Reverend Lawson, "We have witnessed a crucifixion here in Memphis." Coretta Scott King, "The day that Negro people and others in bondage are truly free, on the want is abolished, on the day wars are no more, on that I know my husband will rest in a long-deserved peace."

The assassination did not change minds in white Memphis. Comments included "King brought violence everywhere, I'm sorry it happened in Memphis, but I'm not sorry it happened." Mayor Loeb said to his city council he "sincerely wishes that it hadn't happened and regrets that this thing did happen" but he would not recognize a connection between the sanitation strike and King's presence in a civil rights protest. He continued with "We are never going to recognize this union. …" The majority on the city council had the power to overrule his stand but did nothing.

The planned march went ahead April 8 with marchers walking in orderly silence with armed troops, tanks and artillery lined up alongside the route. The assassination brought a flood of support from organized labor both with money and support for the strike and with attendance at the march. In addition, the local leaders, many well known labor leaders, actors, entertainers and celebrities arrived from around the country: Walter Reuther, Bill Cosby, Robert Culp, Sammy Davis, Benjamin Spock, Harry Belafonte, Rosa Parks.

The march from Clayborn Temple ended at a speakers scaffold built for the occasion at city hall plaza. After many speeches Coretta Scott King spoke as the last and featured speaker when she asked the crowd to go forward and treat King's death as a crucifixion and his work to make all people free as a resurrection. King's funeral took place the next day, April 9, in Atlanta, Georgia. (19)

The strike continued, but now with Undersecretary of Labor, James

Reynolds as federal mediator in Memphis acting as Lyndon Johnson's personal emissary. Mayor Loeb claimed he received 3,803 telegrams and over a thousand letters, all but 100, supporting his anti union position. Reynolds soon decided Loeb and his advisors opposed any settlement: "There was a certain condescension on the part of the spokesmen for the city that they would even sit there and talk to these people. . . . They had their finger in the dike and if they gave way . . . the government employees union was going to mushroom and it would be all over the country."

Reynolds worked to exhaustion setting up and finally getting a settlement: "One group met in one room and one in another until there was really something to say and something to agree on, because there was no point in them sitting across the table, because the more you did that the more bitterness was growing up, building and building. So it was a question of going back and forth and back and forth and then, occasionally bringing Loeb and Wurf together."

White prejudice in Memphis politics continued as usual after King's assassination. A few white ministers from their segregated Christian Churches voiced support for integration and equality for Memphis, but they reported threatening phone calls and social isolation. Some white ministers that supported the strike eventually left Memphis. The three black council members welcomed a fourth white supporter, Jerrod Blanchard, but his angry white constituents called him the "fourth nigger." The only women on the council, Gwen Awsumb, hardly a progressive, suggested Mayor Loeb should compromise to reach a settlement, but she paid a price in abusive phone calls. One caller ranted "I voted for you and now you are doing things for those niggers. You are nothing but a cigarette smoking bitch." Council member Tom Todd referred to union leaders of acting like gangsters instead of men. He added "You can attract a lot more flies with honey than you can with vinegar. . . . But even if they had been "as sweet as pie, we would have been very reluctant to have had a union because we feel . . . that there really isn't much that a union can do for these people that the city can't do for them."

Loeb stalled and refused to recognize the significance of national bad news for Memphis. Time magazine called Memphis "a southern backwater" and "a decaying Mississippi River Town." Bad news brought a broader and more intensified boycott of the Memphis economy, which finally convinced the business community to force Loeb into a settlement. Business pressures and the willingness of mediator Reynolds to allow the egotist Loeb some face saving concessions ended the strike after 65 days.

The settlement included union recognition, a ten cents an hour raise, another five cents an hour in three months and a provision that made dues checkoff a matter between employees and a credit union that would collect dues. Tennessee was, and remains, a right to work state. Wording banned discrimination on the basis of age, sex, marital status and race. Promotions would be by seniority and competency, which replaced years of whites only promotion. Disputes would be settled with a grievance procedure for the first time. Striking was prohibited.

The settlement would not be a contract. Reynolds accepted calling it

a memorandum of agreement, which did not require bargaining in good faith. Grievance settlements were only advisory, not binding. The sanitation workers accepted the agreement without opposition. It was called a victory by the union and Loeb saved face by having the City Council ratify and sign the agreement, and then called it a great win for Memphis.

Privately, Jerry Wurf knew it was a modest gain measured in economic terms, but as he liked to say "Union organizers think they're peddling better wages and working conditions, but essentially they're offering dignity." After a life in labor organizing Wurf knew dignity was about class and where people belonged in America's class hierarchy. When the strike started white Memphis and the mayor tried to make it strictly an economic dispute of wages and working conditions, even though everyone knew perfectly well sanitation workers were black and lived in abject poverty on the wages they earned. But that was exactly the point. The angry calls to Jerrod Blanchard and others were whites recognizing their social status rested essentially on their racial identity, otherwise they could be mixed together in the same class with black people. Working class whites expected their white political power structure to debase blacks and to deny their masculinity as the best possible way to keep black people below them in the pecking order few wanted to talk about. (20)

Our Thing is DRUM

After the July 1967 Detroit riots ended, Detroit's wealthy elite organized a New Detroit Committee, hoping to relieve anger and strife with a rebuilding program. Committee members had access to corporate capital to replace dilapidated Detroit with modern office buildings, hotels, condominiums, convention centers and more. The new committee had three auto executives: Henry Ford, James Roche of GM and Lynn Townsend of Chrysler. There were two department store magnates, J. L. Hudson and Stanley Winkelman; three utility execs Walker Cisler of Detroit Edison, William Day of Michigan Bell, and Ralph McElvenny of Michigan Gas; an oilman, Max Fisher of Marathon Oil, and a banker William McClintock. To give balance, or maybe contrast, the committee included the president of Wayne State University, William Keast, a retired public school superintendent, Norman Drachler and two from the labor movement, Robert Holmes of the Teamsters and Walter Reuther of the UAW.

In contrast, an especially disgusted and angry group of inner city blacks launched a newspaper they called the Inner City Voice (ICV). The masthead of the paper read "Detroit's Black Community Newspaper" and "the Voice of Revolution." Sick of the status quo the founders and editors hoped to do more than rant against the dominant powers of Detroit. They wanted the paper to be an organizing tool defining a strategy for black liberation struggles. Articles took consistently anti-capitalist views designed to provoke action. They took an especially hard line against the automobile industry and the UAW describing "white racist and bigoted foremen, harassing, insulting, driving and snapping the whip over the backs of thousands of black workers, who have to work in these plants to eke out an existence. These conditions coupled also with the double

faced, backstabbing of the UAW have driven black workers to a near uprising state."

The lingering effect of the Great Rebellion, as the July 1967 rioting was known to Blacks in Detroit, and the efforts of the Inner City Voice played a role in auto industry protest and a wildcat strike. When 4,000 walked out of Chrysler's Dodge Main assembly in Hamtramck in May of 1968, some whites joined mostly blacks in the walkout and in the spontaneous creation of an alternative group known as DRUM, an acronym for Dodge Revolutionary Union Movement. The UAW had a local at Dodge Main but DRUM leaflets ignored the UAW and called for an end to discrimination on the basis of race, creed, sex or age and for workers to join in an alternative movement for industrial democracy similar to the advocates in the IWW long, long ago.

More than anything it did, DRUM exposed the short comings of the UAW. Their leaflets demanded accountability for discriminatory hiring, dangerous machinery, repeated and erratic time studies, excluding blacks from skilled trades, speed ups, delayed pay, short pay, harassment over sick leave, and more. By the 1960's, the auto companies accepted they could be coerced into negotiating with the UAW and Walter Reuther, who liked to say "We make collective bargaining agreements, not revolutions." His agreements got wage and benefit increases that moved auto workers into the middle class, but the companies and the union left work rules almost entirely to the company. The contracts did not allow negotiations on the factory floor. Instead, contract violations and factory floor disputes had to be handled through a dawdling process of grievance procedures as part of contract administration that allowed virtually no participation from the rank and file.

Automobile factories could be brutally hot in summer and freezing cold in winter. Compulsory overtime generated stretches of six and seven day weeks of 12 hour days. Arbitrary speed ups left workers exhausted if they could keep up and increased injury rates. Complaints over safety violations only added to the back up of thousands of unresolved grievances. The vast UAW bureaucracy did very little for the roughly 250,000 blacks working in the Detroit auto plants, the largest share at Chrysler. They got the noisiest, dirtiest and most exhausting jobs. Virtually all of superintendents and foreman were white; over 90 percent of those in the skilled trades or skilled trade apprentice programs were white. Foreman had little trouble generating conflict between the predominant groups in the plants: ethnic poles, southern whites, blacks, and Arabs.

The UAW only added to the problem by excluding blacks from union positions and influence. Even though 30 percent of UAW members were black they had only 2 of 26 executive board positions and only 7 of 100 staff positions. The 400 mostly black and female hires the UAW employed as janitorial and secretarial staff at Solidarity house conducted a three week strike to get a $3.00 a week raise, and endured the taunts of their own labor officials who crossed their picket line every day. The black and ethnic rank and file learned to expect the same resistance and obstruction from the union bureaucracy they got from management.

UAW president Walter Reuther was the most progressive voice of the labor

movement in the 1960's civil rights era. He opposed discrimination personally, supported civil rights and donated his time and UAW money to march and support the Memphis sanitation workers and Cesar Chavez' farm workers among other worthy causes. He wanted the labor movement to take the lead in the fight for racial, ethnic and gender equality, but he could not undo the damage done in 1949 when he played a leading role expelling 11 of the most progressive unions from the CIO. From 1935 to 1948 the CIO made the labor movement a force for social change, but not in the 1960's when even Reuther could not relieve the rampant racial discrimination in his own union.

DRUM spawned imitators in other auto plants until they all combined into the League of Revolutionary Black Workers (LRBW), a group organized from the auto plants but completely independent of the UAW. They passed out leaflets, held rallies, made speeches and tried to organize into a political force for the working class, black and white.

One thing DRUM and LRBW did well was to publicize labor officials acting more like the isolated automobile industry executives they needed to resist. They objected to labor officials taking salaries comparable with management. They regarded the millions spent on UAW's Solidarity House on the Detroit River as an out of touch extravagance. Movement leaflets criticized spending millions building a retreat center at Black Lake near Onaway in Northern Michigan as too small to be anything but a private resort of labor officials. Efforts to reform or speed up grievance procedures met resistance for management and labor.

The Inner City Voice joined the debate publishing movement objections to converting the union "into a part of the boss apparatus." Objections included complaints of the "The sacred contract, once viewed as the register of the workers' gains, has become the written record of their subordination to the power of capital. The seniority system, once a defense against favoritism and arbitrary firing, has been adapted to give legal force to the white male monopoly of the better jobs. The automatic dues check-off system has removed the union entirely from any dependence on its membership."

Reuther and his wife died in a suspicious plane crash May 7, 1970 while landing at Pellston Airport in northern Michigan. In a dense fog the altimeter failed to give a proper reading as happened once before in a non-fatal incident. Organized labor lost its most skilled and progressive personality, but he presided over a union in a bureaucratic labor movement increasingly separated from the rank and file.

The Women's Rights Revival

The beginning of a 1960's women's rights revival got a boost from three projects completed in 1963: a commission report on American women, signing the Equal Pay Act and publication of Betty Friedan's book, the Feminine Mystique. The next year in 1964 Congress passed a Civil Rights Act that included an amendment known simply as Title VII, which banned discrimination based on sex.

Early in his presidency John F Kennedy appointed Esther Peterson to

be head of the Women's Bureau at the Department of Labor. She convinced the President to create a special Presidential Commission to study the status of women. The commission published its work in 1963 as the Presidential Report on American Women. It had many pages of data establishing the employment inequalities of women while affirming the role of women as wives and mothers protecting American family life. Work on the committee introduced many women to many other women, often from religious, welfare, peace, education and community reform groups and women from membership associations, labor unions, and universities. With their help the report got widespread distribution and spawned state commissions for women around the country, before it was moved to six drawer file cabinets.

President Kennedy signed the Equal Pay Act into law June 10, 1963. The Equal Pay Act amended the 1938 Fair Labor Standards Act by writing equal pay for equal work into the law. At the time it passed the nation's work was informally but rigidly divided into men's work and women's work. Until women could be allowed to do men's work it would be irrelevant even if it was enforced, which many doubted it would be. It was a start.

Betty Friedan interviewed many women she found unhappy as full time housewives, which she narrated in her book. Mass sales of the Feminine Mystique firmly established millions of white middle class women did not willingly accept the limited cultural role of stay at home housewife and mother of many. Her work inspired response after the somnolent 1950's. It should be mentioned that before Friedan published her famous book she wrote for a labor journal, the UE News, published by the United Electrical, Radio and Machine Workers of America. UE had an aggressively left wing membership that made them an easy target for communist red baiting and eventual expulsion from the CIO. Friedan undoubtedly knew from her time at UE the risks of red baiting for anyone who dared question America's status quo and the white men who defined it. Limiting her book to white middle class women allowed her to address the way white men expected to define the role of women as housewife and mother without diverting attention to communists.

In late 1963 Congress started review of what would become the Civil Rights Act of 1964. During debate to eliminate discrimination on the basis of race, creed or color, Virginia Congressman, Howard Smith introduced an amendment to include sex on the list. Many knew his segregationist views and saw the move as a ploy to give his northern colleagues an excuse to vote against the bill without appearing as racist. The amendment passed as Title VII and the final bill, with Title VII still in it, passed by wide majorities. The law applied to unions as well as private employers and it created a five person Equal Opportunity Employment Commission (EEOC) to administer the law.

Congress limited enforcement powers by restricting EEOC commissioners to investigating and mediating individual complaints without power to enforce their rulings. A finding of discrimination under Section VII called for voluntary compliance and failing that a referral to the civil rights division of the Department of Justice for enforcement in federal court. In this way the EEOC had the same

disadvantages as the National Labor Relations Board efforts to enforce the National Labor Relations Act.

The first commission director, Herman Edelsberg, called Title VII a "fluke." Later he told the Washington Post "There are people on this commission who think that no man should be required to have a male secretary and I am one of them." In an August op-ed piece entitled "Desexing the Job Market" the New York Times wanted to know if men could apply to be "bunnies" in a Playboy club and worried how it would be necessary to neuterize job titles: handyman, milkman, iceman, serviceman, foreman, pressman, girl Friday and the Rockettes. The New Republic wanted to know "Why should a mischievous joke perpetrated on the floor of the House of Representatives be treated by a responsible administration body with this kind of seriousness?" The Wall Street Journal worried some matronly women that gets to be vice president of something might be crude like them and lust after her male secretary.

Treating EEOC enforcement as a joke trivialized women and their work but served to unite demands for enforcement. The possibility of a law and an agency to enforce it energized women to act and address gender inequalities. Celebrity from the Feminine Mystique allowed Betty Friedan to take the lead. In the off hours of a June 28, 1966 National Conference of State Commissions a group of especially disgruntled women discussed their frustrations in Friedan's hotel room in Washington.

During discussions Friedan suggested a National Organization for Women "to take the actions needed to bring women into the mainstream of American society, now and to fight for full equality for women, in full equal partnership with men." NOW supporters organized a founding convention that took place October 29, 1966. Three hundred women agreed on by-laws and a statement of purpose, which called for equality between the sexes. They elected Betty Friedan as their President. Their statement of purpose criticized rigid gender roles and took note that physical strength no longer matters for occupational equality and noted that the United States lagged behind the rest of the developed world in prenatal health care and post natal child care.

The press patronized their effort. The New York Times wrote "They meet in Victorian Parlor to Demand 'True Equality NOW.' " The newspaper's provided an early target for women's wrath with their practice of dividing job advertising into "men's jobs and women's jobs," which the EEOC ignored until 1968. They attacked sex discrimination on airlines and the limitation of women by the dual standard for stewardesses and their forced retirement at marriage or age 32. They wanted women appointed to the EEOC Board and some power for enforcement such as "cease and desist" orders. Women's rights advocates picked an especially good target to battle because any divisions in the labor force creates a cheaper source of labor, limiting job opportunities unjustified by market valuation of skill and experience. Sex discrimination targets women as the cheap labor, a reality readily confirmed by Bureau of Labor Statistics wage data.

NOW started with a minimal budget and an office in Betty Friedan's New York apartment, but with a membership demanding and working toward the same

rights as men to be in equal partnership with them. Shortly they would propose a Women's Bill of Rights banning sex discrimination in employment, maternity leave, child care and tax deductions for it among other things. NOW offered support for a newly worded 1970 Equal Rights Amendment to the Constitution. Organized labor refused to support the ERA as proposed. Labor officials worried state legislation protecting women from the employer abuses heaped on men would be nullified by an Equal Rights Amendment; many of the women in NOW wanted to extend women's protections to men and assure equal treatment for all, regardless of sex, race, creed or color. Eventually in the 1970's organized labor would support an Equal Rights Amendment and NOW would support some strikes of local unions with predominately women members.

NOW leaders battled among themselves and did not succeed in getting women to cohere into a single interest group speaking for women in one voice. Younger women regarded NOW as slightly too conventional and too much like wading into interest group politics rather than direct action on women's grievances. A National Women's Liberation Conference met in 1967 to discuss a much broader agenda of free health clinics, child care, access to professional degree training, professional jobs and unobstructed access to contraception and abortion. These women splintered into so many groups and cells the press had trouble keeping track of them or finding a spokeswoman until they settled on journalist, Gloria Steinem. Steinem covered women's events as part of her journalist's beat and found herself pulled into the issues she covered. Her experience allowed her to launch Ms. Magazine, December 20, 1971 and become a voice of the Women's Liberation Movement.

Any women's movement no matter how mild or small would bring opposition, but aging white men would be the most likely to resort to scorn and ridicule rather than letting opposing women worry the nation's children might grow up without the attention they need. Commentator George Gilder attacked the women's movement with a book entitled Sexual Suicide. Richard Nixon vetoed the Child Development Act, calling a bill to fund childcare as a radical piece of legislation. In the process he played the communist card by calling it government sponsored communal child-rearing leading to the "Sovietization" of American children." His statement stands out as a more flagrant Nixon hypocrisy given corporate America's refusal to sponsor child care while exploiting women as cheap labor.

Once the women's movement mixed abortion rights with employment discrimination, childcare and other important women's issues, it diverted attention and energy from employment discrimination and jobs. College Degree data maintained by the National Center for Education Statistics maintained at the U.S. Department of Education shows many more women earning professional degrees in medicine, law, pharmacy and architecture, but the signals from media coverage suggest continued sexual harassment in professional employment in the corporate hierarchy.

From 1968 to 1972 women in unions increased by nearly 500,000 while men's enrollment stayed the same. Few of the new women moved into leadership

positions and none had a place on the AFL-CIO executive council at the time. Olga Madar was the first women to be a vice president in the UAW. During these years union women organized a variety of meetings and conferences to discuss getting more women and more influence in organized labor. Other women organized around jobs such as 9-2-5 in 1973. In 1974 women's groups gathered in Chicago for a founding convention of what turned out to be the Coalition of Labor Union Women (CLUW). Over three thousand took part to design an organizational structure and discuss and adopt purposes for a membership of women who would be current union members or retired union members. Appropriately Olga Madar was elected president for a group intended to focus on women's rights and women's place in organized labor. The group stressed organizing unorganized women, affirmative action at the workplace, and working to get more women participating in their unions and move them into leadership positions. CLUW continues today. (22)

Labor in Trade, Politics and the Draft

The Vietnam War split the Democratic Party into hostile factions. A conference of delegates from organized labor met separately as the Labor Assembly for Peace in Chicago in 1966, Victor Reuther spoke along with others from the labor movement and advocates for peace such as Martin Luther King Jr. and Norman Thomas. At the end the delegates voted for a resolution calling for an end to the Vietnam War. When some of these same delegates attended the national convention of the AFL-CIO in Miami they expressed their reservations about the war on the floor of the convention, George Meany bellowed "Throw the kooks out." Probably less than half of the rank and file supported the views of the Labor Assembly for Peace, but Meany's contempt for other views reflected labor's divisions on the war.

Reuther and Meany disagreements reflected broader gaps between the AFL-CIO and the UAW through their respective executive boards, and from comments from the floor of annual conventions. By 1968, the UAW adopted a statement characterizing the AFL-CIO as a "comfortable, complacent, custodian of the status quo." Reuther and the UAW executive voted to leave the AFL-CIO effective July 1, 1968. They would join the Teamsters as an unaffiliated union.

George Meany and Walter Reuther had a history of disputes that included foreign labor relations and generally Meany's rigid views of communism were behind their disagreements. No one could be surprised they disagreed over the Vietnam War, Meany pursued his anti communism through using the power and influence of the AFL and accepting funds from the CIA.

Foreign Trade and AIFLD - American Institute of Free Labor Development

President Kennedy proposed and Congress passed the Trade Expansion Act of 1962. It reduced tariffs with George Meany and the AFL-CIO in support. As of 1962 American manufacturing remained dominant in the world not yet fully recovered from the destruction of WWII. Both capital and labor saw the tariff

reductions as favoring American jobs and industry.

Trade expansion also included creating a new American Institute of Free Labor Development (AIFLD). AIFLD 's announced intention was to be a union training program operated by trade unions and universities to assist labor movements in western countries, which turned out to be Central and South America. It had state department funding, contributions from a list of U.S. corporations and the full support of the AFL-CIO with George Meany as AIFLD President. The corporate president of the W.R. Grace shipping company, J.P. Grace, served as chairman of the board of AIFLD. They established a Washington headquarters and a training center at Front Royal, Virginia

Meany had previously scorned collaboration with organized labor in other countries, which was the post war work of the International Confederation of Free Trade Unions (ICFTU). He called the ICFTU staff a collection of "fairies" including its general secretary despite an AFL-CIO pledge of support and funding established by an AFL convention. Before AIFLD, Meany and a select few in the AFL operated their own Free Trade Union Committee (FTUC) separately and secretly to pursue anti-Communist policies in other countries. Funding came in part from the CIA

Victor Reuther knew what was going on because he accepted a CIO post as resident Director of European Labor Relations in the early 1950's before the AFL and CIO merged. He dealt with European labor unions undermined by a CIA funded effort of the AFL and later AFL-CIO to break strikes and disrupt unions in the name of anti-communism.

The AFL-CIO participation in AIFLD amounted to collaboration in CIA efforts to disrupt or overthrow governments that supported independence from U.S. Corporate interests. In Brazil, Joan Goulart was elected president of Brazil with labor support, but overthrown in 1964 and replaced with a military government. George Meany had the Executive Council agree to release a statement: "The recent events in Brazil which culminated in the successful military revolution in April 1st demonstrated the great determination of a freedom loving people to end the grave threat to their constitution and Democratic processes." Meany's anti communism went so far as to connect a military coup with a freedom loving people.

The AIFLD director of social programs in Brazil, William Doherty Jr., spoke in an AFL-CIO sponsored radio broadcast in Washington. He was asked to explain what happened to the people and the techniques they learned at the Front Royal training center. He said

> "As a matter of fact some of them were so active they became intimately involved in some of the clandestine operations of the revolution before it took place on April 1st. What happened in Brazil on April 1st did not just happen - it was planned – and planned months in advance. Many of the trade union leaders – some of whom were actually trained in our institute – were involved in the revolution and the overthrow of the Goulart regime."

AIFLD supported the Batista regime in Cuba and helped over throw the

government in the Dominican Republic. Significant funds were appropriated for AIFLD programs in twenty countries. Meany did not publicly discuss U.S. labor movement efforts to undermine foreign labor unions.

The combined efforts of AIFLD and lower tariffs gradually worked to decimate American labor. As foreign competition increased and the Nixon Administration removed controls on foreign investment abroad American companies found lots of cheap labor with little protection against exploitation from unions decimated by U.S. foreign policy. By the time of the Clinton Administration and the proposal of the North American Free Trade Agreement(NAFTA), the labor movement changed its collective mind given the de-industrialization going on around them. They opposed NAFTA but by then the damage was already done as we shall see. (23)

In 1968

By the fall of 1967 some of the Democrats in Congress saw bombing Vietnam as a pointless failure, knowing President Johnson intended to continue. A few in the Senate discussed doing something, but only Senator Eugene McCarthy of Minnesota and Senator Robert Kennedy of New York considered challenging an incumbent president and hardnosed politician, Lyndon Johnson.

McCarthy entered the race November 30, 1967 while Senator Kennedy continued to think it over. At various gatherings through December 1967 Kennedy met with groups of trusted political friends to discuss the case for running against Johnson in November. Few were for it, nor could they find Democratic Senators willing to endorse him against Johnson; Senator George McGovern reported a "universal reluctance" to take political risks in a fight with Johnson. They wanted to know "What would this do for me?" For Kennedy though it was a moral issue as political issues always were for him. Over these weeks he opposed the war in more strident terms and started calling the war and four more years of Johnson a catastrophe for the country, but despite the rising protest to the war a January 1968 Gallop poll showed Johnson far ahead. (24)

Then the Vietnamese Tet Offensive changed the polls and the politics. It proved the Vietnamese could concentrate troops on their own terms and fight when and where they wanted; Tet made clear the war would not end anytime soon, contrary to administration propaganda. After Tet, war protest surged and McCarthy's antiwar campaign picked up energy and attention, but Kennedy still hesitated fearful of appearing the opportunist.

On March 10, 1968 Kennedy visited California to offer support to Cesar Chavez; on the return trip to Washington he told a reporter he would run if McCarthy could be persuaded to withdraw. Then McCarthy won the New Hampshire presidential primary March 12 by a surprising margin and Kennedy realized McCarthy would not withdraw. After more soul searching he accepted the risks to his political career and entered the race. He entered unprepared, with no delegates and no campaign organization, but he decided to contest the remaining presidential primaries and give it a try. He announced his intention at a press conference March 16, 1968. (25)

The announcement came with a tidal wave of scorn. Former President Dwight Eisenhower said "It is difficult for me to see a single qualification that the man has for the Presidency. I think he is shallow, vain and untrustworthy – on top of that he is indecisive." Truman condemned him as well. Nixon expressed delight and told his staff "We can beat that little S.O.B." Senator Scoop Jackson said "I have just issued a statement expressing 100% support for President Johnson." McCarthy supporters, especially the student volunteers, denounced him. Newspaper columnist Mary McGrory complained "He didn't even let Gene and the young people savor their victory. They were bitter and wounded by what Bobby did, and so was I." Columnist Murray Kempton wrote "Senator Kennedy Farewell" and declared him a coward for stepping into a campaign established by someone else.

There followed a whirlwind of events and announcements in a spring filled with surprise and horror. Over the next two weeks Kennedy traveled to sixteen states and encountered vast and barely controllable crowds. "I have to win through the people. Otherwise I'm not going to win" he told the New York Post.

On March 19, Johnson made a State Department address. He said "We are the Number One Nation. And we are going to stay the Number One Nation." He remained defiant, but the crowds at Kennedy rallies started to take a toll and the Pentagon Papers show serious doubts about the war among administration advisors. He told historian Doris Kearns "I felt that I was being chased on all sides by a giant stampede. I was being forced over the edge by rioting blacks, demonstrating students, marching welfare mothers, squawking professors, and hysterical reporters." In the evening of March 31, 1968 Johnson announced in a TV address that Averell Harriman would pursue talks with North Vietnam and he would not run again for president.

With Johnson out and vice president Hubert Humphrey the heir apparent, Kennedy campaigned for the voters ignored by the Republicans and the establishment Democrats. From the start he realized "I've got every establishment in America against me. I want to work for all who are not represented." . . . "I want to be their president." The Indiana primary scheduled for May 7 would be his first test. He had a rally for April 4 in Indianapolis, but it would be the day of the Martin Luther King Jr. assassination. King's death and the rioting that followed provided a stark reminder of America's racial divide and Kennedy's intention to address it. (26)

He had to suspend his campaign until the rioting died down and King's funeral finished. When he returned to the campaign journalist John Barlow Martin described his Indiana campaign. "He went yammering around Indiana about the poor whites of Appalachia and the starving Indians who committed suicide on the reservations and the jobless Negroes in the distant great cities, and half the Hoosiers didn't have any idea what he was talking about; but he plodded ahead stubbornly, . . ." Kennedy got 42 percent of the Indiana vote, 27 percent for McCarthy and 31 percent for the Indiana governor acting as a stand in for Hubert Humphrey, who entered the race April 27, too late to get on the ballot.

Kennedy hoped to win by uniting blacks, Hispanics, Indians, blue collar

whites, the farm vote and the disaffected young: “We have to convince the Negroes and poor whites that they have common interests. If we can reconcile those two hostile groups, and then add the kids, you can really turn this country around.”

Kennedy did not have support from the south, corporate America, the right wing or any part of the Democratic Party establishment, which meant he did not have the support of organized labor. AFL-CIO president George Meany derisively referred to him as “Jitterbug,” - someone erratic and inconsistent in his opinion. Walter Reuther was so tied to Johnson and establishment politics he supported Humphrey as necessarily best for labor, although some of the UAW regional directors supported Kennedy and worked on his behalf. Other opposition in the left wing press fancied themselves as radicals and decided Kennedy gave “the illusion of dissent without its substance.” (27)

After Indiana and except for Oregon, Kennedy won the primaries. He spoke against the war and for racial equality and the needs of the poor and dispossessed while McCarthy battled LBJ’s war policy and otherwise offered his views on America’s future in what his own speech writer, Jeremy Larner, called “underdeveloped generalizations.”

Journalist Richard Harwood remarked in the May 26, 1968 Washington Post that “McCarthy was the philosopher, Kennedy the evangelist. McCarthy speaks in generalities and Kennedy speaks in specifics. McCarthy dwells on himself and his moment in history; Kennedy dwells on the tragedy of the poor.” McCarthy meanders, Kennedy sprints. “McCarthy soothes; Kennedy arouses.”

Campaign staff considered Kennedy a loyal and respected friend describing their work as a “huge joyous adventure.” David Halberstam added “Most politicians seem attractive from a distance but under closer examination they fade. . . . . Kennedy was different. Under closer inspection he was far more winning.” The Kennedy campaign moved to California where candidate Kennedy did not shirk from speaking to a hostile black audience in Oakland where “a handful of people stood up and blistered white society and him as a symbol of white society.” “We wants to know, what are you going to do for us?”

Kennedy suggested a debate with McCarthy in effect dismissing candidate Hubert Humphrey and the “politics of joy.” The debate took place June 1 and the press declared Kennedy the winner. When the June 6 vote was counted Kennedy had 46.3 percent; 41.8 percent McCarthy, but the sudden Kennedy assassination made it irrelevant. (28)

King and Kennedy angered established power by understanding corporate divide and conquer and attempting to do something about it. The assassinations eliminated the two men who had both the will and the ability to bring constructive change for the working class and the working poor. In the aftermath of the Robert Kennedy assassination there came a range of comments expressing that sentiment. Paul Cowan of the Village Voice saw Kennedy as “the last liberal politician who could communicate with white working class America.” Robert Coles: “Kennedy had a unique ability to do the miraculous: attract the support of frightened, impoverished, desperate blacks, and their angry insistent spokesmen, and, as well, working-class white people.” Journalist Alexander Bickel wrote “His greatest gift

to the country would have been the respite these two groups would have granted him to seek solutions that cannot at anyone's hands come quickly." Reverend Hector Lopez from Oakland asked "What can you call Bobby? 'the last of the great liberals'? He wouldn't have liked that. I know he wouldn't. I guess I'd have to say he was 'the last of the great believables.'" Writer and sociologist Michael Harrington wrote "As I look back on the sixties, [Kennedy] was the man who actually could have changed the course of American history."

Many of the comments above came immediately after the assassination or in just a few years, but they remain true in 2024; no one has replaced them. What they stood for and might have accomplished by uniting the working class of all race, creeds and colors disappeared from American politics. (29)

With Kennedy and McCarthy in the campaign, opponents of the war had hope for an antiwar candidate for president. For Kennedy to win the primary in conservative Indiana suggests wide spread opposition to the war. All knew it would be difficult to get the nomination because Humphrey had Johnson's establishment delegates committed to him. He had more delegates that way than Kennedy or McCarthy even though Humphrey or his surrogates kept running last in the primaries. Once Kennedy was gone, everybody knew it would be hopeless for McCarthy to go it alone in the up coming Chicago Convention scheduled for August 25, 1968. McCarthy kept calling for an "open" convention without committed delegates but to no avail.

Humphrey arrived in Chicago with his nomination guaranteed, but still tied to Johnson and the war. He had George Meany and the AFL-CIO bureaucracy ready to work hard and support him, but virtually nothing else. They all forgot to consider the opinions of the rank and file, otherwise known as blue collar working class. Meany did not appreciate many thousands of them might vote for Kennedy but would not vote for Humphrey, or that they might be alienated enough to support the growing third party candidate, the racist George Wallace, or not vote at all.

Meany, never shy about delivering his opinions, made clear to one and all that organized labor supported the Vietnam War, which he argued was a war against evil communists. He could have respected the diverse views of his rank and file and kept his mouth shut. Even though he was not a Democrat running for office he did not appear to appreciate his stand on the war took the rank and file for granted just like the Democratic Party's politicians always did. Walter Reuther made an effort to keep the Democrats from dividing on the war by pressuring Humphrey to announce a plan to suspend bombing in Vietnam. Reuther drafted a speech to do that and negotiated the final wording with Humphrey by telephone, but there would be no peace announcements from Humphrey, a subordinate still ready to accommodate Johnson. (30)

The August 25, 1968 Democratic Convention in Chicago started with Democratic party delegates in the convention center and a variety of dissenting groups excluded from establishment debates arriving to protest. The days and nights of the convention week from August 24 through August 29 turned into a daily spectacle of rioting and violence. Journalists, not just protesters, but

journalists on and off the convention floor were also subjected to the beatings and violence: Dan Rather and Mike Wallace to wit.

The violence brought demands for accountability among charges and counter charges. In response, the National Commission on the Causes and Prevention of Violence commissioned a special report on the violence in Chicago published in December of 1968 as Rights in Conflict, also known as the Walker Report, after its director, Daniel Walker. Written in just two months it ran 362 pages and included a variety of statistical information for injuries, arrests and fire arms. The cops took to beating press photographers and destroying their cameras and film, but enough survived to include 96 pages of photographs in the Walker Report.

The media seized on the report's principal conclusions that Chicago police caused the riots as part of deliberate attacks on anybody and everybody unlucky enough to resemble a war protester, or be in the wrong place at the wrong time. The pictures leave no doubts. Chicago police targeted beatings on the people demonstrating as part of the efforts of the National Mobilization Committee to End the War in Vietnam(MOBE), although there were two other dissenting groups that applied for permits: the Youth International Party ("Yippies") and the Coalition for an Open Convention. All of them wanted to hold rallies, marches and demonstrations at various locations around Chicago: Lincoln Park, Grant Park, the loop, the Amphitheater, the Coliseum, Soldier Field. National Mobilization Committee to End the War in Vietnam(MOBE) had personnel with previous experience organizing anti war demonstrations. David Dellinger did the organizing work for the October 1967 demonstrations at the Pentagon. Those demonstrations brought confrontation when thousands climbed steps to Pentagon entrance doors and now Dellinger was back with Rennie Davis and Tom Hayden planning for Chicago. Undoubtedly this trio put Mayor Daly on edge.

A MOBE group met in Lake Villa, Illinois in March before the Johnson announcement to plan their effort. Hayden and Davis, always the intellectuals, arrived with a position paper designed to build a coalition of protest groups for a mass march at the end of the Chicago convention. Dellinger told the press "We are not going to storm the convention with tanks or mace. But we are going to storm the minds and hearts of the American people."

By August MOBE applied for permits and found negotiations, described in some detail in the Walker Report, to be a game of double talk. A long established ordinance closed city parks at 11:00 p.m. and did not permit camping or sleeping in them. MOBE wanted to reserve Soldier Field, but the Democratic National Committee already had it and so Chicago officials had some legitimate objections to thwart plans, but by and by it turned out there would be some objection to a march or assembly everywhere, everyday. MOBE negotiators decided by mid August they would never get any permit and Chicago officials revealed that truth by asking if they would go ahead without permits. Finally, on the Tuesday of convention week MOBE got a permit for a rally Wednesday, but only for the afternoon and only on condition they could not pass out literature and would obtain a liability insurance policy; a narrow reading of the first amendment on

behalf of the "liberal" party.

The Walker Report goes on to narrate the rioting day by day in bleeding, head busting detail. An alternative and shorter version exists in Reunion, a memoir by Tom Hayden. His account of his week helps establish Lyndon Johnson's determination to suppress antiwar protests and keep the Democratic Party true to his war. Hayden and Rennie Davis had two plainclothes police assigned to follow them continuously all week. In Hayden's account, he was subjected to verbal threats, a gratuitous assault by one of his police tails, and two arrests for being visible in the action in what appears as a planned effort to get him off the streets. The presence of thousands of U.S. Army troops and at least a thousand FBI, CIA, and army and navy intelligence services establishes a planned Federal role to suppress dissent. None of the Federal actions suggest an expectation of maintaining order; Lyndon Johnson and Mayor Richard Daly had scores to settle. (31)

The Democrats could have won the election with a unified working class just as Robert Kennedy thought he could do. Kennedy's death left a massive void filled by the racist Wallace. His insurgency campaign attracted Kennedy's blue collar voter, north and south, and in spite of Nixon's bland and evasive campaign no other significant group could be counted on to deliver enough Democratic votes for Humphrey to win. Humphrey's cowardice allowed Nixon to neutralize the war as a political issue with his "I have a secret plan to end the war" announcements. Opponents of Vietnam had no place to go with establishment Democrats happy to be nothing more than Republicans with a smile. Corporate America exulted in delight. Recall Nixon left office after more than five years but it would be his successor Gerald Ford that finally pulled the U.S. out of Vietnam.

Walter Reuther, worried and embarrassed by UAW rank and file defections to Wallace, campaigned against him with his own appearances and by putting in full time staff and millions of UAW dollars to counter the Wallace divide the working class strategy. Polls showed Wallace with 21 percent of the vote in September, but only 13.5 percent voted for him in November. Nixon's poll numbers declined by November, as well, but he hung on to a small majority of the popular vote. He took the Electoral College vote by a wide margin: 301 Nixon, 191 Humphrey, 46 Wallace. (32)

Chapter Seventeen - The Blue Collar Divide

Electrical Equipment Operators on Strike at CBS

"I will not work with strike-breakers. It's a matter of principle for me. I simply refuse to work with anybody who takes money to do a union man's job while that man is on strike. I call them scabs and I'm surprised that these management people allow themselves to be used that way. I could no more go into a building and work with scabs than I could play handball in church."

----------All in the Family Actor, Carroll O'Connor, August 1974

Richard Nixon took the presidential oath of office January 20, 1969. Soon he had his Justice Department indict eight from the Democratic Convention protests in Chicago. The March 1969 charges came via an amendment inserted by Senator Strom Thurmond into a recently passed fair housing bill. The Thurmond amendment made it a felony to cross state boundaries with the intent to cause rioting. Since thousands crossed state lines to attend the convention, the indictments guaranteed biased enforcement of people taken off a Nixon "enemies list." Of course, the list included David Dellinger, Rennie Davis, and Tom Hayden, but also Black Panther Bobby Seale and four others. His indictment suggests a Nixon campaign to suppress black protest given Seale's brief and innocuous appearance in Chicago; he had no part in planning the demonstrations. (1)

The Chicago Eight trial turned into a farce with Judge Julius Hoffman appearing deranged and making extra legal threats while ignoring established court procedure. Think of Judge Hoffman as identical to Judge Joseph Gary at the Haymarket trial of 1886, Judge Kenesaw Mountain Landis in the IWW trials of 1919, or Judge Webster Thayer in the Sacco and Vanzetti trials of 1921 or quite a few more. Hoffman joined the wider 1960's authoritarian effort to suppress war protest with harassment, indictments and prison: Daniel Ellsburg, Daniel and Philip Berrigan, Dr. Benjamin Spock, Reverend William Sloan Coffman to wit. Once Nixon agreed to revoke student deferments and began drafting college students to be his dutiful soldiers, it could hardly be surprise college campuses would erupt in protest. Protest could be deadly as at Berkeley, California in the People's Park protests, and demonstrations at Kent State in Ohio and Jackson State in Mississippi.

Nixon, like Lyndon Johnson before him and Ronald Reagan after him, defined patriotism as obedience to presidential authority. All three left a record of threats and retaliation in response to war protest. The demand to suppress war protesters was not as obviously class based as their mistreatment of labor. It should be instructive for Democrats that so many of the working class and the union rank and file voted for Richard Nixon and later Ronald Reagan.

Courting Labor

In spite of the Vietnam War, Nixon had time to discuss building a new and different political coalition with his many advisors. He decided the time had

arrived to break up the New Deal coalition, or what was left of it, and build a new identity for the working class. He wanted to generate divisions in organized labor and between labor and the Democratic Party. This aim proved easier to accomplish that he might have guessed. He enlisted Hoffa's legacy, the unscrupulous Teamsters president Frank Fitzsimmons, and he got major help from George Meany and the AFL-CIO Executive Council.

In the summer of 1970 Nixon invited George Meany and sixty others from organized labor to a Labor Day White House dinner. At the dinner Nixon made a generic toast to Meany that described him as a man "strong, full of character, devoted to his church, devoted to his family, devoted to his country, whether the president is a Republican or a Democrat, standing with that President and his country when he felt that that served the interest of freedom, that kind of freedom which is so essential if a strong, free labor movement is to survive." A little awkward but kind words that helped disguise disagreements in domestic policy by keeping to a theme of patriotism and their mutual support for the Vietnam war.

The Labor Day dinner pleased the president and convinced him and his various advisors their best route to the blue collar vote would be through labor leaders "worth cultivating" and by "picking them off one by one." Nixon made Charles Colson his labor mastermind. He conceded it would be hard to get labor to advocate for the President, but "Our immediate objective is to keep labor split away from the Democrats. Our long range target is to make them part of our 'New Majority.' "

Colson put courting labor leaders at the top of his action list explaining "Our task, therefore, is to cultivate local leaders, who are strongly patriotic, anti-student and keenly aware of the race question." His other suggestions included appointing sympathetic labor leaders to "every commission we announce," sending an administration representative to labor conventions, meeting regularly with top union economists, and fixing prospective indictments of friendly labor leaders.

Presidential Chief of Staff H.R. Haldeman kept a diary of White House meetings and events he later published as the Haldeman Diaries. At a meeting of White House advisors July 21, 1971 Haldeman took notes of the president's presentation. "He[Nixon] feels the country is in a great moral crisis, a crisis of character, and we won't get leadership from our class. When we need support on tough problems, the uneducated are the ones that are with us. So it was generally agreed that we must maintain an open public communication, regardless of how the labor leaders kick the Administration. There are many ways to get the working people with us. Jobs is the main one, but the racial issue and a lot of others can also be used." . . .

"The President [Nixon] added a sort of a long philosophical thing, then, making the point that the ordinary working guy makes up two-thirds of the people in this country who never went to college. In this period of our history, the leaders and the educated class are decadent. Whenever you ask for patriotic support, they all run away: the college types, the professors, the elite, etc. So he concludes the more a person is educated, he becomes brighter in the head and weaker in the

spine. When you have to call on the nation to be strong on such things as drugs, crime, defense our basic national position, the educated people and the leader class no longer has any character and you can't count on them. We can only turn for support to the non-educated people."

Nixon's "ordinary working guy" referenced above made up the same group Democrats took for granted, always figuring they had no where to go but the Democrats. Nixon's reference to race, college professors and patriotism in the Haldeman notes make clear he intends his plan to divide the working class into aggrieved groups. If members of the working class think of themselves as working class they will be more likely to vote democratic. If Nixon can get some of them to be angry over something else like race, education, and patriotism for the Vietnam War he figured they would leave the Democratic Party and join his New Majority. The Nixon plan did nothing to end corporate America's preference for a dual labor system where racial discrimination continued to make the black community a profitable source of cheap labor.

The higher echelon of the AFL-CIO actually thought themselves a great success and a national powerhouse because they almost elected Hubert Humphrey. Meany and the AFL-CIO continued to loudly support the Vietnam War while adding their views of antiwar protesters as communists and far out left liberals. Meany did not seem to care that communist charges had already decimated labor and liberalism or think anyone young or opposed to the war might be a potential union member, but then again Meany did not care about organizing new members. His notion of a union brings to mind a church without a Sunday school, on a straight path to extinction. (2)

The Teamsters and the Farm Workers

Cesar Chavez was in poor health in 1970 after five years of non-stop work and commitment to La Causa. Some of his health problems resulted from his frequent use of fasting as an organizing tool to rally his followers around non-violence. He could have used a long rest, but he was confronted with an immediate challenge to farm worker organizing by the Teamsters union in collaboration with Salinas Valley lettuce growers.

The battling with the Teamsters overlapped with President Nixon's efforts to cozy up to organized labor. Nixon hoped to enlist the labor movement to support him in his efforts to administer domestic price and wage guidelines. Part of Nixon's economic policy called for an expansion of agricultural exports where agricultural products like grapes could be sold abroad at higher prices and profits. He did not applaud farm workers cutting into agri-business profits with boycotts and strikes, nor appreciate a constant turmoil of battles on the picket line.

Nixon made an early overture of friendship to International Teamsters President Frank Fitzsimmons by visiting an executive board meeting where he called Fitzsimmons "my kind of labor leader" even though Nixon had to know Federal Agents had evidence of continued Teamster operations in the underworld. It turned out Fitzsimmons had a house at La Costa Country Club, which on a clear day put Richard Nixon's San Clemente estate in view. Their proximity made

meetings and discussions convenient. Nixon put him on an advisory committee or two and granted a conditional pardon to Jimmy Hoffa until by July 17, 1972 the Teamsters endorsed him for re-election to a second term, the only significant union to do so. (3)

Salinas-------The Grower-Shipper Vegetable Association representing many small growers and several major corporations had California farm operations in lettuce and field crops, which made them vulnerable to a boycott. The growers trained a watchful eye on negotiations in the San Joaquin Valley and reacted quickly to counter Chavez organizing their farm workers. "After nearly a century of fighting Unions, lettuce growers stampeded to sign with the Teamsters."

Many lettuce pickers resented being forced into the Teamsters union and presented with a contract as a fait accompli. Chavez, Fred Ross and Marshall Ganz had little trouble getting hundreds to sign their membership cards; the pickers wanted to strike and though short of funds Chavez agreed to a strike to begin August 8, 1970 at some of the larger growers. One was Inter Harvest, a subsidiary of United Brands; another was Freshpict, a subsidiary of Purex, known more for bleach than fruit.

Meanwhile the Catholic Church continued efforts to help by sending Monsigner George Higgins to negotiate on behalf of farm workers. Higgins got the Teamsters to allow UFWOC jurisdiction over field workers and Chavez agreed to hold off the strike for ten days while William Grami of the Teamsters tried to get growers to abandon their contracts for negotiations with UFWOC. After the ten day moratorium ended without re-negotiation, thousands left work August 24, 1970 and completely shut down the lettuce industry in Salinas, which normally produced 95 percent of the nation's iceberg lettuce.

A spokesman for the Grower-Shipper Vegetable Association recommended to each grower member to form a "citizens committee" with a public relations department and legal team to obtain a restraining order and make preparations for evictions from company housing, to procure a convoy to drive strikebreakers in and out of the fields. In the first week state court judges wrote fifteen injunction orders against picketing at 36 grower sites.

Chavez and the farm workers ignored the courts. Judge Melvin Cohn commented "I would have to be in a monastery in Tibet not to know that neither Cesar Chavez nor his union intend to obey any court order." Finally, September 16 State Superior Court Judge Anthony Brazil declared a jurisdictional dispute existed and issued a permanent injunction against the strike making it necessary to switch to a boycott, this time it would be lettuce. Chavez announced an independent lettuce grower named Bud Antle as the target for the first boycott effort. Antle had a Teamsters labor contract that dated from 1960, before the farm workers. Antle got state court Judge Gordon Campbell to write an injunction ending the boycott, which UFWOC ignored. Antle went back to court November 17. Now Judge Campbell agreed to require UFWOC to post a $2 million bond, which UFWOC refused to do. Shortly, Chavez received a subpoena to appear and answer changes of contempt of court for ignoring the anti-boycott injunction.

Chavez and all of his inner circle looked at the threat of jail for contempt of

court as an opportunity to publicize La Causa with media coverage to a national audience. A mile long march of farm workers assembled at the courthouse and clogged the hallways and grounds for the court appearance December 4.

In court UFWOC attorneys argued the boycott was part of free speech: "and if that is not protected by the first amendment, I don't know what is?" Antle's attorney declared "We know that Mr. Chavez has the power and the ability to call these people off." Judge Campbell cared only whether Chavez ignored his order, not whether the two sides could or would settle the dispute that brought the boycott, or whether he could help. He ordered a minimum ten day jail sentence to be extended indefinitely until Chavez made written order to end the boycott. Chavez went to jail amid much fanfare before a national audience. Ethel Kennedy, Coretta Scott King and other celebrities arrived to participate in some of the many rallies and speeches. Chavez received thousands of letters from supporters.

Mostly white agri-business, or their white supporters, organized counter protesters helping to establish the racist element in their views by waving signs at Ethel Kennedy: "Carpet Bagger go home." The Salinas farm workers had never had union representation, but they were impressed that a supporter like Chavez would go to jail on their behalf. On December 23, the California Supreme Court ruled the growers had signed Teamsters contracts that amounted to a company union. In a 6 to 1 vote they tossed out the injunction and released Chavez. He left jail Christmas Eve 1970. (4)

Coachella Valley ----------Troubles with the Teamsters continued over the next three years as the Teamsters did their best to disrupt the UFWOC contracts. On April 10, 1973, five days before some of the Coachella Valley contracts expired Monsignor Higgins conducted a representation election for workers: UFWOC 795 votes, Teamsters 80 votes, no union 76. On April 12, Chavez arrived to speak at a rally. He asked all who support UFWOC to stand; all did.

Over the next few days only two growers re-signed with UFWOC. Their contract included a pay raise of 15 percent among other benefits. All remaining growers left UFWOC and signed with the Teamsters, but there was no raise in their contracts, which came without a vote. Chavez called for UFWOC to strike these growers and directed picketing at the growers that shut out UFWOC in exchange for the Teamsters.

The Teamsters hired goons that arrived at picket lines on a flat bed truck armed with chains, clubs, knives and baseball bats. They started howling abuse at UFWOC picketers including Chavez before turning to multiple assaults and beatings. UFWOC attorney Jerry Cohen had to be hospitalized after a severe beating. Chris Hartmire persuaded a variety of religious officials from around the country to come and be a part of their ordeal. They got to watch a UFWOC trailer burn to ashes and one of their visiting priests get punched in the face with a blow hard enough to break his nose. The Teamsters local responsible for the goons showed no sign they cared about bad publicity. (5)

Fitzsimmons and Western Conference Director Einar Mohn recognized Teamster goons attacking farm workers made bad publicity but did nothing about

it. They did not have the blunt authority of Jimmy Hoffa but rather than challenge their local union they put out some tired publicity to defend their inaction. They claimed they represented farm workers since the 1930's, that workers favored the Teamsters over the farm workers and that Chavez was a good crusader but not a good "bread-and-butter" union man.

There was a measure of truth in the last claim, but that hardly justifies a giant union busting the small and under funded farm workers, nor justify what amounted to deliberate assault. There was no sign of mediation from the Nixon administration. Chavez, always the organizer, responded by looking for power in IWW and Saul Alinsky style protest. He hired a film crew to look like reporters and document the violence for national television. He played up the racial and ethnic elements of a predominantly white union like the Teamsters busting the predominantly Mexican farm workers. He had public support, but the Teamsters onslaught continued as the harvest moved north into the San Joaquin Valley where Chavez needed to renegotiate 29 Delano contracts set to expire in 1973. (6)

San Joaquin---------The story of contract negotiations in Delano had UFWOC Attorney Jerry Cohen in a hotel room with grower representatives going line by line through contract terms when Chavez exploded in an insult filled harangue over conditions in the housing camps. His harangue included charges the growers were responsible for prostitutes in the camps. Cohen realized these "whores in the camp" charges and aggressive threat of more boycott effectively ended contract talks.

Chavez announced a boycott. He had an astonishing solidarity among San Joaquin farm workers willing to picket at his request, but growers that signed contracts in 1970, and appeared ready to sign again in 1973, now squared off in grimy confrontation. There was violence on the picket line resulting in several thousand arrests, barroom brawls, several shootings and a farm worker killed in one of the shootings. UFWOC ended the battling much smaller with only two table grape contracts, eight vineyard contracts, one vegetable and one strawberry contract. The Teamsters filled the void with new contracts forcing UFWOC members to become Teamsters if they wanted to be farm workers around Delano. (7)

United Farm Workers--------Continued fund raising produced significant funds but strike benefits and other expenses left UFWOC finances awash in red ink. Reluctantly, Chavez approached AFL-CIO president George Meany for financial help. Meany had nothing good to say about the Teamsters taking UFWOC contracts in union busting maneuvers. He agreed to provide financial help with a $1.6 million strike fund but attached strings to the deal just as Chavez always feared outsiders would do.

Meany wanted them to convert the United Farm Workers Organizing Committee (UFWOC) into an AFL-CIO affiliate with a charter and by-laws. An organizing committee such as UFWOC organizes workers and puts them on a path to become a union. It operates as a top down autocracy, which in this case put Cesar Chavez at the top making final decisions. Once an organizing committee

becomes a union it operates with an executive board on democratic principles. While the rank and file seldom exert much influence, executive board members and staff can challenge decisions.

An organizing convention in Fresno, California during the third week of September 1973 changed the UFWOC into the United Farm Workers Union (UFW) putting into operation the charter and by-laws already approved by the AFL-CIO. Chavez worried about inside challengers; he commented "I don't like it." It was an ominous comment for the future. (8)

Agricultural Labor Relations Act ------Meany also wanted Chavez to support labor legislation to establish and administer farm labor unions as a way to end the chaos and take farm workers out of the news. In his memoir Chavez explained "Its time we go on the offensive on legislation, that we talk about a bill of rights for farm workers." In February 1975 Chavez staged a 110 mile march from San Francisco to the home offices of Gallo wines in Modesto to rally support for a boycott of the Gallo brand. At the end of the march he spoke to a large turnout, telling them California's new Governor Jerry Brown promised to support a farm labor law. His comments included "But we're not going to let anyone introduce legislation because they think they know what's best for us!"

That comment reflected UFW's ambivalence toward labor law. Chavez and most of his staff knew the success of the 1970 Delano contracts depended on the use of the secondary boycott, which would be an unfair labor practice if farm workers were included in the Federal Labor Relations Act. They also knew writing labor legislation in California would bring objections and influence from agri-business.

During the 1966 to 1974 tenure of Governor Ronald Reagan Chavez decided Reagan would never sign legislation that would help farm workers or sustain their existing economic power. On speaking occasions, especially after the 1973 battles, he would tell his audience farm workers should be included in labor law and treated their exclusion as just another discrimination, but then he would tell insiders labor law would work against them. Now that Democrat Jerry Brown was governor and appeared committed to passing farm labor legislation, they could hardly back away.

Chavez and UFW attorney Jerry Cohen discussed what they wanted with Governor Brown in a bill later reviewed at a press conference April 9, 1975. Hearings followed and then discussions between UFW, the Teamsters and the growers until reaching agreement May 5, 1975. The bill assured farm workers the right to join a union with procedures for elections on short notice; there were penalties for growers who defied the law. It contained language to restrict boycotts to certified unions, making it an unfair labor practice to pressure employees not to handle a particular product or use a secondary boycott after losing an election. The legislation applied solely to agricultural workers. UFW agreed to allow the Teamsters to continue with contracts until elections could take place; Governor Brown signed the bill into law as the Agricultural Labor Relations Act (ALRA), June 5, 1975. (9)

Chavez remained ambivalent and conflicted between the union he had organized and the continuing social movement he preferred. He predicted the growers would agree to better wages and contracts, but worried "The only thing that will keep us going will be if we get into, if we can develop the movement into a real commitment to giving. By that I mean giving to other people who need to struggle, giving them help, but giving them substantial and real help. If we can do that, we will continue to have a movement." Chavez show signs he liked the fight more than the victory, but years of experience taught him not to expect growers would change their hostile approach to farm workers just because the savvy Jerry Brown got a law through the California legislature.

The ALRA included an Agricultural Labor Relations Board (ALRB) to administer the law and resolve unfair labor practice disputes. ALRB jobs tended to be filled with existing state government employees not necessarily familiar with farm work. The nature of the work required that union certification elections or disputes be resolved quickly at harvest time or the harvest would be over and the elections and disputes irrelevant. The law required elections in seven days but ALRB officials did not always comply and they allowed growers to inflate the list of eligible voters and invalidate ballots without getting confirmation of voter rolls. The ALRA provided that union organizers could meet farm workers on grower property one hour before and one hour after the work day. The growers resisted and the ALRB agents did not always press access complaints.

In spite of the troubles there were 354 elections by the end of December 1975. The UFW won 189 of them with 50.2 percent of total voters; the Teamsters won 101 with 23 percent of voters. In spite of grower efforts to be rid of unions, voters chose no union in only 20 elections representing just 4 percent of voters. The bureaucratic operation of the ALRB proved to be a difficult process, but whether it was good or bad became irrelevant in February 1976 when the California legislature refused to renew its budget and ALRB went out of operation as ALRB board members could not, or would not, provide services as volunteers. (10)

Proposition 14---------Chavez responded by proposing a replacement farm labor law to be approved as a referendum in a statewide vote. It would become Proposition 14 that asked voters to approve another Agricultural Labor Relations Act that would provide funding without interruption. It also attempted to relieve the election difficulties that surfaced during the operation of the earlier law. It provided certification elections supervised by the state government and established rules to compile voter lists. The new law, like the old law, allowed for union access one hour before and one hour after work and then an additional one hour at lunch time.

Statewide propositions pose a gamble that requires a substantial and expensive campaign to succeed. Chavez announced "We will match their millions with our bodies, our spirits and the goodwill of the people of this state." The growers organized a broad group of large and small growers into the Ad Hoc Committee chaired by Harry Kubo, a Japanese American farmer-grower.

Growers from agri-business as well as the Farm Bureau and Western

Growers Association joined with a variety of other corporations from the oil, insurance and paper industries to fund a "No on 14" campaign using Harry Kubo as their spokesman. He spoke in carefully crafted terms that linked private property rights to patriotic freedoms and personal success.

Chavez insisted on shuttering the boycott houses around the country in order to bring UFW staff back to California to conduct a statewide "Yes on 14" campaign, but there was internal opposition to doing that among veteran staff. The boycott continued to work as urban and suburban consumers continued to reduce purchases of grapes. Diverting resources from a tested success to a statewide vote on farm worker rights looked like a risky gamble, but none of the loyal staff refused to go along; they all pitched into run the campaign.

Harry Kudo's family was an unlikely spokesman for California growers. His family lost their first farm when the Roosevelt Administration forced them into the Japanese internment camps during WWII. After their release the family started over and built a new operation on another modest farm. In 1976 Harry Kudo's approach to voters for Proposition 14 equated a union right to come on his property to campaign for a union election as the same loss of property rights his family experienced in WWII. Corporate California funded travel and appearances for a full time Kudos campaign with a message "Protect Private Property – No on 14 Committee."

The UFW campaign treated the Kudos message as a ploy by wealthy corporations manufacturing a "phony" message, but it worked because "No on 14" won by a landslide in the November 2, 1976 election. Previous attempts to discredit Chavez by supporting the Teamsters as a better alternative failed, but Kudos found a common sentiment with voters that got growers what they wanted. (11)

Winding Down---------Losing on Proposition 14 did not need to be a major turning point for the UFW. It did not repeal ALRA. It was merely in limbo and they had many successes before ALRA. Not all the experienced UFW staff thought labor law would help farm workers or the union anyway. It was the first significant mistake or misjudgment for Chavez, which left him distraught and humiliated according to insiders. Esther Padilla would explain "Cesar lost it after Prop 14. I think he had a break down. He just couldn't believe that Cesar Chavez, this icon he had become, would lose an election." Marshall Ganz found him getting "into some strange stuff. He's doing mind control, he's doing healing, he's starting to talk about conspiracies."

The UFW assembled at La Paz to conduct post-mortem discussions, but they turned into a Chavez search for blame and a morale depressing purge of some respected and hard working staff. Chavez deliberately created dissension with accusations of disloyalty that encouraged staff to attack each other at meetings in La Paz. Firings, dismissals or resignations typically followed. Less than two weeks after the election loss on Proposition 14 Chavez accused Nick and Virginia Jones of disloyalty. They were the dedicated UFW managers of the Boycott Houses providing overall supervision in 34 cities. He made the preposterous charge they

brought spies into the Prop 14 campaign. They both resigned but left with a letter to the Executive Board: “We are deeply concerned about what we perceive to be serious internal destruction of the United Farm Workers of America” . . . and suggested to the board they consider the damage done by . . . “accusations and firings of full time staff based on the flimsy say-so, whims and innuendo which the accuser(s) are not held responsible to substantiate.”

The days after the Prop 14 loss show Cesar Chavez losing interest in the union. His brother Richard pressed him to meet the needs of a union but Chavez responded with “If this union doesn’t turn around and become a movement, I want no part of it. I’ll help and everything, but I don’t want to be in charge. I want to do something else. I tell you because that’s the way I feel.”

It was in early 1977 that Chavez got acquainted with Charles Dederich, and visited Synanon, his elaborate drug-treatment center east of Fresno. Gradually the drug treatment center transformed into a residential community of an authoritarian movement. Chavez liked the movement and wanted to use the movement’s encounter group therapy at La Paz. The therapy known as the “game” had a Modus Operandi where players accuse a target person of exaggerated misconduct as a way to correct their faults. A target was selected for a verbal attack and others joined in for an abusive and obscenity driven screaming match until the target could accuse someone else.

Quite a few of the UFW staff wondered what the game had to do with administering a union of farm workers. Board members and others refused to play the game and continued with attempts to administer a union. Marshall Ganz offered that “It’s unthinkable to me that after twelve years of work we’re going to blow it out the window right now.” What to do with a leader losing touch could not be solved. Enough people continued to keep some union work going to allow UFW to continue in a reduced form. The number of farm workers under UFW contracts declined to almost nothing from the late 1970’s and beyond. Eventually agri-business would supplant the UFW and restore the Bracero Program with a new name. It would be the H-2A Temporary Labor Certification for agricultural workers, which permit U.S. employers to hire foreign workers on a temporary or permanent basis to fill jobs essential to the U.S. economy. Agri-business could not get enough low wage Mexicans no matter how many crossed the border, with or without legal status.

Over many years Chavez showed brilliance bringing solidarity and economic power to farm workers with his savvy, hard work and dedication. During much of that time he listened to his smart and hard working staff, most of them committed volunteers, but gradually as the years passed he expected to centralize power and make all the decisions ignoring Democracy, his staff and the rank and file in the fields. In a 1977 Executive Board meeting he brushed off the worries from the rank and file committees announcing to board members “they’ll take whatever we give them.” (12)

By the late 1970’s Chavez started resembling Terrance Powderly. Recall Powderly organized large segments of the working class into an economic power house in the late 19th century only to get distracted and fade away failing to

respond to the needs of his membership. In the 1970's another would do the same.

Work in America

Work in America is also a Report of a Special Task Force to President Nixon's Secretary of Health, Education and Welfare, Elliot L. Richardson. In the Forward written by Secretary Richardson he suggests "While wages and fringe benefits have received the lion's share of the attention in the past few decades, considerable interest has been displayed over the last year in our magazines, newspapers, and other media in the quality of working life." A task force of ten people used papers submitted by 57 professionals to compile the report divided into six chapters.

Some of the discussion recommends an "active and responsible role for labor unions" in the redesign of work while noting the ultimate "quality of working life rests with the employer." The report cites "considerable evidence" that "alienated workers are less loyal to their unions than non-alienated workers" and that "young workers who are rebelling against the drudgery of routine jobs are also rebelling against what they feel is 'unresponsive' and 'irrelevant' union leadership." The report singles out the auto industry as "the locus classicus of dissatisfying work; the assembly line its quintessential embodiment."

The level of anger and disgust generated from a life confined in routine jobs in industries like the auto industry did not come out well in the report, which was written in clear and literate language but in a matter of fact tone somewhat like the owners manual for a dishwasher. The auto industry had some well paid but otherwise dehumanizing jobs controlled by negotiations between a remote and bureaucratic management and an increasingly remote and bureaucratic labor union. (13)

After Walter Reuther's death Leonard Woodcock took over negotiations for the 1970 UAW contract that resulted in a 67 day strike against General Motors. Journalist William Serrin wrote a detailed account of negotiations and eventual settlement. Talks started with all three major U.S. companies two months before the contract expiration date, September 15, 1970, but the companies figured a strike would be at only one. Ford and GM did not like the high rates of absenteeism, approaching 5 percent, late arrivals and poor workmanship; they wanted to dismiss those with three days of absence without permission. The union primarily wanted three improvements: a higher wage, a return to using a cost of living formula suspended in the 1967 contracts and a retirement option for all those with 30 years of service. The big three companies made nearly identical offers September 1.

Woodcock treated these first proposals as an insult but as the contract deadline approached GM made another proposal with improvements in the three financial demands. They agreed to a $.38 wage increase, a higher ceiling on cost of living and 30 year retirement for those at least 58 years old, but the union turned it down. The UAW executive board waited until Sunday September 14 to vote to strike GM the next day, September 15.

GM plants at 138 locations around the country shut down and 340,000

dutifully left work. Soon 500,000 autoworkers would be striking or on lay off as a result of the strike. Compared to the 1930's it was a calm and orderly strike. Management did not try to operate the plants, which made it unnecessary to have mass pickets to discourage scabs. Some deigned to picket at the plants, but the union required a once a week appearance at a union hall to hear an informational pep talk and get strike benefits. Strikers interviewed early in the strike made their time off sound like welcome relief from the routine of assembly line work. Michigan liquor sales jumped 4 percent the first week of the strike. After eight weeks with no wages and union strike funds about exhausted the rank and file needed a paycheck. With the large committee of negotiators failing to reach agreement, the higher ups decided it was time for them to get serious about a settlement. The strike ended with a few small improvements over the financial benefits GM offered in September, while the rank and file played the role of spectator. Although President Woodcock and his negotiators miscalculated the financial gains they could get from a strike, the negotiators did a good job getting pay raises for members, except they did nothing to relieve the misery of routine work spelled out from Work in America.

The true opinion of the settlement showed over the next three years and then again in 1973 for the next contract. UAW officials had yet to learn "It's not the money. It's the Job" as comments from GM auto assembly at Lordstown, Ohio suggest. The Lordstown plant built in a field along the Ohio Turnpike was one of the first efforts to move plants out of Detroit to a cheaper rural area. The General Motors Assembly Division, or G-Mad, managed the manufacture of the Chevy Vega at Lordstown where 7,000 assembly workers turned out 101 cars an hour. A line speed of 101 cars an hour leaves 36 seconds per car for an operation repeated over and over all the livelong day.

Working conditions came out in interviews with the assembly line workers. Writer and journalist Barbara Garson found Duane, a young army veteran, who told her about his work. Duane thought "Its like the army. They even use the same words like direct order. Supposedly you have a contract so there's some things they just can't make you do. Except, if the foreman gives you a direct order, you do it or you're out."

"You're out" it turned out could mean fired or a Disciplinary Layoff, DLO for short. As Stan told her "Last week some one up the line put a stink bomb in a car. I do rear cushions and the foreman says, 'You get in that car.' We said "If you can put your head in that car we'll do the job. So the foreman says "I'm giving you a direct order. So I hold my breath and do it. My job is every other car so I let the next one pass. He gets on me and I say 'It ain't my car. Please. I done your dirty work and the other one wasn't mine.' But he keeps at me and I wind up with a week off. Now I got a hot committeeman who really sticks up for me. So you know what? They sent him home too."

The men wanted a little more time to sneeze or scratch or piss. Eddie told her "You raise your little hand if you want to go wee-wee. Then wait maybe a half an hour before they can find a relief man. And they write it down every time too. Because your supposed to do it on your own time, not theirs. Try it too often and

you get a week off."

Back in Detroit UAW officials infuriated their rank and file after taking a series of actions against selected UAW locals and their members involved in protests over Chrysler management. Chrysler announced they would close their Briggs Manufacturing Corporation, a parts subsidiary in Detroit, and move to low wage Tennessee. UAW members at Briggs would lose pensions, group insurance benefits, workman's compensation claims along with their job security rights, apparently without objections from UAW officials. Protesters could not get a response from UAW higher ups until their Local 212 voted to condemn their union leadership. UAW officials responded by putting the local in receivership and appointing an overseer. A spokesman for the protesters commented "We at Briggs have received our master's degree in union-company collusion and right wing politics. We will carry that knowledge with us in our new workplaces."

In the summer of 1973 UAW locals staged three wild cat strikes over working conditions at Chrysler plants in Detroit. In one, several hundred black men tired of the abuses of a racist white foreman demanded his removal. After management and the union ignored them protesters supported shutting off power to the plant in a sit down strike. When Chrysler management finally gave in to the insurgent's demands, UAW vice-president Douglas Fraser wondered if management might be setting a bad precedent. The other two wildcats came after firings from safety complaints; in one a man had an arm torn off. One worker commented to the press "Chrysler treats a man like a piece of meat." At the Mack Avenue stamping wildcat Douglas Fraser and a squad of UAW officials fortified with a massive crowd of loyalists and retirees showed up to break the strike. Fraser decided "Radicals are creating a serious problem at [Chrysler], but we don't feel it is unmanageable."

The UAW contracts allowed the company carte blanche to use compulsory overtime in lieu of paying fringe benefits to a larger work force. Management routinely coerced four hours of overtime after an eight hour shift for six and seven day weeks. Finally in the 1973 contract, the UAW responded enough to their rank and file for a contract restricting work to 9 hours a day, six days a week. Recall that was the same workweek that women fought for at Lawrence, Massachusetts in the Textile Strike of 1911.

The 1973 contract continued with the 90 day rule; the amount of days workers could be dismissed at will before coming under full contract protection. The companies fired hundreds of workers per week to keep a pool of surplus labor, mostly from the 250,000 blacks working in the auto plants since they had the least seniority. The UAW went along collecting a $20 initial fee and additional monthly dues for the 90 days without the obligation to provide normal union services. The high turnover helped the companies collect poverty-program money for "training" the mostly black prison parolees and welfare recipients in a cozy part of a deal between labor officials and management. (14)

The UAW continued to have a reputation as a responsible union, even though the union's international leadership got more remote from the rank and file and increasingly resembled the top down leadership of corporate America. In

the 1970's the United Steel Workers, United Mine Workers and the Teamsters had similar problems of a leadership separated from their rank and file.

In the steel industry, Philip Murray served as the first president of the United Steel Workers (USW) and also the second head of the CIO until he died in 1952. When he died David McDonald moved into his USW job, which he kept for thirteen years when he was defeated in a close election by his secretary-treasurer of thirteen years, I.W. Abel. Journalist William Serrin offered some details of the campaign where Abel charged McDonald with ignoring the needs of the rank and file. He campaigned against McDonald for high living, charging he maintained an expensive home in Palm Springs, California and hobnobbed with corporate America and their friendly politicians; Abel called it "Tuxedo" unionism. In a close election April 30, 1965 Abel won with just over 51 percent of 607,678 votes cast.

Once Abel took over as president, he found he liked chauffeured limousines and cocktails with corporate higher ups as much as McDonald. Lyndon Johnson appointed him to the Kerner Commission where he got acquainted with politicians and visited the White House. Abel had the union purchase a new office headquarters in a fancy high rise building in downtown Pittsburgh and acquire a country club with swimming pool, tennis courts and a golf course fashioned from a 785 acre estate and 35 room mansion owned by a former coal magnate.

Removing union officers in elections will always be a difficult challenge, but pesky activists do come forward from time to time. During the I.W. Abel years a Chicago steelworker, Ed Sadlowski, stepped forward with a simple slogan, "fight back." Sadlowski started work at age 18 in United States Steel's South Works. He was elected to union office at age 22 and president of Local 65 at 25. He grew tired of the entrenched and remote officials that did the union's business while ignoring the rank and file. In 1973, he decided to run for election to be Director of District 31, an area made up of 288 Chicago area USW locals. The current director, Joe Germano, announced his retirement after 31 years of service that started back in 1942. He expected to appoint his successor, Sam Evett, who expected to run without opposition. Few of the rank and file had ever met Germano or Evett, but Evett had the full support of I.W. Abel and his international union staff and at least the acquiescence of the presidents of Chicago area locals.

Before Sadlowski could run he had to get his name on the ballot, which proved to be a daunting task. His campaign manager told journalist Joe Klein "It was practically impossible to even get on the ballot: You had to get 18 of the 288 locals to nominate you and that was a lot tougher than it sounded. Evett's people would block us from meetings, hell we didn't even know where half the locals in the district were and we couldn't find out because the district headquarters wouldn't give us the list."

Eventually they found 40 locals to nominate Sadlowski and he spent hours at plant gates campaigning, but the insiders stole the election late on election night in pure Chicago style. Labor attorney Joe Rauh uncovered the fraud and sued the USW. Another election in November 1974 included federal supervision: Sadlowski finally won.

For Sadlowski, “There is labor and there is management and woe to those who seek to smudge the line like Steelworkers president I.W. Abel, who makes $75,000 per year has begun to think like he makes $75,000 per year.” … “You take a guy who’s been working for the union 20 years in his shop. A good guy, and you give him a staff job because he’s earned it. Now that pays $17,000 per year with a car and expenses. So one day this guy is going to work with a brown bag for lunch and the next day he’s sitting across the table from management and they’re calling each other by their first names. They’re pals and that’s the way it happens.”

USW president I.W. Abel decided to retire in 1977 and name his successor, Lloyd McBride; another Sadlowski versus the establishment election ensued as part of his rank and file insurgency. Sadlowski attacked the no-strike contracts negotiated by Abel and McBride and accused them of collaborating with management while ignoring the rank and file that did not get to vote on contracts in the USW. The Abel-McBride team replied by labeling Sadlowski a communist in a 1950’s style red baiting attack. The campaign attracted national attention but the press chose to obsess over Sadlowski’s interest in music and the study of labor history. Reporters discussed him as though someone making a living in a steel mill had to cross class lines to be reading books or show sign they had college degree skills and intellectual interests.

Sadlowski’s insistence that working class people deserved respect for intelligence that could and should bring other opportunities to make a living worked against him. In an interview he said “Working in a steel mill drains the lifeblood of a man. Nothing is to be gotten from that.” He asserted steel mill workers could be writers, lawyers, doctors; they had not had the opportunity and if they did it would benefit all. He offered the view that the labor movement should work toward ending work at steel furnaces and over open hearths. The Abel-McBride campaign seized that view to charge Sadlowski wanted to eliminate steel industry jobs. Even though many steel workers admitted they had never met or talked to their leaders in contrast to Sadlowski. The election turned on the sentiments expressed in his “other opportunity” interview. Sadlowski got only 43 percent of the vote and the USW insurgency effectively ended.

The isolation and operation of top down unions would soon be a moot issue for steelworkers as 1977 started the rapid demise of the domestic steel industry. U.S. Steel laid off 4,000 from its Chicago South Works. The company would become USX with the X standing for branching into something more profitable than steel. Shortly there would be thousands laid off from many steel companies with mills in many locations: Bethlehem Steel laid off 3,500 in Buffalo, New York and another 3,500 at Johnstown Pennsylvania, and in quick succession other layoffs came at Armco Steel in Middletown, Ohio, Inland Steel in Chicago, and Youngstown Sheet and Tube in Youngstown, Ohio. (15)

Many Teamsters and Jimmy Hoffa went to prison in the 1960’s as a result of Robert Kennedy’s relentless pursuit, but changing the Teamsters did not come quickly. The boss driven practice of investing Central States Pension Funds in various gangster real estate projects continued for more than another decade. Corrupt practices varied by local but rank and file objectors found themselves

confronted with gangland goons ready to be enforcers. Objecting to International officials did no good with President Frank Fitzsimmons in league with the gangsters.

The boss driven Post Hoffa Teamsters expected the rank and file to shut up and pay their dues, but a Teamster counterpart to Ed Sadlowski turned out to be a UPS driver from Local 804 in suburban New York named Ron Carey. Carey started at U.P.S. at age 20. Two years later he became a shop steward "concerned about the way things were being handled." He ran for election to be Local 804, business agent before winning on the third try in 1968.

Carey reduced salaries and the budget of his predecessor and concentrated on providing the services his rank and filed needed. Like Sadlowski, he offered writer-journalist Steven Brill a similar opinion: "They [Teamsters Leaders] see themselves as different once they get elected. They start wearing pinky rings and talking out of the sides of their mouths. If they ever do visit a shop they stand off in a corner as if to say, 'I'm calling the shots here.' Well I don't call the shots . . . I work for these guys. These driver's dues pay my salary."

Carey led an 87 day strike of Local 804 opposing the UPS practice of substituting part time for full time employees. Shortly after the strike started Carey discovered the Teamster's local 177 processing packages normally routed through the loading docks of Local 804. Local 177 was part of Joint Council 73 controlled and corrupted by the Provanzano family and their gangster connections. His rank and file shared his anger and headed over to New Jersey to picket the loading docks, but in the gathering gloom of a late summer evening a Local 177 truck driver speed up the driveway and hit and killed a picketer, also a good friend of Carey's. Carey ordered the picketing stopped given the danger, which infuriated his rank and file that wanted to continue. Angry pickets claimed the driver made threats to "run down" anyone in his way, but the driver was never detained or questioned by police.

Carey's Local 804 and the Provanzano's Local 177 represented the extremes of honesty and corruption in the Teamsters. Others locals had leaders like Carey that quietly did the best they could while others collaborated with employers to loot their rank and file with insider deals. The International with Fitzsimmons in charge was too busy looting the Central States Pension Fund to care much what the locals were doing, unless they interfered. The late 1970's would take it all down when Jimmy Carter agreed to deregulate trucking and airlines. Price cutting competition and easy entry brought layoffs and wage cuts. Teamsters membership would see a sharp decline, much like it was in the steel industry. Carey would start Teamsters for a Democratic Union. (16)

United Mine Workers President John L. Lewis retired January 14, 1960 after a forty year tenure beginning January 1, 1920. The United Mine Workers never did operate as a democracy, but for the most part Lewis had the confidence of his membership and acted in their larger interest even as autocrat. Thomas Kennedy succeeded Lewis from 1960 to 1963 and then Tony Boyle until 1973. It will be safe to conclude that Boyle had none of Lewis good qualities, but all of his bad ones, and worse.

With Boyle as the leader the UMW did not bother responding to the rank and file or organizing; they showed little interest in the growing threat of Black Lung disease. In the fall of 1968 a mine explosion at Farmington, West Virginia killed 78 miners. Boyle showed up after the blast to explain to the press that miners know it can be dangerous in the coal mines and the company, Consolidated Coal, had a good safety record.

Joseph A. "Jock" Yablonski took this conduct as one more sign of Boyle's corruption and collaboration with management, especially in the case of Consolidated Coal where sixteen mine inspections revealed dangers management ignored. The 59 year old Yablonski started in the United Mine Workers as a rank and file miner forty years before. He had the interest and ambition to be his district president and later member of the Executive Board. He left the mines to work in WMW administration during the Lewis years and worked for Tony Boyle in 1968 when he got fed up enough with Boyle's misconduct to make his anger public and challenge Boyle for the union Leadership. Yablonski was the Sadlowski or the Carey for the United Mine Workers: "In recent years the present leadership has not responded to its men, has not fought for health and safety, has not improved grievance procedures, has not rooted itself in the felt needs of its membership and has rejected democratic procedures, freedom to dissent and the right of rank and file participation in the small and large issues that affect the union."

Yablonski ran for election as insurgent to remove and replace Boyle and lost in a rigged election, regrettably prevalent in unions and despite the so-called Landrum-Griffin protections. A pledge by Yablonski to fight on for change brought Boyle's decision to hire three assassins to brutally murder Yablonski, his wife and daughter in a violent invasion of their Pennsylvania home. The aftermath brought outrage and renewed determination to organize the rank and file. Boyle took his union leadership to its reductio ad absurdum.

The Yablonski funeral, restricted to family and his committed union supporters, would be the last funeral of the 1960's assassinations. There were vows of resistance that brought the initial plans for an insurgent organization to be known as Miners For Democracy (MFD). Veteran coal miner Arnold Miller would be their leader. It would take until December 1972 to get rid of Boyle and install the insurgent slate. Finally, the rank and file could talk of collective reforms without fear of internal violence or assassination. By September 1973 the trail of evidence from the assassins arrived at Boyle, who would be convicted and finally go to prison in the fall of 1975. (17)

Labor and McGovern

George McGovern grew up in South Dakota, the son of a Methodist Minister. He returned to be a history professor at Dakota Wesleyan University until entering politics to organize the state Democratic party in a mostly Republican state. He won election to the House of Representatives and eventually the U.S. Senate in 1962 on his second try. He opposed the war in Vietnam primarily on moral grounds but let Robert Kennedy and Eugene McCarthy lead the "Dump" Johnson campaign in 1968.

After the ruinous 1968 Chicago convention he agreed to chair a McGovern-Fraser Committee to reform the Democratic Party delegate selection and convention procedures. As the 1972 presidential election approached the Vietnam war dragged on, but the new delegate selection procedures allowed having much younger delegates with more women and minorities previously excluded. Some of the new delegates opposed the war while the influence of organized labor would diminish significantly compared to 1968.

After the Kennedy assassinations the Democratic Party did not have a leader nor a clear identity, as proved by its four candidates campaigning and entering presidential primaries: George Wallace, Hubert Humphrey, Edmund Muskie and George McGovern. The Democratic Party dabbled in a policy of busing public school students out of districted schools to achieve racial equality, which proved to be severely divisive. George Wallace campaigned as an opponent of busing and the forgotten man from the New Deal looking for the blue collar vote. He was doing quite well when Arthur Bremer changed the course of the campaign by shooting Wallace in a shopping mall parking lot in May 1972. His injuries forced him out of the race.

In the primaries that followed Democratic candidates looked for the right words to support racial equality without alarming too many suburban and blue collar voters who wanted neighborhood schools, not busing. George McGovern emerged as the candidate with the most primary election delegates for the convention but George Meany did not want McGovern and began organizing attacks against him. Since McGovern had as good a pro labor record in the Senate as anyone in domestic politics, it was necessary to distort his labor record to make their attacks, and then branch into foreign policy by attacking his anti war stance. McGovern carried several personal beliefs into the election campaign that he would not compromise. He opposed the Vietnam War and the bloated military budget, which infuriated George Meany who continued to support the Vietnam War in the same way he did four years before.

An “Anybody but McGovern” campaign surfaced to challenge his path to the nomination by changing the rules for selecting the California delegation. It used a maneuver that came after McGovern won the California primary. The Democrats countered by replacing the Illinois delegation nominated as part of the Daley Machine’s use of the old rules. The new Illinois delegation included Jesse Jackson in a largely youth and minority delegation ready to nominate McGovern.

McGovern survived the battling to win the nomination, but a furious George Meany immediately called the AFL-CIO executive council and demanded they adopt his preference to withhold AFL-CIO endorsement of both candidates, which they did by a vote of 27 to 3. At a press conference Meany announced “I will not endorse, I will not support and I will not vote for Richard Nixon for President of the United States. I will not endorse, I will not support and I will not vote for George McGovern for President of the United States.” (18)

During the election campaign McGovern stopped by Lordstown Assembly where he was quite popular. The young work force there treated him like one of them. The local president had a banner that read “Freeze War Not Wages.”

Lordstown workers wanted him as their president, but a majority of the working class would go for Nixon. The Nixon campaign aired a series of mood pieces of happy scenes interspersed with Nixon as an action figure in his presidential role. He declared "Peace is at hand" when it was not but otherwise said little of substance.

California pollster Don Muchmore suggested "McGovern has got a great issue in alienation, but I wonder if he knows the cause. The people who are alienated are the ones that don't want pot, who don't want abortion, who don't want to pay one more cent in taxes." McGovern supporters tended to be affluent and educated in a way that made them see politics as a moral issue that the working class could not afford to share. Kevin Phillips saw the divide cutting two ways. McGovern could win "if there is an all pervasive new morality cum alienation that cuts across previous ethnic and chronological lines" then McGovern might win. But "if the real frustration is with the trampling of traditional values and if major chunks of the old Democratic coalition are angry at the cultural upheaval" then McGovern will lose.

McGovern campaign videos had him speaking to small groups of the working class with a voice over "Come home America." He discussed the Nixon economy and rising grocery prices and higher than usual unemployment, but made little headway in the polls with those issues. Nixon got only 14 percent of the labor vote in 1968 but polls showed more than half of labor supporting Nixon for 1972. There were speculations why, but no great answers.

As the November 7, 1972 election got closer, McGovern had no doubt he would lose. He changed to speaking in the moral values of his religious roots mixed with an incredulous tone of a country that preferred a humorless, egocentric man willing to continue a war that killed American youth in a useless slaughter of Vietnamese.

Reports are that Nixon viewed the disintegrating Democrats as his personal victory. He had successfully split the Democratic Party and with George Meany's help was well on the way to moving significant segments of the working class into the Republican Party. A smarter group of Democrats should have recognized they could not be an opposition party by taking the labor vote for granted, a practice going back to Grover Cleveland, which Meany pushed to the breaking point demanding that organized labor support the war as he saw it. Too many higher ups in the labor movement ignored their rank and file in similar fashion, as the disgruntled of Lordstown, Ed Sadlowski, Ron Carey, Jock Yablonski and Arnold Miller could testify. Too often Democratic politicians move to the right rather than risk a personal defeat in the short term by defending labor for the long term.

Taking the labor vote for granted was the irony of the McGovern campaign because McGovern saw some political issues like the Vietnam War as moral issues he could not take for granted as part of politics as usual. He wrote his doctoral thesis on the Colorado labor wars during the Ludlow massacre, later published as The Great Coalfield Wars. He knew labor history in moral terms and knew the abuses heaped on the working class and the inequality of rights, income and wealth it generated. McGovern showed respect for the working class

the Democrats so badly needed to settle in for the long haul and be a party of opposition to corporate America's Republican onslaught.

Richard Nixon would go on to resign in August 1974 as a result of his Watergate misconduct. By then the damage to labor and the Democrats was done. Nixon had successfully wheedled and coaxed significant numbers of the working class to abandon their fight for the collective rights of labor. He got them to identify with a smorgasbord of special interest groups fighting yea or nay over busing, abortion rights, pornography, out of wedlock babies, affirmative action, law and order, gay rights, women's liberation, and the environment.

Dividing the electorate into disparate interest groups works perfectly for corporate America and the Republicans. They need coalition politics to win elections given their core constituents come from a minority of the rich and privileged. Nixon got many from coalition groups like the Right to Life to vote against their own economic interests in exchange for words of sympathy for abortion or declarations to get tough on crime and on and on. That was quite a feat in itself, and it flowed smoothly into Ronald Reagan and the ebbing tide of the working class. (19)

Labor, the NLRB and the Courts – Again

Labor law evolved through the 1960's and into the 1970's with a new cast of National Labor Relations Board members. Eisenhower Board appointments filled the five member Board when John F. Kennedy took office as president. JFK appointed attorney Frank McCulloch March 7, 1961. He worked on labor legislation for Senator Paul Douglas of Illinois from 1949 until his appointment. JFK appointed Gerald Brown April 14, 1961 to replace another Eisenhower Board member. He was an economist with 14 years experience as Regional Director in San Francisco at the time of his appointment. Both Brown and McCulloch believed labor law should be labor's law and intended to promote collective bargaining.

President Richard Nixon re-appointed Attorney John Fanning to the Board as part of his blue collar politics. He was a democrat originally appointed by President Eisenhower in December 1957 because of his experience at the Department of Labor and Defense. His work with Defense contractors and their unions made him acceptable to labor and management. He served on the Board until December 1982, the longest serving Board member. The three – McCulloch, Brown, and Fanning – would provide a majority to drive Board policy until President Nixon appointed Edward Miller as Chair in June 1970; McCulloch left the Board shortly afterward.

Corporate America would be as hostile and belligerent as ever during the 1960's. They complained the McCulloch Board interfered with management rights. Corporate officials regarded McCulloch as a "dedicated left winger." McCulloch took the Wagner Act declaration of policy literately, which put the federal government in the role of promoting and protecting collective bargaining in an industrial democracy. The opponents of organized labor filled the media with complaints of powerful unions taking over corporate prerogatives. They

ridiculed collective bargaining as codetermination that would destroy economic efficiency and the economy. Corporate officials organized their opposition into a Labor Law Reform Group (LLRG) to develop proposals to change labor law and contracted with Hill & Knowlton, an international public relations firm, experts at "image making." Since McCulloch regarded codetermination as the Wagner Act's stated policy the two sides could only be determined opponents.

The new Nixon Chair Edward Miller was a corporate attorney in private practice working in the same Chicago law firm from 1947 to his 1970 appointment. Miller pledged "to administer the law as written" except that included protecting the individual opposed to their union. As a result of Nixon's effort to court labor the Miller Board did not have three Republican votes to support Miller's views until the end of December 1970. The Miller Board lasted until December 1974, shortly after Nixon resigned and Gerald Ford took over as President.

President Ford picked Miller's replacement as Board chair. That would be Betty Murphy, a former NLRB attorney who left for work at a law firm that represented both labor and management clients. She had a conservative enough record to be acceptable to management. The Murphy Board ran from February 1975 into the Carter Administration until December 1979, but Republicans did not always have a majority vote because vacant seats during several periods left two Republicans and two Democrats. (20)

The McCulloch Board, the Miller Board and Murphy Board usually had partisan majorities, which did result in 3 to 2 votes in controversial cases just in case anyone doubted politics played a role in Board rulings. Neither the Miller Board nor the Murphy Board were as controversial as the Dotson Board to come during the Reagan years. The same free speech disputes during union certification elections, bargaining orders, and the subjects for mandatory bargaining supplied the disputes for many cases. (20)

Free Speech Again

Free speech disputes continued into the McCulloch Board era without let up. Union organizing efforts and election campaigns turned up some very hostile managers that gave no sign they could bring themselves to accept any Taft-Hartley Act limitations on what they could say or do to defeat a union representation election. Recall Section 8(c) allows management to express any views, arguments or opinions opposing a union, except managers could not use expressions that contain "threat of reprisal or force or promise of benefit." However, captive audience speeches, barring access with no-solicitation rules, interrogation of employees, telling tall tales can all go on without threats of reprisals or promise of benefits.

When administrative law hearings produced evidence of conduct that might, or might not, be an unfair labor practice the Board must evaluate the severity of misconduct and fashion a remedy using authority in Section 10 – Prevention of Unfair Labor Practices. The original Section 10(c) survived the Taft-Hartley Act amendments, which recall allows the Board "to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate

the policies of the Act."

A few examples illustrate some of these difficulties. In **Plochman & Harrison – Cherry Foods Inc** a union lost a certification election after an anti union campaign that started four days before the election. Management mailed a pamphlet alleged to describe an eyewitness account of a violent and gratuitous strike depicting a union responsible for sabotage and shooting an infant baby. Then the day before the election management conducted its version of a captive audience speech by showing a 22 minute film entitled "And Women Must Weep." The National Right to Work Committee created and distributed the film as depicting a true story from the pamphlet. Plochman & Harrison management described the strike in the film as "a nationwide condition that is eating out the heart of American liberty."

The McCulloch Board set aside the election and ordered another by a three to two vote. The two opposing votes from the Farmer Board holdovers found the film expressed views that did not make threats of reprisal or promise of benefits." The majority returned to the General Shoe doctrine, which recall looks for "laboratory conditions" when evaluating election propaganda in a union election campaign. The majority decided a fictional film that declares "a vote for union representation is a vote for strikes, violence and perhaps even murder" . . . "exceeded the bounds of permissible campaign propaganda."

Shortly after, in a similar case, **Carl T Mason**, the union lost their certification election badly, 12 yea, 50 nay. The Board overturned the election in another three to two Board vote. The majority reviewed letters sent to employees. The letters included statements like "What would happen to our customers if there were a strike? . . . Cancelled orders can mean customers permanently lost. If there are no customers, there is no business-this certainly is not job security." And "Employers are not allowed by law to give raises or make promises before an election but you can be sure of one thing-if by teamwork, we solve our problems and make a profit, it will not require a union to see that the employees share in the benefits."

The anti union campaign in Carl T. Mason included reading management's letter in captive audience speeches and a captive audience showing of "And Women Must Weep," apparently for good measure in case employees did not read the letters sent to them. It was all too much for the Board majority. Chairman McCulloch in a separate opinion especially objected to a film with professional actors and a made up script to depict extreme union violence as a true story. It went beyond what should be appeals "only to reason and based only on facts." The majority voted to set aside the election and ordered another.

In the case of **Sewell Manufacturing Co.** of Bremen and Temple, Georgia, the Amalgamated Clothing Workers(ACW) lost a certification election July 21, 1961 by a lopsided vote of 331 for and 985 against. The Board majority threw out the election and ordered another following a hearing documenting a four month campaign opposing the union with crude and repeated racist appeals attacking groups like the NAACP and labor union officials for supporting racial equality. In a second election August, 24, 1962 management continued its anti union

campaign and the union lost again by a vote of 345 for, 931 against. The Board directed a third election.

Remedies in union election disputes require subjective judgements that failed to bring settled law. Four union representation cases with card authorization and election disputes went before the Board in early 1966 - General Steel Products, Gissel Packing Co., Inc. Sinclair Company, Hecks Inc. In each a union had a majority of signed cards authorizing the union to represent them, which the companies refused to accept. In each case management engaged in making threats of reprisals and offers of benefits. In two of the cases - General Steel Products and Sinclair – the union lost elections when they had a card majority. In the other two cases - Gissel and Hecks – the union had card majorities and sought recognition without an election. The Board reviewed these cases, set aside the two elections, and in all four they ordered the employer to bargain with the union – a bargaining order. Notice here the difference of these cases than earlier free speech disputes because here the Board did not order another election; they by-passed the election and ordered the employer to bargain after review of their abuses during the campaign. The Board had to petition a U.S. circuit court to enforce the rulings in all four cases: three to the Fourth Circuit, one the First Circuit.

The First Circuit Court heard the Sinclair case where the court agreed management used threats of reprisals and offers of benefits and also that management refused to bargain in good faith. The court refused to accept the Sinclair defense that authorization cards will always be unreliable and should never be used in place of a union representation election. The court answered instead that "A good faith doubt is not established merely by assertion but must have some reasonable or rational basis in fact. Here the company made no attempt to discover what the actual card situation was when the union requested recognition." . . . "Instead of recognizing the union on the basis of its admitted card majority the company insisted on an election - as the Board found, in order to gain time in which to dissipate the union's majority." The first circuit affirmed the Board order for Sinclair to bargain with the union as though it won a representation election.

The Fourth Circuit Court cases had identical disputes, but the Fourth circuit agreed that authorization cards cannot be reliable and so there will always be good faith doubt for all attempts to replace elections with authorization cards. In general, they wrote as in the Gissel case "[A]uthorization cards are such unreliable indicators of the desires of the employees that an employer confronted with a demand for recognition based solely upon them is justified in withholding recognition pending the result of a certification election." The court in these three rulings refused to enforce the Board's order to bargain, but only a cease and desist order to end threats against employees and an order to reinstate employees fired for their union support. The losing sides in these four cases petitioned the Supreme Court for a writ of certiorari.

In the case of **NLRB v. Gissel Packing Co., Inc.** the Supreme Court combined the four conflicting Circuit Court rulings into the single 1969 case. Chief Justice Earl Warren intended to provide settled law for union elections.

Writing for the majority he declared the need to resolve four disputed issues about 1) union elections, 2) authorization cards, 3) bargaining orders and 4) employer free speech.

In the first issue, the Supreme Court ruled a union can establish majority status using cards or other means, not just an election. Justice Warren wrote "[I]t was early recognized that an employer had a duty to bargain whenever the union representative presented 'convincing evidence of majority support.' Almost from the inception of the Act, then, it was recognized that a union did not have to be certified as the winner of a Board election to invoke a bargaining obligation; it could establish majority status by other means under the unfair labor practice provision of Section 8(a)(5) – to bargain in good faith - by showing convincing support, for instance, by a union-called strike or strike vote, or, as here, by possession of cards signed by a majority of the employees."

In the second issue, the Supreme Court rejected the employers claim authorization cards cannot reflect the will of their signers and should never be allowed in support of an order to bargain. The employers complained that authorization cards do not allow them an opportunity to present their case against the union and that union organizers often misrepresent or coerce their employees into signing cards. The justices agreed an election would be the "best" method to ensure a majority, but that "does not mean that cards are thereby rendered totally invalid, for, where an employer engages in conduct disruptive of the election process, cards may be the most effective -- perhaps the only -- way of assuring employee choice."

The justices refused to agree that allegations of misrepresentation make card majorities unreliable. They cited the Board practice of requiring signed cards with unambiguous statements that signers authorize the union to represent them. They wrote "It does not follow that, because there are some instances of irregularity, the cards can never be used; otherwise, an employer could put off his bargaining obligation indefinitely through continuing interference with elections." Further they rejected the employer's claim "that employees, as a rule, are too unsophisticated to be bound by what they sign" . The employer complaint that union organizers misrepresent what unions do follows a hundred year thread of management contempt for the working class. It shows management's authoritarian side since they expect employees will obey them and be servile unless deceived by unscrupulous outside agitators.

In the third issue the Supreme Court justified an order to bargain – a bargaining order - following a management refusal to bargain while committing unfair labor practices before a representation election. Here the justices noted that when "an employer has committed independent unfair labor practices which have made the holding of a fair election unlikely or which have, in fact, undermined a union's majority and caused an election to be set aside, we have long held that the Board is not limited to a cease and desist order in such cases, but has the authority to issue a bargaining order without first requiring the union to show that it has been able to maintain its majority status." Board authority derives from phrasing in Section 10(c) which allows taking such "affirmative action" as "will effectuate

the policies of this Act." The Board can order management to accept majority status of the union if unfair labor practices destroy the legitimate conditions for an election. Recall this was the ruling way back in 1944 in Franks Bros v. NLRB when the justices noted a cease and desist order or another election just stalls and allows an employer "to profit from [his] own wrongful refusal to bargain."

In the fourth issue, the Supreme Court ruled on the Section 8(c) free speech claims of Sinclair by providing some anti-union "free speech" guidelines. "Any assessment of the precise scope of employer expression, of course, must be made in the context of its labor relations setting. Thus, an employer's rights cannot outweigh the equal rights of the employees to associate freely" . . . "[A]n employer is free to communicate to his employees any of his general views about unionism or any of his specific views about a particular union, so long as the communications do not contain a 'threat of reprisal or force or promise of benefit.' . . . [A]n employer is free only to tell 'what he reasonably believes will be the likely economic consequences of unionization that are outside his control,' and not 'threats of economic reprisal to be taken solely on his own volition.' "

The record of coercion from the administrative law hearings provided the guide for these decisions from administrative law judges through the opinion of Justice Warren. Of the four rulings the Gissel Packing Co. case offer examples of transparently offensive conduct by an employer. Gissel Packing Co. was a Huntington, West Virginia meat packer that slaughtered and processed beef and pork for wholesale distribution. It was family run company with Paula Gissel as president and four sons and one daughter as vice-presidents. (22)

The union asked for recognition based on an authorization card majority in a letter to Charles Gissel, a vice-resident. He refused and asserted signed cards were based on "instances of direct misrepresentation" and suggested the union should file a petition for an election. They offered no examples of any misrepresentation, but offered it as a conclusion. Notice they did not file for an election, and they refused to accept or look at the authorization cards. After the union filed unfair labor charges for a failure to bargain Charles Gissel began cornering employees for interrogations about the union.

At the outset of the campaign Gissel took employee Jerry Lee Frye aside to demand if anyone had talked to him about the union. He said "No." Gissel replied "Well, if you do or if I think you're talking to a stranger, that is a Union man.... I will fire you right away." In similar fashion Gissel saw Herbert Mount speaking to an unidentified man, which he suspected could be a union man, but actually was not. He said to Mr. Mount "employees 'caught talking' to a union representative would be 'fired.' "

Both Frye and Mount were later discharged. I counted 11 other employees interrogated in similar fashion. Employee Kenneth Adkins reported Gissel said that "if the union got in, [he] would just take his money and let the union run the place, that the Union was not going to get in, and that it would have to 'fight' the Company first."

Further testimony from the administrative law hearing had President Paula Gissel inform employees in a speech, Gissel would not recognize the Union even

if the employees desired representation, that she would close the plant or greatly curtail its operations rather than accept the Union; and "clearly implied" that the employees would be given the benefit of group insurance if they rejected the Union.

Justice Earl Warren helped earn his credentials as a fair minded justice with this opinion. It strongly favors unions. The Taft-Hartley wording of Section 9(c) suggests a union recognition investigation can be perfunctory and management can expect to throw out authorization cards and move to an election without delay. In effect, Justice Warren said not so fast; an investigation should be open to finding the truth and if valid authorization cards favor union recognition an election should not be necessary. It allowed broad leeway for the Board to use bargaining orders such as the Franks Bros v. NLRB authorization of a bargaining order after management stalled until a union majority was lost.

While precedent for a case like Gissel should bring settled law, it did not. Even though Justice Warren invited the Board to carefully evaluate management abuses during union election campaigns and to order union recognition without a union election if they saw fit to do so by allowing the expanded use of bargaining orders in place of elections, the ruling infuriated corporate America. Expanded use of bargaining orders by the Board brought many challenges to enforce a bargaining order in a circuit court and many times these courts mentioned the Gissel opinion, but it did not bring settled law as we shall see. (23)

The Duty to Bargain in Good Faith

By the 1960's organized labor and many in corporate America resigned themselves that Taft-Hartley Act Section 8(a)(5) and Section 8(d) required them to show up and talk about a collective bargaining contract. As with Section 8(c) it is plainly stupid to refuse to talk. Recall in the case NLRB v. American National Insurance Co. the Supreme Court directed the union to accept management's last offer when they failed to reach agreement in an impasse. Recall in NLRB v. Borg-Warner the Supreme Court justices decided they could distinguish mandatory from non-mandatory subjects of bargaining as an application of the phrase "other terms and conditions of employment." They further declared that insisting on negotiating over non-mandatory [a.k.a. permissive] subjects as they defined them would be an unfair labor practice.

Corporate America wanted to keep the number of mandatory subjects as small as possible. In the case of **Fibreboard Paper Products Company v. the NLRB** management wanted contracting out to be a management prerogative not subject to mandatory bargaining under Section 8(d). The dispute started when the United Steel Workers collective bargaining contract for maintenance workers expired July 31, 1959. The union gave the required 60 notice of a desire to change the contract. Efforts to negotiate by the union did not succeed until July 26, 1959 when Fibreboard management announced their intention to contract out maintenance work. They told the union "In these circumstances, we are sure you will realize that negotiation of a new contract would be pointless. However, if you have any questions, we will be glad to discuss them with you."

Some discussion with the union followed in which Fibreboard informed the union they had a comprehensive maintenance contract with a company named Fluor Maintenance and "since we will have no employees in the bargaining unit covered by our present Agreement, negotiation of a new or renewed agreement would appear to us to be pointless."

The Union filed an unfair labor practice complaint that included a failure to observe bargaining requirements in 8(a)(5). The administrative law judge recommended dismissal and Eisenhower Board majority concurred, but John Fanning wrote a dissenting opinion. He worried that "contracting out" would allow management to contract out all work in a bargaining unit and thereby bust any and all unions. When the Eisenhower majority ended and the Kennedy appointments became the majority the General Counsel agreed to have the new Board reconsider their earlier ruling. The new majority adopted the Fanning opinion and found a refusal to bargain a violation of 8(a)(5) that makes contracting out a mandatory subject of collective bargaining. The DC Circuit Court affirmed enforcement and the Supreme Court took the case on a writ of certiorari and affirmed their decision.

Chief Justice Earl Warren writing for a 5 to 3 majority explained "The subject matter of the present dispute is well within the literal meaning of the phrase 'terms and conditions of employment.' . . . The words even more plainly cover termination of employment which, as the facts of this case indicate, necessarily results from the contracting out of work performed by members of the established bargaining unit." . . .

"The inclusion of 'contracting out' within the statutory scope of collective bargaining also seems well designed to effectuate the purposes of the National Labor Relations Act. One of the primary purposes of the Act is to promote the peaceful settlement of industrial disputes by subjecting labor-management controversies to the mediatory influence of negotiation. The Act was framed with an awareness that refusals to confer and negotiate had been one of the most prolific causes of industrial strife. To hold, as the Board has done, that contracting out is a mandatory subject of collective bargaining would promote the fundamental purpose of the Act by bringing a problem of vital concern to labor and management within the framework established by Congress as most conducive to industrial peace." . . .

"We are thus not expanding the scope of mandatory bargaining to hold, as we do now, that the type of "contracting out" involved in this case -- the replacement of employees in the existing bargaining unit with those of an independent contractor to do the same work under similar conditions of employment -- is a statutory subject of collective bargaining under Section 8(d). The Supreme Court affirmed the Board order to reinstate the fired employees with back pay and ordered management to bargain with the union - a bargaining order.

The arrogance of the company shows so clearly when management did not bother to bargain to impasse in order to get its way, which Supreme Court precedent allowed them to do. In management's view they were in a hurry, which justified taking unilateral action to dissolve a bargaining unit as a claim of economic necessity; necessity defined as firing higher paid employees in favor of

replacing them with lower paid employees.

The reversal by the Board and the Warren Court infuriated corporate America, which they treated as an interference with their management prerogatives. Arthur Krock of the New York Times wrote a piece about the decision October 23, 1964 entitled "Free Enterprise at Stake before the Court." Oh poor corporate America, they had the expense of back pay for 73 fired employees when all they needed to do was pay some attorney to talk a while and declare impasse. (24)

The case of H. K. Porter Co., Inc. v. NLRB ended March 2, 1970 following another Supreme Court ruling. Their ruling ended a dispute between H.K. Porter Inc., a manufacturing company in Danville, Virginia, and the United Steel Workers Union that started October 5, 1961 when the Region 5 director of the NLRB certified a majority vote for a bargaining unit of 300 production employees.

There followed 28 bargaining sessions until the union filed an ULP complaint charging H.K. Porter acted in bad faith by refusing to accept proposals on a list of outstanding topics. Based on evidence from an administrative law hearing and Board review the Board found HK Porter made a variety of unilateral decisions while refusing to bargain in good faith. On April 15, 1964 the Board authorized a bargaining order directing H.K. Porter to bargain in good faith. Bargaining resumed with 21 more sessions where some outstanding topics were settled but not proposals for dues checkoff. In place of payroll deductions the union offered to have a financial officer come to the plant and collect dues directly from members during lunch or at shift change. Another proposal offered to have union stewards collect dues at the plant after working hours. The H.K. Porter bargainer rejected both proposals with "[W]e are not going to aid and comfort the International Union at this location." and "I should not help the Union collect their dues, and this is what I am doing when I let them collect it on company property." NLRB officials treated these refusals as deliberate bad faith. On July 9, 1965 they again ordered H.K. Porter to cease and desist and bargain in good faith. The Board order included phrasing that H.K. Porter refused to bargain "for the purpose of frustrating agreement with the Union, and hence engaged in bad-faith bargaining."

Both the union and H.K. Porter petitioned the DC Circuit Court to review the Board orders. The DC Circuit Court affirmed and enforced the Board order and commented "[T]he company had no reason, other than to frustrate the bargaining procedure, to refuse to accept the dues check-off," but "it is not necessary to include a specific reference to the check off in the Board's order. Nor, . . . is it necessary to provide in the order that the union shall have the right to collect dues during non-working hours on non-working areas of the company's premises." Their decision came May 19, 1966; the Supreme Court denied a writ of certiorari October 10, 1966.

For the Supreme Court to deny certiorari would normally be an end to a law case, but the case continued for another four years. Following the May 19, 1966 DC Circuit Court ruling the union interpreted the ruling as requiring H.K. Porter to agree to a dues check off procedure while H.K. Porter claimed all they had to do was talk about it, not agree to it. Since again bargaining was going no

where the DC Circuit Court agreed to a hear a union petition to clarify their May 19, 1966 ruling with a new ruling that came December 7, 1967.

This time the DC Circuit Court decided the company could not "purge itself of its bad faith" simply by agreeing to talk. They sent the case back to the Board – remanded the case – for reconsideration in light of a new and expanded opinion they included with their remand. The opinion accepted that Section 8(d) phrasing does not allow a court to compel either party to make a concession and they admitted for a mandatory subject like dues check off a company could bargain to impasse and then get their way.

However, they thought the obligation to bargain to impasse should require some "duty, to make meaningful and reasonable counteroffers, or indeed even to make a concession where such counteroffers or such a concession would be the only way for the company to purge the stain of bad faith . . ." Since H.K. Porter admitted they had no business reason to deny dues check off, they must not be making meaningful or reasonable counteroffers.

The case went back to the NLRB that made a supplemental ruling on July 3, 1968. The Board's supplemental ruling followed the DC circuit opinion and along with an order to cease and desist refusing to bargain they ordered dues check off. The case returned to the DC Circuit Court yet again and again they enforced the Board's order in a brief confirmation of April 22, 1969. After another H.K. Porter petition, the Supreme Court took the case on a writ of certiorari.

In **H. K. Porter Co., Inc. v. National Labor Relations Board** decided June 2, 1970 the Supreme Court voted five to two to reverse the DC Circuit Court ending the case after a nine year slog. Two sentences in the majority opinion tell their story. "It is implicit in the entire structure of the [National Labor Relations] Act that the Board acts to oversee and referee the process of collective bargaining, leaving the results of the contest to the bargaining strengths of the parties. It would be anomalous indeed to hold that, while Section 8(d) prohibits the Board from relying on a refusal to agree as the sole evidence of bad faith bargaining, the [National Labor Relations] Act permits the Board to compel agreement in that same dispute." (25)

From the 1952 case of NLRB v. American National Insurance Co. when the Supreme Court made up the idea of impasse until this H.K. Porter case the notion persisted that a company bargaining to impasse had to meet at least the appearance of making proposals a union could accept or bargain against, but not after H.K. Porter. It was the dawn of a new anti union era of making frivolous and idiotic proposals on mandatory subjects designed to evade bargaining as we shall see by example with the Detroit Newspaper strike of 1995.

J.P. Stevens

On August 28, 1974 textile workers at seven plants in Roanoke Rapids, North Carolina voted to have the Textile Workers Union of America (TWUA) represent them in negotiations with the J.P. Stevens Company. The vote was 3,133 to 1,685, but it was a long time coming and not the end of their struggles. J.P. Stevens Company began as a northern company established in 19th century

Massachusetts. It moved south in the 20th century looking for cheap, non-union labor where it bought the Roanoke Rapids plants in 1956. In only a few years the TWUA lost more than 40,000 members to "run away" plants moving south, which left them determined to organize the south after decades of failure. TWUA needed to prove they could organize J. P. Stevens as a precursor to organizing across the south.

In spite of support from the AFL-CIO, efforts to organize from 1956 to 1974 failed, including a failed NLRB election in 1965. As one old timer put it "When 'Stephenson' took over in 1956 they changed everything." They dismissed their long time plant manager and abandoned or sold company housing, recreation facilities and the local hospital. Paternalism had been a substitute for unions, but now there would be neither.

Steven's management responded to organizing efforts by firing those found to be, or suspected of, supporting unions in their plants. One fired was Crystal Lee Jordan (Sutton) who took part in the early 1970's efforts featured in the film Norma Rae. Like so many before her she would be arrested on disorderly contract charges and spend the night in jail for holding up a sign inscribed with "Union." The firings violated NLRA unfair labor practices of Section 8(1)(a): "to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7."

Intimidation had stalled organizing for years. Organizers found "Everybody we contact says they will sign when the fired go back to work." Company misconduct brought a succession of unfair labor practice complaints filed with the National Labor Relations Board. Over two to five years the NLRB ordered reinstatements and back pay in case after case, but Stevens then refused to comply forcing NLRB attorneys to pursue enforcement through the federal courts. Even after a circuit court ruled against Stevens, company officials ignored the court order, which brought contempt citations and threats of fines and incarceration. Legal action finally brought a change of strategy, but at minimal economic or political cost to Stevens.

Stevens used some strategy of intimidation at each step of union organizing. After enough people at their Statesboro, Georgia plant signed cards for the NLRB to schedule a representation election, Stevens officials threatened to close the plant before allowing a union in their plant: "J.P. Stevens will throw away this plant just like I am throwing away that nickel." Despite the majority signing cards the union lost the election, but the NLRB found so many abuses they certified the union anyway – a bargaining order. Stevens responded with a round of layoffs and refused to negotiate a contract, eventually closing the Statesboro plant.

After TWUA won the 1974 representation election at Roanoke Rapids plants, union officials quickly recognized the new strategy: J. P. Stevens had no intention of negotiating or signing a contract. Failing to bargain in good faith violates the fifth unfair labor practice of the National Labor Relations Act, Section 8(a)(5).

In response, the Textile Workers Union of America (TWUA) negotiated a merger with the Amalgamated Clothing Workers (ACW) to be a much larger

union able to fund a continuing and expensive resistance effort. The new union would be the Amalgamated Clothing and Textile Workers Union (ACTWU), with nearly 500,000 members. (26)

The ACTWU continued filing unfair labor practice complaints and organizing Steven's plants, but chose a boycott of Stevens products rather than strike such a large multi plant firm able to shift production to other plants. ACTWU adopted some of the pressure tactics pioneered by the IWW and used later by Saul Alinsky for community organizing. In 1970's and 1980's it would become known as the Corporate or Comprehensive Campaign, and its earliest tactician, Ray Rogers, gained national reputation for his corporate research and public relations work in the Steven's campaign.

The J.P. Stevens boycott got underway shortly after the union merger. It had several disadvantages. For starters a majority of Steven's products were sold under store labels and could not be identified as a Steven's product by consumers. Stevens attacked the boycott as a union effort to destroy the company. CEO James Finley told the press "The union and the leaders of Big Labor are openly trying to destroy our company and with it the jobs of 45,000 people. Their actions indicate they have no concern for Stevens employees." As always threats generate fears of job loss, making it harder to recruit members and win representation elections.

At J. P. Stevens annual stockholders meeting March 2, 1977, the company recruited and paid expenses for anti union members of their Employees Educational Committee to picket union offices with "Stop the Boycott" signs. The union arrived as well with 3,000 pro-union workers to picket company offices on Forty-Sixth Street. They carried posters and banners with "Boycott Stevens."

Some of the 550 attending the stockholders meeting arrived ready to challenge company policy, its anti-union conduct, racial discrimination and the health effects of byssinosis, a.k.a. brown lung disease. Several hundred had to be moved to an overflow room where they could only listen to proceedings that started with CEO Finley: "Ladies and gentlemen, I am pleased to appear before you in another meeting of shareholders. . . . Much has been written and spoken about the union trying to unionize the Stevens Company and boycott its products, and the facts in many cases have been distorted and incorrectly reported. Our employees have rejected the union repeatedly, and in Roanoke Rapids, the one location where the union won its only election victory, a very large number of employees have joined together . . . for the purpose of getting rid of the union and ending the boycott." Someone from the floor shouted "Dirty liar! You belong in jail."

Mr. Finley did admit "occasions when we made interpretations of the labor laws which we fully believed at the time to be correct, and the Labor Board later disagreed." When he finished speaking, he asked the floor to hold their questions, but someone wanted to know "By what rules do you conduct this meeting, by Robert's Rules of order?"

Mr. Finley answered "There are no rules," a claim that brought loud objections and another response from Mr. Finley that "I can overrule anything. It's the J.P. Stevens rule of order here. That's the way we've been doing it for over

160 years."

Stockholders were not cowed by Mr. Finley who was forced to hear and address questions from the floor, but conceded nothing. On unions, he recited the time honored slogans of corporate America: "We do not feel unions are necessary. We feel like we do not need a third party between our people and us. We've consistently said this. We're going to work along these lines." He called employees "our people" a relic of the plantation south.

On racial discrimination, Mr. Finley claimed to be unaware and responded "With twenty-five hundred people, I mean, I don't know how in the world I could know about every thing that goes on." He denied any racial discrimination even though no blacks were ever promoted and dismissed the issue with "we have never approved, or condoned anyone disobeying the law of the land. . . . we've made errors. We admit that. I don't deny that." (27)

Many of the old timers ended their working life tethered to an oxygen hose from the long term effects of inhaling the rampant and uncontrolled cotton dust in the plants, a condition known as Byssinosis. Finley claimed "Byssinosis is something that is alleged to come from cotton dust. It is a word that's been coined, but has no meaning." In 1969 the industry's trade journal denied the work of epidemiologist Arend Bouhuys. He found Byssinosis in convicts he tested working in the textile mill at Atlanta federal penitentiary. The industry denied the findings as "a thing thought up be venal doctors who attended last year's International Labor Organization meetings in Africa where inferior races are bound to be afflicted by new diseases more superior people defeated years ago." (28)

Stevens continued their anti union campaign after losing the Roanoke Rapids representation election in what southern labor officials dubbed "bargaining a union to death." They retained the union-busting attorney Whiteford Blakeney who advised them refusing dues check off, grievance procedure and binding arbitration will make it impossible for a union to agree on a contract. It apparently did not matter to Mr. Brakeney that his advice requires acting in bad faith and violating established labor law.

Stevens officials claimed they could not afford dues check off because it would reduce take home pay and encourage their employees to demand higher wages; Steven's already had payroll deductions requiring employees to purchase essential tools, purchase U.S. Savings Bonds, and make minimum donations to charity.

The theme in anti union strategies posted on bulletin boards and hand outs incited the fear of demotions, dismissals and plant closings. "We know that the unions are always after their members for money, money, money; for: dues, fees, fines, assessments, contributions, donations, union political campaigns, etc. It's just like another government!!!!!!!!" "Union demands destroy companies."

Stevens made sure all their plants matched the wages and benefits at unionized plants as a way to justify an anti union message that unions are unnecessary and a useless waste of dues money. They expanded vacation benefits, made Christmas eve a paid holiday and guaranteed retirement benefits regardless

of stock market fluctuations.

After CEO James Finley retired and Whitney Stevens took over as the new CEO in 1980 he agreed to a contract with dues check off and arbitration, but for the Roanoke Rapids plants only and not the remaining Stevens plants across the south. In 1983 Stevens agreed to a financial settlement for outstanding unfair labor practice complaints.

To get Stevens to recognize a union counts as an achievement and the union called it a victory, but Stevens continued to resist organizing at its other plants and using the same anti union tactics that included arbitrary firings and dismissals. By the mid-1980's though the textile industry was in decline and Stevens would disappear in a buyout by West Point Pepperell in 1987. By that time textile employment was in a slow decline that would accelerate after Congress passed NAFTA in 1993.

J.P. Stevens company has a special significance as an early innovator in labor relations battles. It helped demonstrate how much labor law could be ignored and violated with impunity without significant financial or legal consequences. Just the delays built into the law could be used to kill an organizing campaign and the fines and penalties amounted to small change for a big company like J.P Stevens. Other companies would copy their law breaking in the 1980's and afterwards, but it did introduce the Ray Rogers innovation in a comprehensive or corporate campaign. It would be tried again with some modifications, some failure and some success as we shall see. (29)

Labor Law and the Courts – Arbitration

At the beginning of World War II recall that officials of organized labor agreed to a no-strike pledge as their patriotic way to avoid disrupting war production. Then Congress and President Roosevelt agreed to create the National War Labor Board (NWLB) with full authority to settle labor-management disputes without strikes. Since a strike or threat of a strike provides organized labor with a primary source of economic power wartime practices and procedures forced labor to accept the power of the NWLB bureaucracy to be impartial contract negotiators and administrators.

The NWLB expected to use arbitration to resolve all disputes. Over the course of the war years NWLB arbitrators allowed management to manage as they saw fit, while labor could disagree by filing a grievance. A grievance would enter a queue until an arbitrator could hear and settle the dispute, often with long delays. In practice arbitrators allowed management to maintain all prerogatives and powers not expressly prohibited. The NWLB would not allow union demands to restrict employer authority to make decisions before bargaining with the union. Unions could negotiate over wages and seniority, but little else was open to discussion if management refused.

The war years established a post war principle that for a dispute during the period of a collective bargaining contract management acts and labor reacts by filing a grievance, which will go to arbitration if it cannot be settled through grievance procedures. The war years also established the notion that a no-strike

pledge and grievance-arbitration procedures go together. These principles carried into the post war mostly because management liked them and began demanding a no-strike pledge in exchange for grievance procedures in post war labor contracts.

The settling of labor disputes by arbitration during WWII depended on the authority granted by Congress to the National War Labor Board (MWLB), but the authority was temporary and after the war the NWLB disappeared. Post war labor disputes devolved to the National Labor Relations Board and the federal courts. Restoring federal labor law in the post war created new legal problems. The original, concise, nine page National Labor Relations Act (NLRA) of 1935 addressed labor rights during the organizing process and up to and including the signing of a collective bargaining contract, but the word arbitration did not appear anywhere in the NLRA, nor did the law address resolving disputes over contract administration after a contract was signed.

Where a collective bargaining contract has a requirement to resolve contract disputes by arbitration a refusal to arbitrate, or a refusal to accept the arbitrator's decision, becomes a contract dispute to be resolved in a state court like any and all contract disputes. However, a refusal to arbitrate could also be thought of as a refusal to bargain in good faith making it a Section 8(a)(5) unfair labor practice to be resolved by the NLRB and the federal courts. The possibility to pursue arbitration at the NLRB with federal law and also with state law in fifty different state courts guarantees different rulings depending on the venue; there can never be settled law with such confusion.

The 1935 National Labor Relations Act had the advantage of keeping union organizing disputes on a clear and direct path of federal law. It provided power to prevent unfair labor practices in Section 10: "[T]his power shall be exclusive and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise." Board powers included the power to issue and serve complaints, hold hearings and "to take such affirmative action as will effectuate the policies of the Act." These Board powers included authority to petition any circuit court of appeals and to petition federal courts "for appropriate temporary relief or restraining order," . . .

During the 1947 negotiations to amend the NLRA Congress could have easily written a clause in Title I of the NLRA to have the NLRB and the federal courts resolve refusals to arbitrate or other contract administration disputes. The early drafts of the Taft-Hartley legislation started with a House version and a somewhat different Senate version. Both of these original versions made a failure to honor an arbitration agreement an unfair labor practice to be processed through the established NLRB petition process with appeals in the federal courts.

When the differences had to be worked out in joint House and Senate Conference the majority removed the unfair labor practice wording from the final bill that passed Congress. The Conference Report offered no reason other than "Once parties have made a collective bargaining contract, the enforcement of that contract should be left to the usual processes of the law, and not to the National Labor Relations Board."

Instead of resolving the problem of overlapping federal and state labor

law enforcement Congress ignored the National Labor Relations Board (NLRB) entirely and inserted a Title III into the law with Section 301(a-e) entitled "Suits by and against Labor Organizations." Section 301(a), reads "Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce, . . . may be brought in any district court of the United States having jurisdiction of the parties, . . ." The wording appears to make the federal courts the place to hear and resolve collective bargaining contract disputes, presumably including arbitration. Notice that Section 301(a) makes no mention of state courts, either yea or nay. (30)

In an early "301" case of **Textile Workers Union v. Lincoln Mills** management denied a grievance and the union asked for arbitration as allowed in the collective bargaining contract. Lincoln Mills refused and the Union filed suit in federal district court under Section 301 to compel arbitration. The district court ordered Lincoln Mill to arbitrate, but the circuit court reversed by ruling that Section 301 provided jurisdiction and authority to hear the case and determine money damages for a failure to accept binding arbitration but not the legal authority to compel arbitration. The Supreme Court took the case on a writ of certiorari.

Justice Douglas writing for the majority accepted that Section 301(a) provides jurisdiction for federal district courts to hear collective bargaining disputes, but he worried that Section 301 did not provide any written guidelines to resolve the many and varied collective bargaining contract disputes sure to arise. In the parlance of judges he found a lack of "substantive law."

It was early in the suits under Section 301 and so Justice Douglas consulted the history of congressional debate in search of substantive law, which debate he found "somewhat cloudy and confusing" and filled with "a great medley of ideas." Justice Douglas then declared that what the law means "[W]ill be solved by looking at the policy of the legislation and fashioning a remedy that will effectuate that policy. The range of judicial inventiveness will be determined by the nature of the problem. Federal [judicial] interpretation of the federal law will govern, not state law. But state law, if compatible with the purpose of Section 301, may be resorted to in order to find the rule that will best effectuate the federal policy. Any state law applied, however, will be absorbed as federal law, and will not be an independent source of private rights."

He wants to use the policy of the legislation to fashion a remedy after he declared legislative policy a great medley of cloudy and confusing ideas, but he then admits another problem: "[W]hether jurisdiction to compel arbitration of grievance disputes is withdrawn by the Norris-LaGuardia Act."

Recall the Norris-LaGuardia Act has nine phrases in Section 4 that carefully define labor disputes that deny the federal courts jurisdiction to hear any labor case much less issue an injunction. However, Section 8 stipulates that no complainant will get relief from court ordered injunctions where there is a failure to negotiate or pursue government mediation, or proceed to "voluntary arbitration."

While Justice Douglas knew binding arbitration was not quite the same as voluntary arbitration, he brushed off the Norris-LaGuardia Act with "[W]e see no

justification in policy for restricting Section 301(a) to damage suits," nor did he see justification to allow for the step-by-step procedural review defined in Section 8 of the Norris-LaGuardia Act.

A failure of one party to honor the terms of any contract, including collective bargaining contracts, creates a dispute that would normally be resolved in a state court where the court would determine money damages for failure to fulfill contract obligations. Everyone agreed Section 301 allows jurisdiction for federal courts to hear money damage suits between a union and an employer, but Justice Douglas does not want a failure to arbitrate limited to payment of money damages. Instead he decided congressional policy allows him to authorize the federal courts to speed up enforcement by issuing court orders to compel arbitration with the threat of contempt of court for a failure to comply. In legal parlance, he wants additional authority for federal courts to hear suits in "equity." Section 301 does not have wording to authorize suits in equity; it has to be inferred. (31)

This Lincoln Mills Case can be thought of as the start of a string of lawsuits under Section 301 to have the federal courts "effectuate" federal policy for collective bargaining contracts, which reasonable people might call judicial legislation. After Lincoln Mills three cases known as the Trilogy followed in 1960, three more came in 1962, another in 1968, then in 1970, and in 1974. When it was all over strikes during a contract would end with corporate America able to file suits in equity to end a strike by court order just as it did back in 1920.

In the **Trilogy** cases the collective bargaining contracts allowed for arbitration of contract disputes with no strike clauses. In all three contract disputes management refused to arbitrate, or refused an arbiters decision, and the union filed suit under Section 301. The cases moved to the Supreme Court where the Supreme Court found arbitration clauses in the union contracts declaring "all disputes," or "any disputes," or "all differences," between the parties will be resolved by binding arbitration. Again Justice Douglas wrote the three opinions all reported on June 20, 1960 where he took the opportunity to "shape" labor law policy.

He wrote "The function of the court is very limited when the parties have agreed to submit all questions of contract interpretation to the arbitrator. It is confined to ascertaining whether the party seeking arbitration is making a claim, which on its face is governed by the contract. Whether the moving party is right or wrong is a question of contract interpretation for the arbitrator. . . . The agreement is to submit all grievances to arbitration, not merely those which the court will deem meritorious." Where there is an arbitration clause federal courts will order arbitration, but will not intervene in the arbiters ruling. (32)

Move on to a 1962 case of **Charles Dowd Box Co., Inc. v. Courtney** where Dowd signed a union agreement, but a short time later he tossed it out claiming the union representative did not have authority to make such an agreement. The union sued to have the contract enforced in the state court of Massachusetts. Dowd argued the state court had no jurisdiction to hear the case because Section 301 was exclusively federal law. The state court enforced the order and Supreme

Court of Massachusetts affirmed. The U.S. Supreme Court took the case on a writ of certiorari and affirmed the Massachusetts courts.

The majority declared "We do not accept the contention that State courts are without jurisdiction. The statute does not so declare. The conferring of jurisdiction in actions at law upon the appropriate district courts of the United States is not, in and of itself, a deprivation of an existing jurisdiction both at law and in equity in State courts." Notice the word "equity." The justices are authorizing injunctions for state and federal courts under Section 301, but by inference. The law does not say that. (33)

After Dowd, Section 301 suits to enforce collective bargaining can be in state or federal courts. Move on to another 1962 case involving the Teamsters Union. In the case of **Local 174, Teamsters v. Lucas Flour Co.** the Teamsters collective bargaining contract had two arbitration clauses. The first defined a procedure for individuals to negotiate shop floor grievances and, if necessary, binding arbitration by decision of a single arbitrator. This grievance procedure did not have a no strike clause. A second arbitration clause called for arbitration of disputes over interpretation of the contract. This second procedure called for binding arbitration and included a no strike clause.

Management fired an employee after he drove a forklift off a loading dock but did not wait for a grievance procedure to move forward. In response the union called a strike demanding reinstatement. The strike ended in 8 days and then went to arbitration. The arbitrator ruled the man was fired with cause and not entitled to reinstatement. Management filed suit for money damages for the strike in a Washington state court. The state court awarded damages to Lucas Flour, and the Washington Supreme Court affirmed. The U.S. Supreme Court took the case on a writ of certiorari.

The Supreme Court declared "[O]ur construction of Section 301(a), which means that the agreement to arbitrate grievance disputes, contained in this collective bargaining agreement, should be specifically enforced." The union argued the damage award had to be dismissed since the strike resulted from the failure of Lucas Flour to arbitrate under the first procedure mentioned above, which did not have a no strike clause and so permitted a legal strike. So sorry, the Supreme Court majority advised, but a contract with a grievance-arbitration clause automatically includes a no strike clause whether it is written in the contract or not. The idea goes back to WWII, now accepted in judicial review, that a grievance procedure for a union is a gracious management favor to labor, which deserves a gracious favor to management as an automatic no strike clause. Grievances shall be a quid pro quo for a no strike clause.

Justice Black was incredulous at this finding. He accused the majority of rewriting the contract to suite itself: "I had supposed, however . . . that the job of courts enforcing contracts was to give legal effect to what the contracting parties actually agree to do, not to what courts think they ought to do." An automatic no strike clause eliminates the power to strike even if management refuses to arbitrate or refuses to accept an arbiters award. Labor's only alternative will be a court suit under Section 301 with a long delay and always an uncertain ruling.

Wording that requires agreement to arbitrate to be also an agreement not to strike does not appear anywhere in federal labor law. It appears to be an invention of the judicial mind; justices fashioning a legislative remedy among a great medley of choices. (34)

Whenever a union violates a no strike clause we could all suppose management will file suit under Section 301 and expect to recover damages as they did in the above case of Lucas Flour Co, but that would be wrong. Management does not like to bear the frustrations of long drawn out court suits when they have objections to union conduct. Delays are fine for unions, but not for management. Corporate America wanted the federal courts to issue injunctions to halt strikes and prevent delays. They did not get their way on the first try but no one should expect the U.S. Supreme Court to provide settled labor law unless management gets what it wants. It would take eight years but sure enough management got its way in the 1970 case of Boys Markets, Inc. v. Retail Clerks Union as we shall see.

In the intervening 1962 case of **Sinclair Refining v. Atkinson** Sinclair had a collective bargaining contract with Local 7-210 of the Oil, Chemical and Atomic Workers International Union. The contract called for "compulsory, final and binding arbitration." Sinclair charged and documented that the union "engaged in work stoppages and strikes over grievances on nine separate occasions" over 19 months. Sinclair petitioned the district court for an injunction ordering an end to wildcat strikes arguing no other remedy was available. The union argued the Norris-LaGuardia Act denied the district dourt jurisdiction to hear the case. The district court agreed and dismissed the case. The 7th Circuit Court affirmed the ruling and the Supreme Court took the case on certiorari.

Recall the Norris-LaGuardia Act of 1932 denies the federal courts authority to issue injunctions "in any case involving or growing out of any labor dispute." Justice Hugo Black writing for the majority declared "the injunction sought here runs squarely counter to the proscription of injunctions against strikes" contained in the Norris-LaGuardia Act.

Management argued that Section 301 no longer prohibits injunctions in labor disputes but the Supreme Court majority would not accept the management view. Instead they concluded "that Section 301 was not intended to have any such partially repealing effect upon such a long-standing, carefully thought out, and highly significant part of this country's labor legislation as the Norris-LaGuardia Act." They offered several reasons for their conclusion. First, the original version of the National Labor Relations Act of 1935 included in its Section 10 – Prevention of Unfair Labor Practices – a subsection 10(h) which makes an explicit exception to the Norris-LaGuardia proscription on injunctions in labor disputes. Section 10(h) allows the National Labor Relations Board and the Attorney General to seek an injunction, but bars private litigants from doing so. The majority also noted that Sections 17 of the Clayton Act carry specific prohibition against labor injunctions. Therefore, the majority explained "If Congress had intended that Section 301 suits should also not be subject to the anti-injunction provisions of the Norris-LaGuardia Act, it certainly seems likely that it would have made its intent known in this same express manner."

Second, the majority reviewed the Section 301 legislative history. As before, they found Congress considered repealing the Norris-LaGuardia Act, but did not. The initial House bill expressly repealed the Norris-LaGuardia Act for suits brought under Section 301, but the repeal was eliminated by the Conference Committee. The Senate Bill made breach of contract suits under Section 301 an unfair labor practice, which left injunctions for the National Labor Relations Board. Senator Taft explained in the Conference Report the House conferees insisted on eliminating the unfair labor practice wording in that it would make "the terms of every collective agreement subject to interpretation and determination by the Board, rather than by the courts."

The Norris-LaGuardia Act remained and Justice Black declared "The question of whether existing statutes should be continued in force or repealed is, under our system of government, one which is wholly within the domain of Congress." Further he got right to the point of management aims. He noted "What is involved is the question of whether the employer is to be allowed to enjoy the benefits of an injunction along with the right which Congress gave him in Section 301 to sue for breach of a collective agreement." Justice Black would not infer authority for an injunction, nor would he infer Section 301 had wording to overrule the Norris-LaGuardia Act.

Justice Brennan wrote a vigorous dissent joined by Justice Douglas and Justice Harlan. No need to review the dissent here because the make up of the Supreme Court changed by 1970 when the Brennan minority dissent became the Brennan majority opinion in a new case. So much for settled law.

Resolving disputes over collective bargaining contracts turned into judicial anarchy after this 1962 ruling in Sinclair. Some of the 50 states allowed their state courts to use an injunction to halt strikes in collective bargaining disputes, but federal law allows a defendant union to remove, a.k.a remand, a state court case to federal court as long as the federal law in use allows the case to start in the federal court, which was true for Section 301 suits. In legal parlance, the federal court needed original jurisdiction to hear a Section 301 dispute.

Since the Sinclair ruling enforced the Norris-LaGuardia ban on injunctions, unions have an incentive to remove all contract disputes to federal court, which they did in a well practiced scenario. Management would file a petition in state court seeking an injunction to end a strike. The defending union would remand the case to a federal district court that would dismiss the injunction. At some point in the process management would file a petition attempting to return the case to the state court, but a federal district court would often dismiss this last petition, a result that incensed officials in the state courts and in corporate America.

Some of these disputes went on to the various U.S. circuit courts on appeal, but the rulings varied. Some circuit courts ordered the district court to return their case to the state court and some did not. In a Tennessee case the Avco Corporation, a defense contractor, prevailed on a state court to issue an injunction to enjoin a strike by its 2,000 production and maintenance employees. The union filed a petition to remove the case to federal district court. After removal the union asked the court to dissolve the injunction and dismiss the case. Avco filed a motion to

return the case to the Tennessee court as a contract dispute covered by state law, which petition the district court denied.

The Sixth Circuit Court affirmed the ruling and the Supreme Court took the case on a writ of certiorari. The Supreme Court used the case of **Avco Corp. v. Aero Lodge 735** to resolve whether a district court has authority to remand a Section 301 case from federal court back to state court. The Sixth Circuit Court answered no, arguing "State Courts would become the preferred forum for adjusting breaches of no-strike clauses" which "would undermine a uniform development of the law" and mean that "the injunctive remedy would vary from State to State." The Supreme Court majority agreed. Justice Douglas writing again for the majority declared Section 301 cases must follow federal law and so the case should remain in federal court.

The federal district court also dissolved the state court injunction, but without mention of a reason, such as the Norris-LaGuradia Act. Three justices including Justice Brennan wrote "[I]t is not clear whether or not the district judge dissolved the injunction "because [he] felt that action was required by Sinclair Refining Co. v. Atkinson, . . . Accordingly, the Court expressly reserves decision on the effect of Sinclair in the circumstances presented by this case. The Court will, no doubt, have an opportunity to reconsider the scope and continuing validity of Sinclair upon an appropriate future occasion." Justice Brennan signaled his need to wait for an opportunity to overturn Sinclair. So much for settled law. Avco ended in 1968; the new case came in 1970. (35)

The new case was **Boys Market v. Retail Clerks Union** where the Retail Clerks Union, Local 770, had a collective bargaining contract with Boys Markets Inc, a supermarket. The contract provided that all disagreements will be resolved through arbitration procedures and there should be "no cessation or stoppage of work, lock-out, picketing or boycotts. A disagreement between a frozen foods supervisor and a union representative led to a strike followed by union picketing.

Boys Market attorneys filed for a temporary restraining order in a California court to end the strike, which the court granted. Just as in Avco the union removed the case to federal district court. The union petitioned the court to dismiss the restraining order; Boys Market responded with another motion to compel arbitration and enjoin the strike and all picketing. The federal district court granted the Boys Market petition, but the 9th Circuit Court reversed citing the ruling in Sinclair Refining v. Atkinson that the Norris-LaGuardia Act denied authority to issue injunctions in a labor dispute. The case moved to the Supreme Court on a writ of certiorari, where Justice Brennan writing for the majority declared "Having concluded that Sinclair was erroneously decided and that subsequent events have undermined its continuing validity, we overrule that decision and reverse the judgment of the Court of Appeals."

The union argued stare decisis should govern the present case, but Justice Brennan responded "We do not agree that the doctrine of stare decisis bars a reexamination of Sinclair in the circumstances of this case." So much for continuity and predictability in law, but Justice Brennan claimed "Sinclair stands as a significant departure from our otherwise consistent emphasis upon the

congressional policy to promote the peaceful settlement of labor disputes through arbitration and our efforts to accommodate and harmonize this policy with those underlying the anti-injunction provisions of the Norris-LaGuardia Act."

Justice Brennan makes clear he wants the injunction available to corporate America, which he cites as necessary to uphold federal policy in favor of arbitration. The only federal policy Justice Brennan refers to is defined in Section 201(b) of the Taft-Hartley Act. It encourages voluntary arbitration among other things. In addition, as mentioned above, Section 8 of the Norris-LaGuardia Act does allow an exception to its ban on labor injunctions. It defines a process for a court to hold hearings and determine if corporate America has made every reasonable effort to negotiate a settlement including submitting to voluntary arbitration.

No one disputes the policy. However, the issue in both Sinclair and Boys Market is whether a strike by a union burdened by an automatic no strike clause can be immediately enjoined with a federal court injunction. The injunction would be in addition to corporate America's right to sue under Section 301 and recover money damages caused by a wildcat strike, but suits take time. Justice Brennan needs to brush aside the Norris-LaGuardia Act to give employers the fast action they want.

After his opening comments in his Boys Market opinion Justice Brennan asserts that his "dissenting opinion in Sinclair states the correct principles." Justice Brennan dissenting in Sinclair declared that Section 4 of the Norris-LaGuardia Act and Section 301 must "co-exist and it is clear beyond dispute that they apply to the case before us in apparently conflicting senses." His Sinclair dissent acknowledged that Congress rejected repeal of Norris-LaGuardia but claimed such rejection "does not imply hostility to an attempt by the courts to accommodate all statutes pertinent to the decisions of the cases before them." His Sinclair dissent further complained the majority was making Section 301 subordinate to the Norris-LaGuardia Act, which they concluded could not be justified. He wanted the courts and judges to be able "to effect the most important purposes of each statute." Finally, Justice Brennan returned to Justice Douglas insistence that "arbitration commitments has emerged as a dominant motif in the developing federal law."

When Congress passed the Taft-Hartley Amendments, Section 301 had no words in it about strikes, or a no strike pledge or court injunctions under the Norris-LaGuardia Act, nothing. Justice Black invited Congress in his 1962 Sinclair majority opinion to repeal or amend the Norris-LaGuardia Act, or Section 301 of the Taft-Hartley Act. It did nothing and the laws remain as they did in 1947.

After referring to his dissent in Sinclair, Justice Brennan wrote further that "Statutory interpretation requires more than concentration upon isolated words; rather, consideration must be given to the total corpus of pertinent law . . ." he cited the Norris-LaGuardia Act as "responsive to a situation totally different from that which exists today." The majority here admits courts used the injunction on behalf of management as a weapon "wielded against the activities of labor groups." But they argue as the labor movement "developed toward maturity, congressional emphasis shifted" to peaceful resolution of labor disputes. They admit "This shift

in emphasis was accomplished, however, without extensive revision of many of the older enactments," which reference must include the Norris-LaGuardia Act. Otherwise they cite four Supreme Court rulings as examples of a change in "Congressional" emphasis. Their examples include their own interpretations in Lincoln Mills, the Steelworkers Trilogy and Lucas Flour before again claiming it was Congress that has changed the emphasis of labor relations to "the voluntary settlement of labor disputes without resort to self-help, and more particularly to arbitration as a means to this end." They conclude from this that the ruling of the former majority in Sinclair Refining "seriously undermined the effectiveness of the arbitration technique" and justifies an injunction to end strikes.

The reference to "self help" above is a judicial euphemism for a strike. A strike is a test of economic power between labor and management and as such amounts to a contest in a capitalist economy. Senator Wagner made it clear in drafting and getting his National Labor Relations Act through Congress that he intended it would reduce the disruptions of strikes by equalizing economic power and so encouraging negotiated settlements to reduce economic loss instead of strikes.

The justices, not Congress that has failed to act, want to eliminate the ability of unions to test their economic power. If a union has a grievance management can stall; if management has a grievance they will be allowed immediate injunctive relief as a policy adopted by the Supreme Court. It is a double standard in aid to management. Since the Supreme Court treats a no strike pledge as a quid pro quo for arbitration, automatic arbitration clauses eliminate legal strikes during the term of a contract. A judicial regulation substitutes for the capitalist's contest.

The majority affirmed the district court's conclusion that Boys Market "has suffered irreparable injury and will continue to suffer irreparable injury" because the rank and file of the Retail Clerks Union failed to follow the arbitration procedures. The justices offer no suggestion what the irreparable harm might be or how it would differ from money damages.

Justice Black wrote a caustic dissent that affirms the belief of many that the justices legislate in place of Congress. He complained that Section 301(a) of the Taft-Hartley Act says "nothing at all about granting injunctions." . . . "Although Congress has been urged to overrule our holding in Sinclair [Refining v. Atkinson], it has steadfastly refused to do so. Nothing in the language or history of the two Acts has changed. Nothing at all has changed, in fact, except the membership of the Court and the personal views of one Justice." (Justice Potter Stewart reversed his vote) . . . "Most especially is this so when the laws involved are the focus of strongly held views of powerful but antagonistic political and economic interests. The Court's function in the application and interpretation of such laws must be carefully limited to avoid encroaching on the power of Congress to determine policies and make laws to carry them out."

He also objects to the court changing its mind as it is doing in this case. "Having given our view on the meaning of a statute, our task is concluded, absent extraordinary circumstances. When the Court changes its mind years later, simply because the judges have changed, in my judgment, it takes upon itself the function

of the legislature." . . . "The members of the majority have simply decided that they are more sensitive to the "realization of an important goal of our national labor policy" than the Congress or their predecessors on this Court."

Corporate America knows the U.S. Constitution makes it hard to get Congress to repeal legislation and they know the Supreme Court has periods with a five member majority will do its legislating for them as in Sinclair v. Atkinson, but they can be patient and bring the same disputes back again and again. Eventually new appointments will bring Supreme Court majorities that can be counted on to legislate for corporate America as it has in Boys Market v. Retail Clerks Union. The U.S. Constitution has a separation of legislative and judicial powers, but only on paper as Justice Black knew so well. There is one more dispute to consider in this sequence of arbitration cases. (36)

In **Gateway Coal v. United Mine Workers**, the Gateway Coal Company operated an underground mine with approximately 550 miners and maintenance workers organized into Local 6330 of the United Mine Workers. On April 15, 1971 a shuttle car operator noticed an unusually low airflow in his section of the mine. His foreman found an airflow less than half of normal: 11,000 cubic feet per minute instead of 28,000. The company evacuated the mine and ordered arriving employees to stand by. Repairs restored the airflow and operations resumed, but 100 of 226 employees had departed. Next day, the union asked for the departing 100 to be paid for reporting to work, but the company would only arbitrate, which the union refused and so the miners on all shifts walked off the job.

On April 17 state and federal inspectors arrived and found three foreman had falsified readings in the hours just before the shuttle car operator gave notice. The inspectors notified the company of criminal charges against the three. The company suspended two of the men but not the third, claiming he had reported the trouble. On April 18 around 200 miners voted to strike unless the third man was suspended. The company acquiesced.

On May 29, with criminal charges pending the Pennsylvania Department of Environmental Resources notified the company they could reinstate the three men. One retired but two returned. In response miners on all shifts refused to work. In the meantime the company offered to arbitrate and the three accused pleaded no contest to the charges and paid a $200 fine. Rather than fire the two men the company filed for an injunction under Section 301(a) of the Taft-Hartley Act. The district court ordered arbitration. The 3rd Circuit Court reversed arguing "the usual federal policy favoring arbitration of labor relations disputes did not apply to questions concerning safety." The Supreme Court took the case on a writ of certiorari and reversed the circuit court, and ordered arbitration.

Justice Powell wrote for the majority: "At all times material to this case, the parties were bound by the National Bituminous Coal Wage Agreement of 1968." . . . The "arbitration clause governs disputes 'as to the meaning and application of the provisions of this National Bituminous Coal Wage Agreement,' disputes 'about matters not specifically mentioned in this National Bituminous Coal Wage Agreement,' and 'any local trouble of any kind aris[ing] at the mine.' " . . .Justice Powell noted "The Court of Appeals . . . recognized that the usual federal policy

encourages arbitration of labor disputes, but reasoned that this presumption of arbitrability applies only to disagreements over "wages, hours, seniority, vacations and other economic matters." . . . "We disagree." . . . "We also disagree with the implicit assumption that the alternative to arbitration holds greater promise for the protection of employees." . . . "We therefore conclude that the "presumption of arbitrability" announced in the Steelworkers trilogy applies to safety disputes[.]"

The 3rd Circuit Court also rejected the use of an injunction in a safety dispute by citing Section 502 of the Taft-Hartley Act that allows for "a refusal to work because of good faith apprehension of physical danger is protected activity, and not enjoinable, even where the employees have subscribed to a comprehensive no-strike clause in their labor contract." Justice Powell brushed that off as unproven speculation: "The Court of Appeals majority erred, however, in concluding that an honest belief, no matter how unjustified, in the existence of 'abnormally dangerous conditions for work' necessarily invokes the protection of Section 502. If the courts require no objective evidence that such conditions actually obtain, they face a wholly speculative inquiry into the motives of the workers."

The opinion concluded with a declaration of irreparable harm for Gateway Coal. "[I]njunctive relief was appropriate in the present case under the equitable principles set forth in Boys Markets, Inc. v. Retail Clerks Union. The district court found that the union's continued breach of its no-strike obligation would cause irreparable harm to the petitioner."

Oddly enough Justice Douglas wrote an angry dissent, a surprise since he crafted the arbitration policy in the Lincoln Mills and the Steelworkers Trilogy. He wrote "The history of the coal miner is a history of fatal catastrophes, which have prompted special protective legislation. Nor was the mine involved here an exception. It is classified by the United States Bureau of Mines as "especially hazardous," triggering special inspection procedures to insure the safety of the men who work it. Congress has received testimony about safety problems at this mine in which the workers, a year before this dispute, complained of the supervisors' negligence in safety matters, particularly their practice of "not testing for gas."

The history of safety abuses brought special conditions to the union contract with Gateway Coal. The collective bargaining contract created a union mine safety committee with binding authority to remove all workers from the mine. There is no provision for arbitration should the operator disagree with the mine safety committee. "And in what clearly appears to be a buttress to the union's authority in this matter, all no-strike provisions from prior contracts were explicitly excluded from the agreement in question here, which contains no such commitment on the part of the union."

Justice Douglas also cited a 1969 mine safety law (H.R. N. 91-653) giving the Secretary of the Interior authority to make random safety checks, to respond to charges of hazardous conditions, and to impose a variety of penalties for violation of written safety standards. He concluded "A close reading of this Act convinces me that it must displace all agreements to arbitrate safety conditions." Justice

Douglas cited Judge Hastie writing for the majority in the 3rd Circuit Court, "Men are not wont to submit matters of life or death to arbitration." (37)

In the eleven cases in this sequence beginning in 1957 with Textile Workers v. Lincoln Mills and ending in 1974 with Gateway Coal v. United Mine Workers, the Supreme Court justices repealed the Norris-LaGuardia Act and pumped up Section 301(a) to add authority to enjoin strikes. Congress did nothing, except allow the Supreme Court to debase them and any notion the United States Constitution has a separation of powers.

Jimmy Carter and the Bum Deal

Jimmy Carter won a close election for president in 1976 with 50.1 percent of the popular vote and 297 electoral votes. His opponent Republican Gerald Ford never recovered from the sour public reaction to his Watergate pardon of Richard M. Nixon. It was so soon after he took office. Still he got 48 percent of the popular vote and 240 electoral votes, close enough to think he would have won without the pardon.

Four years later in 1980 it would be a different story. Carter got only 41 percent of the popular vote and 49 electoral votes against Republican Ronald Reagan. Carter had to confront a disgusted liberal challenger in Senator Edward Kennedy during the primary election period, but the Democratic Party was not ready to toss out an incumbent. Carter had little serious trouble getting the nomination. After his loss he suggested it was Kennedy who "split" off the liberal vote, but if he wanted to know the cause of his loss he had only to look in the mirror.

Organized labor backed Carter for the 1976 election and during the campaign the liberal elements hoped to reassemble the crumbling pieces of the New Deal coalition. It would take only months into 1977 to realize working class worries would not be a priority in a Carter Administration. International Association of Machinists president William Winpisinger characterized the labor opinion when he denounced Carter as the "The best Republican President since Herbert Hoover." The Democratic Party had the coveted Trifecta: the president and control of both houses of Congress all four years, but did nothing for labor or labor's causes. Carter got what he deserved but the working class would take a terrible beating as a result of his sanctimony and navel gazing.

The Republicans did a good job blaming Carter for inheriting a persistent inflation during a period of doubling oil prices and intractable unemployment. Economists could not make these conditions fit economic theory, which predicts prices will rise when excess spending creates shortages. Unable to fit inflation and unemployment into cherished market theory, they forecast expansionary economic policies would be inflationary while relieving unemployment only a small amount. Carter responded to the pressure in exactly the way corporate America wanted: by restraining federal spending to cut deficits and avoiding new spending on social programs. The labor agenda had two main components: full employment and labor law reform, but President Carter showed no interest in either. (38)

The Humphrey-Hawkins Failure

Way back on January 11, 1944, President Franklin Roosevelt addressed Congress in a state of the union address where he proposed an Economic Bill of Rights for the American People to be ready for the post war. Including a "Bill of Rights" in the proposal leaves no doubt the president intended it to carry the weight of constitutional rights. He said in part "In our day these economic truths have become accepted as self-evident. We have accepted, so to speak, a second bill of rights under which a new basis of security and prosperity maybe established for all – regardless of station, race, or creed." He went on to more specifically define these rights to be the right to a job earning enough to pay for adequate food, clothing, medical care, a decent home, a good education, and protection of economic fears of old age, sickness, accident and unemployment.

Roosevelt died just as WWII was ending and so he did not have a chance to steer his measure through Congress. An alternative bill did pass after his death, but reduced to empty platitudes by the relentless attacks of corporate America.

Fast forward to 1977 and the sometimes liberal Senator Hubert Humphrey of Minnesota and the always liberal Representative Augustus Hawkins of the Watts district of Los Angeles drafted a bill intended to do what Franklin Roosevelt failed to complete. Humphrey explained "We must create a climate of shared interests between the needs, the hopes and the fears of the minorities, and the needs, the hopes and the fears of the majority." Humphrey, Hawkins and many others understood equal rights and equal treatment had to go with full employment, a conclusion made so clear with the McGovern debacle and by Martin Luther King and Robert Kennedy only a few years before.

The initial Humphrey-Hawkins bill made a job a civil right without reference to gender, race, creed or color. It reflected Robert Kennedy's notion that it was class not race that will unify support for social democratic policy. Like civil rights and gender rights legislation, individuals denied a job could file suit to secure employment. The bill defined full employment as a 3 percent unemployment rate to occur after 18 months. It defined a planning process for the president and the Joint Economic Committee of Congress to assure adequate production to generate full employment and local councils empowered to establish priorities for projects that could help assure full employment around the country.

They introduced the bill in the spring of 1976, which made it part of the presidential campaign. House majority leader Tip O'Neill made it "the centerpiece of the campaign." Organized labor wanted some immediate changes and supporters negotiated to dilute the force of the law thinking it would increase the chances of getting it passed: e.g. the 18 months to full employment expanded to 4 years. Once Carter took office the Republicans and corporate America ramped up to attack and defeat it.

The Republicans in Congress relied primarily on economists speaking to Capital Hill committees and conversations in the press to debase and belittle the need for government involvement to achieve full employment. The list included Alan Greenspan, President Ford's Council of Economic Advisors chair, William

Simon, President Ford's Secretary of Treasury, Herbert Stein, President Nixon's Council of Economic Advisors chair, Charles Schultze, Lyndon Johnson's Budget Director and economists Milton Friedman, John Kenneth Galbraith, and Arthur Okun.

Some of the economists forgot their economics and resorted to empty phrases of ridicule. Friedman called it "close to a fraud." Stein called it a "vast election year boondoggle." Arthur Okun called it "beautiful poetry." Schultze called it "economically illiterate." Rather than defend their doctrinaire opposition to interfering with markets, they relied on their celebrity status to predominate.

Schultze, supposedly a liberal, did not like the "prevailing wage" clause because it threatened to draw people out of low-paying private sector employment and into higher-wage pubic sector jobs; definitely true, but irrelevant for the aims of the bill. Something so simple sounds important coming from a celebrity economist, but the prevailing wage is the equivalent of a minimum wage.

The root of the Humphrey-Hawkins bill was a minimum wage combined with the public sector as the employer of last resort. If the government sets its prevailing wage at $4.00 an hour, then expect those in the private sector earning less than $4.00 an hour to leave their low paid private sector job for better pay in a government job. To keep their employees corporate America will have to pay them at least the prevailing-minimum wage, which will raise corporate costs. Schultze, the economist, knew perfectly well market wages can sink too low to keep people out of poverty, but choose to ignore the social effects of unemployment and income equality to be a spokesman for corporate America's views.

The Republican attacks established the political power to make high unemployment a necessary part of controlling inflation, which President Carter accepted. During the campaign candidate Carter would say only "I am for the concept of Humphrey-Hawkins as it shows the consequence of unemployment on the present scale." Once in office Carter, most of his cabinet and White House staff opposed it early in his term, but recognized the difficulty of opposing the major segments of the political coalition that put him in office: organized labor and the black, Hispanic and minority communities.

Rather than confront the liberal wing of the Democratic Party with Carter's opposition Charles Schultze helped revise the bill into the same meaningless platitudes as the diluted Roosevelt bill back in 1946. In the final Humphrey-Hawkins bill full employment turned into a goal without a prevailing wage or timetable or procedure to bring it about. It was also filled with unrelated pledges to balance the budget and fight inflation. Even in its diluted form White House insiders Stuart Eizenstat and Charles Schultze reported they had to browbeat Carter to sign it. The New York Times decided the final bill offered "largely symbolic value." Others recognized what was left as a public relations sham.

The opponents of Humphrey-Hawkins attacked it as central planning, but it was not. The bill included an executive branch review of total production and total spending, which would help make it possible to have productive jobs ready to fulfill the government's obligation to be the employer of last resort, but such an effort falls far short of central planning. Humphrey-Hawkings left private

business alone while potentially funding the jobs of last resort through contracting with private business.

The attack also ignores the failure of private business in a country where people have to have a job to support themselves. The capitalist market economy corporate America extols as the perfect way to organize an economy ignores a history of repeated and devastating recessions and depressions with the unemployed going hungry and walking the streets. (39)

Labor Law Not-Reformed

The 1977 impetus for labor law reform flowed from the transparent violations of labor law by J.P. Stevens. Stevens made no effort to disguise their deliberate violation of the National Labor Relations Act as an inexpensive strategy to bust unions. A new President from the Democratic Party provided hope for change and a chance to organize the south. Even after decades of the great migration the south provided an attractive haven for companies moving from northern locations in search of low wages.

President Carter started his only term in office with 61 Democratic Senators and 292 Democrats in the House for the 95th Congress; the later total being 67.1 percent of the House vote. That total would drop slightly in the 96th Congress, but the Democrats had clear majorities there as well. With Democrats in firm control of the federal government organized labor thought they could get some relief from oppressive labor law and practices. Relief from Taft-Hartley Section 14(b), a.k.a. right to work, and a use of card check in place of NLRB supervised elections being two hopes among other changes. States exercising their option for using Section 14(b) gave a measure of anti-union sentiment that frightened Democrats in Congress, but Carter signaled only tepid halfhearted support for any proposals.

Some fools in labor and the Democratic party thought they could get corporate support with a slate of more modest, ask for less, proposals. The same House and Senate bills were introduced in July 19, 1977. The House bill passed October 6, 1977. Senate debate began May 19, 1978 and ended in failure June 22, 1978 through filibuster.

The legislation proposed as HR 8410 and a slightly different Senate version S2467 proposed additions and amendments to Sections 3, 6, 9 and 10 of the National Labor Relations Act as already amended. Specifically, the Section 3 amendment called for making the National Labor Relations Board seven members, expanded from five, and with each member to serve seven-year terms. An additional sentence provided a procedure for the Board to expedite a judgement of a case concluded before an administrative law judge.

The Section 6 proposal added a new Section 6(b) while relabeling the old Section 6 to be Section 6(a). Section 6(a) continued to provide the Board authority to make, amend, and rescind rules and regulations as may be necessary to carry out the Act. The proposed Section 6(b) provided authority for the Board to make a rule that if the employer addresses the employees on its premises or during working time on issues relating to representation during a union organizing drive the employees will be assured of an equal opportunity to obtain information from

the union. The new rule should assure the right of employees to hear the opposing view of a labor organization "without undue interference" and in equal amount between management and labor. Section 6(b) would have allowed sixty days for Congress to review and disapprove of the rules made by the Board.

A proposed amendment to Section 9(c) would have required the Board to serve notice to an employer within 25 days that a union has filed a valid petition showing a substantial number of employees wish to be represented by a union. Further, the Board must direct a secret ballot election to establish union representation, yea or nay, within 50 days of filing and serving a valid petition. Section 9(d) was amended by making it more difficult to set aside a Board order. Under the proposed change a Board ruling would stand unless federal law was violated or the Board acted "arbitrarily or capriciously."

The Section 10 proposals included an amendment to Section 10(b) that would have expanded the power of the Board to hold a hearing to contest willful violations of Board orders and expanded that power to hold hearings in the event of management's willful violation of an order by a federal circuit court.

Section 10(c) proposals took out the fifth sentence of the original 10(c) that allowed the Board to deny back pay to employees suspended or discharged for cause and inserted in its place a sentence directing the Board to dismiss a complaint if testimony from a hearing did not find a preponderance of evidence of a willful violation of a Board order.

Two 10(c) sub sections were proposed. Section 10(c)(2) allowed the Secretary of Labor to deny federal contracts to those in corporate America in willful violation of a final board order; a process known as debarment. Section 10(c)(3)(A) allowed the Board to award compensation from a finding of a refusal to bargain prior to signing the first collective bargaining contract with a newly certified union. The compensation would be the Bureau of Labor Statistics average wage and benefits settlements quarterly report minus the actual wages paid. Section 10(c)(3)(B) would increase the back pay award to 150 percent for employees dismissed for unfair labor practice violations. The original House bill had double the amount for backpay.

There were other minor changes but broadly speaking the changes denoted above addressed the more defiant union busting practices favored by corporate America as so well illustrated by J.P. Stevens. The proposed changes improved the chances unions could organize a local at a workplace where a known majority already wanted a union. The bill passed the House with only 257 votes when the House had 292 Democrats. Democrats never agree to vote as a block like the Republicans. From there it went to the Senate to confront a corporate backed filibuster, which the Democrats had the votes to break but three with Democratic labels decided to vote with Republicans. All came from southern right to work states as leftovers from Nixon's Republican strategy: Sparkman of Alabama, Bumpers of Arkansas, and Long of Louisiana.

Senator Harrison Williams presided over hearings June 29, 1978 as chair of the Committee on Human Resources. These hearings came following six attempts to bring an end to the filibuster, i.e. cloture, and many days of Senate

debate before that. Republican Senators let Senator Richard Lugar express their opposition to S2467. In his statement he explained "I believe that my views are in general harmony with the thoughts of most anti-cloture Senators." Senator Lugar had nothing positive to say about S2467 or organized labor.

The bill had the majority vote of both the House and Senate and fell just short of the two-thirds necessary to break a filibuster, but Senator Lugar denounced it as "special interest legislation of the most brazen sort, and it enjoyed limited support in the country." He denounced union access to employees to make the union case with "The equal access provision, in any form, is unacceptable." He denounced the use of back pay and debarment for corporate labor law violations with "The make whole and debarment punitive provisions, as presently structured, are far too intimidating for small businesses to contemplate[.]" He admitted as "presently structured" S2467 tried to discourage deliberate labor law violation by corporate America with some small financial penalties. He claimed he would not object to certification elections in 50 to 80 days, but he wanted to assure the opposition had the means to delay union elections by allowing challenges to the bargaining unit and voter eligibility.

He offered the press something to quote by suggesting "I am certain that a large Senate majority, including, as far as I know, each anti cloture Senator, is willing to enter a constructive dialog leading to labor law reform legislation, provided that both dialog and legislation approach the subject in a fair and comprehensive fashion." He wanted the Senate to "embark on a review of the entire labor-management landscape in quest of a bill addressing the problems of employees, small businesses, and innocent bystanders to labor disputes, a quest and a bill on which we can all cooperate." And then he added "A solid majority of Senators earnestly hope that the committee will adopt this course" when he knew perfectly well a minority of anti-cloture Senators would do everything possible to prevent labor law reform, then or ever.

Notes and reports from White House advisors and insiders show their efforts to get Carter to push hard for passage. "We are within one vote of defeating the most expensive and powerful lobby ever mounted against a bill in the Nation's history." . . . "The present circumstances do present us with an unusual opportunity to show the depth of our commitment to labor." . . . "To the labor unions, this bill is the most important one Congress has considered in a great many years."

It all went for naught; Carter either did not understand or did not care. For Democrats to have the Trifecta with a filibuster proof majority and wash it away with nothing for the working class serves as a clear illustration of Democratic Party failure to stand up for any policy or constituent group. President Carter spent enormous time, energy and political chits on the transfer of the Panama Canal, while the abandoned working class left him and the Democratic Party by the million. President Carter proved taking labor for granted does have its risks, which we can cite as Carter's domestic legacy. (40)

Labor in Transition

George Meany retired as AFL-CIO President in 1979 and designated his long time protégé Lane Kirkland to succeed him. Kirkland's career in organized labor started in the AFL research department after graduating from Georgetown University in 1948 with a degree in foreign studies. After serving in other AFL-CIO administrative posts Meany made him his special assistant beginning in 1960. Then in 1969 the AFL executive council agreed to make him the AFL Secretary-Treasurer at Meany's request. His climb to the top of the labor movement came by Meany appointment not his efforts in a local union as part of the rank and file. The two shared identical views that made it easy for Kirkland to be Meany's totally loyal defender. After 1969 Kirkland expected to become the AFL-CIO president without opposition when Meany retired. The rank and file were not involved in his appointment and only the most active union members would have ever heard of him.

George Meany served as AFL president from 1952 to 1955 and as the only AFL-CIO president from 1955 to his 1979 retirement. Except for a relatively short career as a New York plumber he spent his life in the labor movement. He did not write a memoir, but during the last four years of his life agreed to tape record an oral history with journalist Archie Robinson. Meany spoke of the events of his life in chronological order and let Robinson fill in the background of events to give an appropriate context for the recollections and views quoted in the text.

The resulting book first published in 1981 after Meany's death establishes him as a devoted defender of labor and labor rights, but he failed to acknowledge the need to make labor a mass movement. During his tenure as AFL-CIO president, especially in the 1970's, he was the public face of the labor movement involved in an impressive array of labor related legislation, committees, agencies and events. Presidents invited him to the White House for consultations and the news media repeatedly interviewed and quoted his views on labor and foreign policy.

In spite of his personal connections with corporate management, presidents and politicians he did not hesitate to criticize them, but he did not appear to notice they ignored him while the labor movement continued in decline, along with labor's influence in the Democratic Party. He seemed to think his status and force of commitment would protect the labor movement. In a famous encounter in 1972, a reporter asked him why AFL-CIO membership continued to fall as a percentage of the work force. Meany answered, "I don't know. I don't care." The reporter followed up with "Would you prefer to have a larger proportion?" Meany answered "Not necessarily. We've done quite well without it. Why should we worry about organizing groups of people who do not appear to want to be organized?"

Corporate America can be profitable and succeed without considering a word of advice from their mass of stockholder-owners, but corporate officers derive their power from control of substantial capital and financial assets. The words of George Meany needed a source of power beyond any wisdom they might represent. His only asset and source of power came from the support of

his rank and file, and the more the better. From his beginning Meany did not care about organizing, but as the years passed he spoke against marches, strikes, boycotts and collective action of any kind. He liked the attention he got as AFL-CIO President; he liked expensive cigars, and fine dining at fancy restaurants, but he paid little attention to his only source of power. In spite of his good intentions and protective words, he failed to protect the labor movement. His successor, Land Kirkland, would also fail, as we shall see. (41)

Daycare Attendant - FT position 7am - 4pm M-F, and occasional Saturdays 9-4pm (rotate Saturdays every 4-5 weeks). Starting salary $9/hr. Job responsibilities include supervising dog play activities, keeping the play area clean, and walking dogs at predetermined times. Candidate should have strong dog behavior skills, an understanding of pack behavior, ability to remain calm and react to aggressive play, dog handling skills, timely, responsible, strong communication skills, flexibility, and enjoy work as a team player. Candidate must have more than just a LOVE for dogs.

----------Personal Ad, Craigslist, May 2005,Washington DC Link

I have only been at work for 41 minutes and feel like I have been here for hours. Because of the holidays coming up my days at work are spent looking at websites like i-am-bored.com [sic] please come talk to me. I can only chat through e-mail, but it is on all day. My job will allow me to look at a lot of websites while I sit here bored, but I can't us[sic] IM, so we have to chat through e-mail. Care to talk?

----------Personal Ad on Craigslist, December 2005,Washington DC Link

Labor Lawyer Thomas Geoghegan recounts a story in his 1990 memoir Which Side are You On? The story covered his eight year attempts to recover pension benefits promised to employees of Wisconsin Steel when it abruptly closed on March 28, 1980. It gives a splendid example of Reagan era capitalism.

International Harvester owned and operated Wisconsin Steel for decades as part of its vertically integrated equipment manufacturing. In the 1970's Harvester wanted to sell it, but neglect and $65 million of unfunded pension liabilities proved too much to attract an offer. No one would buy it, but closing down left Harvester with a $65 million pension liability, plus $20 million additional shut down benefits.

To evade the payments Harvester transferred title to, Envirodyne, a company willing to go along with the Harvester transfer, but with neither the means, the know-how, nor the interest to operate Wisconsin Steel. Next, Envirodyne transferred title to a subsidiary, EDC, created for the purpose of transferring title. Then EDC transferred title to another subsidiary, WSC, created for the purpose of transferring title. That made it possible for WSC to go bankrupt without liability for the $65 million pension funds since as Geoghegan explained corporate privileges allow subsidiaries to go bankrupt without liability to a parent company.

Wisconsin Steel did have property and real estate assets even though it could not be sold for as much as the pension liability, but Harvester retained the mortgage liens on that property as a result of acting as banker providing funds to Wisconsin Steel. If Harvester had actually transferred everything of value to Envirodyne, there would have been something to sell and pay on that pension

liability. Instead the transfer amounted to rigmarole via legal loophole.

None of this was public because Harvester kept the plant running in spite of the manipulations. Then March 28, 1980 arrived and Harvester went forward with its evasion scheme. It shutdown down the mill without warning, foreclosed on the mortgages and WSC immediately filed for bankruptcy.

In the story Geoghegan explains Harvester retained the investment banking firm Lehman Brothers to carry out the deal. When staff at Lehman Brothers saw the details they gagged, or as Geoghegan recalled, it was so vile they sent an official to a Harvester Board meeting to talk ethics and morality, all to no avail.

The men abruptly dismissed had their own local union. Alas, it was not affiliated with the United Steel Workers or the AFL-CIO. The union had a president named Tony Roque and a man Geoghegan refers to as ERV, which stand for the initials of Edward R. Vrdolyak. ERV did a modest but apparently worthwhile business helping the union process workmen's compensation claims.

A day or so after the shutdown ERV closed up business and left the union to its own devices, which meant Tony Roque all by himself. When he paid a visit to Harvester they told him to sign a document they handed him that would guarantee their pensions, but was actually a waiver releasing Harvester from everything except a "tiny sliver" of the benefits. Apparently Harvester attorneys decided Roque might be gullible enough to sign allowing them to insure further protection if the WSC bankruptcy judge cast his or her eye on Harvester.

At least 800 of the 2,600 who lost their job had passed the minimum retirement age of 45 and qualified for a pension from 25 years of service. Geoghegan described some of the mental and personal miseries he found when he took the case. But a leader surfaced and organized picketing and protest that went on over the next seven years.

Meanwhile Geoghegan had to make a case for misconduct that justified relief. He filed a succession of motions with many different legal arguments, all turned down until September 1987 when a lone Judge decided to allow a "piece of the suit" to go forward. Now it was time to prepare for a court trial except everyone including the Harvester attorneys recognized the outcome was dicey. Up to now the Harvester attorneys had ridiculed Geoghegan as a legal crackpot, but they did not relish a drawn out trial. Both sides agreed to settle.

With interest the true amount owed the men was $90 million, but after the back and forth ended the settlement came to $14.8 million, a little over $.16 on the dollar. A meeting of all the men followed where they discussed the settlement and took a vote: 583-75 accept.

Geoghegan did not include details of the judge in the case, or footnotes, or a case citation. His story was part of a memoir not a law review article. We might suppose though the judge felt repelled by the fraudulent conduct of corporate officials pushing gimmicks to intentionally deny responsibilities under a written contract. Unlike corporate America and the Reagan Administration, maybe he felt real capitalists honor their contracts.

Chapter Eighteen - Frontal Assault

I believe leaders of the business community, with few exceptions, have chosen to wage a one-sided class war today in this country—a war against working people, the unemployed, the poor, the minorities, the very young and the very old, and even many in the middle class of our society. The leaders of industry, commerce and finance in the United States have broken and discarded the fragile, unwritten compact previously existing during a past period of growth and progress.

---------- from a letter and press conference by Douglas Fraser, president of the United Auto Workers, July 17, 1978

The excerpt above came from the opening paragraph of a letter of resignation from a labor and management group created by Richard Nixon. The group commonly known as the Dunlop Group for its chair, John Dunlop, started as part of Richard Nixon's efforts to cozy up to labor. The letter goes on to suggest a change has come to corporate conduct: "I am convinced there has been a shift on the part of the business community toward confrontation, rather than cooperation."

He cites the all out effort to defeat the modest labor reform in the Carter years, but sees "The rise of multinational corporations that know neither patriotism nor morality but only self-interest, has made accountability almost non-existent. At virtually every level, I discern a demand by business for docile government and unrestrained corporate individualism. Where industry once yearned for subservient unions, it now wants no unions at all."

He made a list of corporate attacks on national health insurance, full employment, minimum wages, social security and organized efforts to suppress voter registration that make it impossible for him to continue service on a committee with so many members from the business elite. Instead "I would rather sit with the rural poor, the desperate children of urban blight, the victims of racism, and working people seeking a better life than with those whose religion is the status quo, whose goal is profit and whose hearts are cold."

The Fraser resignation and comments came a full three years before the election and inauguration of Ronald Reagan and the Air Traffic Controllers Strike so often cited as a turning point for organized labor. Douglas Fraser was part of the labor movement and the UAW during the 1950's when labor leaders like Walter Reuther were able to negotiate wage gains and other benefits as never before. Whispers around suburban Detroit fretted that autoworkers should not be making more money than school teachers, even though higher wages for autoworkers included union contracts with compulsory overtime.

These whispers did not acknowledge that socialists, Marxists and communists worry about what people should be earning. If corporate America joins in collective action through the American Manufacturers Association, the Business Roundtable or the Chamber of Commerce and an endless string of mergers, then that can be no different than labor combining for collective action

through labor unions. If autoworkers make more than school teachers it must be another example of the free-for-all in free enterprise.

If the 1950's were the "golden age" of labor as some have dubbed the era, it was because of wage gains, but not because corporate America changed their collective minds about organized labor. Major manufacturing industries continued to need a mass workforce. Union members could see the benefit of collective action knowing it would be nearly impossible to get tens of thousands of scabs to replace them. In the 1950's the war-ravaged world needed more time to rebuild, assuring little competition from imported products. The lost profits from strikes outweighed the cost of lost production and higher wages; corporate America needed to be practical.

The golden age of labor derived from economic circumstance. By 1978, productivity and capital investment moving to the south and abroad would change everything. Fraser saw the world correctly, but for some reason he actually thought there was a previous age of cooperation when the exclusive club of white men from corporate America included some "nice" guys.

Air Traffic Controllers Strike

The strike by the nation's air traffic controllers union, PATCO, started August 3, 1981 and ended abruptly two days later when President Ronald Reagan fired 11,345 air traffic controllers. The PATCO strike and rapid disintegration of PATCO occurred early in the Reagan presidential years, which helped foster his reputation for leadership as a "mythic figure in American Life." Many others in politics and journalism chimed their agreement.

Two people, who worked in the New York Air Traffic Control Center, started organizing their colleagues following a fatal collision of airliners December 16, 1960. A United Airline DC-8 flew into a TWA Constellation; the wreckage fell into Brooklyn and killed 134. To horrified controllers the air traffic control system had not kept up with the rapid growth of air traffic: either in procedures or with technology. They wanted a thorough investigation, while the Federal Aviation Agency (FAA), an independent agency at the time, hurried hearings and blamed the DC-8 pilot for the collision.

A month later John F. Kennedy took office as president after a close election that included labor support. Labor wanted the right to organize government workers and Kennedy offered an Executive Order to define that right. His Secretary of Labor Arthur Goldberg and Daniel Patrick Moynihan from his staff proposed a separate agency to settle labor disputes in lieu of the right to strike. Arguments within the administration went on for a year until President Kennedy signed EO10988 on January 17, 1962. It excluded bargaining over pay, and the conditions to hire, fire and transfer employees, but allowed for informal, formal and exclusive representation in employee organizations. Exclusive representation required a majority yes vote; non-voters would be counted as no. EO10988 left interpretations to the Civil Service Commission. (1)

Labor grumbled at the limitations, but the air traffic controllers started talking with organizers from the American Federation of Government Employees

(AFGE), International Association of Machinists(IAM) and the National Association of Government Employees(NAGE). The majority of controllers were military veterans and the FAA had a command and control culture, top to bottom; they opposed and resisted organizing.

NAGE organizers made some progress organizing a few control towers while criticizing the FAA; traffic kept growing. By 1966, 304 control towers handled 45,000,000 operations for 2,300 airliners and 100,000 private planes. Most of the traffic concentrated at 107 airports. On December 4, 1965 an Eastern Airline plane glanced off a TWA jet; the TWA plane got down safely, but the Eastern plane crash landed killing four. Fatal crashes occurred an average of once a month from 1962 to 1966. In July 1967, 82 died in a collision over Hendersonville, North Carolina.

Under public pressure to reform the FAA agreed to hire 600 new controllers, to pay overtime for work over 40 hours a week and to allow controllers to schedule a two week vacation once a year. Then the FAA reneged on its promise, but shortly after Congress created a new Department of Transportation, which replaced the Federal Aviation Agency with the Federal Aviation Administration. The FAA acronym remained but now management control shifted to a new cabinet secretary.

Controllers remained disgusted, especially at major airports where the routine of daily overtime wore them down. In August 1966 controllers at Chicago's O'Hare Airport used "go by the book" procedures knowing FAA guidelines would bring traffic back ups. In August 1967 they repeated a work to rule slowdown and snarled traffic again, this time calling it "Operation Snowball." The slowdown infuriated the FAA, but they worked out three steps of pay increase with the Civil Service Commission to mollify Chicago controllers.

Shortly after a New York controller, Mike Rock, realized he was handling landing instructions for attorney F. Lee Bailey, piloting his own jet. After thinking it over Rock called Bailey to solicit advice and support in convincing the FAA to respond to their grievances. After initial discussions on January 4, 1968 Bailey agreed to help organize a national organization of controllers at a meeting set for January 11 at the International Hotel near Kennedy airport.

A week to plan the meeting turned out to be enough time given the solidarity among controllers and non-stop promotion. Bailey was well prepared when 700 controllers from 22 states turned out to listen. He told them "You should be a professional, you should be like a pilot, you should be treated like a pilot, you should get a salary like a pilot." They settled on the name Professional Air Traffic Controllers Organization (PATCO), which deliberately excluded the word union. It would be summer before another meeting and agreement on a Bailey drafted set of bylaws and a board of directors was in place. They called it a professional organization.

Their first order of business was compulsory overtime, which more than doubled from 1967 to 1968. PATCO announced July 3, 1968 they would operate by the book, which they called "Operation Air Safety." Significant delays developed at New York, Chicago, Denver and Kansas City. The FAA stalled but

found it hard to be against air safety. PATCO denied a slowdown since they were only following FAA rules. They called for meetings, which finally took place July 23, 1968.

Mike Rock led a group of PATCO members with a list of proposals that included a new training program, an overhaul of current FAA rules and regulations, a commitment to full staffing of all sectors at all times; an agreement to hire trainees at GS-10 among other things. The July 23 meeting went poorly with both sides acting offended and trading insults.

Operation Safety continued until the FAA agreed to meet F. Lee Bailey for more discussion that brought an agreement on September 4, 1968. PATCO agreed not to "advocate the use of unwarranted sick leave or unnecessary air traffic spacing as protest in exchange for the FAA to treat PATCO as a professional association and to cooperate in dues check off for all organization members. On October 11, 1968 President Johnson exempted air traffic controllers from restrictions on federal overtime pay, which was their chief demand. (2)

With a regular source of funds, PATCO opened offices on K Street in Washington and settled in for the long haul. President Johnson was about to leave office after the Nixon election and so the lame duck FAA refused to apply the overtime order. The new Nixon cabinet included Massachusetts Governor John Volpe, Secretary of Transportation with James Beggs, his deputy and a new FAA administrator, John Shaffer. All were hostile to PATCO. At the New York center supervisors expected controllers to sign a log to use the bathroom.

Controllers met in a Miami convention May 23, 1969 and got worked up enough to plan a sick out. It stalled but Bailey appeared on the Johnny Carson show June 17 and discussed controller problems and signaled a summer of increasing traffic delays if the FAA ignored PATCO. Transportation Secretary Volpe characterized PATCO complaints as over blown, but he appointed independent consultant John Jay Corson to head a commission of labor relations and aviation experts to study the FAA; apparently a concession.

On June 18, controllers in Kansas City, Houston and Denver called in sick en masse. On June 19 all 240 New York controllers called in sick. The sick out got some sympathetic press coverage, but Secretary Volpe was furious. Bailey met with Volpe, Beggs, and Shaffer to deliver PATCO demands: a 20 year retirement and the higher grade of pay for high density areas, without reprisals against sick out participants.

Bailey persuaded controllers to go back to work and let him negotiate, but a back and forth of taunts, threats and reprisals went on for more than a year. The FAA threatened to fire those who would not sign a statement answering for delays. PATCO threatened to halt traffic unless the harassment stopped. On July 18 the FAA announced reprisals against those who staged a "concerted work stoppage" which varied from reprimands and suspensions to dismissal in a few cases. They canceled leaves and vacations and ended dues check off again. PATCO called it "open war."

Then the southwest regional director transferred three veteran controllers to another region in a manner interpreted as reprisal. The PATCO Board met on

October 10, 1969 and decided they had to resist or face elimination. Bailey agreed and warned of a direct confrontation looming. FAA postponed transfers pending further negotiations.

The transfers remained unresolved into 1970 when the PATCO Board met January 23, 1970; they voted to call a sick out February 15. The Corson Commission completed its report, which criticized the FAA for failing to understand the role of employee organizations or accept them as collaborators to build good performance.

On February 14, 1970 Secretary Volpe intervened to offer a meeting February 16th with Bailey if he would call off the sick out February 15. The answer was no, but he offered to meet one hour after the noon deadline on February 15; Volpe would not meet with a job action underway. Bailey and Mike Rock conferred and decided to go ahead "for one lousy hour." In the meeting the FAA agreed to a plan to have the transfer question put before to the Federal Mediation and Conciliation Service (FMCS) for arbitration. The FMCS panel voted 2-1 to cancel the transfers, but the FAA and Volpe ignored it and announced the transfers would take place March 13, 1970.

PATCO announced their plan for a sick out beginning March 25, 1970, a Wednesday. Thursday ninety percent of Indianapolis controllers called in sick. FAA Administrator John Shaffer threatened more transfers. federal district court Judge E.G. West upheld the legality of the transfers, but the sick out continued through Easter weekend. Saturday, March 28th only 15 of 143 showed up for work at the New York Center.

The FAA threatened to dismiss 1,500 controllers, while White House Advisor H.R. Haldeman attacked PATCO, calling F. Lee Bailey the Jimmy Hoffa of the airways.

The press, airline pilots and Congress lost their patience with PATCO after the sick out dragged into its second week. James Reston of the New York Times called it the Easter uprising. He wrote "If PATCO can strike at Easter and win without penalty to its members, then we need not be surprised if in the future firemen go on strike at the height of a five alarm fire, public health doctors in the middle of a major epidemic, and policemen at the crest of a crime wave; that way lies anarchy and dissolution of the bonds and restraints that distinguish a civilized community from the jungle."

The Nixon White House announced plans to file for an injunction at sixteen Federal Courts in Washington, New York, Cleveland and other major control centers. Bailey and PATCO officials appeared before Judge George Hart Jr. in Washington who ordered them back to work. Bailey held a press conference to advise controllers to return to work, but he was merely PATCO legal counsel and lacked authority within PATCO bylaws to make a back to work order. On April 2, Judge Hart threatened fines and contempt of court unless the PATCO executive board voted members back to work. He gave them until April 11 to comply. On April 12, the PATCO board met and decided to give in. (3)

In the aftermath Volpes' deputy James Beggs wanted to fire the "whole bloody mess" but they decided firing controllers trained at taxpayer expense would

be too expensive. Instead, they fired organizers and left the passive participants alone as the most practical way to drive home the point that the government would not tolerate strikes by any name.

The FAA fired 294 controllers and fined 2,315 two days pay, but controllers used their right to appeal under federal personnel rules. Eventually eighty lost their jobs as of April 19, 1971when the Supreme Court refused to hear any further appeals.

PATCO was down but not out. During the spring and summer of 1970 the executive board decided to part ways with F. Lee Bailey and they elected new officers: John Leyden of New York as president and Robert Green of Denver as vice president. Green would soon be replaced by Robert Poli. Leyden shifted from confrontation to negotiating for good relations with Congress, other unions and gradual improvements with the FAA. Leyden took counsel from Jesse Calhoon president of the Maritime Engineers Beneficial Association (MEBA). Calhoon had years on the job, good relations with key people in Congress and he knew the President would negotiate with labor if there was political advantage and a union endorsement.

Over the next two years Leyden, with Calhoon helping, got President Nixon to allow fired controllers to reapply for reinstatement. Most did. Then on May 16, 1972 Nixon signed the Air Traffic Controllers Career Act. It allowed controllers age fifty to retire after 20 years of service or at any age after 25 years of service. Nixon explained "With this legislation we will now be able to train those employees who can no longer work in air traffic control for a second career at Government service."

President Nixon also had his Secretary of Labor, George Schultz, revise President Kennedy's executive order to be EO11491 that allowed for agency wide bargaining after a majority election. When the vote was counted September 20, 1972 84 percent of controllers at 350 FAA installations elected to have PATCO as their exclusive representative.

In negotiations for the first 1972 contract and for negotiations through the 1970's PATCO President Leyden worked to avoid confrontations and convince his membership to be patient and accept slow change. There were hundreds of grievances and testy disputes at FAA facilities around the country, but PATCO succeeded restoring dues check off, negotiating an air safety reporting plan, and persuaded the FAA to upgrade job classifications for some controllers.

A National Safety Reporting Program set up procedures to improve air safety. Controllers had no say in the procedures they used and tended not to report mistakes since they could be held responsible. The new procedures encouraged reporting safety errors by granting immunity to controllers that would open discussion of system wide improvements.

PATCO asked for an upgrade of air traffic control work to a higher General Services (GS) rank in the fall of 1975. A new FAA administrator, John L McLucas, took over November 24, 1975 and agreed to have the Civil Service Commission (CSC) evaluate their proposal. Rumors from the draft report surfaced July 21, 1976 that CSC downgraded some low density towers and did not upgrade other

facilities.

PATCO militants presumed the report reflected the anti-union opinions of the Ford Administration and responded with a slow down at selected airports that began July 29, 1976. The slowdown delayed more than a thousand flights the first day with delays especially at Washington and New York. McLucas was able to negotiate a truce between the CSC and John Leyden. Leyden agreed to call off the slowdown if McLucas would review and mediate the CSC proposals within thirty days.

The CSC did not recommend upgrades to GS-14 and downgraded 6,000 of the jobs at 155 centers. Narrative in the report ridiculed PATCO claims. McLucas kept his promise and did his best to mediate an agreement with the CSC while advising PATCO against further slowdowns. PATCO set a deadline of November 15th for the final Civil Service Commission agreement. When the Ford Administration lost the November election to Jimmy Carter the CSC lost their will to fight but stalled. Leyden had to keep the pressure on and threatened a national air traffic slowdown before the CSC finally agreed to comprise terms January 13, 1977. There would be upgrades for 1,900 positions including GS-14 at 8 high-density facilities, but upgrades at 37 other facilities did not make it past GS-13, while limiting downgrades to one airport, Love Field in Dallas. About half the membership got upgrades, but the other half felt angry to be left out. Leyden got a pay raise for the membership through the upgrades when PATCO did not have the right to negotiate over pay. The membership split with Leyden in the middle. (4)

President Carter appointed Langhorne Bond, FAA director. Bond invoked a federal civil service rule that required employees to serve at least one year in-grade before an upgrade. Bond had the power to wave and act immediately, but he delayed instead. It was not a good start for the next round of contract negotiations.

In negotiations for the contract that expired in July 1977 Leyden proposed a few miner personnel changes like dropping the dress code and a proposal to allow an expansion of a previously negotiated option that let controllers join the flight crew for a scheduled flight, known as a familiarization flight, or FAM flight. FAM flights gave controllers a chance to see their work from the pilot's point of view, but it was understood as a perk, or a freebee.

Discussions stalled into November; the FAA refused to budge. PATCO responded by picketing at airports and threatening another slowdown if there was no progress by December 15, 1977. On December 13, negotiations in Washington brought some FAA concessions on FAM flights, training, arbitration and seniority issues among other things, although the FAA demanded a three year contract.

Leyden thought it acceptable, but some of his more militant members did not. He had to campaign hard to get a majority vote, which finally came February 1978. However, the airlines would not allow more FAM flights and the FAA would not press the issue. The membership got in a huff and followed through with a slowdown beginning May 25. For several days, flight delays brought back ups of an hour at east coast airports, but demands for FAM flights brought bad press and a court fine and so the slowdown ended June 8 with nothing.

Relations between the FAA and PATCO soured badly afterwards. On October 1, 1978 Bond ended the twenty year retirement program, followed by an end to the National Safety Reporting Program as a result of a mid air collision in San Diego on September 26, 1978. The official report blamed pilot error and not controllers but Bond felt immunity would protect deficient controllers.

Leyden now found himself with a significant group of members determined to organize for a strike. In a meeting September 5, 1978 the PATCO Board pressured Leyden who reluctantly authorized vice president Robert Poli to meet with membership at control centers around the country to promote and plan a strike. By summer 1979 a committee of sixty traveled to make the case for a strike. Robert Poli argued "Our studies show that the only illegal strike is an unsuccessful one."

The case for a strike proved to be quite divisive. Leyden learned from Robert Poli that he intended to run for President at the upcoming convention. Mike Rock, known now as "Mike Strike," and Poli doubted Leyden would endorse a strike. When the PATCO Board met January 7, 1980 Poli had support from four of seven board members; Leyden just one with two undecided. In the midst of a heated argument Leyden resigned effective February 1. The Board voted Poli as president with an interim vice president.

Leyden supporters were dumbfounded and complained the board "took away our rights as PATCO members to decide who shall be the President of PATCO." The editor of the PATCO newsletter, Anthony Skirlick Jr, blamed "Godfather Rock" and the "sword wavers" who "cannot expect to change the world by not allowing airplanes to fly." "The moderates among us know what the FAA has in store for us this time."

Bond started planning for a strike by developing new procedures to handle traffic with fewer controllers. PATCO started accumulating a benefits fund that appeared to be a strike fund and Robert Poli mailed the membership a list of negotiating demands. They included a $10,000 raise, another 10 percent after one year, a cost of living allowance one and a half times the increase in the Consumer Price Index, a 30 percent bonus for time spent conducting on the job training, a four day work with three consecutive days off. (5)

Both Robert Poli and Langhorne Bond had their eye on the upcoming presidential election. By 1980 PATCO and organized labor had given up on President Carter. Reagan avoided attacking unions and encouraged his campaign officials to pick up labor votes negotiating for endorsements with union officials. PATCO counsel met with Reagan campaign officials and worked out wording for a Reagan endorsement.

Reagan appointed Drew Lewis to be Transportation Secretary and J. Lynn Helms to be FAA director. Lewis had considerable experience in the transportation business and politics. Reagan officials also kept their word and discussed Helms appointment with PATCO and Poli did not object.

Talks for the new contract opened February 12, 1981. They attracted the attention of Ken Moffett of the Federal Mediation and Conciliation Service. Slow progress convinced PATCO they needed to make a serious threat of a strike. White

House advisor Ed Meese and other staff monitored negotiations while debating how much to offer given the Presidents written endorsement. The Reagan endorsement said “I have been thoroughly briefed by members of my staff as to the deplorable state of our nation’s air traffic control system” but did not make firm commitments to PATCO’s specific demands.

At the PATCO New Orleans Convention May 22, 1981 delegates set a strike deadline of June 22, 1981 following a “fiery” address by Robert Poli on May 23. White House staff respected Drew Lewis who advised significant concessions would be necessary to avoid a strike. He outlined the agreement he negotiated to White House staff in a meeting June 11, 1981. The offer included a 5 percent add on to base salaries, exemption from federal caps on premium and overtime pay, an increase in night shift differential from 10 to 20 percent, a guaranteed half hour lunch hour, a stipulation that high-density controllers would work no more than 6.5 hours a day, and severance pay of a year if medically discharged.

There was grumbling at the White House but a consensus developed to accept the Lewis offer, which Reagan approved June 12. Lewis and the entire White House staff thought it was a generous offer that broke ground by offering pay increases. Ken Moffett of the Federal Mediation and Conciliation Service thought PATCO came out a big winner; they were “doing something here that no one else is about to do in government, which is to negotiate with you over wages, hours, and working conditions.”

Robert Poli and the more militant controllers thought the concessions showed they could hold out and get everything in further negotiations. On June 18, Secretary to the Cabinet, Craig Fuller, reported to White House officials and President Reagan that a PATCO strike was likely June 22. At 2 p.m. Sunday, June 21 the two sides convened again for two sessions of talks that extended for eight hours while PATCO went ahead tabulating a strike vote based on the June 12 contract offer.

Poli and the militants wanted 80 percent to reject the offer and go ahead with a strike. When the vote came in at 75 percent, Poli and the Board called off striking in favor of further negotiations. However, further discussion hardened positions on both sides. Drew Lewis had to fight with colleagues to keep from withdrawing parts of the contract offer.

The PATCO Board met July 1 to give members a chance to register their opinion of the contract, but opinions ran against accepting the Lewis terms by about 3 to 1. The PATCO executive board would not take on the critics of the contract.

Poli called Drew Lewis on July 29 to tell him 95.3 percent voted to turn down the contract, although that was only 78 percent of all controllers. He set August 3, 1981 as the strike date. The White House agreed with Lewis to add nothing more with money in a decision made July 31, 1981. (6)

At the White House President Reagan and various counselors decided they would give two days to get the less committed strikers to go back to work before firing them with the guarantee they would never be rehired.

Reagan adjusted the draft of his Rose garden speech in the morning of

August 3. At 11:00 a.m. he told news conference "Let me make one thing plain; I respect the right of workers in the private sector to strike. Indeed as president of my own union I led the first strike ever called by that union. … But we cannot compare labor management relations in the private sector with government. Government cannot close down the assembly line."

"I must tell those who failed to report for duty this morning they are in violation of the law and if they do no report for work within 48 hours they have forfeited their jobs and will be terminated." In comments afterward Reagan said "I believe that there are a great many of those people, and they're fine people, who have been swept up in this and probably have not really considered the result, that they have taken an oath."

President Reagan would not negotiate during a walkout. Some strikers had doubts, but roughly 90 percent of those who walked out stayed out past the deadline. They would not believe the FAA could operate without them. Air traffic dropped 50 percent in the first week. Flights were only 30 percent full with many delays ranging up to 4 hours. Bus companies had a 40 percent increase in business. Rental cars were in short supply.

President Reagan dismissed 11,345 controllers who did not return, just as promised. Their work shifted to 4,669 non striking controllers, 3,291 supervisors, 800 military controllers and about 1,000 new recruits. It took a month to reduce their workweek to 48 hours, but Drew Lewis offered an 11.4 percent increase in pay and lowered the work week to 37.5 hours to give more overtime pay.

The strike continued to generate public debate for months to come. Both sides appeared on various news and talks shows: Lewis to say it was safe to fly, Poli to say it was not. Foreign controllers and the Airline Pilots Association (ALPA) would not leave work in support, which further doomed the strike. The public did not support PATCO and President Reagan remained adamant that they would not be rehired and the public mostly supported his position.

The Federal Labor Relations Authority decertified PATCO October 22, 1981, explaining that violating the no strike pledge disqualifies a union from representing federal workers. A shortage of controllers cut air traffic for years. May 19, 1983 the National Transportation Safety Board urged the FAA to limit further expansion of flights until there were more controllers. At Chicago after 18 months fully certified controllers were down 65 percent and traffic was up 28 percent and there were more trainees than fully certified controllers, but Reagan administration refused to rehire controllers. They intended it would be a lifetime ban. (7)

The refusal of the PATCO rank and file and their president Robert Poli to accept the Drew Lewis compromise offer cannot be defended, by organized labor or anyone. The record strongly suggests that President Reagan and his White House Staff did not want to deal with a national shut down of the airline industry just a few months into his first term. They let Secretary Lewis agree to a list of concessions to avoid a strike of air traffic controllers. No savvy labor leader ever expects to make a list of demands even close to the number and amount of PATCO demands and then make no compromise for anything. What an irony to get so

much and then throw it away in a fit of pique.

After PATCO refused the offer President Reagan and his administration seemed to snap into a fit of rage. Reagan did not just fire the air traffic controllers he announced they would never be rehired or work again in government service and he kept his promise. The never rehired part of his response was at best unnecessary since firing the controllers accomplished the immediate objective of getting the airline industry back in operation and it saved him from looking weak. Apparently no one connected with PATCO bothered to review the historical outcome of the railroad strikes of 1894, 1922 and 1946 or mention that a president cannot sit idly by while a union shuts down an entire national transportation system. The rank and file appeared to get themselves into their own fit of rage as a substitute for better judgement. Americans expect to live in an historical vacuum.

The Reagan administration allowed the airlines to work with the FAA on a plan for reduced flights. An extended shut down would have been their financial horror, but after the firings the airlines were able to raise prices while filling up the planes with a reduced number of flights, and in the parlance of economists to raise their revenue by operating in the inelastic portion of their demand curve; the cuts allowed government assisted cartel practices. The staffing cuts and use of controller trainees had to compromise safety in spite of the administration insistence they did not. There were no major accidents during the years after the firings and so they got away with whatever risks the staffing shortages created. (8)

Robert Poli acted more like a press spokesman than a labor leader. PATCO did not have support from organized labor or the other airline unions, especially the pilots and machinists. Nor did the public understand or know about the years of managerial mistreatment prior to the strike. The PATCO strike generated little or no public support. The only person from labor that behaved properly in the whole matter was John Leyden, who did so much for PATCO. When Leyden took over from F. Lee Bailey he responded to the PATCO rank and file with advice and counsel and negotiated steady contract improvements, even though the Carter administration took a harder line against them than Richard Nixon and arguably President Reagan as well. Once a leader cannot get the rank and file to listen and respond, it's time to leave, which he did. PATCO had the rank and file solidarity many unions can only dream about, they just did know how to use it or when to listen to Mr. Leyden's good advice.

Reagan Era Strikes and Concessions

The demise of PATCO did enormous damage to the labor movement, but the more aggressive anti labor onslaught of the 1980's was already under way before PATCO as the 1978 comments of Douglas Fraser, the collapsing steel industry and the events of the J.P. Stevens battle suggest. Corporate America was already experimenting with aggressive ways to turn back and neutralize labor law mostly by realizing how easy and cheap it was to ignore it. The years after the PATCO failure brought nothing new to labor relations but merely a few modest variations in the bitter class warfare from 1877 and beyond.

In the 1950's the need for thousands in a growing economy allowed

people like Walter Reuther to leverage some negotiating power from that need. As new labor agreements passed through the 1960's into the 1970's Reuther and others negotiated common industry wide labor contracts, which those in labor-management relations started calling pattern bargaining. Nearly all of the pattern agreements included a formula for a Cost of Living Adjustment, or COLA. Economists abandoned excess demand from shortages as the 200 year old source of inflation and in accommodating fashion started speculating on wage-push or cost-push inflation as a way to blame labor for rising prices. Reagan partisans introduced supply side.

During the 1970's the Wharton School of the University of Pennsylvania sponsored regular business conferences where topics included labor relations. Professor Herbert Northrup spoke at these conferences in part to attract interest in his own Research Advisory Group(RAG). It was this group that published a manual of strike breaking techniques entitled Operating During Strikes. Some of Northrup's views came from his earlier employment at General Electric where he worked for Lemuel R Boulare. Mr. Boulare believed in a "take it or leave it, we do not negotiate" stance toward labor; his supporters called it "Boularism." Since the National Labor Relations Act requires business to negotiate in good faith, organized labor called "Boularism" an unfair labor practice to be halted by the National Labor Relations Board. PATCO hardly started something new as Mr. Boulare would be happy to affirm and the Phelps Dodge copper strike and other 1980's labor battles make so very clear. (9)

Phelps Dodge, Arizona Copper Strike

The Phelps Dodge Company dates from 1834 when it imported copper to process into plate at its New York facilities. It started mining copper in 1881 at mines in Bisbee, Ajo, Morenzi and Douglas, Arizona. The company had a well earned reputation for difficult labor relations, that you may recall include the September 1915 Clifton-Morenzi strike and the forever famous July 1917 Bisbee deportation.

A strike in July 1967 virtually shut down U.S. copper, lead, zinc, and silver production, closing up Phelps Dodge in the process. President Johnson appointed various cabinet secretaries and mediation boards to settle the strike, which finally ended in March 1968 with a pattern bargaining agreement for Phelps Dodge, Kennecott, Anaconda and others. A series of three year contracts followed in 1971, 1974, 1977, and 1980 that maintained pattern bargaining, although company demands to eliminate the COLA in 1980 brought a three month strike. (10)

Attorney George Munroe became Phelps-Dodge CEO in 1969 after more than a decade of Phelps-Dodge service. In 1980 Phelps Dodge earned a $110 million in profit in spite of the strike, and the industry's trade journal named Munroe copper's man of the year. Phelps did not diversify to more than copper but operated without long run planning or financial plans for downturns. Trouble arrived in 1982 with a sharp and severe recession that cut copper prices and turned profits into losses. Munroe responded with a five month shut down of mining, smelting and refining operations in a layoff of 3,400 employees. That was April 7,

1982, which layoffs Munroe thought would help his labor force understand how much their jobs were in jeopardy: "We just wanted to try to drive home the real world. A lot of those people live in remote communities and they've had a pretty easy life – the company had always been a nice comfortable womb. I just wanted to let them know it was not a sure thing."

Munroe delivered his message in town meetings at Ajo, Bisbee, Morenci. and Douglas He told them Phelps-Dodge competes in a world market with cheap labor; Phelps-Dodge needs to cut wages, abandon work rules and renegotiate the 1980 contract. Neither union officials nor the membership would accept re-negotiating an existing contract. In response to stalemate the Board of Directors decided to promote Richard T. Moolick to take over labor relations. He had long service at Phelps-Dodge as a mining engineer and vice chairman with a reputation inside the company as a vocal opponent of organized labor. Moolick scoffed at CEO Munroe and his town meetings as a sign of weakness. He had a well thumbed copy of Operating During a Strike and set out to apply it at Phelps-Dodge, or at PD as the company was often mentioned.

Moolick wanted to break down pattern bargaining and end the COLA arguing the price of copper sometimes goes down when the consumer price index goes up. He made his case to other industry officials at industry meetings. The United Steel Workers represented the miners. Their union treasurer and chief copper industry negotiator Frank McKee met with Kennecott and reached an agreement everyone expected to be the pattern bargain. McKee accepted the industry down turn and agreed to a contract with a wage freeze in a three year deal that left conditions alone for job security and a COLA.

Afterwards when Phelps-Dodge negotiations started May 4, 1983 Moolick made it clear he would not go along. Moolick announced that a loss of $74 million in 1982 required a $74 million give back with a $2 an hour wage cut, an end to COLA, concessions on benefits and medical care, and a return to the "26 and 2" schedule. Many of the miners must have winced, or laughed, when CEO Munroe told them they had an easy life since "26 and 2" in the copper industry means working 26 days in a row with 2 days off. As if these give backs were not enough, Moolick demanded union members purchase their own safety equipment.

Moolick had his negotiators tell McKee "New York is serious. We're not going to back down" in good Boularism fashion. McKee responded with two words: "Kennecott settlement. Meet that and we are home free." A hostile but futile negotiation went back and forth until the June 30, 1983 deadline approached when PD negotiators announced there would be impasse, which recall came from the Supreme Court case of NLRB v. American National Insurance Co. Moolick expected to dictate terms of employment the next week and operate without a union contract. They served notice they contracted with a private security force, apparently expecting their plans would provoke violence; a dozen union members were fired. The union filed its first unfair labor practice July 21; there would be another August 1, and another September 2, 1983.

Just as PD decided to provoke a strike two more copper companies, Magma and ASARCO accepted Kennecott as the pattern bargain. Picketing at

Morenci started immediately on July 1 along with a planned offensive by Moolick. Management strategy included a public relations war explaining rights to hire permanent replacement using authority from the 1938 ruling in the National Labor Relations Board versus McKay Radio Supreme Court Case. Newspapers repeated his threats and warnings such as don't squander your job and don't lose your pension rights.

Mine manager John Bolles sent letters to striking and previously furloughed employees hoping to entice strikebreakers: "Too many people for too few jobs is like a game of musical chairs. Have you thought about what it means to you and your family if you don't have a chair when the music stops?" At Morenci, PD drafted office workers and foreman and used 12 hour shifts to keep work going. Strikers lined the road sides shouting scab. At Douglas and Ajo, the courts granted injunctions to limit picketing. The Ajo injunction named five people and then several hundred unnamed John Does exactly as the courts did back in 1877 during the great upheaval. In Ajo, PD owned all the utilities so the court gave permission to shut off water and electricity if strikers did not comply with the injunction. Few crossed picket lines but there was scattered fist fights and random gunfire, but nothing in July compared to August about to arrive. (11)

In early August, Moolick and his strike team met and reached a consensus to hire permanent replacements. At a press conference August 5, they announced they would begin replacement hiring on August 8. Union spokesman Cass Alvin speculated Phelps-Dodge was "inviting trouble."

Trouble started early August 8 when strikers at Morenci spotted busloads of scabs heading for the mine with cots, mattresses, food and provisions to live at the mine. There followed a mile long chain of cars with an angry crowd of at least a thousand heading to the Morenci mine. They demanded to shut down the employment office. A menacing crowd forced state troopers to escort two job seekers off the property and employment director Dick Boland closed the employment office.

The crowd remained until the 3:00 p.m. shift change and demanded to "Close it down." A harried state trooper offered to mediate. A highway confab followed between plant manager Bolles, a Phelps-Dodge attorney and two strikers. Bolles apparently had orders to keep the plant open. As an alternative Bolles agreed to cancel shift changes for 24 hours if the crowd would lay down their clubs and bats, which successfully diffused the crowd.

Governor Bruce Babbitt flew in for talks, but called himself a volunteer. The two sides met in separate rooms with Babbitt going back and forth. Afterwards Babbitt reported Phelps-Dodge "stayed as far away from the issues as they possibly could: 'We've (PD) made an offer. We're waiting for a counteroffer. And we have nothing to say in the meantime.' Their labor negotiating strategy was carefully planned and they stuck to their Script." Babbitt suggested to PD officials that hiring replacements appeared to be the cause of the violence and so recommended suspending new hires for a ten day cooling off period. Moolick agreed to have chief negotiator Pat Scanlon suspend hiring for ten days, but he wanted the governor and the legislature to provide protection for his strikebreakers.

Babbitt commented that "We cannot allow any further drift into violence and lawlessness."

The next day, August 9, another menacing crowd showed up visibly armed with clubs and bats. They demanded the plant be closed by noon or they threatened to invade and close it by force. As noon approached the local union president Angel Rodriguez could not offer a delay. Phelps-Dodge Scanlon could not reach Moolick, but finally got authority from CEO Munroe to shut down the plant at Morenci for ten days, time for the union to hope for some legitimate negotiation.

An angry and disgusted Moolick showed up to confer with his PD negotiators. He brought twenty shotguns and led off the discussion with what to load: buckshot or birdshot. Boland argued for shifting production to Ajo while keeping Morenci closed; Bolles and Boland would eventually be demoted. Governor Babbitt, the Democrat, got the labor vote and so the Republicans charged Babbitt was a negligent, indecisive, weak-kneed failure responsible for the shut down. Republicans in the legislature wanted to take over the National Guard and exclude the governor from exercising authority over the Attorney General, a Republican.

The Governor had the National Guard ready for duty August 10, but delayed calling them out. Federal mediator Sam Franklin arrived August 11 to reopen negotiations while restless strikers and many of their wives continued picketing. PD negotiators repeated the "company wants to be innovative, so I suggest that the unions take what PD offered." By August 15 mediator Franklin suggested it was time to have the decision-makers get together: Richard Moolick and Frank McKee. They met privately but got no where. During the ten day shut down, PD fired 188 of the strikers at the four Arizona Mines and evicted 74 strikers and families from company housing. PD took surveillance films of the picketing to attempt to justify the arrests they wanted. There were 11 arrested at Ajo on a variety of petty charges like yelling at scabs and obstructing traffic, but they were hauled away in vans to jail in Tucson, where they stayed until the union could arrange for bail.

As the deadline to reopen approached Governor Babbitt met with a room full of aides and advisors including the director of the Department of Public Safety (DPS). They worried about violence given the stance of PD and the reaction of the union on August 8 and 9. They also had history from the 1915 Morenci strike where Governor Hunt used troops to keep strikers and strikebreakers from provoking violence taking strikers jobs.

Governor Babbitt had an opportunity to do the same. As of 1983 the 1938 Supreme Court ruling in NLRB v McKay Radio did not allow PD to replace strikers with an unfair labor practice claim pending against them without risking back pay obligations. Instead of offering any resistance to PD, he accepted his aides and advisors dark views of futility such as "We're going to have little effect on the negotiations. The company has chosen to break the union, and our ability to have leverage on that is minimal." The intention to break the union was now a common part of discussions and PD made little effort to disguise their intent, or failure to bargain in good faith.

While Babbit could have sent the National Guard as peacemakers without taking sides or having troops escorting strikebreakers to work, he told the press on August 15 he would "Call out the National Guard only as a last resort" without defining a possible last resort. Babbitt met with a delegation from the union August 17. Angel Rodriguez reported Babbitt told them he faced fierce pressure to enforce the law and therefore to call out the Department of Public Safety(DPS) and the National Guard(NG). Rodriguez concluded "It was obvious that Babbitt intends to use them to keep the gates open at the properties." (12)

Strikers and their supporters realized too late that PD and Governor Babbit used the ten days to prepare a military occupation; the union took PD at their word. In the meantime a special intelligence unit of the DPS had agents in Clifton with fake ID's to hire informants, bug union meetings, and establish a database of "trouble makers." They used authority from a statute intended to stop drug trafficking, but now used on unions. They never discovered a strike informant, but they turned profiles over to PD.

At 5:00 a.m. on August 19, 1983 a miles long military cavalcade drove into the village of Clifton at the Morenci mine. The 426 state troopers and 325 national guardsmen came in jeeps, two and a half ton trucks, five ton trucks, amphibious carriers – the San Francisco river was close by – five Armored Personnel Carriers and Huey combat helicopters. The troops had M-16 rifles. Diane McCormick lived close to highway 666 and commented later to then journalist Barbara Kingsolver, "All of a sudden we saw these caravans passing." Others described it as "like they were going to start a war -with the tankers. A whole army coming into this little community. Can you imagine? And there were helicopters coming in, dropping men off, and then the trucks, with water, the machine guns, and everything. We thought they were gonna have a machine gun at every home. They started gathering at the drive-in that's closed."

The National Guard took several days to arrive and assemble themselves. The town watched from their windows and porches. Troops and DPS officers ranged over the town entering stores, confronting residents and arresting people on PD claims of picket line misconduct. Reports of family members or friends removed from their homes after well armed DPS and National Guard arrived at their door circulated freely.

Others saw the excess as deliberate intimidation on behalf of PD. "It was bad. They had snipers on top of the hills, and tanks. They had SWAT teams all over here. I remember one case where they had a whole SWAT team on two picketers." Flossie Navarro, described the helicopters: "We had eighteen up here in the air – eighteen helicopters." . . . "All night you would hear them – brrr, brrr, brrr, like they was taking the top of the house off. At night, and of a day, for the three o'clock shift change." And the troops: "They was all over the place, all up the road and on top of the stores, pointing their guns down at people like it was a battle."

Democratic Governor Babbitt excused the troop occupation as a necessary counter to strikers who would violate a state court injunction limiting assembly of pickets. He won his second term in the November 2, 1982 election by a 62.4

percent majority. He was just four months into his second and last four year term with no obvious political risk to cower in confrontation with Republicans. (13)

The union filed its third and only important unfair labor practice charge September 2, 1983. The complaint charged PD failed to bargain in good faith in violation of Section 8(a)(5) of the National Labor Relations Act. The union alleged the known conduct of Moolick and his negotiators made clear PD had no intention of negotiating a settlement. The union claimed PD personnel attending bargaining sessions made threats and promises intended to coerce union members and failed to have anyone present with authority to make decisions.

In practice Republican administrations like the Reagan Administration took an indifferent or sometimes hostile stance toward NLRB procedures. In the PD case the southwest regional administrator, Milo Price, took over from investigators and refused to allow a complaint against PD to go forward; he dismissed the case October 16, 1983. No higher up in any other part of the NLRB moved to object. There would be no hearing on the unfair labor practice; strikebreakers replaced strikers as permanent replacements.

A week of rain the end of September washed down the hillsides into the San Francisco River and then Clifton on October 1, 1983. No one drown in a six foot wall of water, but flooding left 3,400 homeless adding to the miseries of a strike. It occurred the same week PD announced an end to health care insurance coverage. Then United Steel Workers(USW) President Lloyd McBride died November 6, 1983. While Frank McKee continued to direct the PD strike, he ran for USW president but lost to Lynn Williams in March of 1984.

The change of union presidents brought a change of union strategy. McKee refused to bring in Ray Rogers to work on a corporate campaign, nor would he agree to bargain over the COLA. New USW President Williams agreed with the local leadership in Arizona to make some concessions. They offered a $2 per hour pay cut, payroll deductions for medical care, and a two year freeze on cost of living. Local president Angel Rodriquez called it "[B]asically what we offered is what they asked for." PD wanted language permanently ending a COLA and refused the concessions. Instead, they announced an end to seniority in a unilateral move. As more crossed picket lines PD demanded larger concessions, but concession offers did not bring settlement, only more demands.

USW President Williams also agreed to try a corporate campaign but with the Washington, D.C. based Kamber Group rather than the better known Ray Rogers. The strike and picketing continued through the summer of 1984 while the Kamber Group devised a variety of tactics to put financial pressure on PD. Their financial losses in 1982 and 1983 put them at the mercy of bank loans, which the Kamber Group hoped to stop. Pressure for PD to clean up pollution brought an EPA lawsuit and fines for water pollution. The United Steel Workers pulled pension funds from banks that provided loans to PD and then pushed more than a dozen other unions to do the same. Albert Shanker of the American Federation of Teachers threatened to remove $1 billion of pension funds from Manufacturers Hanover Trust, but then backed out at a critical time.

Continued picketing at entrance gates brought taunting and confrontations

between guards, strikebreakers and picketers. Strikebreakers relied on guards to let them throw copper pennies and taunt picketers waving paychecks. Strikers responded with a variety rock throwing, window breaking vandalism and personal threats. The unions sponsored several union rallies during 1984; one was May 5, 1984, a day of celebration known as Cinco de Mayo, the anniversary of the Mexican victory over Napoleon III in the 19th century; another rally took place June 30, 1984 and on labor day 1984.

All three rallies included speaking and agitation by Dr. Jorge O'Leary. PD had employed Doctor O'Leary in their Morenci hospital for 12 years, but he did not support the PD position and so they fired him. In response he and his wife opened the People's Clinic on Highway 666, determined to provide health care to strikers who needed it. The People's Clinic became a staging point for shouting at scabs driving by after leaving the mines at shift change.

On Cinco de Mayo, ninety-nine celebrants left the Chase Creek Plaza and walked up to People's Clinic to picket at shift change: ninety-nine was the court limit on picketers. Others including some school age children walked up part way and assembled nearby on Highway 666. A local scab Joe Epperson pointed a loaded gun at the picket line that set off a melee of rock throwing picketers and kids and angry police throwing tear gas bombs. There were eleven arrests, although not Mr. Epperson.

On June 30, 1984 several thousand turned out at Copper Verde Park ready for games, music and a family day to note the one year anniversary of the strike. Most had left when Dr. Leary led a march up highway 666 at shift change to shout at scabs. Only a few were left by 5:00 p.m. when police officers drove up in an unmarked car expecting to address the remaining picketers, perhaps a dozen or two. Someone slapped the trunk of the police car. The officer had 200 riot troops ready in helmets, gas masks and face shields, which he ordered to advance down the highway in formation. They fired wooden bullets and tear gas bombs into picketers and rounded up anyone they could catch before blocking the highways in and out of town. Those arrested were hosed down and held in handcuffs in the Morenci Club, a PD facility, and later charged with unlawful assembly and rioting. For the first time the newspapers expressed dismay at excessive force, but they got the brush off from law enforcement in what appeared to be an angry revenge. Dr. Leary spoke in defiant terms at a Labor Day rally and another picket march took place this time without DPS interference.

The Taft-Hartley Act provides a method for union members to file a petition with the regional NLRB requesting a vote of the rank and file to decertify a union and install an open shop. NLRB rules require union members, and only union members, file a petition which must have 30 percent of those in the bargaining unit. Employers and NLRB staff are barred from initiating or aiding in filing a petition. In the PD case permanent replacements were part of the bargaining unit and so certain to vote against the union. Strikers have a right to vote up to 12 months following a strike but the 12 months had passed. However, NLRB regional director Milo Price handed out petition forms and directed staff to assist in filing them. The NLRB scheduled a three day decertification election for the

four PD properties – Bisbee, Ajo, Morenci, Douglas – for October 9, 1984. No one doubted the outcome, but since PD and Milo Price did not act as neutrals during the election the union used its right to appeal to the NLRB, which finally certified the outcome for decertification February 19, 1986.

The strike faded away partly because the union had no further way to resist, but PD attempts to resolve their financial problems at the expense of their labor force did not stem their financial losses. The two years Federal Reserve Bank Chair Paul Volker used to crush inflationary expectations took its toll on PD in the 1982 and 1983 recession. Copper prices went down as did other commodity prices. PD closed their Ajo mines announcing a $20 million loss for just the second quarter of 1984. The strikers in Ajo enjoyed watching more than 200 strikebreaking scabs pack up and leave. Partial closings and job cuts came at the Douglas and Morenci mines as well. The weary strikers celebrated with a "Good bye Scabs" rally December 31, 1964. Janie Ramon from Ajo complained "It was the working class that voted Babbitt in, but he has blown it now. He blew it by sending the National Guard in. I don't think people here will vote for Democrat again. And we are definitely not Republicans. What we need is someone who understands labor issues, a working person. Someone who knows what we've been through." (14)

Business Week published a discussion of Phelps-Dodge managerial deficiencies in July 1982 entitled "The Crisis that Threatens Phelps-Dodge." A failure to diversify and consider long range planning dominated the analysis. What management should do and could do included specific proposals until toward the end when the unnamed author decided "There are serious doubts, however, that Phelps has the management talent to achieve even these modest goals. Independent thinking or dissent has never been popular at the company. That is exemplified by its strategic planning."

A public airing of managerial failures by a respected business journal just prior to a union busting onslaught such as Phelps-Dodge can be regarded as quite unusual, but it proved to be no help to the rank and file or their Arizona communities. Otherwise the significant events of the 1983 Phelps-Dodge strike repeated the same union busting practices as the myriad mining and manufacturing strikes far back into the 19th century. Think of it as a repeat of a long running Broadway play.

Like dozens of governors before him of both parties Governor Bruce Babbitt succumbed to one sided reports of violence, and called out the National Guard. One of his advisors told him his choice was "between law and order or civil disorder" but none mentioned the rare legacy of Arizona Governor Hunt or Governor Frank Murphy of Michigan in the GM sit-down strike.

Like so many of the strikes before it Phelps-Dodge management took an aggressive role controlling law enforcement. A plant manager at Ajo had eight police there arrest ten picketers on charges of felony rioting. Those arrested were taken before a Justice of the Peace also employed as a Phelps-Dodge mine guard. She set prohibitive bail totaling $175,000.

Like so many of the strikes before it this one included evictions from

company housing. On Thanksgiving 1983 PD negotiator Jack Ladd announced "The sooner those people in Morenci and Ajo realize that they are finished, the better off they will be. There are no jobs for them. It would be better for them to pack up and leave and find a job elsewhere."

Like so many strikes before it this one included a congressional investigation conducted by Missouri Representative William Clay. His report concluded "for the first time settlements were possible in the copper industry without resort to strikes [but] Phelps-Dodge deliberately has chosen to provoke one." Like other strike investigations, it was ignored.

Like so many strikes before it the key source of trouble derives from labor law that denies the right to strike by allowing management to declare impasse and hire scabs with permanent replacements. This latest Phelps-Dodge strike had nothing new, just the same old thing, an update for 1983. (15)

Yale University Strike

Yale University has a reputation as a great university with a motto "light and truth." They also have a reputation as chintzy and stingy in labor fights over nickels and dimes. They fight with the graduate students, the maintenance workers, the kitchen help and the clerical staff as though their working class employees wish for a living wage might drain the Yale endowment, or challenge the privileges of the upper class.

Yale's maintenance and food service workers in Local 35 made little progress negotiating contracts or conducting strikes in the 1960's until they met Vincent Sirabella, then the business agent for Local 217 in New Haven. By the 1960's, Sirabella had decades as a labor agitator who apparently tore a page from the guidebook of the IWW. Sirabella had to drop out of school at age 12 and work as a dishwasher after his mother died in childbirth. That was in 1934, a good time to learn about depression era labor organizing, which he did. He was soon involved in the Hotel Employees, Restaurant Employees (HERE) and the need for solidarity. He learned early not to trust the union bosses any more than management.

When he agreed to be business agent for Local 35 he needed a replacement for his work at Local 217. He recruited with a newspaper want ad that read "Wanted: labor trainee, person willing to work long hours for low pay in order to be a labor leader." John Wilhelm, a 1967 Yale graduate, took the job.

Sirabella took the training part of his recruitment seriously by acting as a mentor to Wilhelm and getting him involved with organizing at Yale. The negotiations for a 1971 contract for Local 35 - maintenance and food service workers - stalled and a strike followed. Sirabelli refused to be invisible and adopted the IWW method of street parades during Yale's graduation ceremonies. Sirabella made plans for Monday morning June 14: "Our objective was to confront [Yale President Kingman] Brewster during the graduation procession and demand that he enter the negotiations to help end the strike." Police were out to block their efforts. As so often happens when working class protest meets entrenched privilege the police lost their temper and used their billie clubs to

beat protesters; there were twelve arrests. Much of the altercation was filmed for a local TV channel, which showed Yale graduate, and Sirabella recruit, John Wilhelm, getting clubbed over the head. Protests continued until Friday before Yale decided to settle.

In 1980, Wilhelm took over as business agent of Local 35 made up of Yale's maintenance and food service workers already organized from the 1960's. Soon he decided it was time to organize Yale's long ignored clerical and technical workers into Local 34 after comparing the salaries of the two groups. At Yale "Lower wage workers, primarily women and minorities, earned barely above the legal minimum wage. They were laid off at summertime, at Christmas, and at spring break. Fully, a third of them were on welfare."

Wilhelm organized "around the notion that the union is a tool for them to use to deal with whatever they want to, as opposed to insurance policy unionism, where you say 'Well if you join the union, you'll get fifty cents an hour more' or 'If you join the union we'll have good health and welfare,' which I don't think works very well." Like the IWW, he wanted active participation as a show of solidarity in plans for negotiations, picketing, parades and demonstrations. Reliance on paid staff limits involvement and solidarity as the IWW knew all too well. "Everybody knows the problems." What the union must do is "persuade people that it's possible to improve those things, and secondly, that the union is the best way to improve them . . . You have to persuade people of both of those things." (16)

The bargaining unit had more than 2,500 people dispersed through many departments, bureaus, and administrative units, often with just a few people in each. He had four organizers at first and eventually six. The situation made a steering committee necessary to recruit and develop a rank and file staff to take responsibility for organizing.

Wilhelm and his staff got authorization cards signed and filed for NLRB election. Several months before the election another Yale president Bartlett Giamatti released a statement that the proposed union would disrupt "the structure of relationships created between the members of the staff and the University" which would compromise the 'collegial spirit' of Yale." The election took place May 18, 1983. Out of 2,505 votes the yes votes got a majority of only 39 votes.

After NLRB certification and a mass meeting of the bargaining unit they elected a 35 member negotiating committee with John Wilhelm voted chief negotiator. The mass involvement generated much interest and the clerical and technical staff covered the campus with posters.

President Giametti announced "It is now time to put aside our differences and in good faith to work together" but he hired Chicago law firm – Seyfarth, Shaw, Fairweather and Geraldson – and stalled negotiating until fall 1983 and then made trivia an excuse for further recess and delays, claiming at one point the Yale did not have a room big enough to hold the union negotiating committee. It would be December before the union presented pay requests that included step increases in the pay structure. The union held demonstrations at Giamatti's house.

Giamatti spoke at a student forum and called union proposals "charming but

unreasonable" and accused negotiators of creating "phony issues" His comments included "Collective bargaining is no picnic." Local 34 held a protest rally March 8, 1984, which had some student and faculty support. An estimated 4,000 took part, but Giamatti dismissed it as a publicity stunt. Some faculty held classes off campus. Yale Law Professor Julius Getman described the administration's negotiating style as confrontational. "During bargaining sessions it treated the union not as a negotiating partner but rather as a naïve entity that required education. Negotiations had less a sense of give and take than a sense of lecture and response. Union invited members of faculty to sit in. I was dismayed at the condescension of Yale."

At a mass meeting Local 34 voted 1,309 to 165 for binding arbitration and set March 28, as a strike deadline. Yale refused arbitration, but settled some issues in health care, grievance procedures and raised their wage offer, but did not address a pay schedule or step increases. The union agreed to suspend the strike and leave outstanding issues to a later date in an April 4 vote of 903-353. (17)

Yale returned to stalling as the summer intermission loomed and made a strike a quixotic enterprise. After fall semester 1984 got under way union members voted 10 to 1 to strike in 10 days if wage issues were not settled. On September 22, Yale announced its final offer, which left the two sides far apart. On September 26, 1984, 1,800 of approximately 2,600 clerical and mechanical workers left work. All but one of Yale's dining halls had to close after service and maintenance workers honored picket lines. Custodial service at the university also stopped. At lunch and dinner times, restaurants and deli services adjoining campus filled with students with $72 of weekly meal money from Yale. Peanut butter and bread disappeared from store shelves the New York Times reported.

The union wanted a salary scale with step increases and an 8 percent pay raise for each of three years. Local 34 contends that Yale discriminates given the low pay and 82 percent of the clerical and technical workers at Yale are women. Yale President Bart Giamatti responded with "The university cannot agree to demands that would damage our capacity to provide compensation for all parts of the community on a fair basis, as well as to maintain our good financial-aid policies and to keep tuition increases as low as possible."

Faculty and students remained conflicted whether to support strikers with some unable to believe that noble Yale would have to be disrupted by something as grimy and pedestrian as a working-class strike. Provost William Brainard said "I know that one can't live the way one would like to, or the way one would like one's family to, on a Yale clerical and technical worker's salary That's a national problem, which Yale can't be expected to solve."

The union realized withholding services alone would not win a strike against a well endowed university and so they made use of IWW tactics like picketing, parades, and publicity from candle light vigils and civil disobedience. A graduate school alumni reception endured 300 pickets; a bigger group picketed the president's house and blocked traffic and got arrested in front of President's house.

On October 16, police arrested 190 strikers for blocking a public road

during a silent protest. On October 26, after a meeting of the Yale Corporation, police arrested 430 including some students and faculty for blocking New Haven streets. Police arranged buses for transporting demonstrators to station houses; they were charged with disorderly conduct but released pending court dates. The New York Times reported a thousand more looked on. A variety of celebrities arrived in support including Bayard Rustin and Ray Abernathy. (18)

After six weeks on strike only around 50 crossed picket lines and returned to work, but again the calendar played a role in union strategy. On November 29, the union voted 800 to 250 to abandon picketing and return to work December 4th but resume the strike January 19, 1985 if outstanding pay issues remained unsettled. University secretary John Wilkinson expressed relief that "There's a lot of work that needs to be done – work that hasn't been done." Local 34's chief negotiator John Wilhelm said "the union went back to work . . . because a university, unlike other employers, has very slow periods." . . . "There's no obvious reason to let the university starve us out when they need us less." Others expressed a sense of relief, but a pro-management student group denounced the union's claim the university discriminates against women. Pro union students from Amherst, Smith, Princeton, and the University of Massachusetts showed up in buses to rally around shouts of "comparable worth."

Shortly after the new semester opened and before the January 19 strike deadline Yale agreed to a contract with 20.25 % increase in salary over 3 years retroactive to July 1, 1984. It provided for a system of slots or pay steps. It was one of the few labor successes in a decade filled with labor disaster.

A large measure of the success came from Wilhem's organizing. He remembered his mentor Vinnie Sirabella who told him "I'll tell you the things I think I learned from him right at the beginning. One was that you had to be militant in order to get anywhere. Even more important was to have faith in the members. I have never to this day met another person who had such faith in the workers. He absolutely believes that as long as you provide the workers with the facts and as long as you give them some leadership, they'll always do the right thing, whatever that is." Wilhelm would go on to make a career in the labor movement. (19)

Hormel and the Packinghouse Workers

The 1985-1986 strike of Local P-9 at George A. Hormel & Co in Austin, Minnesota combined astonishing solidarity with a nightmare of divisions. It had national news coverage during some episodes of an unruly back and forth contest of labor against labor and labor against capital. It had support from around the country except the United Food and Commercial Workers International insisted the local union give up its strike and the government and the courts intervened with troops, injunctions, arrests, including an arrest on a charge of criminal syndicalism.

The Concessions--------The strike started August 14, 1985 after 93 percent of Local P-9 voted yes to a walkout, but the vote came after three separate rounds of concessions beginning with a new contract in 1978. Hormel threatened to close

its Austin plant rather than remodel. It looked at other sites in Waverly, Iowa and Mankato, Minnesota, but demanded concessions from Local P-9 in Austin in order to stay. After negotiations broke off Hormel closed their beef slaughter plant, laid off 200 and then gave 52 week layoff notice to 300 more.

Confronted with closing and layoffs Local P-9 business agent Richard Schaefer gave in to concessions in a "transition agreement" and a "new plant agreement." The union agreed to put their incentive pay into an escrow fund as a loan to Hormel to help build the new plant. They agreed to a 20 percent speed up in production and they could not strike until three years after the plant was completed and operating. In exchange the workers got a promise of at least 750 jobs and agreement that wages in the new plant would not be lower than wages in the old plant.

Hormel wanted a second concession in 1981 even though the new plant was not open. They wanted a wage freeze in return for a promise not to close a plant in 1982. Local P-9 agreed to a three year wage freeze at $10.69 an hour, which included language that "The cost of living adjustment which is now in effect will be incorporated into the rates, and there will be no increase or decrease in rates for the balance of the present term of the contract and for the 1982-1985 term of the agreement."

The new plant opened in August 1982. Automation raised production by 20 percent to 440 cans of Spam a minute, but only 1,500 jobs remained out of 3,000 from the old plant and 1,100 of those were new hires. The foreman no longer conferred with the work force to set line speeds and expected all to raise their hand for permission to use the restroom.

In 1984, before the end of the contract, Hormel demanded a third concession in spite of a new plant and higher productivity. They demanded a 23 percent cut in wages from $10.69 to $8.25 an hour in Austin with a retroactive cut in benefits. After a competitor like Iowa Beef Processors built bigger plants with slaughtering and processing all on one level they also tapped into the rural surplus of labor and paid lower wages. Older processors – Swift, Armour, Wilson and Hygrade - cut wages in response or were bought out by bigger companies like ConAgra. Wages at some Wilson plants dropped to $6.00 an hour. To Hormel their wage cuts were just a response to a decade or more of general wage cuts in the depressed meat packing industry. To those in Local P-9, Hormel reneged on a written contract.

The United Food and Commercial Workers (UFCW) International union had to respond to wage cuts on behalf of the eight Hormel Plants, not just the Austin plant. After threatening a strike of the Hormel "chain" UFCW officials negotiated a slightly higher wage of $9.00 an hour.

In Austin officials and the rank and file of Local P-9 refused to accept the $9.00 wage that satisfied UFCW officials and the other seven plants in the Hormel chain. Local P-9 preferred to act alone to enforce the unique terms of their 1978 contract after they could not persuade UFCW officials to hold out for a better deal.

Local P-9 President Jim Guyette convinced his rank and file to go to arbitration to enforce the terms of the 1978 contract. The local could not legally strike until three years after the August 1982 new plant opening, but the

additional terms of the agreement prevented wage cuts with a right to strike if Hormel reneged, or so they thought. However, UFCW officials had provided only summary language to the agreement, which was the same "summary" language written in another agreement between UFCW and Oscar Mayer. The UFCW local at Oscar Mayer won a reversal of wage cuts in arbitration and so Local P-9 had good reason to believe they would prevail in their arbitration. It turned out the exact wording of the full contract was not the same for Local P-9 and so the arbitrator ruled in favor of Hormel; they could cut wages and Local P-9 did not have a legal right to strike in their contract.

To officials and the rank and file in Austin their UFCW International officials betrayed their trust. By fall 1984 Guyette and the rank and file had lost faith in UFCW. Members and spouses organized an Austin United Support Group and then invited Ray Rogers, the founder and principle strategist for Corporate Campaigns, to plan a strategy to fight Hormel. Rogers arrived in Austin in October to attend a fall meeting where he was surprised to have 3,000 turn out and tell him they wanted to leave UFCW and strike immediately.

Ray Rogers, his assistant Ed Allen and Jim Guyette met in Washington with UFCW officers and then again two months later in Chicago at two meetings with regional UFCW officers. However, UCFW Packinghouse division director, Lewie Anderson, informed the press UFCW would not back a campaign against Hormel. UFCW wanted to use "a full court press" against ConAgra, now the owner of Armour & Co. Wages were so low at some of the other small plants that UFCW wanted to shore up these lower wages. Anderson wished to "inform all local unions and the AFL-CIO that the union does not 'endorse, support or authorize' a corporate campaign or boycott against George Hormel Company. Local P-9 has "chosen the wrong target at the wrong time."

On January 18, 1985, Local P-9 voted to impose a $3 per week per person charge to fund their corporate campaign. UFCW International opposed the fund but Lewie Anderson agreed to meet in Austin April 14, 1985 for more discussions. Anderson cited past efforts to fight concession that brought 35 plant closings; UFCW plant closings make it too late to worry about fighting concessions. The plant closings push the industry "close to becoming non-union." UFCW wanted a pattern bargaining agreement at a lower wage. Fighting to restore the $10.69 an hour would encourage Hormel to subcontract at lower rates.

Guyette wanted to know why people at unorganized plants would want to join a union to take a pay cut?" Guyette went on to say "We can't understand an International trying to force us to take less. In most places of the country you have to look for people willing to fight. You've got it here, and now you're trying to defuse it."

Anderson conceded enough to say "We're not on your backs. You can proceed in your direction, but if you go outside of your local and try to drag others into it, that's another story." International UFCW president William Wynn wrote the membership to criticize the P-9 leadership. But Local P-9 voted a second time to fund their campaign; the vote was 722 to 178.

The first negotiating session was June 25, 1985. Negotiations continued

on July 2, July 17, July 31, and from August 3 to August 10. Hormel wanted numerous other concessions from decades of previous union contracts and did not initially make a wage offer. Wages during negotiations remained at $8.25 an hour.

Hormel wanted to abandon written seniority guidelines for choosing people with the "ability to perform all the work operations." In place of seniority Hormel would decide to fill vacancies, make promotions, assign overtime, abolish or alter jobs, or subcontract work without written guidelines in a new contract. They wanted to restrict overtime and holiday pay. The wanted to eliminate previous grievance and arbitration rulings as precedent for new disputes; future grievances would start from scratch. They wanted to abolish 52 week notice for layoffs and reduce notice of plant closings to 3 months.

It was not until the last session that Hormel made a wage offer. They wanted a two tier wage with one wage set and frozen at $10.00 an hour, but new hires at $8.00 an hour, then $9.00 an hour after three years. Hormel refused to discuss safety issues or accident rates in the new plant. (20)

A Three Sided Strike---------The strike that started August 15, 1985 brought 400 pickets to the plant gate on August 16. There would be many more picket lines and demonstrations before the strike collapsed and UFCW International stepped in to substitute their own settlement on August 27, 1986. Local P-9 lost their strike, but that was not enough for UFCW officials they used trusteeship language to dissolve the Local P-9 charter and take over their union hall and assets.

When the strike started Ray Rogers had plans ready for the rank and file to act and be involved in the hunt for public support. He had Local P-9 members go door to door to hand out information; one handbill had a caption "Who's Behind Hormel's Cold Cuts." P-9 volunteers distributed thousands of these and other circulars. A caravan of three hundred P-9 members left Austin for a five-day tour of Ottumwa, Sioux City, Algona, and Knoxville, Iowa, Rochelle, Illinois, Beloit, Wisconsin and Fremont, Nebraska. They camped in local parks and found other Hormel local unions and communities to support their cause.

The corporate campaign included pressure on Hormel's bank, First Bank, which had corporate board interlocks going back to the 1920's. Their relationship included revolving credit with a $75 million long term loan agreement to build their Austin plant and they ran pension and profit sharing plans and held 12.3 percent of Hormel stock. Local P-9 members traveled to mid-west branches of First Bank hoping to convince customers to close accounts and stop doing business with a union busting bank. UFCW International officials opposed their effort as did Hormel and bank officials but the plan bogged down in legal wrangling and proved ineffective. (21)

Back in Austin P-9 members turned out for regular United Support Group meetings at the Austin Labor Center. UFCW International officials gave an official but qualified support for P-9 strikers. Strike benefits of $40 a week did not make up for lost pay. Given the insecurities toward UFCW International P-9 organized an Adopt-a-Family campaign to get donations from other unions around the country.

They found substantial support in the Hormel local in Ottumwa, Iowa that sent $2,800 worth of food. More support came later from 500 or so union activists from twenty states who attended December 6-8, 1985 meetings to organize a National Rank and File Against Concessions. This and several other liberal or left leaning groups provided food support.

Rogers and Guyette wanted UFCW permission to set up picket lines at other plants, which UFCW refused. After a five hour meeting in Chicago, UFCW agreed to issue a joint statement giving qualified permission, which said "If Hormel fails or delays in bargaining in good faith, the International union will sanction extension of P-9's picket lines to other Hormel operations."

Negotiation efforts went forward with Federal Mediators Hank Bell and Don Eaton getting talks going in meetings beginning November 15 and extending into December, but without progress. Local P-9 Board discussed wages in a December 12 meeting where the Board had four votes for $10.69, three for $10.25 and five for $10.75. Finally, on December 13 Bell and Eaton reported they got some new contract wording with modifications and clarifications.

The new offer ran for three years and modified the two tier wage by allowing a shorter nine month probation period for new hires. The wage offer was still $10.00 an hour with an increase to $10.10 an hour after three years. Expanded new seniority language set up bumping rights to the youngest man's job by department and then across the plant, but complicated and confusing language suggested older employees could still lose their jobs to younger employees. The old 52 week layoff included the security of a guaranteed annual wage since the livestock necessary to operate a meat processing plant was subject to fluctuations leading to periods of layoffs without work. The new 52 week notice and guarantee of minimum work was gone. Safety improvements would come entirely at Hormel discretion. They made no commitment to rehire strikers.

The contract satisfied Hormel and the officials at UFCW International. UFCW President William Wynn told P-9 "Boys, this is the best you're going to get, and we recommend that you accept it." He also threatened UFCW would not sanction roving pickets or allow them to expand their strike to other locals.

Local P-9 members were unhappy and realized UFCW and Hormel made separate negotiation without them. UFCW officials hoped to pacify P-9 members with two letters: 1) UFCW Region 13 director Joe Hansen wrote to Local P-9 members, 2) UFCW president Wynn wrote to AFL-CIO affiliates.

In his letter to P-9 Hansen stressed the rank and file had courage, idealism and tenacity but they were mislead by Ray Rogers in a campaign that was poorly conceived and oversold, inadequately researched and doomed to failure before it began. He went on to say the second contract was not perfect and was less than what members deserved, but "nothing measurable can be won by continuing the struggle that has cost you, your families and your community so dearly." Then he announced UFCW would take charge of the vote to ratify the new contract via a mailed ballot, even though members usually conduct their own ratification vote.

In his letter UFCW President Wynn wrote AFL-CIO affiliated union presidents that UFCW has not approved P-9 efforts to attract funds through their

Adopt-a-Family plan. He explained "we are deeply concerned that any funds sent directly to the local would simply find their way into the hands of Ray Rogers and Corporate Campaign Inc. Clearly, after 10 months of corporate campaigning against Hormel and First Bank, Rogers strategy has been a complete failure on all major fronts."

The defeatist letters did not break solidarity at Local P-9. On December 19 around 200 strikers blocked the Austin plant gate with their cars. They arrived at 4:00 a.m. On December 21 a caravan from the Twin Cities delivered twenty tons of donated food and toys to the union hall. The same evening about a thousand P-9 members gathered to discuss the contract, which the leadership called a sellout cooked up by the mediator and the company. The director from the Ottumwa, Iowa local spoke against the contract, which he called inferior to their contract. Expiration dates differed weakening the bargaining position of all UFCW locals. P-9 took their own vote on December 27; 61 percent voted no. The mail ballot vote January 3 was 58 percent no. (22)

Hormel announced they would reopen the plant January 13, 1986 and any strikers that did not return would lose their jobs to permanent replacements. Reopening was a media event with 350 strikers milling around the gate by 6:30 a.m. along with plant security staff. Few from Local P-9 crossed picket lines, but many cars with out-of-state tags came to be strikebreakers. Many came from Iowa.

Once the Austin plant reopened the strike turned into a back and forth of demands and charges between P-9 and UFCW. UFCW President Wynn encouraged P-9 strikers to cross picket lines and return to work. In effect he told them through television and the press their goals could not be achieved and true union members choose concession contracts over suicide and martyrdom. Local P-9 responded four days later on January 20 with a massive traffic jam blocking the plant gate.

There was no violence or destruction of property, but strikers have no legal right to block roads or plant gates. Hormel officials closed the plant for the day and had plant manager Deryl Arnold read a statement to reporters, which included "The police are powerless to control mob violence, mass picketing, and wanton destruction of property, and mob psychology has taken over."

Exaggeration helped justify Hormel CEO Richard Knowlton's request to Governor Rudy Perpich to use the State Patrol or to call out the National Guard. However, state law prevented using State Patrol in labor disputes and National Guard requests must come from local officials "indicating that local resources were exhausted and not capable of dealing with the threat to public safety." Austin Police chief Donald Hoffman and Mower County Sheriff Wayne Goodnature made their request.

The National Guard arrived at 2:30 a.m. January 21 with 500 troops, only the third call up since 1900. No labor leader of the AFL-CIO spoke against it, while Minnesota AFL-CIO president Dan Gustafson supported it. When troops showed up at the plant at 4:00 a.m., union pickets were there in force. Picketers closed the plant Monday and again Tuesday with the grudging acceptance of the guard and police. The Governor agreed to call up four more companies of troops

and supply an armored personnel carrier.

The next morning National Guardsmen paved the way for strikebreakers to get into the plant by blocking the exit ramp off Interstate 90, except for cars with orange Hormel stickers. The state police patrol, supposedly barred from labor disputes, helped to block the road. When two P-9 drivers blocked the ramp and locked their car doors, police smashed their windows and arrested them.

Later in the day a hundred farm tractors arrived from St. Paul to rally support in Austin. The American Indian Movement came and Farmstead Meatpackers from Albert Lea, Minnesota. Roving picketers traveled to Hormel plants in Ottumwa and Algona, Iowa and Beloit, Wisconsin. Almost all of 850 people in Ottumwa refused to cross picket lines. Letters of support poured into Austin and random people showed up in Austin to picket.

Lewie Anderson of UFCW debated Jim Guyette on ABC Nightline where Ted Koppel expressed his surprise: "Mr. Anderson, in the past unless a local really did something outrageous, the parent union would have defended it; otherwise the whole labor movement starts coming apart at the seams."

January 29 over 2,000 marched through Ottumwa in support of P-9, many from the International Brotherhood of Teamsters and the United Autoworkers, along with the Mayor Jerry Parker. UFCW President Wynn responded with "I strongly urge you to inform every member of the consequences of risking their jobs in order to help Rogers save face."

January 31 Governor Perpich withdrew some of the troops and P-9 responded with a massive traffic jam at the plant at 4:00 am. Security guards locked the gates and the plant had to close, although that was not announced. On February 3, Governor Perpich sent 800 guard troops back to the north gate because of alleged threats reported by the sheriff that strikebreakers would use guns. On February 4, Judge Bruce Stone found Guyette and Rogers in contempt for violating court ordered limitations on picketing. He fined them $250 and ordered 15 days in jail, although their sentences were stayed.

February 6, Ray Rogers led over a hundred strikers to north gate at 5:45 a.m. Instead of blocking the gate groups of five or six tried to walk under the I-90 ramp and assemble in the gate area, but police authorities told them to leave or be subject to arrest. Rogers was arrested along with twenty-six others. They arrested all that walked under the overpass and then blocked off the rest. All were charged with obstructing justice, except an additional charge of criminal syndicalism made against Ray Rogers. The judge set bail at $2,500.

February 11, the union offered to return to work on a one year contract at $10.05 an hour if Hormel would take back strikers; they refused. They had enough replacements crossing picket lines to operate the plant at full capacity of 1,025. Hormel Corporate VP Charles Nyberg said "It is unfortunate that union members have only now come to recognize the economic realities facing the meatpacking industry."

Hormel had the police and troops blocking roads, but on February 14, Judge Bruce Stone placed more restrictions on picketing. He would allow three picketers and six other demonstrators within 50 feet of plant grounds. Judge Stone

demanded Guyette and Rogers sign a statement they would abide by his rules or else send them to jail. He added this is "a curtailment of your first amendment rights, but there comes a time when a judge has to do something he thinks is fair." (23)

No Retreat, No Surrender---------By mid February the strike had turned into a back and forth of provocation with Local P-9 adopting the defiant slogan no retreat, no surrender. Hormel used the predictable steps of importing scabs and expecting to get police and the courts to act on their behalf. Governor Perpich decided to remove all the troops from Austin and avoid further involvement beyond a few plaintive calls for compromise, but UFCW International dug in with a stepped up determination to break the strike. Shortly they would use their authority in the UFCW by-laws to demand an end to the strike and call for removing the elected officials of P-9 to replace them with their appointed trustees. Through it all they ignored the broad support of local unions and the rank and file from around the country.

On March 10, 300 strikers, spouses and supporters chained and padlocked Hormel headquarters in Austin beginning at 3:00 a.m. and one of their number drove to Twin Cities to deliver the key and a letter to Governor Perpich. The letter had the phrase "Our civil rights have been denied by you and the Hormel Company long enough."

Judge Bruce Stone made their claim more reasonable since he admitted he was violating their right of free assembly when he limited pickets, but police showed up at 7:00 a.m. and eventually arrested 122 after Hormel refused to meet with them and they locked arms and blocked entry to company grounds. People resisted police enough that it took until 1:30 p.m. to open the Hormel offices. The Austin jail had room for 45, but authorities stuffed it with 80 and then sent others to surrounding county lockups. They were charged with obstructing legal process and unlawful assembly.

On March 15, UFCW President Wynn responded by ordering the Local P-9 Board of Executives to end the strike and cut off strike benefits of $40 a week. UFCW regional director Joe Hansen hoped remaining strikers could return to work without the stigma of crossing a picket line. If they could not get their jobs back ending the strike would allow them to apply for unemployment benefits. On March 16, P-9 members responded with a vote to continue the strike.

On March 20, P-9 strikers, Mesabi range miners, Albert Lea meatpackers and about 50 supporters from the Twin Cities blocked Hormel again, shutting down the plant for several hours. Police arrested twenty-four including several board members. March 21, March 27 and again April 2 about a hundred picketers gathered at the plant gate to jeer scabs amid pushing, shoving and kicking cars. The April 2, demonstration brought 13 arrests with charges of obstructing the legal process and unlawful assembly, although two were charged with assault after wrestling with police.

Ray Rogers organized a week of rallies and protests advertised as "Shut Down Hormel Week." It began April 9, with a small but orderly demonstration of a hundred, followed by a bigger demonstration of 360 on April 10 and a still

bigger demonstration of 600 on April 11. The April 11 demonstrators used a car to barricade the way to the north gate at 5 a.m. Police blocked the Interstate 90 ramp at 6 a.m. and threatened arrests if protestors refused to leave, but the crowd ignored at least three warnings.

Police used a van to drag out the barricade and lined up on both sides of the road before starting to arrest people one by one; eight were handcuffed and removed. Six police charged in again but demonstrators locked arms and threw dirt, rocks, coffee and a firecracker. Police put on gas masks and declared the demonstration was a riot, a designation that allowed them to make felony arrests. After more threats police fired a dozen tear gas canisters. KAAL television filmed five police converging on a fleeing demonstrator, punching him, flinging him to the ground and handcuffing him. It turned into the poster for the strike. Eight more arrests brought the total to seventeen. At 8:20 a.m. police escorted scabs into the plant.

Seventeen would be charged with felony rioting including Ray Rogers who was several miles away in a K-mart parking lot. Rogers and Guyette were also charged with aiding and abetting a felony. Lesser charges were made against twenty-five more. No one was injured and there was no property damage but Sheriff Donald Hoffman berated UFCW officials "If that International does not take over the union now, they're the most incompetent union in the entire country as far as I'm concerned. … It's about time they showed a little guts here."

Hormel and the sheriff wanted to prevent the finale of the protest week, but the march and rally went on as planned. A previous February 15 rally turned out 4,000 with many from out of town unions. The April "Shut Down Hormel Week" turned out 6,000 from unions from sixteen states. Include California chemical workers, California longshoremen, Texas oil workers, Maine shipbuilders, Pennsylvania mineworkers, Chicago clothing workers, and New York Communications Workers. Many spoke at an overstuffed arena including Jesse Jackson and local labor leaders from around the country. (24)

Dissolving Local P-9 in Austin----------The show of union Solidarity did not change any minds among officials at UFCW who went forward with hearings to establish a P-9 trusteeship with UFCW appointees. Title III of the Landrum-Griffin Act governs the trusteeship takeover. Creating a trusteeship should follow the international union constitution and meet written conditions in Title III, which expect to correct corruption or financial malpractice, to assure the performance of a collect bargaining contract, to restore democracy, or carryout the legitimate object of a labor organization. None of the conditions applied to Local P-9 but hearings went forward April 14 in Minneapolis.

A UFCW appointed hearing officer, Ray Wooster, conducted the hearing. Guyette had to post a $5,000 bail to attend and the International picked a small public library room for the hearings, which prevented busloads of P-9 supporters from attending the meetings. Wooster started by announcing the hearings would settle one question: Did P-9 comply with the March UFCW directive to end the strike?

The rules in the UFCW constitution allowed local officers the right to present evidence and to examine and cross-examine witnesses, but few UFCW witnesses showed up to examine so the hearing degenerated into a three day verbal contest. Wooster passed his report and written statements to the UFCW Executive Board for a decision, which appeared to be a foregone conclusion.

By now, late April 1986, the strike shifted to the courts. Hormel complained to the National Labor Relations Board to have P-9 picketing declared an unfair labor practice. The NLRB filed for an injunction in Federal court before Judge Edward Devitt. Devitt wrote a sweeping injunction limited picketing or taking pictures of strikebreakers entering the plant. He authorized 150 U.S. Marshals and 22 federal deputies to enforce his order until the NLRB made a ruling on the unfair labor practice.

Meanwhile Local P-9 filed suit in Federal Court in Washington DC asking money damages for UFCW's "malicious, willful and bad-faith" effort against P-9. The Hormel public relations director called it a publicity stunt, which happened to come the day the executive board voted to dissolve P-9 into their own trusteeship. The same day, May 8, UFCW attorney Harry Huge asked Judge Devitt for an injunction to enforce the trusteeship. UFCW wanted clear authority to take ownership of the P-9 union hall and all of its financial assets.

Lawyers for both sides appeared in DC Federal Court before Judge Gerhard Gesell. P-9 attorneys wanted a temporary injunction to prevent the P-9 takeover so they could proceed with their case while UFCW attorney Huge moved to transfer their injunction request back to Judge Devitt in Minnesota. Judge Gesell asked them "Why are you bringing your dirty linen to me?" The case had serious labor law issues, but Gesell went with UFCW and sent the case back to Judge Devitt to rule for UFCW.

Back in Minnesota P-9 attorneys developed their arguments using both case law and Federal labor law. Case law decisions made the local union the primary bargaining agent, not the international. P-9 attorneys also argued that the Norris-LaGuardia Act prevents Judge Devitt or any Federal Judge from issuing an injunction in a labor case. UFCW argued the Landrum-Griffin Law allowed a trusteeship after "some form of hearing."

Judge Devitt ignored both sides and declared "the basic issue here is a contract, not a labor dispute." The contract he decided was the written UFCW constitution which vested controlling authority in the International, which allowed that a "broadly expressed grant of authority may be exercised for … enforcing compliance with directives of the International."

The Devitt ruling June 2 paved the way for UFCW to physically remove P-9 from their union hall, dismiss union employees, and change the locks in order to install their appointees in Austin to settle on a contract agreement with Hormel. UFCW helped Hormel arrange for U.S. Marshals to prevent any further picketing at the plant and then mailed letters to strikers ordering obedience to the Devitt ruling, threatening sanctions against any effort to interfere with the trusteeship.

Support continued in spite of P-9 legal losses and the end of picketing. Union conventions voted resolutions in support of P-9 that included pledges of money.

The Hotel and Restaurant workers pledged $100,000 from the convention floor. The Western States Conference of the International Association of Machinists, the Coalition of Black Trade Unionists, the National Education Association, State, County and Municipal Workers, the Postal Workers and the letter carriers voted resolutions in support of P-9. Mass action resumed in late June with a rally at a campsite north of Austin. Around a thousand showed up from twenty states to listen to speeches and march through Austin yet again.

UFCW negotiators and Hormel announced their settlement August 27, which included the concessions UFCW had already accepted, but without any recall rights for picketers or demonstrators. UFCW Packinghouse division director Lewie Anderson said "What we have is a hell of a victory for the union." There were enough who had crossed the picket lines along with replacement strikebreakers to easily ratify the agreement via UFCW mailed ballots. On September 12 they voted 1,060 to 440 for a contract based on a two page summary; UFCW refused again to allow members to see their own contract.

The United Support Group continued with the remnants of P-9 in a severely divided community. Even though the strike was lost, resistance to Hormel and UFCW continued. Local president Jim Guyette and Ray Rogers continued efforts to raise funds and to build a national Hormel boycott. A group of forty from Austin visited the February 1987 AFL-CIO meetings in Bal Harbour, Florida to protest UFCW. In May 1988 Hormel notified a former striker he would be off the recall list after they found a "Boycott Hormel" bumper sticker on a car registered to his wife. The jobs had been debased to the point, it wasn't much of a loss. (25)

The Ghost of the IWW----------The strike and the bitterness lingered on, but it can be recognized from the ghost of the IWW. The IWW knew dues check off was a conflict of interest for leaders who might compromise the interests of the rank and file for a steady income as the UFCW International officers did in Austin. Ray Rogers gets work in corporate campaigns because International officers will not fight; they compromise member interests for a steady income. The IWW had no use for contract agreements or grievance procedures that replaced rank and file action with private negotiations between employers and labor leaders. Solidarity derives from participation, which local P-9 proved in Austin. Leaders develop through their participation, which is why everyone was a leader in the IWW. The use of the strike, the boycott, mass picketing, parades and demonstrations as a show of solidarity and economic power was started or perfected by the IWW over a hundred years ago.

The P-9 Hormel strike came as a culmination of consolidation in the meat packing industry. In the 1930's the big four in the meat packing industry were Armour, Cudahy, Swift, and Wilson with 78 percent of the meat products market. By 1962 their share was just 38 percent while three new companies – Iowa Beef Processors (IBP), Excell (a subsidiary of Cargill) and ConAgra – were expanding with new production and marketing methods, partly driven by the demands of large supermarket chains.

After WWII supermarket chains started to buy meat to process in central

warehouses for distribution to affiliated stores. Their processing replaced skilled retail butchers with more productive machinery for cutting large quantities of beef to standard specifications. During this period Iowa Beef Processors (IBP) expanded into a vertically integrated operation by expanding their slaughter house operation to an "on-the-rail" dressing of cattle in a continuous chain. Their method eliminated the need for a warehouse or a wholesaler by producing a ready to ship finished products in vacuum seal bags they called "boxed beef."

Their new methods changed the work in the meat packing industry. It reduced the number of jobs and the need for skilled meat cutters, while it routinized work on the shop floor. The companies abandoned their old, multistory packinghouse operations in urban areas and replaced them with one-story plants in rural areas nearer to cattle ranches and a low wage supply of unemployed farm labor. New plants reduced the weight of the final product reducing transportation costs. By the late 1980's boxed beef had 80 percent of the market.

During the 1930's depression the CIO established the Packinghouse Workers Organizing Committee(PWOC) to organize an industrial union because the existing AFL affiliate the Amalgamated Meat Cutters and Butchers Union (AMC) insisted on remaining a craft union of skilled workers. The PWOC became the United Packinghouse Workers of America (UPWA) in 1943, but by the 1960's cost cutting changes in the meat packing industry left UPWA officials negotiating severance packages, technological displacement pay, early retirement, and company wide seniority to permit inter plant transfers to stem the decline in membership. In 1968 UPWA decline brought a merger with AMC, but the merger did not relieve pressures to cut wages.

IBP refused to agree to an industry wide pattern bargain, determined to keep its wages below all others in meat packing. After a strike at its Dakota City plant in 1969 it adopted the strategy of building multiple new plants in midwestern cities. IBP president Hughes Bagley told Congressional investigators that management figures "two out of three would carry the company" because "one of our plants would be down at all times with a labor situation." IBP adopted a large volume rebate program for selected large supermarket chains in order to undercut other packers and force small firms to sell their slaughtered animals to IBP for fabrication into boxed beef.

Through the 1970's the cost cutting, price cutting pressures continued until the combined AMC union merged again with the Retail Clerks International Union (RCIU) in 1979 to become the United Food and Commercial Workers (UFCW). The combined union left former packinghouse workers in a small minority of union members that soon became a low priority for UFCW. The smaller meatpackers started demanding wage concessions to compete with IBP and threatened to close plants without them. In the early 1980's plants were sold and reopened as non-unionized companies; bankruptcy courts threw out union contracts. That was the situation when Local P-9 had to confront Hormel in Austin, Minnesota, but the debacle for labor in meatpacking did not stop there.

After 1990 the meat packing industry ceased to provide self-supporting manufacturing jobs. Both money wages and real wages continued to decline

leaving a labor force in a struggle to stay out of poverty. Turnover and injury rates spiked while average seniority declined. The companies recruited Mexicans and Asian replacements and used federal job training programs to subsidize transportation and training costs for their recruits. A shortage of affordable housing leaves packing plant workers to live in cabin courts, and boarding houses, amid reports of living in tents, or cars. Con Agra and IBP have meatpacking plants in Garden City, Kansas where transient immigrants that work in these plants live in trailer parks without paved streets and where sewage drains into a cesspool. Surplus farm workers, and single mothers fill some of the jobs.

In 1905 Upton Sinclair published The Jungle. It was his journalistic account of life in the Chicago meatpacking industry where "the 'Union Stockyards' were never a pleasant place; but now there were not only a collection of slaughter houses, but also the camping place of an army of fifteen or twenty thousand human beasts. All day long the blazing midsummer sun beat down upon the square mile of abominations: upon tens of thousands of cattle crowded into pens whose wooden floors stank and steamed contagion; upon bare, blistering cinder strewn railroad tracks, and huge blocks of dingy meat factories[.]" . . . "[T]here were also tons of garbage festering in the sun, and the greasy laundry of the workers hung out to dry, and dining rooms littered with food and black with flies, and toilet rooms that were open sewers."

We can be sure the residents of Garden City, Kansas are better off today than residents of the Union stockyards of 1905, but none who worked in either era found self supporting work in the meat packing industry. Notice cost cutting increases in productivity generate growth and more inequality of income, a constant feature of unregulated capitalism.

IWW methods took Local P-9 a long way, but only mass resistance with work slow downs and strikes across the whole industry had a hope of challenging the combined economic power of the new and steadily merged meat packing industry. The Local P-9 strike finished about the same time of another strike that turned out almost the same way; that would be the International Paper strike and the betrayal of Local 14 at Jay, Maine. (26)

International Paper Strike

The strike at the International Paper Company (IP) mill along the Androscoggin River at Jay, Maine started June 16, 1987. Around 1,200 left work in a strike at the largest and richest paper company in the world, and largest private landholder in the United States. Before the strike a minority of the members of Local 14 of the United Paperworkers International Union (UPIU) took an active interest in the union. Until the 1980's members tended to accept the contracts negotiated by their union leadership; one of the mill workers remembered the early 1970's: "Union-company relations were very good and the mill was going to be there for a long time."

In the early 1980's company leadership changed with a new president, John Georges. The new leadership began to press for concessions, especially in premium pay for overtime and Sunday work while encouraging older supervisory

staff to retire. Initially the union cooperated in the flurry of managerial jargon: "Team concept," "Quality Improvement Process(QIP)," and Management Training Systems(MTS). Soon union officials and rank and file began to regard the jargon as a euphemism for removing the union. (27)

Concessions----------In 1983 negotiations International Paper demanded contract concessions from Local 14. A majority voted to strike, but a strike was averted when union negotiators agreed to give up July 4 as a holiday and accepted a decrease in pension benefits in exchange for a small wage increase. Negotiations for a new contract started in the spring of 1987. A UPIU strike at Boise Cascade in Rumford, Maine the year before failed and so Local 14 offered to continue the current contract for another year without changes. IP refused.

Before negotiations started in 1987 the Jay, Maine mill operated everyday of the year except Christmas day and employees had required work an average of 38 Sundays a year, but at double time premium pay. The 1987 concessions demanded by IP ended the Christmas day off and Sunday premium pay. The company demanded the right to contract maintenance work to eliminate 350 jobs, and replaced seniority rights for jobs with the "team concept" that allowed moving people between jobs without regard to seniority.

UPIU International President Wayne Glenn knew it was unnecessary; "They were asking for stuff that we've had for 25 years in our contract. And it was at a time when the profits with the company were setting records and at the same time now, they gave the executives an average of a 38 percent increase in salary. It boggles your mind."

One representative from the International UPIU, Local 14 President Bill Meserve and two others tried to negotiate with a corporate team of three from the Androscoggin plant: the manager, their lawyer and a former Local 14 president, KC Lavoi. Lavoi left Jay and came back to be in management as human resources director.

The company team would meet and declare "We reject your proposal." Union negotiators made counterproposals and the company would say "We reject your counterproposal." Union negotiators would ask "What do you dislike about it?" The company would answer "We don't like the whole thing" and then refuse to make a counter offer.

The union asked the company to demonstrate need for concessions; Lavoi answered; "I'm not saying we can't afford it, I'm saying we need to maintain our competitive position." During this period management built a fence and dirt road around the plant and then brought 52 house trailers onto the property while it contracted with an employment service company known for recruiting replacement workers in strikes.

By now Bill Meserve decided "IP's ultimate goal was to break the union" and others from Local 14 and UPIU International accepted that local negotiators had strict limits imposed on all of the many IP mills by central management in Louisville, Kentucky.

During this period management wanted their employees to write manuals

for their jobs, but Bill Meserve asked them to declare that manuals were not for training replacement workers. They refused. Instead they made an unfair labor practice charge to the National Labor Relations Board that alleged Local 14 was interfering with employee rights to cooperate with management. Boise Cascade used the same ploy in the Rumford strike a year before. IP lost the case.

At the time the Jay, Maine negotiations troubles started other IP mills at Lock Haven, Pennsylvania, De Pere, Wisconsin and Mobile, Alabama faced similar bargaining pressures. The International union and local officials wanted to conduct pattern bargaining through a pool of IP mills in order to avoid having concessions at one mill become the concessions for all of IP and across the industry.

Pooling arrangements for multi-plant negotiating were considered along with other strategies, but on June 4, 1987 Local 14 voted by a 98 percent majority to authorize the leadership to call the strike that started June 16, 1987. (28)

The Strike---------- Local 14 and its membership did not have money or organizing experience to conduct a strike. The International paid $55 a week strike benefits and the State AFL-CIO sent Peter Kellman, an experienced organizer to help raise funds, publicize the union case and organize picketers.

In the first three weeks of the strike IP replaced 500 of the strikers with permanent employees; by the end of summer IP replaced all of the union strikers. Local 14 President Bill Meserve and Peter Kellman did their best to discourage violence by picketers, but the parade of scab replacements were cursed, pushed and sometimes punched in a variety of altercations. One of the picketers later admitted "When the scabs started arriving there was mob violence, smashing windshields, kicking in fenders, etc., and I was in the middle of it and not minding it a bit. Maybe even enjoying it. At one point I chased a Wackenhut Guard down the railroad tracks screaming and trying to get into a fight." There was enough violence that the company had an easy time getting an injunction that limited pickets to twelve at a time at any plant entrance. Some picketing continued through the strike.

By mid summer Local 14 initiated efforts to organize a pool of other IP mills to negotiate as one. Recall labor law requires 60 days notice to end a contract and join a pool. Prospects did not look good when few mills gave 60 days notice, but the contract at the IP mill in Pine Bluff, Arkansas expired in late August. Meserve and Kellman wanted the UPIU International officials to assist in persuading the Pine Bluff local to join a pool. After lengthy back and forth the International arranged for officials and members of Local 14 from Jay to meet with officials and members in Pine Bluff. Meetings took place in late August but it was a contentious meeting with hostile accusations and no agreement. By September 22, Pine Bluff signed a separate contract suggesting a pool would not be easy to arrange in spite of the poor prospects for individual mills to counter the economic power of IP. (29)

By fall 1987 members of Local 14 recognized they were losing their strike, but they were not ready to give it up. Members turned out at weekly union

meetings in large numbers in a show of solidarity and held rallies, marches and demonstrations. Meetings were open to the public and attracted townspeople and outside supporters. Jesse Jackson agreed to speak at Jay and attracted a crowd of 3,000. Some of the rank and file stepped forward to manage essential programs to maintain the strike. Volunteers ran a food bank; others volunteered to study environmental regulations and IP's environmental pollution record as a way to pressure IP.

The elected government in Jay supported strikers and agreed to hear proposals to adopt ordinances drafted by the union. They passed one that prohibited the use of movable or temporary housing for ten or more people, but a federal judge wrote an injunction to prevent enforcement.

Town officials agreed to re-evaluate IP health and safety problems and property tax subsidies to the mill as a way to impose costs and pressure IP to settle the strike. IP responded with threats to sue members of the Jay government but two versions of an environmental ordinance were upheld in court rulings and the second passed in a voter referendum. The environmental ordinance had standards and procedures with a detailed permit process.

Then on October 1, 1987 the mill at Jay dumped 80,000 gallons of waste into the Androscroggin River, which brought state and federal environmental authorities and lots of bad publicity for IP. The Occupational Health and Safety Administration reported "that IP Co. exposed workers at its Jay mill to toxic gases and hazardous chemicals without adequate protection." Thirty-one employees were exposed to toxic gases "on a regular basis." Then on November 11, 1987 a chemical spill required evacuation of thirty homes near the mill.

Local 14 found support from the Maine legislature that passed three versions of statutes to limit or restrict the use of strikebreakers. Governor John McKernan vetoed the bills, but recall federal Labor Law allows hiring strikebreakers as permanent replacements, a legacy of the 1938 NLRB v. Mackay Radio & Telegraph Company. A strike over terms of a new contract does not constitute an unfair labor practice and so Local 14 had no ability to restrict replacements from taking their jobs. (30)

Local 14 continued to persuade their International officers to persuade other locals to join a pool and to collect a $10 a month contribution to support the Jay, Maine strike. Some of the rank and file from Local 14 traveled to other mills to speak for the solidarity a pool represents, but found resistance and minimal support at the International union. In the fall of 1987 mills at Moss Point, Mississippi and Corinth, New York signed contracts with concessions.

Local 14 wanted the UPIU to assist them to recruit Ray Rogers Corporate Campaign to fight IP. The International opposed using Rogers but relented under fierce pressure from Meserve and Kellman. The corporate campaign got going in the winter of 1988, but did not include a boycott of IP. UPIU International President Wayne Glenn opposed it: "Unfortunately, a lot of our members were working for IP so that we'd be hurting our own people."

Otherwise Rogers used similar strategies he used at Hormel. He wanted to harass corporations that had interlocking directors with IP. These were Coca-

Cola, Avon Products and the Bank of Boston where Rogers called for boycotts of companies that shared IP directors, organized letter writing campaigns to interlocking corporate boards, staged rallies near corporate headquarters and had the rank and file do outreach to other IP mill towns to pass out literature and talk door to door.

One letter of an Avon stockholder to the CEO of Avon emphasized the ethical side of the strike: "I am deeply concerned about the continued presence of Stanley Gault on our Board of Directors. As you know, Mr. Gault also sits on the Board of the International Paper Company. … Like J.P. Stevens ten years ago, IP has become a nationwide symbol of employer insensitivity and irresponsibility. We should not share a director with a company whose name has become synonymous with rapacity."

IP continued to attract attention with another environmental accident. On February 3, 1988 a substantial amount of chlorine dioxide leaked into the air around Jay. Local officials shut down the plant and evacuated residents near the mill. The governor showed up to inspect and hear the company tell him the spill was not dangerous and the plant should be reopened. The Occupational Health & Safety Administration got involved and the bad publicity attracted a national audience. IP learned their pollution attracts a larger audience willing to suspect a connection between environmental misconduct and their treatment of employees in a labor dispute.

By the spring of 1988 there were signs union efforts to impose costs on IP were enough to give management the incentive to settle. Local 14 had the solidarity, organization and fundraising to continue their fight in spite of the hardship created doing so. "We got squeezed here in this town, our families got squeezed, our livelihoods got squeezed, our finances go squeezed. Our morality, brother against brother, everything got tested to the limit." (31)

The International Takes Over---------- UPIU International President Wayne Glenn continued to support Local 14 in public statements into the spring of 1988, but there was tension between Local 14 and International officers. They did not always agree on strategy even though the International continued to provide financial support.

Then Wayne Glenn made arrangements to meet with corporate officials in Louisville, Kentucky in two weeks of meetings starting March 28, 1988. Local 14 reluctantly agreed to call off Ray Rogers corporate campaign before the meetings. Rogers asked him what he got for suspending the campaign, but it was a unilateral condition of IP President John Georges for having national talks to settle the strike. Glenn had not attended rallies, marches and demonstrations in Jay, Maine, but he had been talking with IP officials.

Bill Meserve and Peter Kellman went to Louisville, but were not included in the meetings, nor were any of the other three local unions on strike at IP mill towns. Negotiations never got past the rights of replacements. IP insisted "The company was firm in its position that permanent replacements hired during the strikes are permanent. Many of these people left other jobs to accept employment

with IP; many have endured harassment and other attempts to intimidate them. To turn our backs on these individuals would be unconscionable, and we will not do it."

Strikers could take available jobs at other IP locations around the country as they came available; to work for IP they had to move. Meserve was furious with the International for their interference when talks ended April 13, 1988. Suspending the strike had suspended fund raising and drained off energy at a critical time. Members of Local 14 refused to accept IP conditions in a contentious meeting in Jay.

Ray Rogers returned to work and got 20 IP locals to meet at Memphis, Tennessee on May 23, 1988 and make a joint response to IP and UPIU International. The group voted two resolutions: one called for IP to reopen talks to rehire 3,500 strikers, a second called for the International staff to persuade IP locals to support unified contract negotiations in a show of solidarity and to boycott IP products.

During this period from April to August 1988 the Environmental Protection Agency, the Occupational Health and Safety Administration and the Maine Department of Environmental Protection all released reports condemning IP for misconduct and failure to follow state and federal regulations. The reports provided Ray Rogers with exploitable material to pressure IP to settle the strike, but the International stalled and did not pursue these possibilities.

Instead of UPIU International organizing IP locals for unified contract negotiations they signed off on concessions at the Vicksburg, Mississippi mill. The local there did not strike but accepted a small work shift premium as a face saving way of accepting IP demands to give up Sunday double time pay and make other concessions. UPIU president Wayne Glenn then announced he would agree to accept the "Vicksburg Package" at any other locals where it was offered. Since Local 14 and the other three locals on strike would vote down any contract that did not restore jobs to strikers, the Glenn decision abandoned solidarity and divided the union. The four striking locals would have to try to get their jobs back on their own. The other locals were free to accept concessions and stay on the job, but UPIU president Wayne Glenn was not going to ask them to hold out, or strike, or risk their jobs to protect the jobs of other union members.

It was a capitulation by the International when Local 14 fought a year and a half in dogged determination. Peter Kellman summed it up: "Everyone was looking to the International for leadership, and they made clear that they weren't going to pick up the ball and lead the fight and that the direction they wanted us to go was to end the strike. We knew that to continue the strike against IP we would have to fight our own International and nobody wanted to do that." (32)

The Strike Fades Away----------Bill Meserve decided to end their Local 14 strike without a vote, but he had to face an angry and embittered membership for doing so. Meserve argued the lack of support from the International and their inability to get other IP locals to join the strike made it necessary to end the strike. He suggested they could continue with Ray Rogers and the Corporate Campaign.

Local 14 gave up their strike without conditions, which allows strikers a

preference by seniority for future job openings under U.S. labor law. Some went back; some could not accept working alongside scabs and took a small buyout. Others left Maine. Those who returned reported feeling too hostile to tolerate scabs and feeling too sour to work much. Hostility was especially high against those who crossed the picket line, but a few got used to it and stayed. The strike destroyed civility in Jay much as it did in Austin, Minnesota.

Local 14 continued to be the certified union at the Androscroggin mill in Jay after the strike, but one of the scabs had already filed a petition to hold a vote to decertify the union. Replacement scabs and recalls could vote, but not strikers or strikers awaiting recall: too much time had passed. Local 14 had a legal obligation to serve and represent non-union replacements, but conflict at the mill and the hatred directed toward them by strikers gave them little incentive to vote to keep the union. Worse the International UPIU voted to deny membership to replacements at its August 1988 annual convention, which guaranteed replacements would vote to decertify. Local 14 lawyers were able to stall the vote for three years, but eventually a 660 to 380 vote decertified Local 14.

In the mean time UPIU president Wayne Green wrote to strikers telling the rank and file he would continue "to negotiate for a just and equitable settlement." A second Memphis meeting of 17 local unions took place in November 1988. Delegates voted to have the International continue the corporate campaign until the 2,300 strikers at Jay, Lock Haven and DePere were rehired. Delegates made plans to organize a pool of locals to avoid signing individual contracts that become the low wage standard for all. Glenn responded that the International commitment to "this battle was never in question." The rank and file doubted his resolve and it turned out with reason since the IP executive board voted to end contributions to Ray Rogers campaign in February 1989. (33)

These strikes of the 1980's narrated here – Phelps-Dodge, Yale, Hormel, International Paper – illustrate the destructive consequences of Supreme Court rulings from the previously discussed cases of NLRB v. McKay ruling of 1938, followed by NLRB v. American National Insurance Co. ruling of 1952 defining impasse, followed by NLRB v. Borg-Warner Corp. ruling of 1958 defining mandatory and non-mandatory bargaining, followed by H. K. Porter Co. v. NLRB in 1970 eliminating the need to make legitimate counter offers. The attorneys for IP have taken the Supreme Court at its word that there will be no such thing as bargaining in bad faith for corporate America. Legal bargaining can be showing up and explaining unilateral decisions to impose wages, hours and working conditions under NLRA Section 8(d).

In the International Paper strike the NLRB interfered with UPIU International efforts to conduct a pattern bargain through a labor pool, something the UAW, Walter Reuther and other unions had done in the 1950's such as the Treaty of Detroit contract. The effort to organize an UPIU pool of local unions went well into the period after the Vicksburg IP Package. By 1990 sixteen mills signed up. In response IP filed a complaint with the NLRB claiming a pool put a burden on bargaining equivalent to a failure to bargain in good faith in violation of Section 8(b)(3) and Section 8(d) of the National Labor Relations Act. NLRA

Section 8(b)(3) mentions nothing about a pool or a burden on bargaining. The NLRA calls for self organization, which should be enough to allow a union to organize its locals anyway they want, but the case and the willingness of the NLRB to hear the case highlights a partisan nature of labor law depending on a Republican or Democratic party appointed NLRB.

UPIU counsel defended the pool to administrative law judge Frank H. Itkin as a necessity when IP demands the same concessions and low wages of all their paper mills. UPIU counsel argued "The employer is operating under its own conditions with the union until the union is able to link enough of its locals to build a bargaining strength to make the company change its mind. What in the Act or what in the Congressional mandate ever said that unions have to go out alone as individual locals and fight a corporate giant who is making $800 million a year and give him an $8,000 concession?"

Judge Itkin brushed it off with the law imposes "diligence and promptness" on a union. Testimony from IP management made clear why they opposed the pool: "Every month that goes by, there is somebody else getting in the pool. I mean the thing is growing. We can see this tremendous strike leverage building up on the part of the union simply by doing nothing except continuing to urge and abet the growth of the pool."

UPIU settled the case by dismantling the pool; Wayne Glenn replaced it with what he called "coordinated bargaining under authority of the president." Later he said "We tried to develop a solidarity kind of a feeling, but I don't think we were ever really very effective, to be honest about it." Some thought he didn't try very hard. (33)

The International Paper strike as well as the other strikes of the 1980's narrated here all find similar managerial contempt for employees intelligence and any expectation to be respected as willing and able to do their jobs. Devoted capitalists can be guaranteed to support their right to think and make the best and smartest decisions in the management of corporate America, but they cannot be expected to share their power to make any decision by their employees on the job. Many of America's jobs come with a supervisor that assumes employees cannot, and will not, make decisions for themselves. Corporate jobs sometimes come with a thick handbook of rules, to be enforced by a Department of Human Resources with the assumption employees cannot and will not do their jobs without the pressure of someone hanging over them. These same managers fight with unions over collective bargaining, but as AFSCME's President Jerry Wurf liked to say, they fight over respect more than they fight over wages.

Not all in corporate America are as boorish and contemptuous of workers' rights as in these strikes, but authoritarian management goes back before the 19th century, and before the popularity of arbitrary management like that of Frederick W. Taylor in the 20th century. When the country was founded slaves and a variety of indentured servants were the working class to be employed and exploited by the upper class. Slaveholders expected to exercise arbitrary authority over the life and work of their chattel slaves without respect for their rights, their intelligence, or their humanity as some of the defeated strikers of the 1980's might easily

recognize. (34)

Union Survival Strategies in the Service Industries

In a decade filled with continuing manufacturing decline and union busting gloom, there appeared hints of a brighter future organizing in the lowest paid service industries. Service work cannot be exported and the low pay in isolated regional markets makes scabs-replacements harder to find in a strike. Organizing in low paid industries has the potential to create general benefits to all of the working class. Taking wages out of competition at the bottom of the wage scale puts a floor on wage cutting that compels job seekers to search for jobs in higher wage occupations and places.

The previously mentioned Yale university success, modest though it was, came as part of support from an international service industry union, the Hotel Employees, Restaurant Employees (HERE), which works to organize hotel and restaurant employees at locals in major cities around the U.S. Another service industry union, the Service Employees International Union (SEIU), also experimented by adapting the Ray Rogers methods from his organizing campaigns during the J.P. Stevens strike and later at the Hormel and Decatur strikes among others. HERE and SEIU Internationals provided funding for research, legal aid and organizers with organizers working to develop leaders among the rank and file and to get as many involved in planning committees, picketing and protest. As new methods evolved, organizers started using them as an alternative, or complement, to National Labor Relations Board election methods.

In 1985 officials at the Mellon Bank in Pittsburgh offered SEIU an opportunity to try out new methods in what they billed as Justice for Janitors. Big city office buildings tend to have property management companies serving multiple owners and multiple corporate tenants in a system that put janitorial service contractors into repeated bidding wars. Contracts typically have short term cancellation clauses, where 85 to 90 percent of contract costs go to wages. Winning contracts requires lower wages in a race to the bottom. Mellon Bank cancelled their contract agreement with a janitorial services contractor that included a SEIU collective bargaining agreement. In this instance the non-union contractor converted the jobs to part time work and cut hourly wages and ended benefits. Mellon Bank denied responsibility for the change and claimed the dispute was with SEIU and the new contractor. A strike and a media campaign brought a settlement two years later after the NLRB declared Mellon Bank the employer.

Another Justice for Janitors campaign generated a Philadelphia Daily News story of a janitorial services company calling themselves A to Z Maintenance Corporation that contracted with the Philadelphia Electric Company (PECO) for service at their downtown offices. A to Z ordered their employees to buy toothbrushes to scrub and clean PECO's toilet bowls. PECO called it a way for workers to "complete their tasks with minimal effort and satisfactory results." Street protesters waving giant red tooth brushes brought a wave of bad publicity.

Bad publicity in Los Angeles helped another SEIU Justice for Janitors campaign of Local 399 where building owners shifted more janitorial work to a

contractor able to exploit the growing supply of El Salvadorian and Guatemalan immigrants. Efforts to get a contract with International Service Systems (ISS) in buildings in the Century City area of Los Angeles stalled and brought a strike May 20, 1990. Strikers showed up in the morning to protest in the median strip to march, wave picket signs, beat drums and shout demands for "justice." They were still out June 15, when roughly fifty police with Billie clubs attacked their picket line. With media present they beat and injured 38 picketers and arrested many. The videos circulated in the national media and brought increased public support for the janitors. The protest did not stop, but returned to the streets with several thousand more supporters and an appearance from Jesse Jackson. Support from a disgusted public brought a settlement and a $2.00 an hour raise.

Another SEIU battle took place with Beverly Health Enterprises, a health care service provider with hundreds of locations around the country. Management ignored strike threats even though pay and working conditions were bad enough organizers had no trouble winning NLRB certification elections. Management stalled and evaded signing contracts until the union started challenging license applications and health code violations. They reviewed inspection reports and prepared and distributed their own reports for Beverly facilities over many years: "We gave it to every regulator in the world. And we used it in the certificate hearings, used it in the newspaper, used it all over the place." . . . "We went through every locale and gathered all the wrongful deaths and neglect cases . . . and did a list of everybody suing the company and gave it to everybody else suing the company." It took thirteen months until management agreed to remain neutral, accept a card check majority in a neutrality agreement and then sign a union contract.

Organizing campaigns like the Beverly campaign require research effort devising strategies custom designed to fit varied situations. While the 1935 National Labor Relations Act expected the economic losses from a strike would pressure corporate America to settle, efforts like the Beverly campaign expect to create economic pressure as a strike alternative. Since the courts and corporate America have effectively neutralized labor law and nearly eliminated the strike as an economic bargaining tool, unions in the 1980's attempted to perfect the Ray Rogers methods in what organizers would start calling the Comprehensive Campaign. Richard McCracken, an AFL-CIO attorney involved in these campaigns suggests "There are, for example, many laws regulating company behavior. Every federal, state, territorial, municipal law, ordinance, rule or regulation is a potential source of power for us. … Most of these laws are under-enforced, many of them ridiculously so. Under enforcement led to constant illegality. Violation of the law is a norm of business." McCracken got so disgusted with NLRB dawdling and pathetic remedies for corporate labor law violations, "[He] swore in 1981 I would never file another NLRB election petition, because at that point I was convinced that you couldn't organize through the NLRB period."

HERE organizers tried these same strategies with Culinary Workers Local 226 in Las Vegas battling resort hotels in the early 1980's. They got only mixed results after a long city-wide strike in 1984 shut down tourism in southern Nevada.

Defiant hotel owners found enough replacements in some of the hotels they were able to decertify the union in some of the hotels. The Culinary would renew the battles during the Bush Administration in more refined comprehensive campaigns as we shall see. (35)

Reagan Democrats

Ronald Reagan won his second 1984 presidential election with 54.5 million votes, roughly 10.6 million votes more than 1980. His 59.2 percent of the vote was up 7.6 percent over 1980 against a worthy candidate in Walter Mondale. A post election breakdown of the 1980 and 1984 voting from a variety of analysts encountered working class voters that normally vote for Democrats voting for Republican Reagan and in significant numbers. The media and Republican officials dubbed them Reagan Democrats. Since the working class got absolutely nothing from Jimmy Carter and a Democratic Congress, it does seem understandable the labor vote could find the Reagan message of lower taxes and less government as something better than nothing. Plus the confident, grinning and optimistic Reagan made quite a contrast to the competent, but gloomy Carter.

In 1988, it made sense for vice president George H.W. Bush to run for president as a continuation of the Reagan years, even though no vice president followed a retiring president into office since Martin Van Buren in 1836. Union busting from the previous eight years and wages failing to keep up with inflation certainly took their toll on the working class standard of living. Still, H.W. got 48.9 million votes and an easy victory over Democrat Michael Dukakis, but with a vote total down 5.6 million from Reagan in 1984. Democrat Mondale got only 41 percent of the vote in 1984 but Dukakis received 46.1 percent in his losing cause. The shift in the percent of the vote suggests some of the Reagan Democrats changed their minds in the four years since 1984. H.W.'s loyalty to the Reagan administration made him acceptable to suspicious Republicans, but they demanded reassurance that he would be a bonafide conservative and so pressured him into his famous pledge "Read my lips. No new taxes." It would come back to haunt him in the 1992 presidential campaign.

Chapter Nineteen - Bush to Bush

"The news is just a business, I think, like any other big business. They have to show something, but it doesn't really have to be the truth. They say they're objective, but no way. I don't really like the TV cameras to be here because they just pick out certain little incidents, something ugly; they won't show something good. . . . Why does it always have to be ugly? The way they treat us is, if it's not violence, it's not important."

----------Berta Chavez, Clifton, Arizona during the Phelps-Dodge Copper Strike of 1983 as quoted by Barbara Kingsolver, in Holding the Line.

The Reagan White House offered nothing but scorn for organized labor. After PATCO, White House staff expressed satisfaction that labor deserved its failures. President George H. W. Bush ended the verbal warfare. He spoke at the AFL-CIO convention in November 1989: "I am hopeful that 1989 will be remembered as the year when American labor, business, and government first began to work together in a real partnership, for the freedom and dignity of workers everywhere." Encouraging words for the first president with a corporate career in corporate America, but his friendly speech and good manners did not translate into help for labor. (1)

H. W. Bush Era Strikes and Concessions

The 1989 to 1993 years with Bush as president had several memorable strikes. One that started two months into his term brought the demise of Eastern Airlines. A coal mine strike at Pittston Coal Company in southern Virginia counts as especially memorable for generating significant anger and defiance. Decatur, Illinois had manufacturing industry strikes at Caterpillar, the heavy equipment company and also Staley, the food processor and Bridgestone/Firestone, the tire manufacturer; the Decatur strikes dragged into Bill Clinton's presidency.

Eastern Airlines

Labor troubles at Eastern came in part as a legacy of the Carter administration airline deregulation but also the investment decisions of former astronaut Frank Borman, Eastern's president from 1975 to 1986. Borman responded to airline deregulation with a debt leveraged purchase of new equipment, a risky gamble in the netherworld of never-before-tried airline deregulation. During much of Borman's tenure Eastern struggled to turn a profit, but there was a degree of cooperation between Borman and the three principle unions representing Eastern employees: International Association of Machinists(IAM), Airline Pilots Association (ALPA), and the Transport Workers Association representing flight attendants. Then in 1986 Frank Lorenzo purchased Eastern Airlines to combine with four other airlines already purchased as part of his Texas Air Corporation mergers and buyouts.

Deregulation brought price cutting competition at the ticket window

that encouraged a new brand of speculating owners without qualms for taking profits out of their labor force. Frank Lorenzo was a man without qualms as all 38,000 Eastern employees soon found out. It would be a very short time before Lorenzo demanded deep pay cuts, longer hours and new work rules, followed by union charges of attempts to skirt safety and maintenance requirements. Lorenzo replaced pilots, flight attendants and machinists with people working for a third of former wages. New pilots started at $27,500 a year, compared with average of $72,000 before the strike. Ramp workers made $5 an hour instead of $15.

Jack Bavis, the leader of the pilots union at Eastern for much of the strike, and Charles Bryan, the head of the machinists union, admitted the Lorenzo abuses turned opposition into a personal crusade to get rid of Lorenzo. Ultimately they would get their way, but only when Eastern disappeared with him.

Since 1934 when airlines were brought under the Railway Labor Act, airline labor disputes require an arbitration and a 30 day delay, or cooling off, before a strike. Arbitration with International Association of Machinists dragged on for two years during which Lorenzo made a show of luring and hiring replacement machinists into a training program.

The training continued until arbitration and the required cooling off ended, allowing the strike to start March 4, 1989. The Airline Pilots Association signaled they would support the strike and refused to cross picket lines so at midnight the machinists, flight attendants and 3,400 of 3,600 pilots shut down Eastern Airlines. Lorenzo filed for bankruptcy on March 9. In order to keep Lorenzo from selling assets ALPA had their counsel petition the federal court to appoint a trustee to manage the bankruptcy. Judge Burton Lifland refused and would not participate in looking for buyout possibilities.

Instead, he allowed Lorenzo to sell a selection of Eastern's most profitable assets like the New York to Washington shuttle service, their reservation system, and some planes, routes, and gates. Lorenzo announced plans to reopen a much smaller airline with a replacement labor force. The Pilots Association petitioned Congress to pressure President Bush to declare a Presidential Emergency Board, which he refused to do. When Congress passed legislation authorizing such a commission, Bush vetoed the bill. On November 23, 1989 the joint labor council voted to abandon the strike, but replacement pilots had all the jobs that remained.

Successful union busting did not help Eastern recover. It continued to lose money until April 1990 when the creditors finally got their way and Judge Lifkind removed Lorenzo and appointed a trustee, Martin R. Shugrue. Shugrue convinced Judge Lifland to allow him $80 million to keep Eastern operating 800 flights a day, However, Judge Lifkind ordered a financial examination that suggested Lorenzo moved as much as $400 million of Eastern assets into his Texas Air Corporation at the expense of creditors; continuing safety questions did not help chances for emerging from bankruptcy.

Eastern struggled into the summer but a big spike in airline fuel prices sunk any chance of continuing. In January 1991 it ceased operations after 62 years of service and five years of destructive turmoil. On January 21, 1991 members of the Machinist's union picketed Eastern's Miami offices. Picketers appeared jubilant

waving signs at their unemployed replacements that read “We told you so,” and “Eastern Airlines: Rest in Peace” and “Rest in Pieces.” (2)

Pittston Coal Strike

In late January 1988 the labor contract between Pittston Coal Group and the United Mine Workers (UMWA) expired. UMWA did not strike, but wanted to keep their current agreement with the Bituminous Coal Operators (BCOA). Member coal operators in BCOA agreed to a pattern labor agreement with other United Mine Workers locals, but in 1987 the Pittston Corporation withdrew from BCOA.

When a new national contract was negotiated in 1988, the UMWA signed similar “me-too” agreements with four firms that had also withdrawn from BCOA. The BCOA and “me-too” contracts increased wages 6.8 percent, established a trust fund for retraining laid off miners, increased company contributions to the pension and benefit trusts, and established a procedure for laid-off UMWA to find jobs at non-union operations of a coal firm and its lessees. Pittston would not accept the same agreement, but sent a letter dated February 1, 1988 eliminating company health care coverage promised to miners and retirees. Four months later, after considerable protest the company conceded to a plan with a 20 percent co-pay and $200 deductible. Many of the 1,600 retirees had 30 or 40 years of service with Pittston and they had the poor health and accident disabilities that show from life doing a dangerous and hazardous occupation like underground mining. They could not afford to buy the coverage they were promised. (3)

After 14 months of talking the Pittston Coal strike began April 5, 1989 primarily over cutting health care and pension benefits and the failure of Pittston to keep its promises to retirees. The company offered money saving justifications but would not negotiate further and pressed forward to keep the mines open by shipping coal in long convoys of tractor-trailers. State police troopers escorted the trucks. Picketing started immediately outside Pittston Company gates, but soon degenerated into wildcat efforts to halt the trucks as strikers lined the roads. One of the drivers remembers “The convoy did not go half a mile before every windshield of every vehicle, including the state police cruisers, was knocked out, and at least 50 percent of every tire on those trucks and cars were jackrocked and flat. There were at least 500 pickets in the woods, all in camo, and it was a constant rain of large rocks and jackrocks.” (4)

Pittston continued their efforts to ship coal by converting to foam filled tires, bullet proof glass, and metal shields to protect radiators from gun shot damage. The politicians and the courts took the management view, no doubt horrified at extra legal protest. On April 13, 1989 Virginia State Circuit Judge Donald McGlothlin Jr. granted an injunction to limit pickets to ten. Judge Nicholas Persin in the next county did the same injunction on May 10, 1989. On May 24, Federal Judge Glen Williams granted a temporary restraining order to curtail mass picketing on roads near Pittston gates that required pickets to sign in and sign out at picket shacks. The injunction banned nighttime picketing, barred firearms from picketing sites, and enjoined coercive and threatening gestures by pickets. Pittston

contracted with Vance Security Services. Uniformed and armed private guards patrolled Pittston property and kept picketers under constant surveillance.

Democratic Virginia Governor Gerald Baliles sent more Virginia state police. He assigned one-third of 1,600 state police to patrol the three counties with Pittston facilities in 16 hour shifts. He described the Virginia right-to-work statute to justify his actions. The right to work applies to the right to work without joining a union or paying union dues, but had nothing to do with the Pittston strike. Governor Baliles did not mention the duty to bargain in good faith in the Wagner Act. He made no attempt to remain impartial or mediate the strike, but actively supported strikebreakers and replacement workers hired by Pittston.

The strike was six days old April 11, 1989 when strikers started sit-downs and sit-ins, which the union agreed to have members participate on a strictly voluntary basis; many did. On April 18, 1989 sit-downers moved into the Pittston lobby. On April 24, 1989 police arrested two hundred for "obstructing traffic" and arrested 457 sit-downers at the entrance to Pittston's Moss No. 3 Processing plant. Police were rough enough to injure 6 who needed hospital treatment.

Donations into a new group - Justice for Pittston Miners – used available funds to post bond and pay or negotiate fines for individual protestors. Caravans of cars and trucks, some estimated to have 250 vehicles, clogged roads. Police gave hundreds of traffic tickets and took aggressive action against anyone driving below the speed limit. Police officials authorized the use of state helicopters to spot caravans and radio the location of slow or obstructive traffic.

The strike went into summer. On July 27, 1989 Judge McGlothlin wrote a third contempt of court order. He heard 83 witnesses, mostly state police, Pittston employees or Vance security guards, who testified they saw convoys, incidents of assault, rock throwing, and intimidation. Judge McGlothlin imposed $4,465,000 in fines for 22 acts of violence as part of violating his picketing limits, the use of roving pickets, and the "use of mirrors" to reflect sunlight and obscure vision to Pittston truck drivers.

federal district court Judge Glen Williams took a helicopter ride after hearing caravan participants were paid a gas allowance. He did not see a caravan on his ride, but enjoined their use in southwest Virginia. Sixteen were arrested in violation and one received a 3-month sentence, but the convoys continued. Sympathetic UMWA members from other places not covered by the injunctions took up the convoys.

By summer and four months into the strike, UMW President Richard Trumpka did not flinch when he spoke for his rank and file: "If we give in to what Pittston wants, it'll set a pattern for other companies that will cause further erosion and finish us." Trumpka referred to Pittston and its demand to cut contracted health care payments in a New York Times article as "a greedy and insensitive company with a new bunch of people at the top who don't understand coal, Well, I understand coal and they're not going to get away with it. You work coal and sooner or later you're going to get hurt, hurt bad enough to carry it for life and need medical help for life."

UMWA recruited several strikers who were also share holders in Pittston.

Their stock holding allowed them to claim that under Virginia law they were not trespassing but, instead holding a "minority stockholders meeting." UMWA warned them they could be arrested but pledged support. September 17, 1989 a van arrived at the company gate where there were already picketers and 99 men in camouflage and orange vests equipped with sleeping bags and equipment to last 10 days marched into the plant. Caravan of strikers and supporters also arrived at the plant.

Pittston called them "terrorists." Vance guards gathered at the plant while negotiations to remove them went on for four days. Judge Williams issued an order to vacate the plant by 3:00 p.m. or be in contempt of court. UMWA Cecil Roberts delivered a speech to nearly 5,000 assembled outside telling the crowd those inside were ready to violate the order, but Roberts convinced them to leave peaceably.

The union maintained a camp at Carterton, Virginia calling it Camp Solidarity. It welcomed families and supporters not just strikers. As many as 40,000 lived there for periods ranging from a day or two to several weeks or longer. They held rallies and invited speakers for some of the rallies. Rallies and protest continued at Pittston offices at Greenwich, Connecticut. (5)

Federal intervention pressured the two sides to mediate and settle. After a poor start Secretary of Labor, Elizabeth Dole, and mediator William J Usery Jr worked as neutral brokers. Dole could use presidential power to issue a back to work order under the Taft Hartley Act. Although the power was supposed to be reserved for a strike threatening the national health and welfare she turned it into an effective pressure. Dole and Usery suggested solutions within Federal law and kept rank and file and others out of negotiations.

After 11 months of strike on February 27, 1990 miners returned to work with a compromise solution that restored health and retirement benefits for miners. The agreement required the company to pay retirement benefits to older miners. The UMWA made work concessions including an agreement to operate 7 days a week.

In the aftermath of the Pittston strike Senator Jay Rockefeller of West Virginia sponsored a Coal Industry Retiree Health Benefit Act, a.k.a. the Coal Act, signed into law by George H.W. Bush in 1992. The law funds health care benefits of UMWA retirees, their dependents and surviving spouses. It was a legacy of a previous agreement that retired UMWA miners would receive the health care benefits of the last employer for their retirement years. Recall these benefits were part of an agreement negotiated by Secretary of the Interior, Julius Krug and John L. Lewis in 1946. By the 1980's some coal operators abandoned payments. Now they would have to pay, although only for miners retiring before October 1, 1994.

Otherwise corporate America and government played the same roles and pursued the same ends as they always did, although no one died as a result of the protest. The strikers of 1989 and their many supporters responded with the same tinge of desperation as depression era strikers of 1934. In southwest Virginia, it was 1989, but it could have been 1934. In 2016 we can expect surviving retirees and their families voted for Donald Trump, hoping for revenge. (6)

Las Vegas

Las Vegas strikes spanned the Bush Era from early 1989 with an especially renown strike, the Frontier Hotel Strike, that passed into the Clinton Administration. After unfair labor practice filings provided nothing for Culinary Local 226 in the early 1980's, the Hotel Employees, Restaurant Employees (HERE) International sent some of Vinnie Sirabella's trainees from the Yale and New Haven strikes to assist the local leadership. The new arrivals included the now experienced John Wilhelm. Wilhelm set up committees to mobilize the rank and file and started investigating the hotels looking for financial, political and community liabilities. AFL-CIO attorney Richard McCracken explained Wilhelm "started a research department here, which was not the typical union research department, but actually doing corporate research. All this, coupled with mobilization of the members. So we started doing massive street actions, more high-tech things. So that's where we started calling these things 'comprehensive campaigns.' "

It was in the early experimental stages of comprehensive campaigns that HERE offered labor peace if management would recognize a majority of signed union authorization cards, or card check. Getting management to remain neutral and accept a union without a pitched battle based on a majority of signed cards would become an alternative to a NLRB certification election. Progress with neutrality agreements came where over worked and under paid service employees could picket and protest the well-to-do patrons of the leisure and hospitality industry. It helped as well that a supply of low paid replacements could not always be found.

Steve Winn opened the Mirage Hotel in 1989 and decided to get along with unions. He gets primary credit for starting Las Vegas on the path to labor peace. Culinary Local 226 agreed to some work rule concessions, cutting job classifications from 134 to 30 and joined in lobbying efforts to limit new taxes in exchange for much better wages and benefits. It was a start but other contracts expired June 1, 1989 and only twenty of thirty-four hotels renewed. Finally on January 27, 1990, hotel workers left Binion's Horseshoe Club to be pickets encircling the club chanting slogans and taunting tourists wanting to enter the hotel. By evening a thousand assembled for a mass rally with pickets filling the sidewalk in front of the Horseshoe. Labor officials reported 90 percent of the 1,200 members of Culinary Local 226 and Bartenders Local 165 left work. The hotel stayed open but with a severe shortage of bartenders, cocktail waitresses, food servers, cooks, maids, bell hops, housekeepers and change makers.

Local 226 secretary/treasurer, Jim Arnold told the United Press it was difficult to predict how long the strike would last: "We're prepared and we're ready to win. We're prepared for the worst and we hope for the best. We're prepared for whatever it takes." The strike went on for ten months in which the courts used injunctions and local police made a reported 900 arrests, mostly for "provoking a breach of the peace." Union officials and picketers refused to be intimidated and their solidarity and support from other locals and HERE international finally brought a settlement.

The strike at the Frontier Hotel started in 1991 and went on for six years. It started after Margaret Elardi bought the hotel in 1988 with a union contract in effect. Ms. Elardi hired a union busting lawyer to provoke trouble and allow her an opportunity to debase the working class, which the record suggests she preferred to earning a profit. She did not bother with the appearance of good faith. Rather than negotiate she cut salaries and often work hours, dismissed without cause to search for lower paid replacements, ignored seniority rules, refused dues check off, refused to pay into health-welfare and pension funds and fired strikers after the strike started. The strike would finally be settled after the Elardi's sold the hotel to a new and more practical owner who preferred business to class warfare.

In the intervening years the union proved what solidarity can do. None in the union crossed the picket line for six years, a feat that requires broad support from other unions and sympathizers the Elardi misconduct generated. Like the IWW 80 years before, documented and undocumented foreign nationals proved they could be savvy and smart. All were leaders in the IWW and like "Smilin Joe" Ettor from 1911 in Lawrence, John Wilhelm and new labor officials set up rank and file committees and a new slate of immigrants proved themselves as leaders. (7)

The Horseshoe strike, Frontier strike and others in Las Vegas helped HERE officials perfect the economic pressure generated in a comprehensive campaign. They learned to challenge development plans, license applications, unlawful misconduct, and to circulate and publicize unfavorable financial performance and in general be energetic corporate pests. Recognize the comprehensive campaign relies on economic pressure as an alternative to using labor law. By the 1980's the courts and the politicization of the NLRB virtually nullified labor law. Corporate stalling and administrative delays alone could defeat a union.

By organizing in the low paid service industries HERE used their solidarity to raise wages from the bottom upward to be a self supporting livelihood for its members. They organized among the same women and immigrants the IWW organized in the early 20th century and they generated the same economic power through patience and solidarity. The IWW challenged the economic power of capital the same as HERE, but recall the record from McKees Rocks, Lawrence, Paterson and the mining and lumbering regions of the west showed the IWW could only be defeated by upper class violence.

Misery in Decatur

A Decatur, Illinois "trifecta" of labor trouble started in July of 1991 before the September 30 expiration date for the labor contract between the United Auto Workers(UAW) and Caterpillar Tractor (CAT). Caterpillar published a "hard times are coming" discussion in the local newspapers instead of waiting for negotiations. After the CAT announcements, more demands for labor concessions at A. E. Staley and Bridgestone/Firestone turned Decatur into an economic battleground through the 1990's.

CAT wanted wage and benefit concessions, two-tier wages, a flexible work schedule and an end to pattern bargaining. Talks at Caterpillar dragged on through

the fall and ended November 3, 1991 with a strike of 2,400 at Decatur and East Peoria. In response, the company sent everyone home in a lockout at their plants in Decatur, East Peoria and Aurora, Illinois, a total of 5,650. CAT showed the usual business hostility to picketing and so brought in an Asset Protection Team of Vance security guards in dark blue jumpsuits, baseball caps and knee high military boots. Guards got four days training and worked 12 hour shifts earning $120 to $200.

After three months the company announced an end to the lockout and returned to negotiations with their "final" offer February 19, 1992. CAT offered wage increases over three years with a cost of living adjustment and some job security, but included two-tier wages, a 10-hour day with no overtime, weekend work, and an end to pattern bargaining. The union would not concede pattern bargaining while the company expected to hire replacements if the UAW would not accept concessions.

Federal mediators used CAT's final offer to arrange a return to work, which the union accepted April 14, 1992 on condition of a halt to replacement hiring and a return to bargaining. The two sides filled the next year with a variety of wrangling. The union pressured CAT with a work slow down. CAT suspended union members in a variety of grievance disputes. The unions responded by filing unfair labor practice complaints in a back and forth contest. By January 1993 there were 58 unfair labor practice claims alleging improper suspensions and firings. By January 1994, the National Labor Relations Board (NLRB) had a stockpile of 62 unfair labor practice complaints against CAT. (8)

In the mean time the A. E. Staley Company, a family company bought by Continental Foods in 1985 but then nominally sold to British multinational Tate & Lyle in 1988, given the largest share holder was Archer Daniels Midland. Tate & Lyle or ADM wanted to open contract negotiations with the Allied Industrial Workers, Local 837 seven months early. In October 1992 the union voted down the company's last offer, but management imposed their demands in a unilateral move. Work now included 12 hour rotating day-to- night shifts, an arrangement like the 1919 steelworker's schedule and probably intended to provoke a union busting strike. The union chose not to strike, but employed Ray Rogers and another consultant Jerry Tucker to conduct a comprehensive campaign.

Rogers and Tucker found a union with a largely inactive membership, but they worked to increase involvement and organized a slowdown in a work to rule campaign. Tension over work rules and job assignments brought a brief walkout in June of 1993. Staley responded with a June 27, 1993 lockout of 740 union employees.

Some of the locked out workers carried on a variety of mass protests. In June 1994, the increasingly anxious unemployed blocked the exit from the Staley plant at Eldorado Street. Police arrested 48 people and charged them with "mob action" and "obstructing the police." Protestors included Martin Mangan, a Methodist minister and UAW local president Larry Soloman. Two weeks later police broke up another rally this time with pepper gas.

Delays brought dissension in the union ranks. Staley kept production going

with management, clerical, and temporary workers. There were few signs they would budge on economic issues, but the pressure on the unemployed took its toll. Slowly but surely the membership recognized they could not outlast the company in war of attrition. First, the membership questioned the value of a corporate campaign until local union president David Watt had no choice but to put it to a vote. The majority voted to end the corporate campaign.

Then in the fall of 1995 Jim Schinall, a 29 year Staley veteran, demanded the local president David Watt put all contract offers to a vote of the membership. The argument that followed split the union and when the dust settled Jim Schinall won election to replace Watt.

Talks resumed but Staley offered nothing new from the contract four years before; a return to work would be the same as imposed four years before: 12 hour rotating shifts. The contract allowed Staley to use outside suppliers and contractors and lay off permanent workers where it meant improvement in cost, quality or technology. The voting membership accepted the offer by 285-226, a rank capitulation.

Staley called back 350 of the 740 locked out in June of 1993; 146 returned. Staley offered a few improvements in severance and pension to assure a majority vote; some took the severance deal in lieu of the jobs. Jim Schinall, who organized the capitulation, admitted "The company kept chipping away at our solidarity and ability to hang on to what we had. We had 350 people without health care for three years. The family disruptions were my biggest heartaches. The divorce record was terrible. Dying without health care was equally bad. There were a lot of people who stood up for the values of what this fight was all about. The real heroes who surfaced, unfortunately, were in the minority. They were the … road warriors who raised the money, the people who ran the food pantries, who rallied the clergy. This was the biggest faction of quality people, and Staley has lost them forever." (9)

The United Rubber Workers had a contract with Japanese owned Bridgestone/Firestone (B/F) set to end in 1994. The contract was one of the pattern bargaining agreements with the tire industry, primarily four foreign owned companies and Goodyear, which remained an American company. In January 1994 B/F refused to consider pattern bargaining. They wanted 12 hour shifts, rotating days and nights, seven day a week operation, no cost of living but pay hikes linked to productivity and a two tier wage system. Hourly workers must now contribute to health benefits. The rank and file voted to strike and 4,200 left work in July 1994.

Bridgestone/Firestone reported financial losses in the U.S. from 1988-1991. By 1994 earnings returned with a new Chair, Masatoshi Ono, who vowed to keep plants running. He hired 2,300 temps at a 30 percent wage cut and shortly eliminated insurance coverage for strikers. By November 1994, B/F started sending letters to strikers who did not report to work telling them, "you were replaced." Several hundred abandoned picket lines and went back to work. In January 1995 at B/F's Nashville headquarters, Trevor Hoskins announced "the company has attempted for the last year to get the union to "address our competitive needs."

The strike continued officially, but the local was helpless and United Rubber Workers international officials could not, or would not, justify more funds to support the strike at Decatur or at four other plants in Indiana, Ohio, Iowa and Oklahoma. The financial strain on life in Decatur got steadily worse until the local union abandoned the strike and returned to work on company terms in the spring of May 1995, recognizing the potential for decertification by replacement workers. (10)

Caterpillar negotiations resumed June 20, 1994, after two years, but a strike of 13,000 from Illinois plants followed in three days with the union demanding resolution of unfair labor practices. By October 1994 CAT had 5,000 white collar, 1,200 new hires, 2,500 temp workers and 4,000 who crossed picket lines to work and continue production at the eight plants on strike. Management warned strikers they would have to pay all their health insurance costs.

As the strike continued into 1995 the union had 9,300 still out and continuing to walk the picket lines. The Federal Mediation and Conciliation Service joined the talks that took place at intervals in February, March, May, August, and September but without progress. Then abruptly on November 28, 1995 the union bargaining committee announced an unconditional return to work, which ended the second strike even though the rank and file voted down the contract. The CAT offer the rank and file turned down had terms far less generous than contracts at John Deere and J.I. Case.

The unconditional return had "temporary" work rules imposed by CAT, which rules CAT used to discipline union members for handing out union literature or expressing union solidarity by wearing clothing with union logos or slogans, or criticizing company policy. Battling over rules ended in company reprisals and union complaints filed with the NLRB.

During the next year administrative law judges and the National Labor Relations Board found unfair labor practice violations by CAT. CAT gave preferential treatment to people who crossed picket lines and violated free speech rights, among other labor law violations. In January 1997 the NLRB issued a complaint against CAT alleging a pattern of unfair labor practices as part of 92 unfair labor practice complaints.

The Federal Mediation and Conciliation Service continued efforts to settle the strike that ran well into 1998. Since the NLRB found unfair labor practices against CAT there was incentive for them to settle the strike rather than be potentially liable for back pay and reinstatement for the hundreds of people that lost pay from suspensions and dismissals. Federal mediators got both sides to sit down in mid February 1998. They worked out a 6 year contract, but with several conditions opposed by the membership. The contract allowed CAT to drop many of unresolved unfair labor practice complaints and allowed the return of 4,000 members who crossed picket lines. The membership turned down the contract by a 58 percent majority but CAT allowed 50 of those fired to return to work. Finally, it passed in a second vote to officially end the strike by the end of February 1998. (11)

Over the five years of turmoil in Decatur the workforce locked out, on

strike or permanently replaced tried to attract broad national support by making their cause the cause of labor in a comprehensive campaign. They banded together to turn the Decatur strikes into national strikes. Caravans of "Road Warriors" traveled the country to the many other CAT, A. E. Staley and Bridgestone-Firestone cities to build solidarity and successfully raising $2 million in strike funds. They organized a boycott of Staley's bank, First America Bank, to withdraw union accounts, and a boycott of Staley customers, Miller Brewing and other food products companies, attempting to end corporate purchasing of Staley products. Research efforts showed Staley ineligible for tax subsidies, which Illinois dropped after union protest.

In the end all three unions and their members gained nothing but many left their failed campaigns with an angry and cynical perspective on corporate privilege, their views of partisan politics and the AFL-CIO. Some of those opposed to the capitulation at Staley who mounted a creative resistance spoke with journalists and offered their wrap up. The former local union vice president Gary Lamb remarked "Socialism or capitalism? We can see capitalism doesn't work." The now deposed union president David Watt added "Personally I'm a Socialist now. Don't get me wrong. I was raised a Catholic, a capitalist, and like everybody else I want to be comfortable. But capitalism just leaves too many people out."

Another, "Thumper" Williams went a little further. "Before I got into this I thought Socialists had horns on the their heads. I mean back in the fifties that's why my dad and I built a bomb shelter. But having traveled all over the country I met all kinds of people in all kinds of places. I'd never heard of Joe Hill until someone took me and showed me the place he was executed. Someone else showed me where the Pinkertons shot down union workers. Gary and I were in Chicago and one night we wind up at the Eugene Debs dinner and there we are sitting at the gay rights table. Come on. These are things I never thought of before. And now I realize I also have socialist beliefs. Who would've guessed?"

Neither the Republicans or the Democrats showed interest in these people or what they think, nor did the hierarchy of organized labor. The local at Staley was part of the larger United Paper Workers International Union that sold out Local 14 in the Jay, Maine strike, and it was part of the AFL-CIO filled with hand wringing officials and President Lane Kirkland ready to accept concessions without a fight. A quote from former local v-p Gary Lamb tells the story. "As long as I live, there will always be a cold spot in my heart for the A.F.L.-C.I.O. They left us hanging. We are the people in America who just don't have the right to be viewed as anyone's equal. They think we exist only to take orders-be it from the company, the union bureaucrats or the politicians. You don't learn these lessons until it's your butt that gets in the skillet." Lane Kirkland would soon be gone. (12)

Labor, the NLRB, and the Courts - Again

After Frank McCulloch left the Board in 1970 President Nixon appointed Edward Miller to be Board Chair. Like his predecessor Guy Farmer he viewed

his role as protecting the individual opposed to their union, but President Nixon did not forget he was trying to court the labor vote. He re-appointed Democrat John Fanning and so Miller did not have a Republican majority until almost 1971. Miller left the Board after Nixon resigned and President Gerald Ford nominated Betty Murphy to be chair.

The Murphy Board continued until April 1977, when President Carter named John Fanning to take over. President Carter was able to maintain a Fanning Board Democratic majority from October 1977 until September 1980, but in spite of Fanning's moderation complaints poured in that he took an anti-business stance favoring labor. Senator Orrin Hatch held up appointments for new Board members and the General Counsel. As a result, the Board had empty seats and Carter had to make two recess appointments but the Fanning Board maintained a one vote Democratic majority from October 1977 until January 1981 when Carter left office. The stalling limited Carter to three appointments and cleared the way for eleven Reagan appointments soon to come.

The politics of the NLRB reached a new level after the 1981 inauguration of President Ronald Reagan. His emphasis on de-regulating the economy brought more intense criticism of organized labor and the Board as an agency obstructing free enterprise. In August 1981 Reagan nominated John Van de Water to be chair. He was a sixty-four-year-old professor and management consultant who advised employers on how to resist unionization. He could not get a majority vote from the Senate Labor Committee, but Reagan made a recess appointment for him to serve as acting chair until December 1982 when he failed to obtain Senate confirmation. When John Fanning finished his fifth term also in December 1982, a temporary chair served until March 1983 when Reagan nominated Donald Dotson.

Dotson, an attorney with experience in the North Carolina Regional office of the NLRB, also had experience as labor counsel to two corporations: Westinghouse Electric Corporation and Wheeling-Pittsburgh Steel Corporation. Those who knew Dotson described him as "abrasive," "staunchly antiunion," a crusader for the Reagan cause, and a protege of Senator Jesse Helms, a politician not known for supporting progressive causes. Dotson would dominate the Board during the 1980's and pursue his anti-labor views by working to overturn Board precedent, something Chairman McCulloch also did in the 1960's. (13)

The path from the Board to the Supreme Court can be quite long, which gives power to politically motivated Boards to overturn national precedent from Board decisions knowing it will be years before it can reach the Supreme Court and a national policy affirmed or overruled. Decades of rulings over the same disputes should bring settled and predictable law, but appointments to the NLRB, and the federal courts bring new Board members, judges and justices ready to change the law. Corporate America continues to challenge National Labor Relations Board (NLRB) rulings and pursue the same disputes through the courts.

Justice Earl Warren tried to settle free speech disputes with his Gissel ruling. He hoped to clarify what employers could say and do during organizing campaigns, but corporate America kept challenging the limits and the Warren successors on the Supreme Court could not agree how or when to apply them.

Free speech in labor law has not become settled law as we shall see in Free Speech – Gissel Revisited.

When corporate America had the opportunity to rewrite National Labor Relations Law in 1947 with the Taft-Hartley amendments they were able to change the definition of employees in Section 2(3) to further limit the number of their employees protected by labor law. The original 1935 law had a spare definition of employees. An "employee" shall be any employee and shall not be limited to employees of a particular employer, and shall include striking employees, but shall not include an employer's children, agricultural laborers and domestic servants. In 1947, Congress added individuals having the status of independent contractors and any individual employed as a supervisor to the list of those excluded from a bargaining unit and the protection of the law. Congress went on to define supervisors with a new Section 2(11) to give them a separate legal status but left independent contractor undefined. A new Section 2(12) defined professional employees. These changes generated many new and convoluted court disputes attempting to separate employers from employees.

Recall the Supreme Court all but repealed the duty to bargain with their 1952 to 1970 rulings ending with NLRB v. H.K. Porter in 1970. However, in the 1981 case of First National Maintenance Corp. v. NLRB a new slate of Supreme Court Justices took an extreme ruling to a new extreme as we shall see with the duty to bargain – revisited.

Free Speech - Gissel Revisited

In NLRB v. Gissel Chief Justice Warren specifically authorized the Board to consider and use bargaining orders by evaluating anti union speech during election campaigns. He outlined three different degrees of severity. The first and worst case scenario of unfair labor practice during elections occurred when employer misconduct becomes of "such a nature that their coercive effects cannot be eliminated by the application of traditional remedies with the result that a fair and reliable election cannot be had."

Justice Warren's second case scenario of unfair labor practices during elections would result from "less extraordinary cases marked by less pervasive practices which nonetheless still have the tendency to undermine majority strength and impede the election processes." A showing of majority support such as an authorization card majority at least once during an election campaign would be a requirement for a bargaining order at this second level. Also in this second level Justice Warren wanted the Board to evaluate past unfair labor practices as a cause of losing an election and the likelihood they would be repeated in the future. Finally, the third case scenario of misconduct during elections would be a "category of minor or less extensive unfair labor practices which, because of their minimal impact on the election machinery, will not sustain a bargaining order."

The varied nature of anti union strategies before union elections has defied precise definition but judicial review and other commentary has adopted Justice Warren's three degrees of election campaign abuse as Gissel I, Gissel II and Gissel III. Justice Warren may have suspected a cease and desist order and another

representation election does not constitute much of a deterrent to management's anti union election campaigns and given the power of delay employers may feel an incentive to violate free speech guidelines. The possibility of a bargaining order might bring a balance between the right of privacy in union organizing and management claims that free speech provides them rights to intervene and campaign against union solidarity. In practice, the bargaining order has generated a whole new set of disputes since all recognize the significance of bargaining orders over another election. Like the tides, what will justify a bargaining order comes back again and again as law cases crawling through Board proceedings and court petitions.

For example, start with the 1971 case in the Second Circuit Court of **NLRB v. General Stencil**. The union had an authorization card majority twice, 1961 and 1966, and both times management demanded elections, which the union lost after management interrogated some employees about their union beliefs and made threats of plant closing, layoffs, and elimination of other benefits if the union won the election. The administrative law judge found unfair labor practices under 8(a)(1) and 8(a)(5) and after requiring a cease and desist posting, ordered another election. The Board majority agreed in their review of the administrative law judge, but added a bargaining order citing Gissel II as justification.

Management appealed to the Second Circuit Court that denied the order. The Second Circuit argued the facts fit Gissel III, not Gissel II, but the justices remanded the case to the Board and instructed them to define an operational rule for issuing bargaining orders when a card majority precedes unfair labor practices and a union loses an election; they wanted a per se rule for Gissel II. The Board reviewed the entire record and the majority made the same ruling, repeating the standard defined as Gissel II. In a reprise of the 1971 case the Board requested enforcement in a second 1972 case of **NLRB v. General Stencil**, which the Board majority defended and the Second Circuit denied again. (14)

Justice Warren intended his Gissel ruling to bring settled law to union recognition elections but immediately in the General Stencils example we have one administrative law judge, five Board members, and five different circuit court judges who refuse to agree on the precedent or how to apply it. Many more bargaining order cases followed. In General Stencils and in case after case circuit court opinions make direct reference to the Gissel opinion.

Virtually all of the cases find a union organizer had a majority of signed authorization cards, which management refused to accept. By the 1970's and 1980's if not earlier when management successfully defeated a card majority in a representation election and the Board agreed there were unfair labor practices, both sides doubted another election would matter. Delay alone was deadly; union organizers resigned themselves to losing again. Hence, the bargaining order has turned into the featured legal contest during this era's organizing campaigns.

Chief Justice Warren tried to provide some guidelines in his Gissel opinion where he cautioned in his Part IV narrative "employers must be careful in waging their anti-union campaign." Later he said "[G]radations of unfair labor practices, with their varying consequences, create certain hazards for employers when

they seek to estimate or resist unionization efforts. But so long as the differences involve conduct easily avoided, such as discharge, surveillance, and coercive interrogation, we do not think that employers can complain that the distinctions are unreasonably difficult to follow."

In a later paragraph, Justice Warren added "Any assessment of the precise scope of employer expression, of course, must be made in the context of its labor relations setting. Thus, an employer's rights cannot outweigh the equal rights of the employees to associate freely[.]" . . . "And any balancing of those rights must take into account the economic dependence of the employees on their employers, and the necessary tendency of the [employees], because of that relationship, to pick up intended implications of the [employers] that might be more readily dismissed by a more disinterested ear." . . . "Thus, an employer is free to communicate to his employees any of his general views about unionism or any of his specific views about a particular union, so long as the communications do not contain a "threat of reprisal or force or promise of benefit." (15)

The National Labor Relations Act has been around for almost 90 years. With the many lawyers and other union busting consultants available it would be reasonable to think employers would have the discipline to restrain themselves in the crudest of anti union attacks. Even a cursory review of Board cases find the same contempt and bitterness as back in Andrew Carnegie's day. Some things never change, but a few other examples help illustrate. (16)

In the 1981 case of **NLRB v. K & K Gourmet Meats** the company owner-president Arthur Katz operated a small meat processing operation with a supervisor, Barbara Weiler, 14 full time employees and 3 part time employees. One of the 14 employees contacted a union organizer. George Nestler, and an organizing meeting took place October 23, 1979 where 9 signed authorization cards. The next day Nestler asked Katz to recognize and bargain with the union, but instead Katz contacted his attorney who advised Katz to claim there was good faith doubt of a union majority.

Katz scheduled a meeting with his employees for October 30, 1979. Two days before on October 28, Supervisor Weiler and another employee discussed the organizing drive at an ice cream parlor where they stopped to socialize as friends. They talked about the organizing that Weiler opposed and predicted the union would fail as it did before. At the October 30 meeting Katz proposed to increase pay and benefits including hospitalization insurance and profit sharing. At an evening meeting of employees doubted Katz would follow through without a union and they discussed a strike.

Instead, an unfair labor practice petition followed and the administrative law judge declared the ice cream parlor discussion an instance of interrogation, and declared the offers of benefits to be Section 8(c) unfair labor practices that did not justify a bargaining order. However, the Board accepted the General Counsel's contention that Katz courted no-votes with offers to settle a wide range of grievances, which justified a Gissel II bargaining order.

The Board petitioned the Third Circuit Court, which refused to enforce the order. They agreed the offers of benefits justified a cease-and-desist order, but

regarded the other claims as minimal. The Third Circuit's two to one majority held this case to be Gissel III while the Board majority maintained it was Gissel II.

There was a hostile dissent by Justice Gibbons. It started with "It is no secret that at least a significant minority of the members of this court believe that the Supreme Court in NLRB v. Gissel Packing Co., erred in interpreting the National Labor Relations Act . . . Nor is it any secret that those judges who are uncomfortable with the Gissel construction of the statute have been signaling the Board vigorously that bargaining orders are unwelcome in this circuit." . . . "Until this case the guerilla warfare against Gissel orders has been carried out by insisting that the Board's opinion writing is so opaque that we cannot understand it, and remanding. With the present majority a new weapon is resorted to. The majority simply substitutes its fact finding for that of the Board."

In footnote 3 of the opinion the two majority justices disagreed with dissenter Gibbons by citing three earlier cases where the third circuit enforced bargaining orders. None of the justices appear to recognize their bickering fails to suggest progress toward settled law in union organizing more than a decade after Gissel.

During the administrative law hearings Gourmet Meat president Katz testified "[H]e hoped to settle our disputes among ourselves" and "to try to resolve our problems with him, to come to him and get this settled that way." . . . "[I] n the past, I probably haven't heard them out.... I mean just haven't been around enough to hear what's happened, or what should be happening." Along with this plea he offered wage increases, better health insurance and profit sharing, all of which suggests a man hoping to avoid dealing with a union bureaucracy and a government bureaucracy and so keep his business simple. His employees should recognize his offer of a wage increase and other benefits as what they hoped to get by organizing a union.

Mr. Katz plea, his offers, and the small number of employees involved here help illustrate a seldom discussed part of labor law: self-help. The 17 employees could and should realize they are capable of negotiating directly with Mr. Katz. Recall Section 7 of NLRA reads "Employees shall have the right of self organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection."

Two or more employees who approach management have the same Section 8 legal right to protections as any international union. They are protected from dismissal by Section 8(a)(3) and protected from refusals to meet, talk, or listen by Section 8(a)(5) and Section 8(d). Two can file a complaint with the NLRB assuming the company meets the minimum size for jurisdiction as was the case with K & K Gourmet Meats. If we can take Mr. Katz' plea seriously we might suppose he would agree to put his offers in writing as a contract, rather than launch a two year slog through the NLRB and the courts. His signature would make his offer a collective bargaining contract. It would help if organized labor had some

model contracts to look over and some advice because people not acquainted with labor law might have at least one amongst them willing and able to learn about it.

The Gourmet Meat case makes clear there was no possible need for a Board conducted election to determine a majority. The facts established by the administrative law judge make the majority justices comments about voting and democracy especially gratuitous. They wrote "Legislation and experience indicate that an employee's statutory right to select an exclusive bargaining agent should be determined by democratic process in a free and open election. . . . Only in exceptional circumstances, where it is obvious that the extensive machinery and power of the NLRB is inadequate to ensure a free election, should employees be denied their right to cast a secret ballot for or against an exclusive bargaining agent." The majority at Gourmet Meat was evident to all given the documented card majority, especially to management's attorney that advised for Katz to demand an election. Here, as the justices full well know, the election serves as an obstruction to democracy not a service to it. The pompous and pretentious wording in the opinion can not disguise the justice's corporate sympathies and class based hostility toward labor unions.

Gourmet Meat also helps illustrate a fault in Section 8(c) that allows free speech in election campaigns except it puts offers of benefits in the same ban as threats of reprisal. Offers of benefits make organizing a union less important for many employees. Since employees and union organizers can wait to file a petition to schedule an election, or allow management to do so, the filing and delay gives employees the opportunity to see if management will follow through with the benefits. Low paid employees may see the need for a union quite differently when they get benefits without one, which may also influence their voting. Offers of benefits might signal an opportunity for the self-help suggested above.

Recall NLRA, Section 10 – Prevention of Unfair Labor Practices - defines the authority for the NLRB to make a bargaining order in labor disputes such as a disputed election. NLRA, Section 7 defines the legal duty to bargain with two or more employees. Repeatedly employers attempt to evade or avoid bargaining, which the NLRB can try to halt with a bargaining order. Even though corporate America protests as though a bargaining order should be the ultimate violation of democracy or their rights, bargaining orders are pathetically weak. Section 10(j) does provide the NLRB with authority to seek an injunction from a federal court but available sanctions provide little incentive to follow the law. (17)

Employers and Employees

Before Taft-Hartley supervisors could be employees with Section 7 rights to organize and be members of a union and the Board defended their rights against dismissal with authority from Section 8(a)(3). Corporate America challenged the treatment of supervisors as employees, but in the 1940 case of **NLRB v. Skinner and Kenner Stationary Co** the Eighth Circuit Court defended that right. The court concluded that a supervisor can have an employee relationship with an employer and be a representative of the employer to employees. The 8th circuit did not find anywhere in NLRA that supervisors were not protected. Recall in the

William O Douglas dissenting opinion in the case of Packard v NLRB the majority ruled UAW foreman could be included as employees in the bargaining unit, but Douglas chided them for refusing to define employees precisely and separately as adversaries of employers. The NLRA presumes throughout employees are adversaries of employers, but did not define either clearly enough to separate the one from the other.

The House and Senate debate over the Taft-Hartley amendments also treated labor relations as an adversarial contest between management and labor. Congress thought employers should have a right to expect that supervisors acting as agents will be loyal to them and not influenced by unions. A quote from the House Report asserted "[N]o one, whether employer or employee, need have as his agent one who is obligated to those on the other side, or one whom, for any reason, he does not trust." Which side are you on? (18)

A new Section 2(11) defines supervisor as any individual having authority, in the interest of the employer, to take 12 different actions – 1. hire, 2. transfer, 3. suspend, 4. lay off, 5. recall, 6. promote, 7. discharge, 8. assign, 9. reward, or 10. discipline other employees, or 11. responsibly to direct them, or 12. to adjust their grievances - or effectively to recommend such action, if . . . such authority is not of a merely routine or clerical nature, but requires the use of independent judgement. The new Section 2(11) left the courts to decide how many of the twelve requirements make an employee a supervisor, and whether their conduct includes the exercise of independent judgement in the interests of their employer.

In drafting the Taft-Hartley Act amendments some members of Congress sympathetic to labor wrote and included a definition of professionals in an effort to prevent corporate America from treating their professional employees as supervisors to exclude them from union membership. Professional protections come in a new Section 9(b), which prevents mixing professional and non-professionals in a bargaining unit without their vote of approval. These professional protections allow a separate bargaining unit, but of course the desire to separate professionals from non-professionals requires a definition of professionals, which Congress attempted in Section 2(12) given below. The savvy reader will place emphasis on "attempted."

In the new Section 2(12) the terminology defining "professional employee" have two long and convoluted parts: (a) and (b).

Part (a) will be any employee engaged in work defined as (i) predominately intellectual rather than routine mental, manual, mechanical or physical work, (ii) involving consistent exercise of discretion and judgement with (iii) output produced that cannot be standardized and (iv) requiring knowledge of an advanced type in a field of science or learning acquired by a prolonged course of intellectual instruction at an institution of higher learning or a hospital and distinguished from general academic education or apprenticeship or training in the performance of routine, mental manual, or physical processes.

Part (b) will be any employee, who (i) has completed the courses of specialized intellectual instruction and study described in clause (iv) of part (a) and (ii) is

performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in part(a)

Before Taft-Hartley supervisors could be members of a union and the Board defended their rights against dismissal. After Taft-Hartley employees defined as supervisors can be fired with or without cause and therefore fired without labor law protection. Taking "supervisors" out of union bargaining units helps decrease union membership and creates an internal pool of scabs working to divide solidarity and take over the work of employees who dare to strike. The ban on supervisors clears any union obstruction for corporate America to dismiss supervisors that do not carry out anti union directives they might receive.

The ban on supervisors in a bargaining unit appears to be absolute given the wording in Section 2(3), but in the years after 1947 the Board received and processed complaints of unfair labor practice allegations filed by supervisors following their arbitrary dismissal. In two early cases supervisors were dismissed for failing to advise management of union organizing efforts of employees under his supervision and in a second case after a supervisor "half heartedly" engaged in an anti union campaign he regarded as unlawful.

In the first case the administrative law judge concluded a supervisor should not be "a tool or instrument through which the employer could impinge upon the Section 7 rights of the employees." The Board agreed and ordered the supervisor reinstated, but the Fourth Circuit Court disagreed and refused to enforce the order. In the second case, the Board ordered reinstatement because an "action directed against supervisors would inhibit employees in their willingness to exercise Section 7 rights, thereby constituting restraint, coercion, or interference of employees prohibited as an unfair labor practice of Section 8(a)(1). The Board petitioned the Fifth Circuit Court and they enforced the order. In the justice's opinion if "supervisors could be discharged with impunity because they failed to violate the rights of employees and evinces undue preoccupation with the statutory definition, rather than with the underlying purpose and intent of the Act as a whole."

Supervisors can be subpoenaed to testify in unfair labor practice hearings but without labor law protection they can be dismissed if their employer disapproves of their testimony. Dismissals for testimony conflicts with Section 8(a)(4) that makes it an unfair labor practice to discharge or otherwise discriminate against an employee for filing charges or giving testimony under NLRA.

In another early case a supervisor was dismissed for adverse testimony and the administrative law judge ordered reinstatement and the Board concurred. Again the Board found a justification to ignore the exclusion of supervisors. They decided that "rank-and-file employees are entitled to vindicate these [Section 8(a)(4)] rights through the testimony of supervisors who have knowledge of the facts without the supervisors risking discharge or other penalty for giving testimony under the Act adverse to the employer." Since supervisors give testimony under oath the Board decided they should not be pressured to give false testimony to save their job. The Fifth Circuit Court enforced the order in spite of the obvious wording in Section 2(3) that labor law does not apply to supervisors.

These "supervisor" cases went on for 35 years without established precedent. In general, the Board agreed that supervisors could be discharged for disloyalty to their employer but wanted to prevent employers for discharging supervisors as part of an anti union campaign where employees have Section 7 rights of concerted activity. Such practice requires evaluating an employer's motive for firing a supervisor, definitely a subjective effort and unpredictable. In a case of **Parker-Robb Chevrolet** in 1982, a supervisor argued against dismissal of an employee for union organizing and was in turn fired for his efforts. The Board decided the supervisor was not entitled to reinstatement under what the Board majority hoped to make a rule for future cases. Supervisors that participate in union activity or other concerted activity of employees can be fired without protection. Supervisors will be protected when their dismissal interferes with rank and file Section 7 rights or for refusing to commit unfair labor practices ordered from managers above. (19)

Like all of the Taft-Hartley amendments, independent contractor, supervisor and professional employee designations generate more opportunities for legal disputes and union busting. A few example cases give a feel of these disputes.

Independent Contractors---------Congress put independent contractors on the list of those excluded from protection of the labor law, but did not bother defining them. Instead, it continued to be left to the courts to interpret from the cases brought to it. In a 1968 case of the **NLRB v. United Insurance Company of America**, the company utilized 3,300 insurance agents hired by district managers. The agents wanted to be a union local and bargain with the company as employees; the insurance company refused claiming they were independent contractors. The NLRB looked at how the work was done and decided they were employees. Appeal was taken to the Seventh Circuit Court that decided they were independent contractors, but the Supreme Court reversed. Justice Hugo Black who wrote the majority opinion found the facts in the case made the insurance agents employees for much the same reason the court found newsboys employees in the NLRB v. Hearst Publications case from 1944. Justice Black noted "There are innumerable situations which arise in the common law where it is difficult to say whether a particular individual is an employee or an independent contractor." Not all contractor cases have a happy ending as we shall see.

Any employer that finds an advantage in converting their employees into independent contractors can adjust their employment to deny rights under the NLRA. In practice, the Internal Revenue Service has done much to define independent contractors. That occurs because disputes result when individuals claim to be employees while their employer claim they are independent contractors. Many times neither party pays the required Social Security taxes, which puts the IRS in the position of arbitrator to collect the taxes. As everyone knows the IRS operates with forms and so a form is filed and the IRS decides the matter: employee or independent contractor. For purposes of labor law rights, the decision will be moot; the employer determines or alters the terms of employment to suit their purposes. (20)

Managers and Supervisors---------- The case of **NLRB v. Bell Aerospace** tests whether the list of 12 actions defining supervisors in Section 2(11) also defines managers from the same list of authority as part of Taft-Hartley Amendments, except with more authority in a bureaucratic hierarchy of authority. The list defines what supervisors or managers do to direct others suggesting supervisors or managers can only be supervisors or managers if they have someone to supervise or manage.

In the case of NLRB v Bell Aerospace 25 purchasing agents, or buyers, of the Bell Aerospace Corporation petitioned the NLRB to hold a certification election to be represented by the United Auto Workers (UAW). Bell Aerospace objected claiming that buyers are managers not protected by labor law. A unanimous Board ruled buyers are employees deserving protection as a bargaining unit in a union of professional employees as defined in Section 2(12) and authorized by Section 9(b).

Bell Aerospace made a second claim that unionized buyers have a conflict of interest selecting venders and should be denied a right to have a union. Bell attorneys argued a "conflict of interest between buyers as union members and the employer" exists because "buyers would be more receptive to bids from union contractors as opposed to non-union contractors and adversely affect the employer's business." The Board rejected that view citing company rules that prevent buyers from canceling orders or selecting venders without approval from above.

Following their May 20, 1971 ruling the Board scheduled a representation election for June 16, 1971 where a majority vote of 15 to 9 authorized the UAW to represent buyers. The Board certified the UAW on August 12, 1971, but it turned out to be the same day the Eighth Circuit Court refused to enforce a unanimous Board ruling in a case known as NLRB v. North Arkansas Electric. The Board cited the North Arkansas ruling as precedent for its May 20 Bell Aerospace ruling. Since the Eighth Circuit Court overruled their order to reinstate an employee fired as a management employee by North Arkansas Electric, Bell attorneys wanted the Board to overturn their May 20, 1971 ruling as well.

The Board asserted managerial employees have labor law protection except for those managers that have "participated in the formation, determination or effectuation of management policy with respect to employee relations matters." The Board denied Bell Aerospace petition for reconsideration May 1, 1972 where they made clear they would not acquiesce to the Eighth Circuit ruling, which declared managerial employees do not have labor law protection and can be fired with or without cause.

Since Bell Aerospace would not accept the Board ruling the UAW petitioned the Board to make a bargaining order under Section 8(a)(5) and Section 8(d) of the NLRA. The NLRB ordered Bell Aerospace to bargain with the UAW in the second ruling of May 30, 1972. The NLRB petitioned the Second Circuit Court to enforce the order while Bell Aerospace petitioned the Second Circuit to deny it.

The case moved to a three judge panel of the Second Circuit Court that denied enforcement in a ruling February 28, 1973. Here the justices wrote "The

issue here tendered must be considered in light of the confusing pattern of Board decisions before and after enactment of the Taft-Hartley Act in 1947 and the less than pellucid legislative history of the provision of that statute that is here relevant." A search of the 10 page opinion found reference to 48 Board decisions and 13 circuit court rulings as part of their legal and legislative history. To that they reflected that "The effect to be given such a history is a delicate and difficult question." And "The conclusion we reach from all of the foregoing is this: The 1947 Congress clearly believed that at least some "managerial employees" other than "supervisors" were excluded from the protections of the Act."

Rather than leave it at that, they went on to chide the Board for not using the rule making authority from the Administrative Procedures Act(APA). They cited reference to two law professors and their writing in academic law journals that explained how APA could be useful to decide cases like the one before the court. They wanted the Board to hold hearings and then determine a general rule for defining buyers as managers excluded from union membership, or not. Their Second Circuit decision moved to the Supreme Court on a writ of certiorari.

The Supreme Court majority decided Bell Aerospace buyers are managers excluded from protection of labor law and that all managerial employees are excluded from labor law and cannot be protected as members of a union. With their conclusion they provided a more elaborate explanation that admitted the term "manager" does not appear in the Section 2(11) definition of supervisors. To include unnamed managers they presumed supervisor must be farther down the corporate hierarchy than managers and so by default managers must also be included in the excluded supervisory employees of Section 2(11).

In a meager recitation of legislative history in the House and Senate, the majority justices noted that it would be hard to have definitions that do what Justice Douglas wanted them to do in the Packard v. NLRB Case – define adversaries clearly. The best the justices could make of the history and final wording of supervisor to apply in the case of Bell Aerospace was the plaintive assertion below:

> "But assuredly this [supervisor definition] did not exhaust the universe of such excluded persons. The legislative history strongly suggests that there also were other employees, much higher in the managerial structure, who were likewise regarded as so clearly outside the Act that no specific exclusionary provision was thought necessary." . . . "We think the inference is plain that "managerial employees" were paramount among this impliedly excluded group."

The majority view certifies that corporate authority should come from the top and flow down a defined hierarchy, similar to authority in armed forces or the Catholic Church. Dissenters in this 5 to 4 decision discussed what the five refused to address. They did not accept "implied" exclusion of all managerial employees where they found "The [NLR]Act is very plain on its face – "any employee," with specified exclusions, is entitled to the benefits of the Act. Each of the exclusions is a narrow and precisely defined class, and none of them mentions managerial

employees."

The dissenters compared pre and post 1947 National Labor Relations Board cases brought to it. Before Taft-Hartley the Board attempted to fulfill their requirement to determine bargaining units by deciding what managerial employees had a sufficient community of interest with rank-and-file employees to be included in the same bargaining unit with them, or should be put in separate bargaining units. The dissenters could not find a case where supervisory, managerial or professional employees were denied labor law protection before 1947. After 1947, the Board defined managerial bargaining units on a case by case basis much as before and found only two Board cases where the Board did not allow bargaining rights for buyers in separate bargaining units. (21)

The dissenters supported bargaining rights for managers, but they also cited the case of Packard v. NLRB, which recall allowed supervisors to be organized in a union as long s they were in separate bargaining units. In Bell Aerospace both the majority and dissenting justices agreed that Congress had reacted to the Supreme Court from the just concluded 1947 Packard v. NLRB case by taking up an exclusion for supervisors.

The legislative history of Taft-Hartley explains the Packard ruling upset corporate America; they did not want their supervisors to be responsible to both management and the union as they would be if they were in the same bargaining unit as the rank and file they hired and supervised. This was a legitimate conflict of interest and they wanted their interest protected. The Board and the Supreme Court recognized that conflict in their Packard ruling but corporate America wanted a guarantee put in the law: did not trust the Board to rule consistently in the future.

It was unnecessary to ban supervisors from all labor law protection to do what they wanted done, but the final wording worked out in conference did ban supervisors from labor law protection, while the term manager did not appear at all. The legislative history does not tell if banning supervisors was a mistake, an oversight or something deliberate.

It was at this point in their opinion the dissenters cited the quote of Justice Douglas from his dissent in the Packard v. NLRB ruling. The quote was the NLRA "put in the employer category all those who acted for management not only in formulating, but also in executing its labor policies." Justice Douglas wanted employer-managers to formulate AND execute because he quite understandably realized managers and supervisors can not be managers and supervisors if they have no one to manage or supervise.

The majority in Bell Aerospace decided managers only need to "formulate" which of course allows corporate America much broader discretion to deny labor law protection to their "employees." None if these justices bothered to explain how any of the twelve actions that define supervisors in NLRA, Section 2(11) apply to buyers at Bell Aerospace or could occur without someone to supervise. (22)

The **NLRB v. North Arkansas Electric** case mentioned above provides an especially egregious example of judicial abuse in these supervisor disputes. North

Arkansas Electric operated a public utility with 55 employees. On October 27, 1966 a majority of construction, maintenance and survey workers voted to have a union in a Board certified election. In response General Manager Jack Cochran fired "Electrification Advisor" Jack Lenox for insubordination, claiming he did not remain neutral during the organizing campaign. An unfair labor practice complaint followed where North Arkansas Electric argued Lenox was a manager, and like supervisors, not entitled to labor law protection.

The Board ordered reinstatement arguing Lenox deserved protection under the law given the work assigned to him put him in the bargaining unit as a member of the rank and file. To support their view the administrative law judge and the Board did a careful review of his work. Lenox took part in planning and evaluation meetings, made recommendations, did wiring inspections, occasionally handled customer complaints, or conducted training sessions, but Lenox did not manage or supervise anyone. Lenox acted on orders from above but had no authority to direct anyone and hence no one to manage or supervise.

The Board petitioned the Eighth Circuit Court for enforcement. The justices there did some pontificating and refused to enforce the order but sent the case back to the Board on remand, no doubt hoping the Board would go along; they would not. The Board again ordered reinstatement for Lenox and again the Eighth Circuit refused to enforce the order. The case ended there without a petition for a writ of certiorari, apparently with the justices satisfied that managers only need to be employees who formulate, but not manage.

In Bell Aerospace we had five justices reverse the Board and take the position that "managers" will be excluded from labor law protection because they are like supervisors only higher up in the managerial structure. In Bell Aerospace it was the same as in North Arkansas. Managers need only formulate, disconnected from someone or anyone to manage.

When the Supreme Court denied enforcement of the Board order in NLRB v. Bell Aerospace on April 23, 1974, the justices had the Second Circuit Court send the case back to the Board on remand with directions "for further proceedings in conformity with this opinion." All so bland and polite but it was intended as a deliberate taunt: 'We make the rules here so get lost.' The Board could not avoid the power to overrule, but made sure these Supreme Court justices knew the power to overrule does not include the power to intimidate. On July 23, 1975, they published their last decision in Bell Aerospace: they ordered Bell Aerospace to bargain in defiance of the Supreme Court, defiance typically referred to as non-acquiescence in the law profession. The Board can fight back by refusing to concede or by refusing to make a ruling like Bell Aerospace as precedent for any more of these "manager-supervisor" disputes. Their anger and refusal clogs up the court dockets and also defeats progress toward settled law. (23)

NLRB v Bell Aerospace Co. marks a dividing line of Supreme Court decisions to remove a whole class of employees from labor law in one swoop. Justice Powell wrote the majority opinion in 'Bell Aerospace and in 1980 for another bargaining unit case. That would be **NLRB v. Yeshiva University** where the justices insisted against the simplest of common sense that college professors

must be managers denied coverage of labor law.

On October 30, 1974 faculty of Yeshiva University filed a petition with the Board to hold a representation election to organize a bargaining unit for a union of full time faculty. Yeshiva officials objected claiming faculty are supervisors and managers not entitled to have a union. The Board considered alternative proposals and on December 5, 1975 made a decision to include full time faculty and two assistant deans in the bargaining unit, but not part time faculty. The Board concluded faculty were neither supervisors nor managers, but qualified as professionals under section 2(12) of NLRA.

A majority of faculty voted for union representation in December 1976. Yeshiva University officials refused to bargain and so the Yeshiva University Faculty Association filed an ULP complaint February 4, 1977 for violation of Section 8(a)(5), a refusal to bargain. Yeshiva answered the complaint with claims the Board had disregarded evidence that should be introduced at another hearing. The Board treated the new claim as an attempt to re-litigate arguments that were raised, or could have been raised, at the original hearing. They issued a summary judgement and ordered Yeshiva to bargain in a decision published August 24, 1977.

The Board for its part did exactly what they were supposed to do: separate professionals in a single bargaining unit, take a majority vote and certify them as a union. Yeshiva University again refused to bargain and the Board filed a petition for enforcement with the Second Circuit Court, which denied enforcement in a ruling February 23, 1978.

The Second Circuit Court accepted that faculty could be defined as professionals protected by Section 2(12), but also concluded "[T]he fact that employees are professional does not preclude them from also being categorized as supervisory or managerial employees ineligible for inclusion in a bargaining unit." The case moved to the Supreme Court on a writ of certiorari.

In another 5 to 4 opinion, Justice Powell writing for the Supreme Court majority declared "The [NLR]Act was intended to accommodate the type of management-employee relations that prevail in the pyramidal hierarchies of private industry." Justice Powell added that "[P]rofessionals, like other employees, may be exempted from coverage under the Act's exclusion for "supervisors" who use independent judgment in overseeing other employees in the interest of the employer, or under the judicially implied exclusion for "managerial employees" who are involved in developing and enforcing employer policy."

The quoted sentence above claims the characteristics that define supervisors from Section 2(11) - "in the interest of the employer" and "independent judgment overseeing other employees" - will be satisfactory to transform Yeshiva faculty from professionals into managerial employees working in a pyramidal hierarchy that puts them in conflict with the Yeshiva Administration.

Justice Powell ignored that Congress put Section 2(11) into the Taft-Hartley Act to define and exempt supervisors in order to prevent them from being in a bargaining unit with the rank and file they supervise. All agreed that would be a conflict of interest. In NLRB v. Yeshiva the justices did not identify employees that

faculty oversee and declared that faculty work includes "independent judgement" that allows them to do things that might not be aligned with administrative policy and so "not in the interest" of the university.

In Yeshiva, the justices make their definition of managerial authority an automatic excuse to disqualify faculty from union membership even though the Board put faculty in a separate bargaining unit. Employees organize unions because they disagree with management. Making Yeshiva faculty managers denies them the right to disagree. In good authoritarian fashion the Supreme Court wants them to conform to authority, not negotiate with it.

Section 2(11) specifically requires supervisors and managers to have authority over other employees. Veshiva faculty had independent authority over students but not over employees. In the rare case where a faculty member does manage employees as Section 2(11) defines managers and supervisors, they can be excluded from the bargaining unit.

The majority opinion included footnote 31 that declares "It is plain, for example, that professors may not be excluded merely because they determine the content of their own courses, evaluate their own students, and supervise their own research. There thus may be institutions of higher learning unlike Yeshiva where the faculty are entirely or predominantly non-managerial. There also may be faculty members at Yeshiva and like universities who properly could be included in a bargaining unit." College faculty started organizing union bargaining units at least a decade before this Yeshiva case concluded and perhaps the majority justices had doubts they wanted to defend a ruling like Yashiva as precedent for college administrators to battle with their faculty.

Both of the Bell Aerospace and Yeshiva cases allowed union busting by allowing management to deny representation for a whole bargaining unit rather than just selected supervisory employees. They are somewhat extreme cases because no one the Board allowed in the two bargaining units had employees to supervise. In practice, the courts have found it easy to justify transforming employees into supervisors or managers or transforming professionals into managers or supervisors denied coverage of labor law. (24)

Nursing provides an especially good opportunity for aggressive management in their anti-union efforts. Registered nurses (RN), licensed practical nurses (LPN), and nurses' aides work together to deliver services, allowing management to claim RN's and LPN's supervise nurses aides. In the 1994 case of the **NLRB v Health Care & Retirement Corporation of America** where the Heartland Nursing Home of Urbana, Ohio insisted that four Licensed Practical Nurses (LPN's) were supervisors not covered by labor law and hence could be fired without cause. Nursing employees at Heartland included a director of nursing (DOM), an assistant director of nursing (ADOM), a patient assessment nurse, a treatment nurse, 9 to 11 staff nurses that could be either RN's and LPN's and 50 to 55 nurses' aides. Management admitted there were serious personnel problems and after some delay the human resources director met with four of the staff nurses, a meeting labor law defines as concerted activity. Management responded to their complaints and made some changes, but the human resources

director found "resistive behavior" among three of the nurses and fired them.

The NLRB General Counsel objected and held hearings before an ALJ to determine if the nurses were entitled to labor law protection as a concerted activity under Section 7 and by Section 8(a)(1). The Board ruled they were unjustly fired and entitled to re-instatement, which Heartland refused to do. The case moved to the Sixth Circuit Court that refused to enforce the order; the case moved to the Supreme Court on a writ of certiorari and in another 5 to 4 decision the Supreme Court affirmed the Sixth Circuit and denied enforcement.

The Supreme Court insisted RN and LPN nurses have individual authority to direct nurses aides and so meet at least one of the twelve requirements to be a supervisor. The Board argued it would be inappropriate to make RN and LPN supervisors because they act in the interest of their patients in a way that could not create divided loyalty with the employer. The Board interpreted the phrase "in the interest of the employer" as individual authority that should not be in conflict with managerial decisions affecting revenues and profits. The justices declared "[T]he statute gives nursing home owners the ability to insist on the undivided loyalty of its nurses notwithstanding the Board's impression that there is no danger of divided loyalty." The justices did not address how nursing care decisions could compromise a managerial demand for undivided loyalty.

The Board also argued RN and LPN should be treated as professionals and put in a separate bargaining unit. Instead the justices insisted the conditions of Section 2(11) applied to professionals, which allows treating them as managers denied coverage of labor law. If that were true Section 2(12) would not be in the Taft-Hartley Act. Section 2(12) was put in the law to prevent what these justices decide to ignore. Justice Ginsberg wrote a dissent explaining this point. (25)

The trivial character of the these "supervisor" cases provide examples of corporate pettiness. Bell Aerospace, a major government contractor, launched a three year legal battle to evade collective bargaining for 25 employees. Yeshiva spent five full years in a legal battle to avoid collective bargaining with 209 university faculty. At Heartland Health Care the personnel manager lost his temper and fired three nurses setting off a two year legal battle to keep them fired. The three Board members that ruled for the nurses were Ronald Reagan and George H.W. Bush appointments. Nothing in their background suggests great sympathy for labor law or unions, but they did what they letter of the law tells them to do, only to find justices inventing excuses to overrule them. It suggests even Republican conservatives do not like petty interference from higher ups.

For those who believe Supreme Court justices to be erudite intellectuals it will be best not to read opinions like these. They're filled with exaggeration, scorn, derision, contempt, arrogance. They read in stark contract to the Warren opinion in Gissel. That the Supreme Court would take cases like these on a writ of certiorari suggests they knew in advance what they intended to do.

The Duty to Bargain - Revisited

Recall the Supreme Court rulings defining impasse and mandatory bargaining, but then came this June 1981 ruling in First National Maintenance

Corporation v. NLRB. In the case of **First National Maintenance Corporation v. NLRB**, Greenpark Care Center, a nursing home in Brooklyn, contracted with First National of New York to provide housekeeping, cleaning and maintenance services for a set fee plus payment of all First National payroll expenses. Greenpark agreed not to hire any First National Employees during the time of the contract or for 90 days afterward.

During March 1977, District 1199 (Hospital and Health Care Employees, Retail, Wholesale and Department Store Union) organized the First National employees at Greenpark. A majority voted to unionize on March 31, 1977. However, in late 1976 Greenpark was unhappy with the work of First National employees and cut the fixed fee from $500 a week to $250. Later when Greenpark refused to restore the fee First National gave notice to terminate the contract August 1, 1977.

First National dismissed the employees and refused to bargain with the union. The union filed an unfair labor practice (ULP) complaint alleging a failure to bargain in good faith required by Section 8(a)(5). The administrative law judge ruled in the union's favor by reasoning that a refusal to meet with and at least talk with union representatives will always be unfair, unnecessary and gives up any opportunity to work out disagreements. In the present case the ALJ argued First Maintenance might have persuaded Greenpark to hire some of the laid off employees.

The ALJ recommended that First National Maintenance pay discharged employees back pay from discharge until after they made a good faith effort to bargain with Greenpark, or offered equivalent positions at other contract locations, or bargained to impasse. The Board accepted the ALJ ruling but appeal was taken before the Second Circuit Court. The Second Circuit enforced the Board order reasoning that a dispute over wages had to be a mandatory subject of bargaining. The Supreme Court decided "Because of the importance of the issue and the continuing disagreement between and among the Board and the Courts of Appeals, we granted certiorari."

Justice Blackmun wrote the opinion in this 7 to 2 ruling. After reciting the bargaining requirements in Section 8(d) which recall read as "wages, hours, and other terms and conditions of employment," he declared "Despite the deliberate open-endedness of the statutory language, there is an undeniable limit to the subjects about which bargaining must take place[.]" The justices agreed the undeniable limit to collective bargaining with unions over management decisions would include "advertising and promotion, product type and design, and financing arrangements," and the "succession of layoffs and recalls, production quotas, and work rules." Then the majority declared a third limit on management decisions: the need to eliminate jobs as part of management's need to maintain "economic profitability." This need the majority justices declared to be "a concern . . . wholly apart from the employment relationship."

Reasonable people might wonder how management decisions affecting profitability of a company could be wholly apart from the need to employ and pay a labor force, but the justices make clear their intent to narrow the mandatory

requirement for management to bargain over "wages, hours and other conditions of employment" in Section 8(d). Recall the 1958 Supreme Court justices in the Borg-Warner case decided they knew the difference between mandatory subjects of bargaining and permissible subjects of bargaining. While they did not bother defining criteria for deciding the difference, they did allow wages and hours to be mandatory subjects. Recall a different Supreme Court made contracting maintenance work a mandatory subject of bargaining in the Fibreboard ruling of 1964.

Now in First Maintenance another Supreme Court asserts a refusal to talk with the union while firing a whole workforce has nothing to do with "wages, hours and other conditions of employment" that would make it a mandatory subject of bargaining. Unions encumber management decision making and they aim to turn profits into wages, which makes unencumbered decision making the ultimate union busting political position; it turns unions into illegal conspiracies opposing corporate America like the old days.

The reality that seven Supreme Court justices would sign onto these views cannot be entirely understood without reading the excuses they made for doing it. Possibly they recognize that because they offer a qualifying test that reads "[I]n view of an employer's need for unencumbered decision making, bargaining over management decisions that have a substantial impact on the continued availability of employment should be required only if the benefit, for labor-management relations and the collective bargaining process, outweighs the burden placed on the conduct of the business." As all these justices know decades of litigation could not predict "substantial impact."

Justice Brennan wrote a dissent for the two no votes, in which he objects to overruling the Board on "the basis of pure speculation" that their empty test defines. He viewed their decision as political, concluding "The primary responsibility to determine the scope of the statutory duty to bargain has been entrusted to the NLRB, which should not be reversed by the courts merely because they might prefer another view of the statute."

NLRA Section 8(d) defines the duty to bargain, but ends with the "obligation to bargain does not compel either party to agree to a proposal or require the making of a concession." As of 1981 and First National Maintenance Corp. v. NLRB the duty to bargain has become an empty promise replaced with Supreme Court sympathy for corporate profits over wages for labor. Instead, labor law has returned to the economic contest of the 1930's, albeit without the shooting or quite so much violence. (26)

It's the Economy Stupid

Some will recall "It's the economy stupid" became an internal reminder for Bill Clinton and his 1992 presidential campaign staff; a campaign directive contrived by one of his campaign advisors, James Carville. An appropriate slogan given Clinton's incumbent opponent George H.W. Bush showed no interest in the AFL-CIO legislative agenda. Replacement rights stalled again and he did nothing on health care and vetoed the Family and Medical Leave Act while putting labor

on the defensive pushing free trade in the North American Free Trade Treaty. He raised taxes in contradiction to his promise not to, took the blame for a modest recession from July 1990 to May 1991, and did nothing more for labor than preside over its continued decline. Clinton won with 44.9 million votes to George Bush with 39.1 million votes, a decline of 9.8 million for Bush from 1988. Clinton got only 43.1 percent of the vote, a smaller share in victory than the 46.1 percent Dukakis got in a losing cause only four years before.

Poor George Bush the increasingly aggressive right winger Republicans could not stand him supporting something, or anything, which they disapproved, like raising taxes. They attacked him even though the case can be made he was the best qualified and the most experienced and capable Republican to be president in the twentieth century.

The record has him growing up in Greenwich, Connecticut in a well-to-do family learning good manners, attending the Phillips Academy, a.k.a. Andover, and on to Yale. He served as a Navy pilot from May 1944 to September 1945, and then went out on his own to enter the oil business in Texas. His experience in politics and public service started with a run for the U.S. Senate and then successfully for the House of Representatives. Beginning in 1971, he served as Ambassador to the United Nations, Chairman of the Republican National Committee, Chief of the Liaison Office to the People's Republic of China, Director of Central Intelligence Agency and then as Reagan's V-P for eight years before his 1988 election. The right winger types had the nerve to ridicule him as a wimp, a Navy pilot who flew a lumbering, torpedo bomber on 58 missions in the Pacific during WWII. This ridiculing gives a credible date for the start of the Republican demise as a political party; a demise that finished by 2016.

The 1992 presidential race included the Ross Perot factor. Perot ran for president in the 1992 race as an independent third candidate and polled 19.7 million votes in his first try at elected office, equal to 18.9 percent of the popular vote. Perot's previous experience came at the top of several profitable corporate ventures where he challenged convention and ended up with ten figure assets. His initial campaign pressed a mishmash of economic policies and budget balancing with a personal brand of populism. He financed his own campaign and reluctantly hired some experienced campaign staff. Polls showed him doing well at times but he dropped out of the race in July only to return by October. It was on October 11, October 15 and 19 that he appeared in three televised debates with Clinton and Bush. These debates included discussion of the still not passed NAFTA, the North American Free Trade Agreement, which Perot opposed in the bluntest of terms: "We have got to stop sending jobs overseas." He went on to say "It's pretty simple" and then summarized the corporate incentives to move to Mexico where wages are a fraction of the U.S. with no health care costs, nor environmental or retirement expenses. Then he finished with "there will be a giant sucking sound going south."

That giant sucking sound going to the south came just a short time before the November election, where election results suggest a consequential share of Perot votes came from places like Decatur, Illinois where the weary working class

lost their jobs and ended up with houses they could not sell and bills they could not pay. Post election study of exit polls determined Clinton would have won with or without Perot in the election, but that rather misses recognizing the important possibility that alienated voters of both parties voted for Perot, expecting nothing from Bush or Clinton. (27)

The Clinton campaign had all the right messages to get the labor vote, and President Clinton started his term controlling the Trifecta for the Democratic Party: House, Senate, President. He had the opportunity to do for labor what Jimmy Carter failed to do and Reagan and Bush refused to do. Thinking that Clinton would help them the AFL-CIO executive council was ready with their wish list soon after the election. He started well and steered the Family and Medical Leave Act through Congress. He supported an increase in the minimum wage stuck at $4.25 an hour. He helped take some of the air traffic controllers off Reagan's blacklist in a symbolic move, but the era of good feeling would be short. Instead of trying to get health care extended to everyone by using the existing Medicare and Medicaid bureaucracies with easy to understand proposals, First Lady Hillary Clinton set out to make over the health care system with 1,342 pages of complicated rigmarole that could not be explained to the public in comprehensible terms. Corporate America had no trouble killing it without compromise by emphasizing the disruption to existing health care choices for those already insured. Again no health care reform.

NAFTA

After failing on health care, President Clinton took up the North American Free Trade Agreement (NAFTA), decidedly not on the AFL-CIO wish list. NAFTA originated from the Reagan Administration, which first signed a pact with Canada. The AFL-CIO and organized labor in Canada opposed the measure from its start. The AFL-CIO executive council declared "U.S. trade with and investment in Mexico has already significantly harmed the domestic economy, and a free trade agreement will only encourage great capital outflow from the United States, more imports from Mexico and a worsened immigration situation." The immigration forecast would turn out to be decisively correct.

President H.W. Bush went ahead and signed NAFTA before he left office, but AFL-CIO short term efforts to stop ratification in the Senate succeeded because the Democrats had 58 votes at the end of the 102nd Congress. NAFTA opponents had a right to think they were saved with the friendly Bill Clinton in their camp, but Clinton like so many Democrats before him took labor for granted. Since NAFTA was already drafted the AFL-CIO thought they would find Clinton amenable to a variety of changes favorable to labor. Efforts to persuade Clinton failed to bring anything of substance, which brought the spectacle of another Democratic Party president in an angry battle with organized labor.

President Clinton refused to represent the labor view on trade or respect how many labor votes help put him in office. Instead he brushed off the political message in the Perot vote and all of labor's concerns by offering the economist's line in a February 1993 speech. "The truth of our age is this and must be this:

open and competitive commerce will enrich us as a nation. It spurs us to innovate. If forces us to compete, it connects us with new customers. It promotes global growth without which no rich country can hope to grow wealthy." He finished with "[W]e must compete, not retreat." Clinton made these remarks knowing the AFL-CIO opposed it but he tried to mollify them with promises of labor protections in a side agreement.

By September 1, 1993 AFL-CIO President Lane Kirkland no longer expected help from Clinton. He told Washington Post Reporter Frank Swoboda the time for compromise had passed and labor would "go for broke" on NAFTA. Kirkland called NAFTA a "poison pill" that would be "deeply detrimental to the best interests of the country and the workers of America." The labor protections in the side agreement created investigative committees without an enforcement method, which prompted Kirkland to complain the administration was "not taking our views very seriously."

Instead of negotiations Kirkland devoted considerable resources to resisting NAFTA in a "NAFTA the SHAFTA" campaign. The AFL-CIO pulled together their affiliated unions, like minded community organizations and consumer rights groups to produce a variety of hand out literature and launched a media advertising campaign. Non-union groups joined them to make resistance a coalition of farmers, small business owners, the clergy, civil rights groups and environmentalist organizations in a Citizens Trade Campaign. The Citizens Campaign denied they were a union group, but vigorously argued they were the core of the Democratic Party.

President Clinton had such confidence in his persuasive powers he showed up to speak at the AFL-CIO convention on October 4 in San Francisco. He told 915 delegates he was arguing "not so you'll agree with me, but so you'll know what I want you to know, which is that I would never knowingly do anything to cost an American a job." He also argued America must embrace change to make progress. Gwen Ifill of the Washington Post reported lukewarm applause. He went on to say "I have got to lay a foundation of personal security for the working people of this country and their families in order to succeed as your president and you have to help me do it." The misery in Decatur continued into his administration, but no one pressed him how NAFTA would help with their personal security.

Jack Sheehan of the United Steel Workers told reporter Frank Swoboda "It's a whole new social movement all of a sudden. . . . It's easy to elicit support without explaining the issue." . . . NAFTA is "a forum for expressing discontent with the economy. It's become a symbol of the past problems we have had and it reflects our insecurity." The Washington Post quoted the Amalgamated Clothing and Textile Workers Union political director Jose Alvarez: "American men and women see the government in one scheme after another that gets rid of their jobs." The Citizens Campaign worked hard around the country to get their base to pressure their individual Senators and Congressmen. Corporate America cranked up their own well funded NAFTA campaign generally charging labor as protectionists from an outmoded era while boosting the great benefits.

Both pro and anti NAFTA forces spent millions and both claimed with little proof the other side spent more. The Wall Street Journal identified $17 million as funds for pro NAFTA campaigners. Mexico spent $10 million mostly as a result of Mexico's President Carlos Salinas de Gortari pro-NAFTA position. He absorbed free trade doctrine while an economics student at Harvard. Salinas paid an American public relations firm to develop and coordinate a 50 state Pro-NAFTA campaign.

Opposition forces spent $6 million, although anti-NAFTA groups threatened to withhold campaign contributions from those who vote for it, an amount in the millions. Ross Perot paid $2.3 million for "infomercials" criticizing NAFTA and his United We Stand America added to the anti-NAFTA campaign with an undisclosed amount.

A pro-NAFTA PAC of 35 corporations spent $9.3 million, again according to the Wall Street Journal. Individual trade associations joined the pro side using additional funds of their own. The Clinton White House made no secret of their position and sent cabinet secretaries around the country to make pro-NAFTA arguments. The Agriculture Department printed thousands of handouts with talking points that claimed "Nafta Will Provide a Big Boost to American Agriculture." The Environmental Protection Agency produced a pamphlet titled "Nafta: An Opportunity for America's Environment."

The White House position infuriated Lane Kirkland who got a hold of letters from President Clinton to Republican Congressmen promising them he would defend them in future elections if Democrats tried to use NAFTA against them in future campaigns. Kirkland charged Clinton had "clearly abdicated his role as leader of the Democratic Party." Kirkland told the press Clinton was promising to "give campaign help to the opposition party." Kirkland apparently did not realize that for labor there are only opposition parties.

NAFTA passed the House of Representatives November 17, 1993 by a vote of 234 to 200; the Senate was never in doubt. The yes vote in the House included 102 Democrats as if they demanded to announce the Democratic Party does not represent the working class. A few will recall within a year the value of the Mexican Peso could no longer be propped up to encourage foreign investment. It lost nearly half its value as a result of rampant inflation and the Mexican economy collapsed into depression. Carlos Salinas left the country and left his successor and the Clinton Administration to negotiate keeping Mexico solvent with billions of dollars of U.S. subsidy to buy the peso in exchange for austerity measures for the already impoverished working class. (28)

Advocates of NAFTA do not object if factories in Pittsburgh, Paducah or Podunk close and move to Mexico or somewhere else overseas. They define free trade to include unobstructed investment of capital resources in other countries in addition to the trading of exported and imported goods without tariffs, quotas or other barriers. The case can be made that an end to tariff barriers will bring a boost to production that could bring wide distribution of benefits that includes labor. Notice the word "could" because the gains from trade do not go to labor when foreign investment moves the jobs overseas. Investing capital resources abroad

only adds to the surplus of labor in the United States as the working class knows so well. Without labor unions to negotiate wages the growth in productivity and GDP go to capital as wage and productivity data so clearly proves. It was like that when Andrew Carnegie fought his steel workers at Homestead, Pennsylvania back in 1892, and nothing has changed since.

American economists absorb free market devotions and many become willing advocates of Corporate America. In the case for NAFTA free trade economists can demonstrate the increase of commerce and the growth of GDP, but they seldom worry much about the distribution of benefits. They seldom explain to the people of Decatur, Illinois and cities across the U.S. when or how their unemployed will be better off when factories shut down and move to Mexico, or elsewhere abroad. Free trade agreements that include the unrestricted flow of investible capital outside the United States have consequences for many not considered in GDP reports.

Labor Law Not Reformed - Once Again

The Clinton election brought renewed interest in labor law and allowed some hope for positive changes from organized labor They wanted President Clinton to persuade Congress to pass legislation to prevent the permanent replacement of economic strikers allowed by the McKay Radio ruling of 1938. President Clinton offered his support for the necessary labor law amendments and given the range of unaddressed labor controversies after twelve years of Republican domination, he authorized his Secretary of Labor Robert Reich to establish a U.S. Commission on the Future of Worker-Management Relations. The Commission would be known as the Dunlop Commission after its chair, former Secretary of Labor, John Dunlop. The Commission ran from March 24, 1993 until December 1, 1994 with publication of its final report.

Workplace Fairness Act---------Senator Howard Metzenbaum of Ohio introduced S 55 to be known as the Workplace Fairness Act on January 21, 1993, immediately after inauguration festivities. The House version was HR 5 introduced by William Clay of Missouri. Also known as striker replacement, the bills amended Section 8(a)(5) of the National Labor Relations Act, which remember makes it an unfair labor practice "to refuse to bargain collectively with representatives of employees." The bill added wording to also make an unfair labor practice "to promise, to threaten or to take other action to hire a permanent replacement for an employee who" was an employee at the time of the strike and a member of a bargaining unit of a certified union.

Corporate America had not changed their views since turning back labor law amendments in the Carter Administration. Senator Metzenbaum and Congressman Clay drafted the Workplace Fairness Act during the H.W. Bush administration and the Wall Street Journal published Corporate America's view: "Although an emotional grabber, the striker replacement legislation is devoid of merit, and is hostile to business, American competitiveness and the individual worker." President Clinton made a verbal commitment to support the bill while

Corporate America planned and launched their organized attack. The Chamber of Commerce declared the amendments "would place employers in a position to surrender to union officials demands." The bill did not prevent hiring temporary replacements only permanent replacements and so it came close to restoring the strike as a legitimate economic contest as the NLRA of 1935 intended it to be. The Chamber of Commerce did not mention employees are in a position of surrender to management demands.

On June 15, 1993 the House passed their version, HR 5, where Democrats had a majority of 258, but the vote was only 239-190 as Democrats divided over the working class, as usual. The problem for passage though would be the Senate where Clinton had 57 Democrats to help, but not enough to overcome a guaranteed filibuster. Efforts to pass the bill in the Senate dragged into 1994. Senator Metzenbaum argued firing strikers sent "the unmistakable message that workers are disposable, reducing employee morale and lowering productivity." Senator Dole of Kansas called it a "Labor power grab" and his Kansas colleague Senator Nancy Kassebaum said it would force companies to submit to uncompetitive labor contracts, an alternative way of announcing there should be no collective bargaining since collective bargaining attempts to raise wages to "uncompetitive" levels.

The Senate passed the Bill 53-47, but four Democrats voted nay. Ending a filibuster, or getting cloture, needed all 57 Democrats and three Republicans, but again some Democrats do not see their party as a working class party. Three Republican Senators joined fifty Democrats in voting for cloture, while six Democrats voted with the Republicans to keep the filibuster. The three Republicans were Alfonse D'Amato of New York, Arlen Specter of Pennsylvania, and Mark Hatfield of Oregon. The six democrats that failed the working class were all from the South: David Boren of Oklahoma, Dale Bumpers and David Pryor of Arkansas, Clinton's home state, Ernest Hollings of South Carolina, Harlan Mathews of Tennessee, and Sam Nunn of Georgia. Senator Tom Harken of Iowa offered in apparent frustration with President Clinton, "There wasn't one-tenth of the effort on this that there was for NAFTA."

President Clinton responded to the defeat with a hollow gesture to labor. He signed an executive order that corporate America doing contracting with the federal government could not replace strikers. The lawyer Bill Clinton knew perfectly well it would be challenged in Federal court and knew perfectly well no Federal court or the Supreme Court would allow him to use an executive order to overturn the McKay Radio ruling of 56 years. Empty politics. (29)

Dunlop Commission ---------President Clinton's Secretary of Labor Robert Reich appointed the members of the Dunlop Commission. In addition to John Dunlop he appointed twelve distinguished members with extensive experience in labor-management relations including three former cabinet secretaries: F. Ray Marshall, Juanita Kreps and William J Usery. To get them started Secretary Reich drafted three topical questions to address in their work. These three questions appear here in slightly condensed form. 1) What can be done to encourage

workplace productivity through cooperation with management and participation of labor? 2) What labor law reform would encourage cooperation and participation? 3) What can be done to encourage resolving internal disputes without resorting to the courts or an appointed government body?

A series of seventeen public hearings took place prior to publishing a fact finding report June 2, 1994 with four more public hearings afterward with testimony of 411 witnesses that filled 4,681 pages. The commission accepted additional studies and presentations included in the complete record before the final report of December 1, 1994. The final report included recommendations for the three topical questions set out by Secretary Reich.

The first question required developing recommendations to enhance labor-management cooperation derived directly from controversies prior to the Clinton Administration. The Dunlop committee members found themselves in the middle of a gritty argument over labor law. Some American managers viewed labor-management cooperation in places like Germany and Japan and decided they could adapt them to their own management practices. They experimented organizing labor-management "action" committees to discuss productivity, quality, efficiency, and worker satisfaction with their employees, but without acknowledging the long history of United States corporate domination of unions and imposing company unions to evade labor law.

Discussion of how these committees might work and maintain the right of collective bargaining heated up considerably when Senator Nancy Kassebaum of Kansas and Representative Steve Gunderson of Wisconsin got angry following a National Labor Relations Board ruling. The Board viewed conduct by corporate sponsored action committees could bring legitimate unfair labor practice charges in Section 8(a)(1) and 8(a)(2) of the National Labor Relations Act.

The disputed ruling came in a NLRB case, known as Electromation. Section 7 of the National Labor Relations Act establishes the right of self organization for two or more employees to form a labor organization and to bargain collectively with representatives of their own choosing. Recall Section 8(a)(1) makes it an unfair labor practice of an employer to interfere with, restrain, or coerce employees in their organizing, and Section 8(a)(2) makes it an unfair labor practice to dominate employees in forming or administering their labor organization.

In Electromation, very dissatisfied employees approached management and initiated discussions of their problems. Management formed action committees and appointed a personnel manager to meet with them and "kind of talk back and forth," but the employees wanted to organize a union. When employees want to form a union and initiate efforts with management the NLRA supports to their efforts and employers do not have the right to interfere or sit in their meetings; they are supposed to bargain in good faith. If employers initiate efforts to improve productivity through action committees of employees, they can do so without violating labor law but committees cannot legally discuss changes in the economic conditions of employment or interfere with their employees in their efforts to organize a union.

But the power to object was really the hub of the problem for Congress.

Corporate America does not like labor with power to object. The Dunlop Commission tried to pacify both sides by asking Congress to clarify Section 8(a)(2). There followed an effort by Congress to pass legislation as the Teamwork for Employees and Managers (TEAM) Act. Senator Kassebaum and Representative Gunderson sponsored the bill for Corporate America. The bill included a Section 2 extolling Employee Involvement Programs and acknowledging many of them already exist. Section 3 added a long second proviso to the wording of Section 8(2)(a) that "it shall NOT be an unfair labor practice to establish, assist, maintain or participate in any organization in which employees participate to the same extent as management to address matters of mutual interest." Matters of mutual interest were left open ended and additional phrasing excluded any company organization seeking authority for collective bargaining, not that any company would sponsor an NLRB certification election or establish collective bargaining. The bill passed Congress, but brought a veto from President Clinton; in his veto message he charged Congress with attempting to help corporate America re-establish company unions. The Democrats controlled Congress and failed to pass pro-labor legislation but instead passed con-labor legislation. There were not enough votes to override the veto.

The second question to the Dunlop Commission brought a number of recommendations for labor law reform. The commissioners returned to the reforms that failed in the Carter years. They wanted to amend the powers of the NLRB to limit corporate America's ability to stall and defeat union certification elections and to stall and refuse to sign a union contract after a union wins a certification election. In effect, they wanted to give better definition to bargaining in good faith. The commissioners recommended better access to union organizers by amending NLRB authority to allow access for union organizers in privately-owned but publicly-used spaces such as shopping malls where they are currently banned. The commissioners wanted legal authority for the NLRB to obtain prompt injunctions to remedy discriminatory threats and firings in violation of Section 8(a)(1), (2) against employees that occur during an organizing campaign or negotiations for a first contract.

The third question brought proposals to aid in resolving disputes without resorting to legal proceedings. The commissioners hoped to expand on the existing mediation and arbitration methods by proposing a National Forum on the Workplace involving leaders of business, labor, women's, and civil rights groups. (30)

The work of the Dunlop Commission finished less than a month after the disastrous 1994 off year elections. Nothing came from their work as President Clinton spent the next two years listening to the howling taunts of speaker of the House, Newt Gingrich, and plotting his political survival.

Sweeney Arrives – Clinton Survives

The Clinton Administration and the Democrats lost 4 seats in the Senate and 54 seats in the House in the 1994 "off-year" elections. The Republicans started the 104th Congress January 1995 with 230 seats while only 204 remained for

the Democrats; there was 1 independent. Only the 80th Congress from 1947 and the 83rd Congress from 1953 had a House of Representatives with a Republican majority since Herbert Hoover left the White House in 1933, 60 years before. For President Clinton, supposedly the consummate politician, it was quite a setback, but his campaign promised to put people first and he had the majority in both houses of Congress to do that. Besides failing to pass health care and strike replacement legislation he ignored the broader Perot message on NAFTA. He agreed to higher taxes on income and gasoline after promising a tax cut. He left the working class with little incentive to vote for a Democrat, which many did not.

The first two years of the first Clinton Administration included growing pressure for new direction and new leadership for organized labor and the AFL-CIO. Recall Lane Kirkland AFL-CIO President and Thomas Donahue Secretary/Treasurer took over as George Meany proteges in 1979. Like Meany they preferred to promote a legislative agenda over organizing new members, or to have talk instead of action. John Sweeney took over as Service Employees International Union (SEIU) president in 1980, which put him in the position to view labor's decline for their whole time in office. By January 1995 his opponents to entrenched leadership surfaced as public comments in the press, undoubtedly generated by the frustration from the latest legislative failures. Sweeney was joined by complaints from other AFL-CIO affiliates: "We're playing an insiders game and we're not insiders." Another remarked "The AFL-CIO spends all its time making policy, but it doesn't spend any time on how to implement policy. It's become a theoretical place." Both comments apply as much to Meany as Lane Kirkland.

Soon there came wider calls for the 73 year old Kirkland to retire and allow his 67 year old Secretary/Treasurer Tom Donahue to take over as interim president. That would give time to discuss new direction and find a new leader ready to organize new locals and new members. Efforts were made to avoid condemning Kirkland, an honest and dedicated man many described as remote and more like a professor than a leader of a labor federation, but Kirkland took the calls for his retirement as a personal affront. He resisted leaving, defended his record and continued to argue organizing should be left to affiliates.

Disgruntled union presidents formed a "Committee for Change" to ease Kirkland out of office, something that had never been done in the AFL or AFL-CIO. They hoped to get Donahue to agree to take over, but he would not betray Kirkland and instead decided he would retire. On May 9th Kirkland announced he would run for another term as AFL-CIO president, but Donahue would not run against his old boss.

Since SEIU President Sweeney succeeded organizing new locals and increasing membership by experimenting with organizing campaigns in service industries like the Justice for Janitors campaigns, he had a following that made him the popular choice to run. A "New Voice" slate of candidates would be Sweeney for president with UMW president Richard Trumpka for secretary/treasurer and AFSME vice president Linda Chavez-Thompson for AFL-CIO vice-president. By June enough opposition to Kirkland announced their intention to vote for the New

Voice candidates to convince Kirkland to retire, which he agreed to do August 1, 1995. Immediately afterward Thomas Donahue decided he would challenge Sweeney in the new circumstance. The Executive Board made Donahue interim president over Sweeney and an active campaign followed in the remaining months before the October convention.

Always before AFL-CIO and AFL presidents and executive boards groomed their successors rather than conduct elections. In this first ever AFL-CIO election campaign the candidates spoke at union gatherings of members and officials at local unions and state and city central organizations in a nationwide campaign using the national media. Through the summer of 1995 Sweeney described the labor movement in decline: "The problem with the American labor movement, the problem with unions, is that we are irrelevant to the vast majority of workers in our country, and I have a deep suspicion we are becoming irrelevant to our own members." Sweeney wanted to restore the labor movement as a force for social change. He campaigned for a future with more rank and file participation and a bigger budget for organizing: "As long as we speak with barely one-sixth of the work force, we will never be able to win what we deserve at the bargaining table or in the legislative process." Sounding at times like an IWW rabble rouser he campaigned on a promise to hire and train new organizers from a $20 million organizing fund and to increase minority participation in organized labor.

Donahue represented the caution and denials common to bureaucracies including the labor bureaucracy from post WWII. His campaign had to defend the recent past that included two tier wages from the disastrous 1980's. Sweeney won with the delegate support of 34 unions representing 56 percent of the membership. His majority of delegate votes represented a minority of the 76 affiliated unions at the convention and hence a minority of union presidents. His campaign and victory forced all of organized labor to confront its decline. In defeat, Thomas J Donahue accepted a new job as president of the Chamber of Commerce. (31)

Sweeney took over in the fall of 1995 determined to make "workers rights civil rights" and a flurry of initiatives and new directions followed. Chavez-Thompson would be the highest ranking women in organized labor in a vice president's position Sweeney created for her. In her travels and speaking she did not apologize for the opportunity to tell her story and promote women's involvement in organized labor: "If this is tokenism, give me more." Sweeney added 18 seats to the AFL-CIO Executive Council raising the total to 51. The new Executive Council would have eight women where before there were three.

A restructured bureaucracy would have ten women directors where before there were three. Sweeney devoted himself to creating a variety of programs, committees and task force focus groups to revitalize the labor movement. One would be a new Working Women's Department directed by Karen Nussbaum, a founding organizer of secretaries from the group 9-2-5, the National Association of Working Women. As part of the new effort Sweeney announced plans for "Union Summer," a four week paid internship to bring socially conscious activists into the labor movement "to address injustice in the workplace, community and society at large." A Union City Program called on affiliates to train a rapid-response team

big enough to mount street protests around the country. Sweeney created a new Corporate Affairs department to coordinate national and international corporate campaigns against specific employers. As part of this new AFL-CIO he eliminated AIFLD - the American Institute of Free Labor Development previously mentioned. Many of the older staff, going back to George Meany's days retired and younger and newer people took over. New staff came from diverse ethnic backgrounds and included people who came of age during the Vietnam War protests.

Sweeney had only a year as AFL-CIO president until the 1996 presidential elections. Early approval ratings did not suggest President Clinton would be reelected over Republican Robert Dole. As months passed into 1996, however, candidate Dole had hard work campaigning over Newt Gingrich and his daily taunting of Democrats and the working class. Gingrich over played his anti government Contract with America, which demanded cuts in Medicare, Medicaid, EPA, and OSHA to fund capital gains tax cuts. His list of eliminations included the Departments of Commerce, Energy and Education along with eliminating protective regulations for labor, consumers and the environment; the Contract for America did not have a dime for the working class. Bill Clinton recovered and survived with 49.9+ percent of the popular vote and 379 in the Electoral College. Exit polls showed Clinton did better, relatively speaking, among women, black men, Hispanics and the young in spite of Republican charges he was "the puppet of the Union bosses." Fewer white suburban women turned out at the polls in 1996. Dole got 37.8 percent of the popular vote and 159 electoral college votes. Republicans retained control of Congress in the lowest voter turnout since 1924, and way down from 1992.

The re-energized AFL-CIO under John Sweeney did attract more press attention, especially after Clinton won a second term with a reported $35 million of labor support. A measure of that attention and corporate aggravation came in hostile attack articles in the Wall Street Journal. One published in the spring of 1997 carried the heading "Terminator II." Terminator II told readers "Big Labor has begun another TV ad assault financed by forced union dues. Republicans are shell-shocked" . . . "Even some Republicans in their darker moments are beginning to refer to AFL-CIO honcho John Sweeney as the real speaker of the House." Terminator II claimed "the GOP rank and file have become psychological prisoners of Big Labor."

As promised the AFL-CIO got much more involved in organizing, providing both financial and personnel support. Sweeney traveled to local unions to speak of the labor movement as a crusade, something Lane Kirkland did not do. The AFL-CIO under Sweeney put money and staff into the United Farm Workers (UFW) effort to organize an estimated 20,000 Strawberry pickers, now with the leadership of Arturo Rodriguez, son-in-law of the late Cesar Chavez. Picking strawberries requires stoop labor without mechanized help. One of the pickers complained to a Los Angeles Times reporter the boss wants everyone crouched down all the time. "If I stand up to take an occasional stretch the field foremen yell at us." In the spring of 1997, the AFL-CIO sent 100 Spanish speaking organizers to Watsonville and Salinas, California trying to revitalize the American labor

movement concentrating on the lowest paid occupations like strawberry pickers where reported wages for pickers averaged $6.44 an hour.

Sweeney traveled to Las Vegas to speak at a Hotel Employees, Restaurant Employees (HERE) rally of Local 226, the Culinary Workers, where he declared Las Vegas "the hottest union city in America." . . . "If America needs a raise, the buck starts here." Membership in Local 226 close to doubled to 40,000 since the H.W. Bush era. By 1997 their organizers were at nonunion hotels, while SEIU started moving into the health care industry, and all with AFL-CIO support.

John Wilhelm, then Secretary-Treasurer of HERE, told Nation reporter Marc Cooper, "Las Vegas gives the lie to the corporate propaganda that unionization and livable wages hinder business growth. We are also proof that you do not have to go through the useless NLRB mess to come out with a victory." The Las Vegas organizers continued using the two step card check procedure persuading employers to remain neutral as their best business option while organizers work to convince a majority of employees to sign union cards. HERE put 40 percent of its budget into organizing compared to a national average around 3 percent.

The success in Las Vegas also suggests that well paid employees able to demand a measure of respect will bring more solidarity and more fight than a demoralized labor force barely getting by. At HERE they argue "This is the last town in America where the white working class fully understands that unions can make a big difference in their lives. Certainly, in few other cities today can a waitress make $12 an hour before tips and thereby afford to buy one of the new single-family homes on sale here for more than $100,000." Another native of Las Vegas, Dave Peterson, told reporter Cooper he changed his mind about unions when he realized he was next in line after his employer MGM grand subcontracted out three restaurants that paid the minimum wage. In Las Vegas union members are used to the "union life style." Both HERE and SEIU were able to use card check in more cities and by moving into low paid occupations in these early Sweeney years. (32)

UPS Strike

There were some notable strikes in the Clinton second term. One was the United Parcel Service strike that began August 4, 1997. The Teamsters (IBT) union foolishly accepted a two-tier wage scale way back in 1982, which allowed replacing full time employees with lower paid part time employees. Management used the two tier wage scale to make the hard work of loading and sorting a part time job at half the pay scale of drivers. Part time employees complained their pay was so low they had to apply for welfare and food stamps or double up with family or friends. The Teamsters union had never called a strike at UPS going back to 1916 and management did not expect the Teamsters to have enough solidarity to prevail in a strike.

The strikers though prepared for the strike months in advance knowing UPS would resist but it was the Teamsters for a Democratic Union (TDU) segment of the IBT that carried the strike. TDU's founder Ron Carey fought the IBT Hoffa legacy of autocratic leadership for twenty years before becoming IBT president in

1991. He was the perfect person to help the rank and file fight corporate autocrats and prepare for a strike.

The two tiered wage scale was the primary cause of the strike, although there were pension issues as well. In the four years of the expiring contract four-fifths of new hires were part timers. Union negotiators made one demand: 10,000 full time middle class jobs. A complacent UPS management made a final offer July 30, 1997 that did not create jobs but pulled back and demanded to takeover the union's pension by pulling out of an existing multi-employer pension plan.

On August 4th 185,000 left work in the largest strike in the U.S. since PATCO. Only around five percent of teamsters crossed the picket lines; pilots as well refused to cross picket lines. UPS deliveries dropped more than 90 percent with loss estimates reported as $30 million a day. UPS management did not expect so many would honor picket lines and hiring replacement drivers for jobs that required a period of training would not be easy as they recognized after the strike started. UPS paid for newspaper advertising supporting their view of the strike as "unnecessary and irresponsible."

Strikers worked for public support by publicizing the abuses of part time work well before the strike and especially as the contract deadline approached. Drivers talked to and provided hand out literature to customers on their routes. Literature included a handout entitled "Your UPS Driver Is fighting for America's Future" and "UPS Not in the Ballpark" Would the future hold "good jobs with secure health and pension coverage" or continue to "race to the bottom?" The AFL-CIO offered its support soon after the strike started: "The AFL-CIO and its affiliates will dedicate whatever it takes in terms of time, energy and resources to help the Teamsters win this important strike."

President Clinton refused to file an injunction under Title II of the Taft-Hartley Act. Title II allows the president to establish a board of inquiry to investigate a strike or lockout of an entire industry. If the board finds the strike "imperils or threatens to imperil the national health or safety" the president has authority to seek an injunction in federal court to end the strike. President Clinton endured many demands from corporate America's shippers to seek an injunction, but graciously refused. Fed Ex did not comment, but Clinton was attacked as soft on labor.

After 15 days on August 19, 1997 UPS decided to settle. They agreed to limit subcontractors, gave a 15 percent raise, and agreed to hire 10,000 full time people. Part timers got a 37 percent raise. This excellent settlement derived from union solidarity and Ron Carey's leadership but also from peculiarities unique to the strike. It was a national strike in a service that prevented management from moving production or sales to other sites; all were on strike. The service provided could not be put into inventory, or sold from inventory, as common in strike breaking in manufacturing. Therefore a UPS shut down brought immediate and substantial financial losses and complaints from shippers. Delay risked converting UPS customers to Fed Ex. We can suppose management compared the labor costs of a decent wage with the immediate loss of revenues and decided to call it off.

Media follow up after the strike included some op-ed writer suggestions

the UPS success would carry over to a re-energized labor movement. However, nothing happened in the UPS strike that would change the circumstance or problems of organizing in other industries or occupations. The Teamsters were able to maintain their ability to negotiate respectable contracts into the millenium, but no other union benefited from the UPS settlement in the short term, or the long term. (33)

Detroit Newspaper Strike of 1995

On July 13, 1995, 2,500 left work in a strike against the Detroit Newspaper Agency (DNA), a cartel combination of the Detroit Free Press and the Detroit News. The strikers were members of six union locals of truckers, printers, press operators, circulation workers, janitors, and journalists. The disputes leading up to the strike started almost a decade before and would continue at the negotiating table, on the streets, at the NLRB until finally settled by the courts in July, 2000.

At the time the Detroit Newspaper strike started Supreme Court interpretation of bargaining in good faith as defined in the NLRA made it impossible for a union to win a strike without a shortage of labor to prevent hiring replacements. Bargaining in a shortage assumes corporate America will weigh the economic gains of settling a strike against the economic losses of holding out. All the attorneys representing the DNA cartel and its separate parts knew the legal steps to bust the unions and win the strike, but rather than weigh economic gains against losses for profit maximizing as economists assume, the DNA spent three years planning to provoke an expensive class war. Remind yourself that winning the strike required nothing but talking to get to impasse and win the strike. That explains the motives for the rest of it.

An Evolving Industry---------- Both newspapers were part of larger media chains that evolved from mergers over many years. The Detroit Free Press belonged to the Knight-Ridder Newspaper chain; the Detroit News belonged to the Gannett Media Chain. The U.S. Supreme Court earlier ruled that merger proposals among competing newspapers violated the Sherman Antitrust Act. Shortly after that ruling Congress and President Nixon supported legislation to allow Joint Operating Agreements (JOA's) among competing newspapers. They named their 1970 law waiving antitrust enforcement for newspapers as the Newspaper Preservation Act.

The new law had a proviso that Joint Operating Agreements required approval from the U.S. Attorney General. Detroit News and Detroit Free Press attorneys petitioned for approval to Attorney General Edwin Meese on May 9, 1986. Michigan opponents including some Republicans prevailed on Meese to hold hearings before administrative law judge, Morton Needleman. Judge Needlemen ruled the Detroit Free Press and Detroit News could be profitable operating separately. Knight-Ridder CEO Alvah Chapman refused to accept the decision and a lawsuit followed that finally ended in the Supreme Court in November 1989. The newspapers prevailed.

The resulting Detroit Newspaper Agency (DNA) combined production,

circulation, advertising, and business operations with an even divide of future profits. Their newsrooms remained separate with the Detroit News to have exclusive rights to an afternoon edition while the Detroit Free Press retained the morning edition. They would have a joint edition and combined masthead on weekends. Gannett had three DNA Board votes; Knight-Ridder two.

The first DNA contract required a combination of separate and joint bargaining given the six unions representing DNA employees had some unique problems and some common concerns. In the first contract of November 27, 1989, Teamsters Local 2040 representing mailroom employees settled for no layoffs and some benefits for voluntary severance. Graphic Communications International Union (GCIU), Locals 13 N, 289 M, and International Typographers Union(ITU), Local 18 representing newspaper press operators and engravers, also settled for no layoffs. Teamsters Local 372 representing district managers and circulation workers accepted job cuts, but got some pension benefits and an agreement not to contest district managers in the bargaining unit since the DNA could advance Taft-Hartley legal claims to make them supervisors. These five union locals were part of the Metropolitan Council of Newspaper Unions (MCNU).

The sixth union, the Newspaper Guild Local 22, represented the newsroom employees and the janitors at the Detroit News and also advertising, circulation, marketing and clerical workers at the Detroit Free Press. Local 22 held out and finally agreed to 75 layoffs but without layoffs for the janitors in the bargaining unit. As part of a joint bargain DNA agreed to some cost of living wage increases. (34)

The 1992 Contract--------- For 1992 negotiations the Detroit Newspaper Agency (DNA) demanded cuts in labor costs by adopting new technologies. The union tried to use existing labor law to slow down the pace of layoffs during the technology changeover. Gannett attorney, John Jaske, objected to the International Typographical Union(ITU), Local 18 effort to slow the change over from setting newspaper type in a composing room to doing the equivalent work on a computer using keyboard and computer screen. Jaske complained that 1970's ITU members got guarantees of a job without layoffs in exchange for a gradual changeover to computer technology and the reduction in jobs it would bring. Similar job guarantees continued in all the union contract negotiations into the 1980's with management starting to make buyout offers to speed up the conversion to newer cost saving technologies.

By March 1992 during re-negotiations for the new contract Jaske made threats to replace union printers from among the 1,400 job applications he claimed to have on file. He taunted them "We will publish" suggesting he expected them to strike. While Jaske made threats to speed the change over, DNA CEO Frank Vega, remained ready to continue with buyouts in exchange for selected cost saving changes. Vega was able to reach agreement with Teamsters Local 372, Chief Al Derey to revamp the delivery system for the 1992 contract. As Derey explained "We were able to change the entire circulation department around from a storefront type of distribution to a warehouse type of operation." They

condensed 368 distribution drop off points to 26 distribution centers in exchange for $70,000 buyouts and added ten years of health care.

Productivity questions dominated 1992 negotiations, but some of the union insiders realized the expense and time needed for management to transition to the new delivery system had allowed them a measure of bargaining power for the 1992 contracts, but they realized that negotiating edge would be gone in 1995. At the 1992 ratification meetings Jim St. Louis from the circulation workers, Local 2040 told them "[Y]ou take your overtime and you take your extra days and you go put it in the bank, because come next contract in 1995, they're gonna come at us with both barrels and they're, in my opinion, they were already getting ready to make a strike." (35)

1995 Contract Negotiations--------After the ink dried on the 1992 contract some of the DNA officials began planning for the 1995 contract negotiations, three years away. Accepting what amounted to an interim contract in 1992 fueled the energy to start systematic planning to neutralize union opposition when the 1992 contract ended after three years. The DNA Director of Planning and Development, Alan Lenhoff, and a new Director of Security, retired FBI agent John Anthony, traveled the nation's big cities to discuss strategy with other newspaper officials and they especially relished the opportunity to be present at, and make photograph and videos of, other newspaper strikes. Their research allowed them to compile a book of tasks and a checklist of times for designated personnel to complete their tasks in preparation for the end of the 1992 contract, April 30, 1995.

The DNA security team contracted with the Asset Protection Team(APT) for security needs. Recall APT from the Decatur strikes as providing Vance security guards in dark blue jumpsuits, baseball caps and knee high military boots. For transportation security, especially for truck drivers, they contracted with another security company, Huffmaster and their affiliate Alternative Workforce Inc. (AWF). The Huffmaster contract called for having 33 supervisory staff, 182 security officers, 166 additional security staff in two man mobile response teams, 52 hotel security officers, 16 evidence and documentation staff and 25 downtown shuttle officers in Detroit as the 1992 contract ended April 30, 1995; all expenses paid for by DNA. To equip these staff required 37 nineteen passenger vans, 70 four-door sedans, 3 minivans, 180 video cameras, 233 mobile radios, and 90 cell phones, all paid for by DNA. The Alternative Workforce Inc. (AWF) contract called for 259 truck drivers, 240 home delivery workers, 64 diesel mechanics, electricians and engineers, all paid for by DNA. The DNA expected to pay all transportation expenses and hotel accommodations for out of town personnel to come and live in Detroit during the anticipated strike.

Negotiations with officials of AFT, Huffmaster, and AWF took place during the winter months of 1995 before the old contract ended, April 30, or before any sign of a strike. In addition to securing these private security contractors John Anthony of the DNA security team met with area police department officials around suburban Detroit. At a local restaurant luncheon February 17, 1995 he advised Sterling Heights police of the high potential for strike violence. Anthony

was especially concerned about security for their production facility, a.k.a. the North Plant. Since DNA officials expected a strike and intended to continue production during the strike, Anthony wanted Sterling Police Chief Thomas Derocha to make sure he could, and would, guarantee "complete freedom of ingress and egress to their facilities."

DNA officials, and APT and Huffmaster officials, met with Sterling Heights police again March 31 and April 12 to advise them on DNA security plans for the North Plant facilities. They provided Sterling Heights Police with plant maps, contact information, photographs and video taps from the recent San Francisco newspaper strike as an aide to their strike response planning. Newly appointed strike coordinator, Police Lieutenant Frank Mowinski, went to work full time on department preparations. He wrote and distributed a memo entitled "The Impending Strike at the Detroit News Plant" and a second memo in early May entitled "Contingency Plan for Impending DNA Strike." He advised Sterling Heights city manager of certain "key" issues in a written memo May 8: "Our primary focus and responsibility is that of maintaining access to and egress from the facility for management personnel, temporary workers and materials. This will have to be accomplished amid large numbers of vocal and potentially violent picketers." His words do not assure that Mr. Mowinski recognized "temporary workers" as scabs, or recognized his use of DNA's "ingress-egress" plan would evade collective bargaining and repeat the labor relation's work of police chiefs and county sheriffs over the past 140 years. (36)

As the April 30 contract expiration approached the unions wanted to bargain in a two stage joint bargaining process much as before. They wanted to start with their individual union's non-economic issues before negotiating over the common economic issues like wages. Progress was slow. After a May 9 meeting union representative Albert Derey and DNA, CEO Frank Vega agreed verbally to the joint bargaining process. Derey faxed their written understanding to Vega on May 11. DNA's Vega did not answer specifically, but instead answered that he hoped to get the non-economic bargaining finished by June 30 before taking up economic issues. That did not happen. On July 2, the DNA announced they expected to cancel all existing contracts; the Metropolitan Council of Newspaper Unions (MCNU) met July 6 and set a strike date of July 13. All the unions agreed to honor each other's picket lines.

The DNA 1995 contract disputes included overtime in the newsroom, merit pay proposals, assigning newsroom staff to make television and radio appearances without additional compensation, changes to a Memorandum of Agreement and DNA threats to permanently replace strikers. DNA wanted to reduce labor costs but the unions charged the DNA would not answer questions or clarify their proposals, which they treated as a failure to bargain in good faith. A string of unfair labor practice complaints followed.

Unfair labor practice (ULP) charges continued with complaints filed, amended and consolidated into a final consolidated and amended complaint of April 11, 1996, establishing all ULP allegations. Administrative law judge Thomas R. Wilks took evidence and testimony in hearings scattered over 24 days from

April 15 until October 2, 1996. After the hearings judge Wilks's began sorting through the evidence and testimony to make a ruling. In the mean time the strike got under way July 13 with the unions in remarkable solidarity and the DNA ready with their carefully planned publish during a strike scenario. (37)

The July 13 Strike----------In spite of the short notice striking union members from all the DNA unions moved from work to picket lines at the many scattered DNA sites around the metropolitan area. Some members of other area unions joined the picket lines. There was financial and morale support from the international unions, the AFL-CIO, and especially newspaper unions.

The unions promoted a boycott of both newspapers and its advertising. Some churches and the Salvation Army made food donations. Some of the local governments took a stand in support of the unions with city council resolutions. The Wayne County commissioners voted to cease all of its advertising and notices in the two papers.

Meanwhile the DNA carried out its strike plan, which included publishing during a strike. They had previously notified the H.W. Bush justice department they expected to publish a joint newspaper in the event of a strike, though not authorized as part of the JOA they went ahead without government opposition. To publish during the strike, the DNA employed some employees crossing picket lines – crossovers - and some personnel brought in from other Gannett newspapers. They began advertising for replacements July 26, 1995. Arrangements to provide room and board were all in place. They carried out plans to have the Sterling Heights police help with protection of the North Plant on Mound Road in Sterling Heights.

The initial days of the strike included picketing at a single Mound Road entry gate. By prior agreement between police and the DNA, the Mound Road gate was the only gate in use. Picketers assembled in front of the gate with police set up on a central island in Mound Road. When it was time for trucks to go in or out - ingress or egress – police in helmets with shields and pepper spray formed a V to march across the street and remove picketers from the driveway. During the first march picketers resisted. An altercation erupted and fourteen were arrested. It would get worse.

Disputes between Sterling Heights police and DNA officials broke out soon after the strike started. DNA started moving delivery trucks through unauthorized gates at unauthorized times, without police escorts and in violation of their agreement with police. In response to police complaints the DNA wanted a meeting to "voice our displeasure at the fact that we were unable to enter and leave our facility as we felt we had a right to, which was at any point in time."

The meeting to voice displeasure took place July 18, five days into the strike where Police Chief Derocha met with two DNA officials, Gary Anderson and Security Chief John Anthony. City manager Steve Duchane joined the meeting to inform the DNA he did not appreciate their "super bowl of labor disputes" and the cost imposed on his city. After Anderson reported the complaint to DNA higher ups, DNA officials agreed to pay for Sterling Heights strike related police costs.

On July 20 the DNA paid $116,921.57 to reimburse Sterling Heights for the cost of strike related police expenses.

On July 24 another check for $50,956.42 included a note that "We understand the difficult position that your community has been placed in and appreciate the fine efforts provided to us by your departments." Another check dated August 7, was for $69,225.08 as part of regular payments that would total more than $1 million. The DNA called them public relations expenses, but payments were drawn from a DNA security account intended for "security services." Union members on the picket line began to taunt police with "bought and paid for" and to call their Mound Road median strip staging area "Treasure Island." Other area police departments with newspaper picketing received amounts totaling $690,000.

The private security guards angered Sterling Heights police chief Derocha with a variety of misconduct. He complained of flagrant and intentional violations of agreed protocols. Abuse from hired guards added to the violence, as hired vigilantes always have throughout U.S. labor history, but it got bad enough in this strike, the DNA found it necessary to dismiss two of the security firms by August 8: Huffmaster and Alternative Work Force. APT continued with its Vance security guards.

The Detroit News publisher, Robert Giles, took a more aggressive stance against the unions than Detroit Free Press publisher Neal Shine, but no one at either newspaper interfered with the Gannett higher ups directing the decisions. Robert Giles announced "We have taken a very aggressive management position here in our relations with the unions all along." Since Gannett officials had the funds from a corporate consortium of newspapers to break the strike and bust the unions if necessary, they showed no sign of renewing any bargaining. By early August the newspapers reported plans for hiring replacements.

Management strategy included actively encouraging the newsroom staff to cross the picket line as professionals too good to be allied with working class truck drivers as several remarks make clear. The Free Press publisher Neal Shine writing in his own Detroit Free Press on July 17 declared "The issues between the Free Press and its Guild members don't seem formidable compared to the unresolved problems with the other unions, but tell Guild people on the picket that this is not their strike and they will insist that it is, that they exist in solidarity with the other unions." In fact, newsroom staff had good reason to strike since management unilaterally launched a mysterious merit pay system and cancelled overtime pay. Others on the newsroom staff reported individual phone calls by management with "don't consort with the working class" appeals to cross the picket line.

On August 27, Robert Giles of the Detroit News declared "We are going to hire a whole new workforce and go on without unions, or they can surrender unconditionally and salvage what they can." On August 30, Gannett officials tried a last time to split off the newsroom staff this time by sending individual letters that offered some additional pay and benefits in exchange for an end to collective bargaining and an open shop. It was a take it or leave it offer to be accepted or rejected by vote no later than September 1; voting apparently to be by

those receiving the letter. It bypassed the union and does not resemble bargaining in good faith as written in the National Labor Relations Act, but neither union, nor the individuals queried answered. Solidarity remained, but reports of guild members crossing the picket lines came in early September.

Both sides recognized operating during a strike required quick and timely delivery of newspapers. Picketing to delay delivery for the high circulation Sunday edition, turned into a battleground for successive Sundays. On August 19, a large crowd of picketers refused to let the trucks pass from the Mound Road plant with the Sunday edition of the Detroit News. Television station cameras filmed the police charging into the crowd with shields and nightsticks. There were four arrests and minor injuries.

Saturday September 2, pickets refused to respond to police attempts to clear access at the Mound Road entrance. Police officers advanced with pepper spray on a crowd estimated at 400, but retreated in a barrage of cans and bottles. More joined the picketers; by 5:00 p.m. when an estimated 3,000 blocked the gate. DNA attorney Jaske was at the plant through the night. At 4:00 a.m.. Sunday morning as Jaske reported later "We decided, because the heaviest amount of the mass picketing and violence was concentrated on [Mound Road] . . . that we would try to in effect sneak out the back." To "sneak out the back" meant driving trucks from a north side gate patrolled by a few picketers without police presence. A loaded truck crashed through the locked gate going at a reported 30 miles an hour but stalled hitting the chain across the driveway. Hundreds of picketers made their way over from Mound Road for another melee with police and security guards. Picketers stalled delivery operations until 8:30 Sunday morning.

On Monday of Labor Day, September 4, there would be a repeat. After the traditional Labor Day parade made its way down Woodward Avenue around 300 picketers returned to Mound Road for another grimy and determined stand off between picketers and police. Again television news had cameras there to cover the melee, a back and forth of police advancing and retreating against picketers throwing a variety of debris including discarded steel rods from an adjoining property. Police made 23 arrests, before picketing petered out around midnight.

On Tuesday September 5, DNA officials filed a state court injunction to limit picketers to six, but the Judge declined. On Saturday September 9, DNA officials responded to another round of picketing and delay by hiring helicopters to fly the papers out of the plant, a slow and expensive proposition quickly abandoned. For the Sunday, September 10 edition attorney Jaske pressured Sterling Heights police chief Derocha to do better against the picketing, but he called it too risky and complained he would "have to arrest everybody that was there." Shortly after 4:00 a.m. DNA officials treated picketers to a surprise by driving eleven semi-trucks with trailers through the gate with gradually increasing speed to 25 miles an hour. The police knew of the plan but did not inform picketers. There were several injuries.

On September 12, 1995 a different judge in the same court granted another request to enjoin picketing. He limited the Mound Road pickets to ten, banned throwing debris, and ordered the ten picketers to clear the driveway when trucks

came through. The union leadership would not defy the court. Instead they filed suit October 2 requesting an injunction to prevent the DNA from limiting their right of free speech and free assembly. Although protest continued at other locations, especially distribution centers, it was only one episode in DNA's continuing attack on picketing. (38)

Strikers and strike sympathizers refused to buy either newspaper, which left them without relevant local news or a means to report their view of the strike. Initially strikers posted news and views on an online site they called the Detroit Journal. By late fall of 1995 striking newspaper employees decided they could publish their own weekly newspaper. It would be the Detroit Sunday Journal. The first edition of it came November 19, 1995, The newspaper published a variety of general and local news and their news and views in support of the strike. It developed a loyal following that grew to over a hundred thousand in an effort that turned a profit in less than a year and continued publishing until fall 1999.

The DNA could have ignored the unions and the Detroit Sunday Journal given their wealth and the barricades protecting corporate ownership and private property from outside interference. Instead they published their side of the strike in their News and Free Press. Critics contended the News and the Free Press became a "corporate mouth piece." Several correspondents had their stories edited. One was Detroit News correspondent Bryan Gruley who found his work edited after quoting a striker in a story criticizing the News. He demanded his by-line be removed but he was re-assigned instead. Another concluded "A few of the newsroom editors I felt were consistently pushing stories with an anti-union bent to them."

Mediation efforts by a variety of outsiders resulted in a conference December 20, 1995 in the office of Detroit Mayor Dennis Archer. The mayor learned that except for 20 pressroom jobs the DNA had permanently replaced all striking employees in a unilateral and non-negotiated decision. Afterward the mayor commented "The unions came to the table to bargain in good faith. But management has effectively said 'It's over.' " Attorney Jaske wrote to Gannett officials. "As you have heard yesterday's meeting was obviously a 'set up' by the mayor to either force us to get rid of the replacements or give us a PR hit. We did not and he did." On December 27 attorney Jaske again offered his views to Gannett higher ups: "Now that the unions know that their only alternative is surrender, there is an increased likelihood that we will have one or more of them offer to unconditionally return."

In the fall of 1995 a coalition of civic and religious groups calling themselves Readers United hoped to get the two newspapers to address their journalist mission to the community. They had little success getting a response from DNA and then took to the streets in the spring of 1996 in a series of nonviolent street protests. The first came in front of the newspaper's downtown Detroit headquarters. That was March 6, 1996, followed by another March 14, and more March 21, March 28, and April 11. These protests brought numerous arrests, 289 in all. The arrested included Detroit City Council members, Sheila Cockrel and Mel Ravitz; Wayne County commissioners, chair Ricardo Soloman, Edna Bell, and Kenneth Cockrel

Jr; Michigan Senator member Lana Pollack; UAW president Douglas Fraser, and others.

Union officials always discourage misconduct by picketers and protesters; whatever their sentiments, they have no choice. When it occurred in the Detroit newspaper strike labor officials agreed to renounce vandalism or attempts to block trucks or scabs in a written announcement, but the DNA spared no expense to attack every form of union protest, primarily in a steady flow of demands to the NLRB. Senior vice-president of labor relations at the Free Press, Tim Kelleher declared "We feel it is 'in-your-face' to the labor board." When Detroit area car dealers refused to join the advertisers boycott, DNA chief Frank Vega wrote them a letter to offer help against picketers: "We are willing to absorb all legal costs to stop this interference with your business." Later in the fall groups of strikers walked through stores and malls of those still advertising in the News and Free Press all wearing T-shirts printed with "Please Don't Shop Here." The DNA sent Vance security guards to counter them and succeeded in getting the NLRB to seek an injunction in federal court to ban T-shirt picketers. The DNA also succeeded getting the NLRB to open an investigation of Readers United to determine if they were "agents" of the unions, whatever they might mean. (39)

The Strike Ends---------By the end of 1996 the unions began to re-assess strike strategy even though the advertising and circulation boycotts were succeeding. An independent Audit Bureau of Circulation reported the combined News-Free Press weekly circulation for the first quarter of 1996 dropped by 288,876 or 33 percent. Advertising revenue dropped 25 percent from pre-strike levels. The strike brought a 19 percent drop in Gannett Newspaper division profits in the fourth quarter of 1995 and a 7 percent drop in the first quarter of 1996. These declines brought no response from the DNA or Gannett or Knight-Ridder higher ups. Recall the original National Labor Relations Act intended to encourage both sides to balance the costs of a strike versus the costs of negotiating a settlement as a rational economic decision. The DNA would spend a reported $92 million in the first six months on top of the profit losses. Between 1994 before the strike started until six years later in 2000 daily circulation for the Detroit News dropped from 359,000 to 237,000; daily circulation for the Detroit Free Press dropped from 551,000 to 361,000. The signs of "win at any cost" clouds the economist's claims of rational profit maximizing.

The change in union strategy came in a press conference February 14, 1997. They offered an unconditional return to work, which the DNA acknowledged on February 19. The offer did not intend to be a capitulation, but partly a ploy and partly a realization that court proceedings would settle the strike. The offer to return was a ploy because of any risk the courts could rule in the union's favor. If the court ruled DNA actions an unfair labor practice, the News and Free Press would be legally obligated for back pay from July 13, 1995 to the date of reinstatement. However, they could limit their back pay liabilities to the back pay expense as of February 19, 1997 by rehiring the strikers without delay. Otherwise, the back pay clock would continue running, probably for several more years.

The union's offer to return to work generated more litigation. DNA would not agree to rehire strikers while the unfair labor practices were still pending. The union requested an injunction as the NLRA allows them to do, but the judge threw it out. DNA officials would not waver in their insistence the strike was an economic strike and they would not dismiss a single replacement employee: "We will legally fight to the death to protect these people." Instead, they encouraged strikers to find other jobs, but responded slightly to the financial risk by filling some openings with strikers. In one example, they rehired their home economist, but since they had filled her job with a cross over typist from a clerical pool, they offered their home economist the typist's job, and so on.

Even though the striking part of the strike was over the unions vowed to continue with the circulation and boycott efforts, which they did, and to maintain their public opposition to DNA conduct. A group calling itself the Action Coalition of Strikers and Supporters (ACOSS) planned a march called "Action! Motown '97." The group planned and staged a national march of labor supporters through downtown Detroit on June 20, 1997. A Workers Justice Committee organized the more discontented of the strikers to hand out leaflets and yard signs and showed up to disrupt Detroit News promotion efforts at area restaurants and gas stations. Religious Leaders for Justice at Detroit Newspapers sponsored a "summit" meeting with local religious and political officials to discuss ways to resolve the dispute and resume normal newspaper operations. All to no avail. (40)

In the meantime, administrative law cases continued. Judge Thomas Wilks's took his time sorting through the evidence and testimony before deciding June 19, 1997. The judge ruled the DNA failed to bargain in good faith in all but one of the charges. A legal lull followed until the full NLRB published its decision August 27, 1998, affirming Judge Wilks ruling, except for a union contention for striker replacements. For this contention the Board agreed to consider replacement disputes separately in a later ruling. Then on September 10, 1998 the DNA filed a motion contending the Board ruled incorrectly in their decision treating joint bargaining as a mandatory subject. The Board denied that motion in a ruling March 4, 1999 and then on March 15, 1999 the Board ruled on the separate replacement contention. The ruling favored the DNA by allowing management to set wages for replacement employees during a strike.

With Board decisions completed, the legal procedures in the NLRA allowed the DNA to get jurisdiction in federal court to challenge the remaining Board orders. They filed an appeal in the DC Circuit Court; oral arguments took place May 4, 2000. In a ruling July 7, 2000 a three judge panel ruled against the union on all issues. The unions decided not to pursue a writ of certiorari or further legal action. The unions got nothing from the strike or the post strike legal roundup. (41)

The "Law"--------The strike never had a chance as attorney Jaske and other DNA officials knew so well. All of what happened, including the violence, happened as a legacy of Supreme Court law making in their rulings from 1952 to 1970 as already detailed. Attorney Jaske supervised the legal process knowing

he would have to step through NLRA procedures to get jurisdiction in federal court. He knew no three-judge panel in any federal circuit court would attempt to overrule the Supreme Court on strike replacements or impasse or the game of mandatory and permissive subjects of bargaining. The DNA conducted a carefully orchestrated game of charades. They won each dispute with each union by carefully maneuvering negotiations to justify declaring impasse for mandatory subjects while refusing to bargain over permissive subjects.

In the unfair labor practice dispute over joint bargaining, the DNA argued joint bargaining can only be a permissive subject while the union treated the unilateral rejection of their verbal agreement as a failure to bargain in good faith. The Board agreed with the unions, which left the DC Circuit to rule on the arguments in the Board opinion.

The DC Circuit Court conceded that situations have occurred where the Board ruled a strike over a permissive subject of bargaining could be an unfair labor practice strike for management, but the DC Circuit did not make that point as part of its ruling. Instead the court decided, even though the June 30 deadline passed, the DNA continued bargaining past the deadline in such a way the court would not declare it a failure to bargain in good faith or an unfair labor practice.

Negotiations with Guild Local 22 illustrate much better the route to impasse and losing a strike. Jaske had three demands: 1. end overtime for newsroom staff, 2. put them on merit pay using a unilateral DNA performance appraisal system, and 3. change the bargaining unit by reassigning news staff to television and radio projects.

Jaske knew perfectly well unions will oppose an end to overtime and hence overtime pay, but he made the proposal to exempt overtime early and waited for counterproposals. The unions countered that ending overtime would be illegal. The Fair Labor Standards Act (FSLA) defines overtime rules that allow exemptions for some executive, managerial and professional occupations defined in the regulations. Given that the FLSA regulations divides occupations and work that can be exempt from occupations that cannot be exempt, the union tried to find out what occupations would be exempted, which the DNA refused to answer. As a final counterproposal they asked to have the Department of Labor apply the FLSA regulations and make the decision, exempt or non-exempt, for bargaining unit employees. The DNA refused and declared impasse on July 5. Eventually the DC Circuit Court answered: News and editorial staff would be expected to work overtime as professionals without overtime pay.

Merit pay proposals bring a wary response from unions. Unions do not trust management to be fair and impartial when they demand discretion in determining pay; unions see merit pay as eliminating the wage and effort bargain as internally divisive. Attorney Jaske demanded merit pay but offered few details until April 25 when he responded to union requests. He explained bargaining unit employees working at the minimum pay would get a minimum 1 percent raise with the average of all wage increases at 4 percent; pay more than 1 percent would depend on the most recent evaluation or a manager's request. Union negotiators wanted to know if increases would be determined from actual pay or from a minimum, but

before DNA answered union negotiators made a counterproposal for a 15 percent pay raise. DNA responded that negotiations were now deadlocked at impasse.

At a June 14 meeting, DNA clarified his proposal by explaining the minimum 1 percent raise would be for actual salaries, and again asserted negotiations were at deadlock, which Guild negotiators denied. Instead they asked questions and wanted negotiations delayed to prepare counterproposals, but DNA warned they expected a counteroffer soon; we are ready to implement our last offer. They made two late June offers to meet in faxed communications, but the scheduled time passed without a Guild reply. DNA declared impasse July 5. DC Circuit Court agreed merit pay negotiations had reached impasse; DNA could impose its last offer.

The DNA wanted to assign newsroom staff to make television and radio appearances without additional compensation. The unions made the argument that the proposal itself was made in bad faith and therefore an unfair labor practice, the DC Circuit Court rejected that view. Work assignments were a mandatory subject and the DNA could declare impasse.

The Detroit Typographical Union (DTU), Local 18 had a 1975 Memoranda of Agreement (MOA) with lifetime job guarantees on condition that work in the bargaining unit conforms to written conditions for the work. In the 1995 negotiations DNA wanted to modify the agreement by enlarging the bargaining unit with additional work and different occupations. Local 18 negotiators insisted the MOA was a permissive subject, which would prevent DNA from declaring impasse and imposing their last offer. DNA declared impasse anyway, feeling confident they would prevail in court. DC Circuit Court agreed work assignments were mandatory subjects and DNA could declare impasse and change the bargaining unit as they wanted. (42)

Replacing strikers with permanent replacements turned into an especially grimy legal contest over three disputes. Beginning on July 26, 1995 and continuing into August Detroit Free Press management wrote letters threatening Guild Local 22 members with replacement if they did not return to work. Based on previous case experience the Board has concluded making threats prolongs a strike, which threats they treat as an unfair labor practice.

Second, the unions requested employment information for employees hired to replace strikers, which they are permitted to do by Board rules. Unions have a right to know if the replacements were hired as permanent replacements and so they asked for the contract between DNA and the new hires, but DNA stalled. It turned out DNA notified the Michigan Employment Security Commission that strikers were not permanently replaced even though they were. Since strikers do not qualify for unemployment compensation while employees permanently replaced do; DNA intentions could hardly be doubted.

Third, the unions challenged the DNA when they hired replacements at lower wages and without benefits. Recall the authorizing phrase in the MacKay ruling has nothing in it about the wages or terms of employment for replacements; it gives management the “right to protect and continue his[sic] business by supplying places left vacant by strikers.” Previous court rulings answered that

issue by allowing management to set any terms they wanted for replacements and the Board refused to interfere with that ruling, which ended the matter. (43)

By authorizing replacements and defining impasse based on the use of mandatory and permissive subjects of bargaining, the Supreme Court has forced unions to extremes. They either strike or capitulate, as happened for the Detroit Newspaper strike. To make bargaining an economic contest, bargainers need equal legal rights at a minimum. That was what Senator Wagner and Congress intended back in 1935. As it is now, management can get their way with impasse as long as they remain patient and make some counter offers. They play along without concessions on permissive subjects as long as they remain willing to sign a contract for mandatory subjects. The courts, not Congress, defined impasse, a ruling that assures management can get what it wants.

The Gannett Media Chain and the Knight-Ridder chain bargained as a cartel via special privilege granted by the federal government. As media chains, they had already been buying smaller newspapers for many years. As a cartel in 1995 they made collective decisions in a joint response to their employees and their union representatives. They were as much engaged in collective bargaining of capital resources as any union engaged in collective bargaining of labor resources, the double standard.

In the Detroit Newspaper strike, DNA preparations to defeat the union that began in 1992 included brute force ready to use against picketers. Since labor law guaranteed the DNA would win the strike and officials knew that from the start, brute force was unnecessary if winning was their only goal. The DNA preparations added a significant expense to the lost advertising and circulation revenue from the strike. Unofficial published media estimates suggested at least $100 million dollars, but the expenditures resulted from the determination of the DNA to publish during the strike as an expression of their insistence on the sacred rights of private property over any respect for the working class. The use of force by both sides suggest war and class war have some characteristics in common, but from start to finish no sign in the record allows believing the Detroit Newspaper Agency (DNA) intended to bargain in good faith as the NLRA defines it. Specific Supreme Court rulings have turned collective bargaining into a bad faith game of charades. Congress does nothing while the Supreme Court legislates. Labor law is dead; long live labor law.

Seattle Protests

AFL-CIO president John Sweeney took to the streets on occasion in Justice for Janitors protests and during his campaign for AFL-CIO president he vowed to do it again if necessary. World Trade Organization meetings set to begin November 30, 1999 in Seattle provided another opportunity. Organized labor joined a variety of environmental and human rights groups to protest another round of talks promoting free trade. Secretary of State Madeline Albright and other speakers scheduled for opening ceremonies could not get around protestors linking arms to block access to Convention Hall. Some attendees remained trapped in hotel rooms or blocked at traffic intersections by 20,000 to 30,000 boisterous protesters,

estimates varied, all shouting "Go Home" among other things.

Police applied tear gas, pepper spray and rubber bullets to clear intersections. The mayor declared a state of emergency and set a curfew while the governor called in 200 National Guard troops. Protests were marred by an estimated one to two hundred ranging around spray painting buildings and smashing windows. The media conceded they were a minor part of the protests and called them anarchists for lack of a better description. Opening ceremonies had to be postponed for the next day, also the day for President Clinton to make a free trade pep talk.

Protestors wanted the chance to address the convention but settled for a mass rally at a Seattle stadium to hear speeches from opposition groups including organized labor. The New York Times reported speaker after speaker expressed anger that the trade organization favored corporations and overturned national laws that protected the environment, endangered species, and consumers. Speakers from organized labor objected to American companies moving abroad "where workers are paid less and have fewer rights." Labor objections to free trade focused on the inequality resulting from a general failure to protect living standards worldwide.

John Sweeney addressed the rally and also commented "We're really in it for the long haul on the trade issue. We've been working on building this coalition for a few years now, and we'll now put our heads together to see how we can build on this." Labor hoped to get the convention and Bill Clinton to agree to trade sanctions against countries that violate labor standards, but in the disruption many things like labor standards were postponed for another time. In Seattle, Sweeney and the labor movement were outsiders, but they were there. (44)

William J. Clinton

President Clinton continued to promote and pursue further expansion of free trade through his two terms and do so in exact conformity with the wishes of corporate America. He pressed Congress to give him the "Fast Track" freedom to negotiate trade agreements that cut tariffs worldwide and reduced non-tariff barriers and regulations hindering free trade. Labor again opposed his effort and this time it failed in the House of Representatives where only 44 Democrats voted with him. His effort helped to aggravate his opposition and explains much of the organized protest that showed up in Seattle to protest more trade talks.

Organized labor maintained cordial, if somewhat strained, relations with President Clinton, always the gentleman in his personal relations. He did steer the Family Medical Leave Act (FMLA) through Congress and the Workforce Investment Act (WIA), a revised version of Reagan era job training programs. He supported an increase of benefits under the Earned Income Tax Credit (EITC) and an increase in the minimum wage from $4.25 to $4.75 to $5.15 an hour by 1997.

The minimum wage increase from $4.25 an hour on April 1, 1991 to $4.75 an hour on October 1, 1996 was an 11.7 percent increase during a period the Consumer Price Index went up 17.1 percent, forcing a reduction in buying power. The second step of the increase from $4.75 to $5.15 an hour was a 21.2 percent increase between April 1, 1991 and September 1, 1997 while prices were up 19.2

percent allowing a slight recovery in buying power. However, the minimum wage remained at $5.15 an hour on January 20, 2001 when President Clinton left office. By then prices were up 29.5 percent forcing a decline in buying power. As usual minimum wage adjustments amount to token gestures for Democrats.

Measured against the needs of the working class, President Clinton was a dud. He won some little fights and lost the big ones while ignoring the meaning of free trade for income distribution and the working class. He talked over and over of the benefit from trade without addressing who would benefit, and who would not. He failed in the two significant legislative battles: health care and strike replacement. Health care will be a labor issue as long as corporate America can provide tax free health care as part of a job in lieu of universal, publicly funded health care like every other civilized country in the world. Americans stay employed in jobs they would like to leave if they could keep their health care. Strikers lose their jobs and their health care. Corporate tax benefits in health care finance amount to a grant of corporate economic power to keep people in the labor force and extort concessions from the working class, organized or not. Other Democratic presidents have had the opportunity to legislate against the legacy of the 1938 MacKay ruling that allows corporate America to replace strikers, but failed to do so. After January 2001 add Bill Clinton to the list of failures.

Clinton participated in a Democratic Party search for a new identity, or some identity at all. Shortly after the Walter Mondale loss in the 1984 presidential election a group of elected officials and a staffer, Al From, founded the Democratic Leadership Council (DLC). The founders included governors, Senators and House members and all agreed the Democratic Party needed to attract more white middle class suburbanites. Democrats should abandon their "left" wing ways and instead be for smaller government, lower taxes and more market based policies. The DLC did not bother to define the working class. These "so called" Democrats actually thought they could win elections if they would be just like Republicans but with a smile instead of a sneer. Democrat Jesse Jackson understood their folly; the DLC dissolved in 2011.

The DLC group took credit for Clinton's 1992 victory and then viciously attacked him after the 1994 election losses as described so bluntly by columnist David Broder. Clinton and his advisors tried to appease their Democrat and Republican detractors with "Triangulation," a cutesy and preposterous term for attempting to take political positions in between the left wing and the right wing. Actually it always appeared that Bill Clinton had difficulties as a Democrat because he wanted to be accepted into the Republican society of rich and privileged he so desperately needed to restrain. His last and worst act came when he allowed Alan Greenspan to convince him Corporate America could be trusted to repeal the depression era protections in the Glass-Steagall Banking Act of 1934. Mr. Greenspan's trusted corporate friends did not wait long to loot America's banking assets for their private speculations. His trusted friends failed as gamblers as we shall see.

Then Comes W

Bill Clinton ended his second term with the federal budget and macro economy in excellent shape, but it was not enough to pull Vice President Al Gore to victory in the 2000 presidential race. There was a big drop in the white working class vote for Gore, a highly volatile part of the electorate. George W. Bush took office as president January 20, 2001. He became the first president since Benjamin Harrison in 1888 to lose the popular vote but win the electoral vote, although many will recall five votes on the Supreme Court assured the crucial electoral votes of Florida for his narrow Electoral College majority.

George W. Bush had the perfect qualities to be president going back to the 19th Century Gilded Age when America's business tycoons selected their presidents to be sociable, fully aware of the need to look and act their part and be personally honorable while tolerating corruption in others. While Bush remained personally likable throughout his presidential years, his administration tolerated something between a double standard of conduct for his corporate friends to some very crude corruption starting early with Enron and ending with the looting of the banking system where his Wall Street treasury secretary conveniently restored their $900 billion gambling losses and the Department of Justice found excuses to look another way.

His appointments to the many governmental posts took extreme views on a variety of policy issues, but especially so in their anti-labor views. Probably his advisors reminded him that "Big Labor" spent millions to defeat him, but regardless of any advice President Bush did not bother establishing a relationship with John Sweeney or connect to organized labor, ever. He started his administration with anti-labor executive orders. One tossed out the President Clinton order preventing government from granting contracts to corporate America that breaks federal labor, environmental and tax law. Another banned labor agreements on federally funded construction projects. Instead, a new order required government contractors to notify their employees they do not have to become members of a union. Yet others revoked union representation at selected federal agencies including the Justice Department and federal police agencies and denied union representation for the founding legislation creating the Department of Homeland Security.

His anti labor appointments included Senator Mitch McConnell's wife, Elaine Chao, to be Secretary of Labor, where she stayed for eight long years. Ms. Chao had no connections to labor, organized or unorganized, but instead had a corporate career with BankAmerica and Citicorp and also put her name on work for the anti-labor Heritage Foundation. She shared identical anti-labor views with Senator McConnell in spite of her denials. She rewrote regulations for the Fair Labor Standards Act that allowed business to deny overtime pay to many more service occupations that included fast food managers and restaurant cooks. Charges of failure to enforce minimum wages under Fair Labor Standards started early and continued through the Bush years. There were similar charges Chao failed to enforce Occupational Health and Safety Administration standards and there can be no disputing the Bush Administration successfully repealed

the OHSA standards for ergonomics installed shortly before by the Clinton Administration. The 1997 $5.15 an hour minimum wage remained frozen with year by year inflation generated decreasing buying power.

Bush made especially toxic appointments to the National Labor Relations Board including Chairman, Robert Battista, management's choice for attorney in the Detroit Newspaper strike. He filled the National Labor Relations Board with corporate career employees willing to use the Board's rule making authority to write anti-union rules. While Board rules can be challenged in federal court a Board acting in bad faith guarantees long delays, plenty of legal expense, and an uncertain result from often hostile judges.

Unlike President Clinton, who correctly decided the UPS strike was not an industry wide strike that imperils the national health and safety, President Bush moved to break individual company strikes using Section 208, Taft-Hartley Act authority. He successfully enjoined strikes at Northwest Airlines, American Airlines and west coast dock workers. He moved to privatize, or use independent contractors, for billions more in government work at the expense of the civil service, and especially did so with defense jobs. He did not appoint labor representatives to foreign trade advisory boards as required by Congress and went ahead with more Free Trade Agreements with Chile, Singapore and Australia. The Bush Administration took every opportunity to attack and diminish labor rights and economic security. (45)

Card Check and Neutrality Agreements

The most common method to organize a union continues to be a petition to the NLRB to conduct supervised elections with procedures in NLRA Section 9, but the difficulties in getting, winning an election, and then negotiating a first contract got so difficult after the J.P. Stevens onslaught that organizers experimented with the Ray Rogers style: card check recognition and comprehensive campaign. Union representation in the NLRA does not require an election. Recall that Section 9 allows union representatives to be "designated or selected" by a majority of the bargaining unit, also the procedure affirmed in the Gissel ruling. During the New Deal years the NLRB accepted a majority in more ways than an election that included signed cards.

By the time of the George W Bush administration card check recognition evolved as a viable alternative to elections, although not an easy struggle against an employer determined to keep a union out of their business. SEIU conducted a long and expansive campaign to organize 5,000 Houston janitors that finally ended in success in 2005. Their campaign mobilized the community including religious leaders, the mayor, and a 10-day strike just to get tight fisted contractors to accept card check and then another year and a strike to get a contract.

Card check goes best with a "neutrality" agreement, an agreement where an employer agrees to remain neutral while organizers attempt to recruit the majority necessary for recognition. The neutral part of the neutrality agreement sometimes defines limits to conduct for both the employer and employees. The employer agrees to avoid captive audience speeches attacking unions while

organizers agree to avoid public relations attacks, picketing or strikes. Card check with neutrality has worked for SEIU, UNITE HERE, in leisure and hospitality, in telecommunications with AT&T and the United Autoworkers (UAW). Although most employers continue to oppose them as part of general union opposition, management could not always find replacements for their low paid occupations.

The first of the George W. Bush appointments to the National Labor Relations Board (NLRB) came January 22, 2002. Then the appointment of Robert Battista on December 17, 2002 brought the first majority of three for Bush appointments to the Board. It remained a Bush dominated Board for five years until Battista left December 17, 2007. Then from January 1, 2008 until April 2010 the Board had only two members and could not function without a quorum while the Republican dominated Congress refused to confirm appointees.

The Battista-Bush Board adopted an especially toxic practice of interfering in voluntary card check agreements to allow union certification with a majority of signed cards. The Bush Board reversed decades of Board precedent that allowed voluntary certification agreements to go forward at least until after a first contract could be signed and in operation for a "reasonable" period of time. The Bush Board decided to use the rule making authority in Section 6 of the National Labor Relations Act to provide a means for anti union employees to attack card check-neutrality agreements.

In a case known as **Dana** or Dana/Metaldyne, the UAW negotiated card-check neutrality agreements at non-union establishments of the two corporations, Dana and Metaldyne, where other establishments of the two companies were already organized. In a challenge to their voluntary agreement the Bush Board sided with a minority of employee-objectors and held that an employer's voluntary recognition of a union does not bar a de-certification petition if filed within 45 days of the notice of recognition.

The Taft-Hartley Act of 1947 introduced a procedure in Section 9(e) for a minority to challenge a Board supervised election. A petition by 30 percent of anti-union employees could demand a decertification election but only after 12 months as agreed by Congress. For the Bush Board to promote challenges to a voluntary card check-neutrality in 45 days illustrates the character of attacks on labor relations favored by the Bush Administration. The rule making authority in Section 6 goes all the way back to the original NLRA and Senator Wagner put it there to assist the Board to help labor organize under the law. While the Bush Board's use of Section 6 would likely withstand legal challenge, it is a good example of Republicans packing the Board with anti-union officials to use a pro union law for anti union attack. While it does not end the use of card check-neutrality agreements it adds delays and legal expenses in petty obstructions so common to Republican politics.

The civility in labor organizing and labor relations reached new lows under Bush, but NLRB annual data reports establishes that union organizers did win some elections. In 2001, the first year of the Bush Administration, the NLRB conducted 2,571 union representation elections with one or more unions on the ballot and a union won 1,395 of them, or 54.3 percent. Union elections dropped

to 1,588 by 2008, the last year of the Bush dominated Board, but unions won 64.7 percent of them. In 2001, 203,616 union members had voting rights in the 2,571 elections, but the number dropped to 110,903 by 2008. During the Bush years 2001-2009, a total of 1,155,798 union members had voting rights in union certification elections with 562,991 of them on the winning side, or 48.7 percent of qualified voters ended up as members of a union.

Some of the decline in NLRB elections resulted from the use of card check-neutrality agreements, but organizers using card check agreements succeed at only a slightly better rate than NLRB elections and only if voluntary neutrality goes with card check. Organizers have their best chance at success in the leisure and hospitality industries where low pay and poor working conditions make replacement labor harder to find. Nationwide union membership reported by the Bureau of Labor Statistics shows slightly more than 16,000,000 union members in 2001 and again in 2009. Like Alice through the Looking Glass unions do all the organizing they can do just to stay in place. As the Bush years ended labor hoped to elect a Congress that would pass card check legislation as their Employee Free Choice Act, but it was not to be as we shall see. (46)

Getting Along Remains Hard to Do

While an Al Gore presidential election victory would hardly have ended labor's growing problems, it would have at least avoided overt executive branch opposition and maintained the status quo. But shortly the 9/11/01 attacks provided a boost in popularity for Bush that made a bad situation worse as the labor agenda slipped out of the news and the hostile Bush Administration moved against them with silent impunity. The early years of the Bush presidency had the intended dulling effect in the house of labor leading to internal battling. In the eight years of George W. Bush as president, labor again found getting along hard to do.

The Bush onslaught succeeded in decreasing union membership. In the early Sweeney years from 1996 to 2000 his efforts brought a modest increase of union members. In 1996, 16,269,000 paid union dues as members of a union. By 2000 membership was up a modest 65,000 to 16,334,000. However, during the Bush years of 2000 to 2004 membership dropped 862,000 to 15,472,000. The decline brought dissension to the AFL-CIO executive council meetings in March 2004 where the budget for organizing continued to be a divisive issue as it had been ten years before. Some union presidents argued the labor movement should be active in politics and organizing and very little else. John Wilhelm of HERE told journalist Steven Greenhouse of the New York Times, "As a matter of survival it is imperative for the labor movement to organize on a greater scale." Andy Stern, John Sweeney's replacement as president of SEIU, complained "Our employers have changed, our industries have changed and certainly the world has changed, but the labor movement's structure and culture have sadly remained the same."

Labor provided financial support for John Kerry's 2004 presidential campaign and union members, especially white union households, turned out in large numbers. Their votes probably carried Wisconsin, Michigan and

Pennsylvania but Bush prevailed for a second term. George W Bush re-elected further demoralized labor and set off more serious demands for change.

By 2004 Stern had SEIU and four other unions, calling themselves the New Unity Partnership, arguing the AFL-CIO had too many small unions for a global economy. They made the case for fewer and bigger unions, arguing too many unions compete to organize everyone or anyone. Stern wanted to expand organizing and combine union jurisdictions to the same industries, sectors or crafts in three large unions. (47)

At the winter 2005 AFL-CIO meetings Stern's proposals met with significant resistance. Sweeney opposed, and had the votes to defeat, a proposal to cut the Washington headquarters budget by half to fund organizing campaigns for individual affiliates. SEIU President Andy Stern took the lead making these proposals for change, but did not always acknowledge that SEIU organized some of the lowest paid service workers. Management has a much harder time finding replacements for the lowest paid on America's low wage service industry where replacement scabs will be hard to find. Even so union organizing in low skilled or semi-skilled occupations has the best chance of succeeding by pushing wages up from the bottom, which at least partly explains SEIU's success organizing so many in their Justice for Janitors campaign.

Other union officials recognized the need for more cooperation among unions and the advantage of mergers of small unions but only voluntary mergers had general support. Other suggestions included AFL-CIO cuts in union dues in exchange for an increase in organizing effort. Another suggested having the AFL-CIO work to promote social goals as representatives of a peoples lobby. AFL-CIO organizing director Stewart Acuff suggested "[M]obilizing members requires members to have real investment and ownership in their unions." Terry O'Sullivan of the Laborers union argued "[T]his is about worker empowerment. We need to actively engage our rank-and-file workers more than ever before." American Federation of Teachers material had a reminder "We cannot [adopt] corporate culture, vocabulary and values as our own . . . instead of increasing power for, and for the good of, all working people everywhere." Communication Workers of America vice president Larry Cohen offered "The fundamental question is a voice at work not only a voice, but effective participation in the way decisions are made at work." All wanted respect and participation for the working class that the members of the IWW would have recognized from long, long ago; corporate America still delights putting down the working class.

These winter meetings also included some hostile criticism of President John Sweeney. A growing number of presidents among affiliated unions questioned President Sweeney's leadership after eight years of effort. Criticism started as respectful criticism but turned out to be the precursor of more blunt reproach to come in the spring and summer of 2005. SEIU president Andrew Stern continued separate discussion with four other unions. The group wanted the AFL-CIO organizing budget to go from $22 million to $60 million among other demands. They released a statement that "We need to make far reaching changes and have a leader committed to such changes, and that leader is not John

Sweeney." Stern threatened to establish a new federation: "We will stay in the Federation if it has a program that has a chance of changing worker's lives and if there is a leader committed to the program for change." Sweeney responded with "I believe I am the person to lead the changes we need." (48)

John Sweeney won another term as president of the AFL-CIO at the fiftieth anniversary convention of the 1955 AFL and CIO merger that began Monday, July 25, 2005. Andrew Stern and his confreres used the convention with the assembled journalists to announce their intention to organize a separate labor federation to be known as Change to Win (CTW). A founding convention took place beginning September 25, 1995 where seven AFL-CIO affiliates announced their departure to join the new Change to Win federation. The seven included Andy Stern's union, the Service Employees International Union (SEIU), Union of Needle Trades, Industrial and Textile Employees-Hotel Employees, Restaurant Workers (UNITE HERE), the United Food and Commercial Workers (UFCW), Teamsters (IBT), the Laborers, the United Brotherhood of Carpenters, and the United Farm Workers (UFW). (49)

The seven unions had combined assets around $1 billion and 40 percent of former Federation members. One of the founding members, Anna Berger, explained "Organizing is our founding principle. It is our North Star." Joe Hanson of the UFCW argued "If we do not drastically change, there will be no labor movement in this country." Many speakers expressed frustration with Republicans and Democrats and many doubted the benefit of so much campaign spending on Democratic candidates. Andy Stern was quoted to say "We have one party that writes us off, and one party that takes us for granted." Definitely true with that, but John Sweeney added "There's nothing the Change to Win unions are doing today that couldn't have been done in unity with the entire labor movement."

Of the seven unions in CTW, SEIU continued doing well organizing service workers, especially in health care while Change to Win as a federation did no better organizing after 2005 than the AFL-CIO affiliates they left behind. By 2008 the boasting stopped and CTW faded from view with four of the seven returning to the AFL-CIO, or going independent. By 2011, the other three in CTW, SEIU, the Teamsters and UFW, decided to disappear and be the Strategic Organizing Center. (50)

While Change to Win changed little, SEIU under the direction of Andy Stern got increasingly aggressive and domineering in organizing new members for SEIU, but also he offered some new methods described in his 2006 book, A Country that Works. Stern added another facet for discussion during the NLRB certification process or neutrality-card check negotiation. He wanted to discuss with employers "[H]ow could we build relationships with employers that added value to their businesses as well as to our workers paychecks." He called these relationships "value added partnerships."

Stern's many predecessors in the labor movement going back more than a hundred years recognized employers as adversaries, not partners. Soon after 2006 current union officials and their rank and file began to doubt Stern's independence and began objecting to what they viewed as corporate collaboration

and interference in local rank and file prerogatives.

Jobs in health care services have a variety of hard to replace skilled jobs ripe for union organizing, which SEIU pursued as targets for rapid expansion during the George W. Bush presidential years. Unlike the more vulnerable janitors and custodians, the health care employees SEIU encountered, especially RN's, refused to be malleable subjects of contracts negotiated by others.

SEIU fought over nursing care standards with the California Nurses Association (CNA), an independent union. CNA argued for a legal maximum patient-to-nurse ratio while SEIU negotiated contracts with "safe staffing" that allowed less qualified "service partners" or "care partners" to conduct some RN patient care. After SEIU left the AFL-CIO and formed Change to Win, the AFL-CIO restrictions on organizing at already organized union locals no longer applied, or at least in the view of CNA president Rose Ann DeMoro.

In one case, DeMoro sent organizers to Ohio to challenge a "coercion free election" to certify SEIU with a consortium of hospitals with an agreement to be called the Catholic Healthcare Partnership (CHP). Her organizers arrived to campaign against it, calling SEIU arrangements corporate friendly company unions. which infuriated Andy Stern and SEIU regional president Dave Regan. SEIU spent years in a corporate campaign just to get to the election, but DeMoro was not impressed: "To [Stern] the union is just a human resources department. DeMoro argued "Nurses have to fight to save their own occupation, which healthcare corporations would deskill in a minute. And Stern advocates a model of letting the employer define the work and organizing the workers as the employer defines them. That's deadly for RNs, and deadly for patient care." It was an early salvo in what would be dubbed labor's civil wars.

Much of Labor's civil war took place in California over internal SEIU disputes. SEIU had a Labor Management Partnership agreement with Kaiser-Permanente going back into the 1990's and several of its statewide competitors: Tenet Healthcare Corporation and Catholic Healthcare West (CHW). The SEIU International in Washington worked with Local 250 and Local 399 to negotiate these agreements; they organized new locals at Tenet and CHW increasing union membership by 65,000 in the process. In 2004, the two locals merged and called themselves United Healthcare West (UHW).

After SEIU left the AFL-CIO and set up Change to Win many started noticing a change in Stern, especially when contracts came up for renewal. Suddenly he was in too big a hurry to listen to local officials or allow participation from the rank and file. He took over negotiations and presented the results to the membership as fait accompli. Many noticed terms and conditions they found unacceptable.

Another case from these early disputes occurred when it was time to renegotiate the four and a half year old California nursing home partnership, but instead of allowing United Healthcare West to go ahead the International office stepped in to end the partnership as of June 1, 2007. Given Stern's obsession with union growth the International in Washington decided to have a uniform national contract they expected to apply to nursing homes all over the country.

SEIU-UHW local officials objected and notified their members by mail: "Some in the national SEIU are negotiating an agreement with nursing home employers—in California and nationally—and have repeatedly excluded UHW nursing home members and elected representatives from the process. These agreements could restrict our nursing home members' voice on the job and be implemented without affected members even having the right to vote."

The national agreement imposed by SEIU International from Washington prohibited union members from reporting some categories of problems at nursing homes to state regulators or the media. It barred members from addressing staff-to-patient ratios in a public forum. Local officials concluded Stern made these concessions solely to speed up union growth. UHW president Sal Rosselli made himself unpopular to the Stern bureaucracy in Washington demanding contract agreements with union democracy, the right to advocate for the people they serve, and full union membership for all new members. A UHW petition signed by 20,000 members demanded these conditions "be embodied by clearly defined contract standards." Comments from members included "What really got people upset was this idea that guys in suits, sitting in Washington, D.C., will bargain our contracts. These are people who have never worked in a hospital and who don't know anything about our jobs. Then, to top it off, we won't even have a right to vote on the contract they negotiate." (51)

UHW president Sal Rosselli got his start in SEIU as a rank and file member working as a janitor after he left college in 1967 objecting to a ROTC program and went to work at Dorothy Day's Catholic Worker House in New York. By 2006 he had a long history as an agitator in internal union disputes, but his campaigns for office succeeded. Rosselli had successfully worked with Andy Stern before 2006, but found himself in opposition to the new Stern and his autocratic ways.

Rosselli objected to the concessions Stern would make to management to get neutrality-card check agreements that allowed SEIU a chance to organize a majority favoring a union without interference from management. A previous SEIU agreement with Tenet Healthcare in California included a clause the prevented picketing and strikes by new members, which the membership wanted removed during contract renewal negotiations. Tony Aidukas, a UHW member from Desert Regional Medical Center in Palm Springs, was elected to the bargaining committee. He explained "We wanted to get back the right to picket and strike, to win a say over patient care and an end to subcontracting," but Aidukas and his team were left to cool their heels outside while staffers from the national union sat down with Tenet.

At the time, 22 percent of Tenet was union when Stern wanted national negotiations to bring 100 percent. Toward this end, SEIU signed a new deal giving Tenet the right to subcontract up to 12 per cent of the workforce. When SEIU agreed to wage give backs and a seven-year extension of the no-strike clause, UHW walked out. Aidukas: "Frankly, I don't think there's much concern for the members' lives in this rush to enlarge SEIU. Why join a union that's going to agree to sub-contract your job? Why join a union if you can't strike for ten years? Where's the benefit then?"

The dispute that shaped up between Stern and Rosselli looks similar to the United Food and Commercial Workers battle with Local P-9 in the Hormel fight. Stern had his eye on political power by controlling the language in national labor contracts in health care; Rosselli saw local involvement of the rank and file as the only way to increase membership. Rosselli's objections and resistance reflected a broader unhappiness with Stern announcing mergers and reassigning or dispensing with staff, and imposing agreements from above. A group of opposition calling itself SMART, SEIU Members for Reform Today, formed to be a counter to Stern. Unfortunately for Rosselli he took the brunt of Stern's wrath..

That was the situation leading up to the SEIU quadrennial convention in Puerto Rico set for May 30 to June 4, 2008. As SEIU International President Stern took the opportunity to have his platform proposals planned carefully with the delegates he needed to vote them in. SMART opponents addressed the convention with comments like "These proposals do not guarantee democratic decision-making. . . . [R]ank-and-file members are excluded at the highest level of contract negotiations and replaced with boards of appointed leaders and staff, mostly from Washington, D.C., rather than from local unions." Objections went for naught; SMART did not have the delegate votes to stop Stern proposals.

Another Stern proposal called for expanded use of call centers dubbed Member Resource Centers. For several years Stern had SEIU experiment with call centers to handle local grievances and contract concerns remotely. Typical labor contracts include local union grievances with elected shop stewards as standard practice at least since WWII. Stern made his intentions well known in interviews with journalists prior to the convention. He said he wanted a union movement "less focused on individual grievances, more focused on industry needs." . . . "Our members are more concerned with being serviced. That is what I hear about." The Stern resolution read in part "MRC's will meet union wide standards of cost, quality of service to members, ease of access, multiple language capability, support of leaders and staff, and quality of data to support SEIU programs and staff."

Stern and others admitted they expected call centers to free resources for organizing and national politics. There was lots of "let's give this a try" optimism, especially with more home care workers isolated from a workplace. The call centers did poorly over the next few years; they were not generally effective in replacing shop stewards. Complaints went like "How can a few staff people, stuck in a statewide union office, with a pile of 200 different contracts possibly figure out what is going on in workplaces they've never visited? They can't. It's ludicrous." The call centers also ended up costing much more than anyone expected and drew resources away from organizing.

Call centers were only part of a bigger problem created by autocratic decisions from Stern and SEIU International officials in Washington. As every savvy union member knows once the higher ups make all the decisions the rank and file become passive and disengage. In that way union members become like so many passive stockholders in America's corporations. Sometimes though they get angry as Ron Carey did with Teamsters for a Democratic Union. With the

Stern autocracy, Ron Carey's counterpart would be Sal Rosselli. (52)

Before, but more often after, the 2008 convention Stern ignored Democracy and the rank and file entirely to move, merge and combine SEIU locals here, there and everywhere. During the merger wave the number of SEIU local affiliates went from 373 to 140 with a 600 percent increase in their average size; fifteen locals had membership between 50,000 and 350,000 with 57 percent of total SEIU membership, forty more had membership of 10,000 to 50,000. Many grumbled and made the best of disruption, but Sal Rosselli and the UHW rank and file fought back. The method Stern had to overrule resisters made use of a legal loophole in Title III of the Landrum-Griffin Act, a.k.a the Trusteeship. Title III authorizes a labor organization, such as International SEIU with a subordinate organization such as a local union affiliate like United Healthcare Workers (UHW), to file a "Report" to the Department of Labor to explain why it needs to expel the union leadership and takeover the local and all its assets. The loophole comes in Section 304(c), which states that the Report "shall be presumed valid for a period of eighteen months from the date of its establishment."

The Trusteeship take over of UHW finally came on January 27, 2009, but it was not a surprise by then. Rosselli continued to oppose Stern. He spoke against a California health care plan negotiated by Stern with Governor Arnold Schwarzenegger. Schwarzenegger had vetoed a plan supported by California unions, but Stern negotiated a compromise plan without maximum rates or minimum coverage. Stern removed Rosselli from the California State Labor Council in apparent retaliation. Rosselli resigned from the SEIU national executive committee and continued promoting more local union participation and Democracy in what turned into a back and forth of letters between Stern and Rosselli supporters that made their way into the press. At the June 2008 convention Stern made clear he expected to move 65,000 of Rosselli's UHW nursing care and home care workers into another union.

Since Stern needed a Trusteeship Report to justify taking over UHW, he hired and paid then professor and former Secretary of Labor F. Ray Marshall to investigate Stern allegations of UHW financial misconduct handling a non-profit Patient Education Fund. Hearings went forward in the fall of 2008 as part of the investigation. Many UHW rank and file showed up to tell Professor Marshall they did not want their union dismembered by Stern, but to no avail. The SEIU International executive board did not wait for the Marshall report, which came January 22, 2009. On January 9, 2009 they announced their decision to split off and then merge UHW nursing care and home care workers with Local 6434. Marshall's 109 page report did not find financial irregularities but it contained a recommendation for a Trusteeship takeover if UHW did not comply with the January 22 recommendation within five days. A hasty meeting of UHW officials, shop stewards and rank and file followed on January 24, 2009, but those in attendance demanded a vote of the UHW rank and file before they would comply. Since all knew the overwhelming majority opposed Stern's order, the demand for a vote was effectively a refusal.

On January 27, 2009 Stern appointed Washington staff landed in California

to be trustees. Trustees seized offices, financial assets, dissolved the executive board, removed full-time officers from the payroll, dismissed UHW stewards and began replacing 400 staff. Employers informed of the takeover held rank and file captive-audience meetings to introduce new SEIU-appointed staff representatives. The takeover came complete with a security force hired by Stern to protect the invading interlopers from UHW objectors, known to be angry, but now presumed to be violent. The security group established a command post at an Oakland Hotel and provided 24 hour secret service style protection and a chauffeur driven car for selected higher ups appointed to the replacement union. It resembled the Asset Protection Team of Vance security guards that corporate officials used against the labor movement in Decatur, Illinois just a few years before.

So much for Democracy. Objectors swarmed around the UHW office headquarters in Oakland immediately vowing to use the de-certification election procedures in the Taft-Hartley Act to leave SEIU and organize another union; they already had a name: the National Union of Healthcare Workers (NUHW). Within weeks they had a majority of signed cards or petitions seeking NLRB elections at 350 UHW locals representing 91,000 rank and file. SEIU lawsuits followed seeking $25 million in damages from Rosselli and his objectors. (53)

During these same early months of 2009 another internal labor dispute erupted within UNITE HERE, except shortly Andy Stern took sides and SEIU joined the fray. In 2004 when UNITE – Union of Needle Trades, Industrial and Textile Employees – merged with HERE – Hotel Employees, Restaurant Employees – it appeared to be the ideal merger. UNITE was itself a result of a merger of the International Ladies Garment Workers Union (ILGWU) and the Amalgamated Clothing and Textile Workers Union (ACTWU). Both textile unions dated from the early part of the last century, but the global economy and the effects of NAFTA brought steady decline to textile employment. As of 2004 UNITE had substantial assets including the Amalgamated Bank in New York, but declining membership and few prospects for expansion. In contrast HERE, had modest assets, but a growing membership and good prospects for organizing and continued expansion. The 2004 merger was primarily the result of negotiations between Bruce Raynor from UNITE and John Wilhelm of HERE. Raynor took over as president of UNITE HERE while Wilhelm took over as director of the leisure and hospitality division in the combined union.

By early 2009 the two principals launched into personal attacks, getting into yet another battle in a union movement where getting along remains hard to do and breaking up quite destructive for the rank and file caught in the middle. The initial wrangling started over the pace of organizing and ultimately over control of resources. Wilhelm reported organizing locals in 92 hotels with 14,000 new members and so did not appreciate Raynor's criticism that his efforts took too long and cost too much. As president of UNITE HERE Raynor had authority to interfere and discuss matters with hotel owners, but Wilhelm's leisure and hospitality division had a majority of UNITE HERE members giving him delegates for voting at conventions and therefore power to argue and fight.

The New York Times ran a story February 8, 2009 quoting Raynor using

terminology usually reserved for marital disputes such as "The merger has failed" and "The union has irreconcilable differences" and "The union should have a divorce." Wilhelm responded with "The fundamental problem is that Bruce Raynor does not believe he is accountable to the elected leadership of the union. He has made it crystal clear that if the majority of the union does not give in to him he will destroy the union." Raynor filed suit in federal court accusing the executive board of violating the union constitution by having the executive committee follow Wilhelm's budget decisions to pay for HERE operations. Wilhelm denied the accusations.

Worse, Stern entered the dispute on Raynor's side. Stern and Raynor created a new SEIU affiliate called Workers United (WU) in meetings ending March 21, 2009. WU started by claiming to represent 150,000 members of the pre-merger UNITE unions and immediately started soliciting more members from pre-merger locals in HERE. They used mail, email and personal contact. These moves infuriated Wilhelm who called it "imperialism" and "electoral fraud" since no rank and file voted on the split. The battle over control and assets, especially control of the $4.5 billion of Amalgamated bank, moved to the courts.

These internal union battles resemble battles in corporate America in their search for concentrated power. Certainly America's corporate officials expect to dictate to their stockholders in the fashion Andrew Stern started dictating to his rank and file. Disgruntled stockholders can always sell their stocks, but few can quit their job to get rid of a union. Labor needs active participation from their rank and file in local unions, international unions and across the entire economy to have a chance to succeed. The Stern-Rosselli and Stern-Wilhelm battles renew some of the same destructive and divisive episodes from labor history like Gompers-Haywood, Green-Lewis, Reuther-Meany. Well, which side are you on? (54)

Chapter Twenty - Obama and Beyond

"No social movement has ever been successful in this country which did not involve as an ally the hard-core white middle class."

----------Bayard Rustin, quoted from Commentary, February 1965

The labor battles continued through the waning days of the Bush administration and the approaching presidential election November 4, 2008. By then the booming economy Bush inherited edged toward the precipice of decline and depression, the result of abuses of deregulated banking officials. The Federal Reserve Bank had no choice but to restore the bank reserves looted for speculative gambling, but production spending and employment started collapsing anyway. Jobs were down 3,500,000 in the twelve months of 2008, well on their way to a drop of 8,700,000 before the turn around in the first quarter of 2010. Manufacturing employment during the Clinton years actually increased a modest 249,000, but during the eight years of George Bush it dropped 4,500,000. Textile manufacturing took an especially hard hit. The employment effects of free trade started during the Clinton presidency when textile and product mill manufacturing, and cut and sew apparel manufacturing dropped 504,300. During the eight Bush years these jobs dropped another 598,000, a 71.1 percent drop in textile industry employment; an American industry tossed away.

The effects of free trade started receiving more media attention during the Bush years. Back in 1993 the politicians promised NAFTA would bring an increase in exports with development and jobs for Mexico. No one allowed that a quarter of the Mexican population lived and worked on small farms that had no hope of competing with American agriculture. Washington Post reporters discussed agricultural conditions with Mexican farmers in early 2007. Comments included "For people who can grow on a huge scale for export NAFTA has been good. For people like us it has been a blood bath."

Small poultry farms were already disappearing because of cheaper U.S. imports with the last import restrictions soon to expire. The president of the Tepatitlan Poultry Farmers Association explained "If there are corn subsidies in the United States and none here, we're dead. If the U.S. starts selling things extra cheap outside the U.S., then it won't just be small farmers and individuals who will be leaving. It will be people like me." Instead of an increase in Mexican agricultural exports to the U.S. NAFTA helped Mexico export Mexicans. Mexico's National Council on Population reported 6,200,000 Mexicans live in the United States illegally as of 2007 and the last of the Bush years. "Two-thirds arrived after NAFTA." (1)

The dreary Bush economy helped Obama win the 2008 presidential election with 69,500,000 votes over John McCain with 59,900,000. The electoral count was not as close with Obama taking 365 votes to McCain with 173. Obama's popular vote total was 10,000,000 more than John Kerry in a much bigger turnout than 2004. His 52.9 percent of the vote exceeded any Democrat since Lyndon Johnson. Organized labor supported and contributed a reported $300 million to

Obama's campaign and the Democratic party won the majority in both houses of Congress and so had a two year window of opportunity from his January 20, 2009 inauguration day to January 2011.

The Obama inauguration allowed organized labor a reason to be optimistic. Soon he announced a task force for the middle class while explaining "I do not believe organized labor is part of the problem. To me, its part of the solution. You cannot have a strong middle class without a strong labor movement." He started by reversing anti-labor executive orders from the Bush years, but his primary labor efforts would be the same two the Clinton administration promised, but failed to do: national health care and labor law reform. The Obama labor law reform proposal would be a new version known as the Employee Free Choice Act (EFCA).

Sweeney Departs – Trumpka Takes Over

John Sweeney stepped down as AFL-CIO president at their Pittsburgh convention of September 14-17, 2009. Sweeney brought a refreshing attitude and new energy for change to the labor movement but the number represented by unions declined 1,690,000 from 1995 to 16,300,000 in 2009, based on published data from the Bureau of Labor Statistics. He had no help from the Democrats. Richard Trumka took over as new AFL-CIO president, the first federation president from the United Mine Workers since John L. Lewis ruled the CIO. He had no opposition and vowed to revitalize the labor movement: "I think the American public is more willing to look at ways to curb corporate power that's gone unchecked for years. The public knows unions are the best curb on that." Among his press comments he mentioned "As we've lost manufacturing jobs in this country we've lost a lot of R & D and when you lose R & D you lose your technological edge, and when you lose that technological edge, you start to lose everything." How true! He could have said America may turn into a less developed country, but he let that go.

Trumka did not support Change to Win or find much to like about Andy Stern's two still raging legal battles previously mentioned: 1) Stern-Rosselli, 2) Stern-Wilhelm. In the first battle Stern had SEIU attorney's file suit demanding $25 million in damages from 28 former SEIU-UHW officers and staffers including Sal Rosselli claiming they spent years conspiring to leave SEIU while on the SEIU payroll. The SEIU attorney's quickly revealed the true purpose of the suit by offering to settle if Rosselli and the 27 dismissed and departed objectors would disband their new union, the National Union of Healthcare Workers (NUHW), now in competition to de-certify and replace SEIU locals. When all the accused refused SEIU applied corporate methods to stall or block NLRB elections in a variety of unfair labor practice claims. As well they distributed waves of anti-NUHW campaign literature pressuring the rank and file to vote against NUHW and de-certification.

After a year of stalling de-certification elections went forward in early 2010 at some of the biggest SEIU locals in southern California. Stern and his SEIU-UHW trusteeship locals lost many elections to Sal Rosselli and the NUHW.

The votes were seldom close as with registered nurses at Kaiser's Los Angeles Medical Center that voted 746 to 36 for NUHW; psychiatric social workers voted 717 to 192 for NUHW as did other health-care professionals voting 189 to 26 for NUHW against SEIU. These early de-certification elections and comments by the disgruntled should have convinced Stern that rank and file will not accept authoritarian control or arbitrary dictums from SEIU in Washington. More elections were to come that SEIU lost.

The law suit reached a jury verdict in the spring of 2010, which to quote an observer "SEIU lost, but NUHW did not win." The jury acquitted 12 of the 28 and found the others liable for their January 2009 salaries and expensed for SEIU-UHW during the time they were resisting the trusteeship and therefore not doing work for the union. There were small amounts of dues unpaid and security expenses added on. The fines to the 16 totaled $737,850, all civil fines and considerably less than $25 million. There were no criminal charges or evidence of any stolen funds. More important to Sal Rosselli and his objectors, NUHW would continue, but in a union movement where divisions did enormous damage to the labor movement.

In the second legal battle Andy Stern and John Wilhelm sparred their way to a negotiated settlement between Stern's SEIU/Workers United (WU) and UNITE HERE. Through 2009 the two sides were raiding each others locals with de-certification elections while Stern and his ally Bruce Raynor pressed for arbitration as the way to end their lawsuit, which Wilhelm flatly refused. Wilhelm had the support of well over half of the labor movement that by then regarded Stern as the destructive instigator.

The two antagonists finally agreed on terms in July 2010 that restored UNITE HERE as an independent union with Wilhelm as president. In the settlement SEIU-Workers United got the $4.3 billion Amalgamated Bank while UNITE HERE got the $70 million New York office building headquarters and $75 million cash from disputed assets. They divided jurisdictions with an agreement for UNITE HERE to organize at hotels and the gaming industry. UNITE HERE recovered the food service industry locals split off by Bruce Raynor and Workers United and retained organizing rights for commercial cafeterias, stadiums, concert halls, airports, convention centers, and parks. SEIU got organizing rights to food service workers in health care facilities and government buildings. They agreed to compete for food service workers in public schools, colleges, and universities. The agreement included a condition that UNITE HERE could no longer provide staff and money to assist NUHW organizing. The whole matter wasted millions on lawyers and courts. (2)

Later in April 2010 Andy Stern stepped down as SEIU president leaving the battles with Wilhelm and Rosselli behind. After so much success organizing with the Justice for Janitors campaign, he grew impatient and divided the labor movement making unilateral decisions. An obsession with the growth in members and union dues took precedence over any other measure of advance or success. Collaborating with corporate America to make deals and cutting out local unions and their rank and file antagonized the people he needed the most. Unlike George

Meany he cared too much about new members, but just like Meany he forgot labor leaders only source of power comes from below. Writing in the Nation Max Fraser quoted an anonymous labor official: "Andy Stern leaves pretty much without a friend in the labor movement." He did leave a celebrity, but it also appears he was too much like Bill Clinton: he wanted to be accepted by the wealthy. (3)

Health Care

It would take over a year before Congress passed and Obama signed the Patient Protection and Affordable Care Act into law March 23, 2010. In a July 13, 2009 White House meeting between Obama, John Sweeney, Andy Stern and a group of other labor leaders met to discuss strategy for the two legislative objectives. All accepted that health care would take priority over EFCA. A significant segment of organized labor accepted something close to the Obama health care proposals. Even though a significant number in the labor movement preferred a single payer system the White House conferees wisely accepted continuing with employer provided group insurance and supported individual or family policies purchased from private insurance companies. However, all but Andy Stern expected a public option to be included, which Obama and the labor movement supported during the presidential campaign. The public option would make the government a service provider in addition to the many private insurance companies and private sector health care providers. It would be like Veterans administration health care turned into a public option for everyone.

Health care for more of the uninsured would not come easily even though advocates appeared to have all the necessary votes in Congress including 60 votes for cloture to end an expected Senate filibuster. Then the foremost advocate of health care, Massachusetts Senator Ted Kennedy, died in August 2009. More trouble started when Democrat and chair of the Senate Finance Committee, Max Baucus, decided to attack union negotiated health care plans, such as those at AT&T and Verizon in New England that provided benefits he apparently regarded as "too good." His plan imposed a 40 percent excise tax applied to premiums above $8,500 for individuals, and $23,000 for families, on employer provided health care. The media dubbed the proposal the "Cadillac" Tax, but it opened the door to wide ranging alternative proposals for taxing health care, which generated anger and anxiety for those with existing health care plans. As everyone knows, except possibly members of Congress, the need to keep health care generates plenty of anxiety in a country where everything including the essentials of life remain an option for political assault.

The Baucus proposal looked similar to that of defeated presidential candidate John McCain, but the Senate version of health care with the "Cadillac" tax in it passed the Senate on December 24, 2009 in a strictly party line vote. The "Cadillac" tax discussion also came at the same time as the campaign for the Massachusetts Senate runoff election to fill Ted Kennedy's Senate seat. The Democratic candidate Martha Coakley started with a big lead in a Democratic state against a little known Republican, Scott Brown. After the Senate vote she agreed she could support the "Cadillac" tax. Her election support melted away and

she lost badly to Republican Brown; Ted Kennedy replaced with a Republican!

The election loss came January 19, 2010. Obama had no Republican votes for the Public Option and Senator Joe Lieberman, sitting as an independent, threatened to filibuster against a public option. As usual the Democrats cannot be expected to act in unity. Max Baucus went off on his own and Democratic Senator Blanche Lincoln of Arkansas refused the public option.

The labor movement was furious after Obama went along with the Baucus tax plan and abandoned further negotiations on a public option, but the evidence suggests he did not have the votes to do otherwise. He met with the labor officials and supported some favorable adjustments in the Cadillac tax to apply to union negotiated plans, but it opened organized labor to one of corporate America's favorite taunts that labor's nothing but a special interest. The House passed the Senate bill March 21, 2010 without a single Republican vote and Obama signed it March 23, 2010. It would be several years before it started.

Corporate America kept health care and its profits for itself while also evading an employer mandate, but Obama got the key essentials into the bill. It forced all insurers to operate on a national risk pool and so halted the unscrupulous dodge of preexisting conditions; it had a quite decent list of minimum coverage requirements and a rate system that did make it affordable. All in all an Obama success in a country where Republicans always oppose health care and treat it like an upper class prerogative, but it would be a different story with EFCA. (4)

Labor Law Reform Again - Employee Free Choice Act (EFCA)

Advocates of labor law reform in Congress introduced H.R. 1409, the Employee Free Choice Act on March 10, 2009, less than two months after the Obama inauguration. It had three sections of substance with sections two and three being the most important to labor.

EFCA Section 2 entitled "Streamlining Union Certification" proposed adding to Section 9 of the NLRA, which recall governs the conduct of union representatives and certification elections. A new sixth and seventh sub section 9(c)(6), (7) would be added to the National Labor Relations Act. The new section 9(c)(6) read "If the Board [National Labor Relations Board] finds that a majority of the employees in a unit appropriate for bargaining has signed valid authorizations . . . the Board shall not direct an election but shall certify the individual or labor organization as the representative." The amendment allowed unions to be certified by a card check majority instead of an election, not in addition to an election, with Section 9(c)(7) providing for administration and verification of valid authorizations, or in effect signed cards. Recall Justice Earl Warren tried to settle the question of authorization card majorities in his Gissel opinion; he made them a legitimate method to establish a majority. Corporate America had no intention of going along since delay accomplished what they wanted, and organized labor probably figured another court would overturn the Gissel ruling anyway. So much for settled law.

EFCA Section 3 entitled "Facilitating Collective Bargaining Agreements" proposed adding a new section 8(h) to the National Labor Relations Act, which

intended to define good faith bargaining for a newly certified union. The Taft-Hartley Act in 1947 added Section 8(d) to the National Labor Relations Act intending to give fuller definition to good faith bargaining. Recall the wording in 8(d) had phrasing creating a mutual obligation of employers and union representatives to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment. Further phrasing advised that mutual obligation did not compel either party to make concessions. However, Section 8(d) provided nothing to combat stalling for a first contract after union certification, which became a backup for union busting even if unions prevailed in an election.

New wording in Section 3 for Section 8(h) attempted to provide organized labor with a remedy for employer stalling and refusing to agree to a contract after union certification. Section 8(h)(1) requires the parties to meet and begin bargaining within ten days of certification. Section 8(h)(2) requires the parties to agree to a contract within 90 days of bargaining or either party can notify the Federal Mediation and Conciliation service to intervene and propose a settlement. Section 8(h)(3) requires a settlement in 30 days of mediation and conciliation or the dispute goes to binding arbitration. The arbitration agreement shall remain in force for two years.

EFCA, Section 4 entitled "Strengthening Enforcement" inserted phrasing into NLRA Section 10 that expanded NLRB powers to prevent unfair labor practices. The wording intended to make it harder to fire employees while they are attempting to organize a union or during the period before signing a first union contract. After an investigation, if the Board finds an employer discriminated against employees or discharged employees during these periods the Board can award back pay and "in addition 2 times that amount in liquidated damages" and subject an employer to a civil penalty up to $20,000. (5)

Various drafts of the EFCA bill preceded the 2008 presidential election campaign. Given the miserable Bush economy labor anticipated a better chance to pass labor law reforms than the Carter and Clinton years. Obama agreed to support it during campaign appearances while his opponent John McCain dutifully attacked labor and promoted expanding Section 14(b) options for "right to work" to more states.

Once the bill was introduced March 10, 2009 after only 49 days into the Obama administration the howling and exaggerations began. The Chamber of Commerce announced a $10 million campaign of TV adds and pressure tactics on capital hill. Randel Johnson of the Chamber of Commerce explained at a press conference "We are doing our best to point out to the administration that this will be a firestorm on Capitol Hill, bordering on Armageddon." Columnist George Will, ever the corporate spokesman, wrote "The exquisitely misnamed Employee Free Choice Act would strip from workers their right to secret ballots in unionization elections." Given corporate America's determination to keep union campaigners off their property, to coerce employees in captive audience harangues and stall or corrupt union certification elections in J.P. Stevens fashion, worry over employee voting rights does make George sound two-faced.

The Service Employees International Union pledged $10 million for an accountability campaign, but Democratic support wavered early. Obama had other priorities and the hurdle of 60 votes in the Senate has consistently doomed anything for labor. Republican Arlen Specter changed parties but decided to oppose EFCA while Democratic Senator Blanche Lincoln announced her support of the Republican view. Democrats remained two to four votes short of the super majority needed to pass.

By the September 14, 2009 AFL-CIO convention John Sweeney and Richard Trumka offered compromises. Sweeney told Steven Greenhouse of the New York Times "he would support a change that calls for speedy unionization elections, a provision that would replace the much attacked card check provision." Sweeney went on to say fast elections would be acceptable "as long as there is a fair process that protects workers from anti-union intimidation by employers and eliminates the threat to workers." Randel Johnson made clear the Chamber of Commerce opposed that as well. He told the New York Times that fast elections "has the effect as a practical matter of eliminating the ability of the employer to educate its employees about the adverse effects of unionization."

Trumka spoke to Greenhouse as well as Sweeney and he suggested a minimum compromise would need three essential components: election within ten days, "greater penalties against employers that break the law during organizing drives," and binding arbitration. Trumka knew corporate America continues to selectively fire people for their union support, nor have spies and stole pigeons disappeared from labor relations. What the Chamber of Commerce calls education the labor movement regards as intimidation.

Arlen Specter and President Obama spoke at the AFL-CIO convention. Specter, by then a Democrat, would not endorse card check or EFCA. Instead he made a gesture of labor support by announcing he would revise the legislation with several Senate colleagues. The bill stalled into 2010, until after the Massachusetts Senate election to fill Ted Kennedy's seat. Martha Coakley's loss to Republican Scott Brown dropped an essential vote for EFCA. Obama supported Senator Blanche Lincoln in her 2010 Senate primary race even though she opposed EFCA; labor actively campaigned against her. She won the primary but lost to the Republican. In Pennsylvania, labor opposed Arlen Specter for his opposition to EFCA and defeated him in the Democratic primary, but his opponent lost to the Republican. Since Obama did not make EFCA a priority, energy and votes for the bill disappeared in the delays, and so labor law reform died again. Labor officials universally saw Obama's conduct as the same take-the–labor-vote-for-granted attitude the Democratic Party shows for labor decade after decade.

If the legislation had passed Congress, organized labor would have benefited, but how much remains debatable. As written, it benefited unions by allowing them the option of replacing an NLRB election with card check, rather than majority card check followed by an election. Union proponents think card check could eliminate threats to jobs that so many employees associate with anti-union employer campaigns, but unlike previous labor law reform efforts, EFCA did not address union access or captive audience pressures. Card check campaigns

often take months of effort and with no sign organizers can get employees signed up without management knowing, especially with large numbers to organize. Corporate opponents claim union organizers bully their employees to get signatures, but use the claim as a strategy to invalidate a card check majority if there is one. The law did not address how long the signatures should remain valid or whether, or under what conditions, signers can withdraw their union support.

The second and third parts of EFCA - penalties for violating the law, arbitration for a first contract - are definitely an improvement, but again a ruling in favor of a union could be ignored or challenged. The increase in financial penalties to corporate America does not appear significant as a deterrent and does nothing to speed up the years of delay to get them. Arbitration rulings could be ignored and leave unions with more delays for law suits and doubtful court rulings. The failure on the third try to modify the anti-union elements in the Taft-Hartley Act and the Landrum-Griffin Act brings a depressing reality that neither political party treats labor as a worthy priority. (6)

Labor and the Courts - the Right to Work

The historical record of union busting documents the term “right to work” from the 19th century. The term implies support for a legal right to a job since Americans are expected to be self-supporting, but the public use of the term “right to work” has nothing to do with the right to a job. To the nineteenth century corporate mind Americans could strike, but in no circumstance could a strike be used to deny the right to work to others. Corporate discussion of the right to work has always attempted to equate patriotism and individual freedom with the freedom to betray working class solidarity and go back to work as a scab and help break a strike.

Recall in the 1902 coal strike where the appointed Anthracite Coal Strike Commission settled the strike but indulged the mine owners with a contract phrase asserting “the rights and privileges of non-union men are as sacred to them as the rights and privileges of a unionist.” Courts joined management in the use of right to work by treating efforts to negotiate union recognition and representation for all employees as a common-law conspiracy to deprive nonunion men and women their right to work.

The National Labor Relations Act of 1935 attempted to neutralize the divisions generated from right to work campaigns by having the federal government supervise elections to certify a union and make an agreement that applied to all those in a government defined bargaining unit. The New Deal reform legislation expected unions to represent everyone whether or not they voted for the union just as the loser must accept the majority in national and state democratic elections. New Deal reformers hoped a universal respect for democracy would bring a measure of respect and acceptance to union organizing and neutralize right to work attacks, but it did not.

The attacks continued until 1947 when Republicans got control of the 80th Congress and included right to work divisions into the Taft-Hartley amendments. They started by putting a new declaration of policy at the front of the law, which

recall declares "the purpose of the revised National Labor Relations Act will be to protect the rights of individuals." They inserted the often quoted Section 14(b) that allows states to prevent unions from negotiating dues check off and call it a right to work. The Wagner Act provided union representation by majority rule, but the Republicans demanded to let a minority be free riders and withhold union support in the name of their right to work. The term "right to work" does not appear in Section 14(b), but encouraging a minority to break union solidarity was called an individual's right to work as part of 19th century union busting. By 1947 common use of the term made right to work a universal term; the media and politicians automatically identified Section 14(b) as the right to work as it continues today.

The 1947 insertion of Section 14(b) has allowed legal attack on union security clauses that collect dues through dues check off for all the members of a union. Since a certified union must represent all its members and provide services equally to all, union security clauses like a union shop or an agency shop attempt to prevent free riders from evading their responsibilities as a minority in a democratic election. It did not take long for opponents of unions to challenge dues check off. In 1956 in **Railway Employees' Dept. v. Hanson** employees of the Union Pacific Railroad brought suit in a Nebraska Court to prevent collecting union dues from disgruntled employees as part of a union shop agreement. The union defended their union shop clause by citing 1951 amendments to the Railway Labor Act that specifically allow it.

A Nebraska trial court issued an injunction to prevent collection of dues as a source of irreparable harm and the Nebraska Supreme Court affirmed by holding that a union shop agreement violates the First Amendment and Fifth Amendment to the Constitution in that it deprives employees their "freedom of conscience, freedom of association, and freedom of thought protected by the Bill of Rights."

Justice William O. Douglas writing for the court addressed "Wide ranged problems" appellants "tendered under the first amendment." … "It is argued that, once a man becomes a member of these unions, he is subject to vast disciplinary control, and that, by force of the federal [Railway Labor] Act, unions now can make him conform to their ideology."

Justice Douglas replied "there is no more an infringement or impairment of First Amendment rights than there would be in the case of a lawyer who, by state law, is required to be a member of an integrated bar. It is argued that compulsory membership will be used to impair freedom of expression." … "We only hold that the requirement for financial support of the collective bargaining agency by all who receive the benefits of its work is within the power of Congress under the Commerce Clause, and does not violate either the First or the Fifth Amendments." (7)

In a second case of **Machinists v. Street** from 1961 the Southern Railway System entered a union shop agreement using authority from the 1951 amendments to the Railway Labor Act exactly as in the Hanson case. Non-union employees brought suit in a Georgia State Court complaining the union used their dues to "finance the campaigns" of people they opposed and "promote the propagation

of political and economic doctrines, concepts and ideologies with which [they] disagreed." The trial judge found the allegations fully proved and issued an injunction to prevent enforcement of the union shop agreement on the grounds the relevant section of the Railway Labor Act violates the First, Fifth, Ninth and Tenth Amendments to the Federal Constitution. The Supreme Court of Georgia affirmed. Appeal was taken that ended at the United States Supreme Court

The case of Machinists v. Street raises the identical issues from Hanson, but new justices decided to find a difference that allows them to modify precedent. In Street the justices looked at the Hanson opinion and found no evidence that union dues had forced "ideological conformity" that impaired the "free expression of employees." Instead the justices concluded Hanson only sustained the relevant sections of the Railway Labor Act as "constitutional in its bare authorization of union shop contracts requiring workers to give 'financial support' to unions legally authorized to act as their collective bargaining agents." . . . "Clearly, [the Hanson court] passed neither upon forced association in any other aspect nor upon the issue of the use of exacted money for political causes which were opposed by the employment." The justices decided this failure to pass on "forced association" in the Hanson opinion left "questions of utmost gravity" for the Street case then before the Supreme Court.

In the Street case the Supreme Court found that money had been drawn from the union treasury to make political contributions, which they defined as a "forced association." The Court decided the use of compulsory union dues for political purposes violated the Railway Labor Act, not the Federal Constitution.

The majority opinion in Street included a lengthy history of Congressional debate for the 73rd Congress of 1934 discussing amendments to the Railway Labor Act. In the debate and discussions the justices admit "It was made explicit that the representative selected by a majority of any class or craft of employees should be the exclusive bargaining representative of all the employees of that craft or class." … Further they wrote, "Performance of these functions entails the expenditure of considerable funds. Moreover, this [Supreme] Court has held that, under the statutory scheme, a union's status as exclusive bargaining representative carries with it the duty fairly and equitably to represent all employees of the craft or class, union and nonunion." … Unions the justices admitted "advanced as their purpose the elimination of the "free riders" -- those employees who obtained the benefits of the unions' participation in the machinery of the [Railway Labor] Act without financially supporting the unions." However, they cautioned "One looks in vain for any suggestion that Congress also meant Section Two of the Railway Labor Act to provide the unions with a means for forcing employees, over their objection, to support political causes which they oppose."

In their Section III of the opinion, safeguarding the rights of dissent, the justices explain how Congress incorporated safeguards to protect dissenters. Here the justices quoted debate from congressional hearings and cited the original proposal to authorize a union shop. Phrasing in the revised law prevents a union shop agreement that would force the discharge of any employee for any cause except non-payment of dues. In the hearings, testimony included worry

employees could be discharged from criticizing their union. Organized labor officials then agreed to wording that made it explicit that dues collected from non-union employees in a union shop were to prevent the "free rider" problem, but with the proviso a union contract could not require discharge of an employee for any reason except non-payment of dues.

The discussion and inclusion of a free rider proviso brought a judicial conclusion in Street that "A congressional concern over possible impingements on the interests of individual dissenters from union policies is therefore discernible." From that decision the justices decided unions do not have "unlimited power to spend exacted money" which requires the justices to "delineate the precise limits of that power in this [Machinists v. Street] case.

In their Section IV, the appropriate remedy, the justices declare "the union shop agreement itself is not unlawful." Objectors "remain obliged, as a condition of continued employment, to make the payments to their respective unions called for by the agreement." . . . Their "grievance stems from the spending of their funds for purposes not authorized by the Act in the face of their objection, not from the enforcement of the union shop agreement by the mere collection of funds." However, "dissent is not to be presumed -- it must affirmatively be made known to the union by the dissenting employee." For those who make their dissent as occurred in the Street case, "a remedy would be restitution to each individual employee of that portion of his money which the union expended, despite his notification, for the political causes to which he had advised the union he was opposed." If funds cannot be traced or come from general funds then "the portion of his money the employee would be entitled to recover would be in the same proportion that the expenditures for political purposes which he had advised the union he disapproved bore to the total union budget."

And so ended the case of Machinists v. Street on June 19, 1961. Notice the justices interpreted the intentions of Congress to evaluate a statute; they looked in vain to find that Congress intended to allow agency shop fees to go for political support, but they did find it worthwhile to give some protection for unions against free riders without finding union dues an unconstitutional limit on free speech. (8)

Jump forward to May 23, 1977 and the decision in **Abood v. Board of Education of Detroit** after another group of union objectors made another attack on the union and agency shop, a right specifically granted by a Michigan statute. The U.S. Supreme Court took the case after Abood exhausted appeals in the Michigan Courts without relief. Appellant Abood claimed to the U.S. Supreme Court that collective bargaining in the public sector is inherently "political," and that to require them to give financial support to it is to require "ideological conformity." The justices disagreed but wrote "The differences between public and private sector collective bargaining simply do not translate into differences in First Amendment rights." . . . "We conclude that the Michigan Court of Appeals was correct in viewing this Court's decisions in Hanson and Street as controlling in the present case insofar as the service charges are applied to collective bargaining, contract administration, and grievance adjustment purposes."

However "We [the justices] do not hold that a union cannot constitutionally

spend funds for the expression of political views, on behalf of political candidates, or toward the advancement of other ideological causes not germane to its duties as collective bargaining representative. Rather the Constitution requires only that such expenditures be financed from charges, dues, or assessments paid by employees who do not object to advancing those ideas and who are not coerced into doing so against their will by the threat of loss of governmental employment." Like the Hanson case, however, the justices found no evidence to determine appropriate relief as the "complaints were only general ones." They remanded [returned] the case with instructions to use the Street method of determining relief. (9)

In 2014 in the case of **Harris v. Quinn** the National Right to Work Legal Defense Foundation, an anti-union group, financed a challenge to the common law doctrine in labor law established in the case of Abood v. Detroit Board of Education. In Harris v. Quinn the state of Illinois used federal funds for a Medicaid Rehabilitation Program designed for Americans unable to live in their own homes without assistance but unable to afford the expense of in-home care. The Rehabilitation program provides federal funds for states to pay personal assistants chosen from a state approved pool of personal assistants who provide the in-home care.

In the 1980's a majority of Illinois personal assistants voted to have Service Employees International Union (SEIU) represent them as their exclusive bargaining agent. SEIU petitioned the Illinois Labor Relations Board for permission to represent the Personal Assistants as their union, which at first the Board declined to allow. After some delay and discussion the Illinois legislature amended the state's Public Labor Relations Act by declaring personal assistants working in the Medicaid program to be public employees for purposes of collective bargaining. The Public Labor Relations Act specifically permits a collective bargaining agreement whereby non-union members in the bargaining unit pay an agency or fair share fee as their share of expenses for union services.

In 2010 three personal assistants in the bargaining unit petitioned a federal court for an injunction to end the non-union "fair share" as a violation of their constitutional rights to free speech under the first amendment to the constitution. Petitioners wanted the court to abandon the common law doctrine established in the Abood case. The district court and the Seventh Circuit Court dismissed the petition, but the Supreme Court agreed to hear the case. The Supreme Court voted 5 to 4 to strike down the "fair share" fee for SEIU, but only for the Rehabilitation Program.

The majority of five included a long discussion ridiculing the Abood opinion of the 1977 Supreme Court majority, but they decided not to overturn it. Instead they decided to restrict the "fair share" rules to what they declared to be "full-fledged" employees. To have the "fair share" rules apply to personal assistants, they wrote, . . . "asks us to approve a very substantial expansion of Abood's reach." Such an expansion has "important practical consequences" which "would invite problems."

The mention of practical consequences and problems came on page 20 of the 39 page majority opinion. Much of the remaining 19 pages described

the conditions of employment as full-fledged employees and how they differed from those of personal assistants they claimed to be partial public employees, but additional discussion infers problems. Justice Alito writing for the majority offered a parable: "Suppose, for example that a customer fires a personal assistant because the customer wrongly believes that the assistant stole a fork. Or suppose that a personal assistant is discharged because the assistant shows no interest in the customer's favorite daytime soaps. Can the union file a grievance on behalf of the assistant? The answer is no."

The majority worried that requiring a "fair share" fee for personal assistants in Illinois could bring an expansion beyond full-fledged employees to "individuals who follow a common calling and benefit from advocacy or lobbying conducted by a group to which they do not belong and pay no dues."

The majority admitted "the wages and benefits of personal assistants have been substantially improved; orientation and training programs, background checks, and a program to deal with lost and erroneous paychecks have been instituted; and a procedure was established to resolve grievances arising under the collective-bargaining agreement . . . and we will assume that this is correct." But the majority added that "the agency-fee provision cannot be sustained unless the cited benefits for personal assistants could not have been achieved if the union had been required to depend for funding on the dues paid by those personal assistants who chose to join." The majority did not reference a previous case for this claim of authority or give an example application for their assertion.

A blunt dissent of 25 pages, written for the minority by Justice Kagen, treats the majority opinion as a ramble of irrelevant excuses. Kagen would apply the Abood ruling as common law doctrine because "The only point in dispute is whether it matters that the personal assistants here are employees not only of the State but also of the disabled persons for whom they care." . . . Yet "Illinois sets all the workforce-wide terms of employment. Most notably, the State determines and pays the employees' wages and benefits, including health insurance (while also withholding taxes)."

Justice Kagan argues that Supreme Court "decisions have long afforded government entities broad latitude to manage their workforces, even when that affects speech they could not regulate in other contexts. . . . The "decision also enables the government to advance its interests in operating effectively—by bargaining, if it so chooses, with a single employee representative and preventing free riding on that union's efforts."

In a more blunt point, the minority argued, the majority declined to overrule the Abood doctrines as requested by the National Right to Work Legal Defense Foundation because it has been used for so long the Supreme Court has come to apply the rule as "a general First Amendment principle." As such the court has relied on "fair share" rules in deciding cases involving compulsory fees outside the labor context.

The majority must have decided it would be too difficult to write a legal justification to throw out compulsory fees just for labor unions. Ultimately they

did accept when a federal law requires a union to provide union services, the government can make a collective bargaining contract to allow the union to be reimbursed for their required services. Five justices needed some excuses why it should only apply to "full fledged" employees. It is worth noting that four Supreme Court justices, one district judge and at least two circuit court justices make a majority of federal judges voting to uphold the Abood ruling. However five Supreme Court Justices made up a little bit of law to help their anti-union constituents; just politics as usual.

For 58 years from 1956 to 2014 different majorities of different Supreme Courts found it constitutional for unions to operate union or agency shops and collect agency fees from non-members under the Railway Labor Act and the National Labor Relations Act. Notice in these Hanson, Street and Abood opinions the justices did not find reason to make constitutional claims. They merely ruled the Commerce Clause of the U.S. Constitution allows Congress the necessary authority to make national policy for unions as it did in the Jones and Laughlin case of 1937. They respected the wishes of a democratically elected Congress to create a method for exclusive union representation and eliminate free riders.

In 2014 Harris v Quinn petitioners returned to constitutional rights of free speech, but the Justices decided to fabricate a non-constitutional term, "full fledged" employee, to throw out an agency fee without a decision about free speech. Justice Alito writing for the majority patronized respondents and dissenters alike by finishing paragraphs with excuses like "[T]heir argument largely misses the point." And "This effort to recast Abood falls short." And "Respondents are mistaken." And "This argument flies in the face of reality." And "The Abood Court fundamentally misunderstood the holding in Hanson[.]" Court watchers knew the majority was warming up to do away with agency fees altogether, which came in 2018 in the case of Janus v. AFSCME. (10)

In the Supreme Court Case of **Janus v. AFSCME** a disgruntled Illinois employee named Mark Janus agreed to be the petitioner in a lawsuit intended to overturn legal doctrine in the case of Abood v. Detroit Board of Education, by repeating the same claims still another time. Appellants complained among other things the union engaged in "political and other ideological activities" that deprived them of "freedom of association protected by the First and Fourteenth Amendments."

In Janus v AFSCME the five Supreme Court justices voting to overrule Abood, Street and Hanson were appointed by a Republican President; the four voting to uphold were appointed by a Democrat President. The opening lines of the majority opinion declared the Abood "arrangement violates the free speech rights of nonmembers by compelling them to subsidize private speech on matters of substantial public concern." … "We recognize the importance of following precedent unless there are strong reasons for not doing so. But there are very strong reasons in this case." . . . "Abood was poorly reasoned."

The majority opinion written again by Justice Alito concludes in Section III "In Abood, the Court upheld the constitutionality of an agency-shop arrangement like the one now before us, but in more recent cases we have recognized that this

holding is 'something of an anomaly.'" It can be noted the "recent cases" that make Abood something of an anomaly are Harris v Quinn and Knox v SEIU, both Alito opinions; Alito cites himself as authority for Janus v AFSCME.

Here is the Alito response to the "poorly reasoned" Abood opinion. Quoting from Alito in Section III he declares the "First Amendment forbids abridgement of freedom of speech." . . . "Compelling individuals to mouth support for views they find objectionable violates that cardinal constitutional command, and in most contexts, any such effort would be universally condemned. Suppose, for example, that the State of Illinois required all residents to sign a document expressing support for a particular set of positions on controversial public issues—say, the platform of one of the major political parties. No one, we trust, would seriously argue that the First Amendment permits this."

"Perhaps because such compulsion so plainly violates the Constitution, most of our free speech cases have involved restrictions on what can be said, rather than laws compelling speech. But measures compelling speech are at least as threatening."

"We have therefore recognized that a 'significant impingement on First Amendment rights' occurs when public employees are required to provide financial support for a union that takes many positions during collective bargaining that have powerful political and civic consequences." . . . "Because compelled subsidization of private speech seriously impinges on First Amendment rights, it cannot be casually allowed."

Read the phrases again but pare away the surplus verbiage and you will find a tautology, true by its own terms. Alito declares first amendment rights prevents abridging free speech, and then defines agency fees as compulsory speech. Next he declares compulsory speech violates first amendment rights. It's a perfect circle, empty of reasoning, legal or otherwise. Unions have only Alito's personal opinion to define agency fees as a violation of the first amendment.

From here Alito tells readers he "will give standard reasons for agency fees and alternative rationales proffered by respondents and their amici," but as Justice Kagen complained in her dissent the majority just dismissed them. Alito writes the agency shop is unnecessary because postal workers have exclusive representation, but in right to work states "employees are not required to pay an agency fee and about 400,000 are union members." Section 14(b) of the National Labor Relations Act as amended gives the state legislatures authority to eliminate dues check off and hence eliminate the union and agency shop. Many states have done that and so the justices claim "millions of public employees in the 28 States that have laws generally prohibiting agency fees are represented by unions that serve as the exclusive representatives of all the employees."

The democratically elected legislatures of 28 states have chosen a policy by majority vote to apply section 14(b), but it's one thing to argue agency fees are unnecessary and another to declare them unconstitutional as no other Supreme Court majority has ever done. The other 22 legislatures made the democratic decision to allow the agency shop.

Union organizing requires a majority vote of a government defined

bargaining unit in order to be a union. Not once in any of these majority opinions do I find the justices mention, much less defend, interfering in a democratic election. In the three cases – Hanson, Street, Abood – the justices did not address constitutional questions, which allowed them to avoid interfering with democratic votes. They did not find wording in the law that allowed using dues for political purposes and so filled in a policy they thought consistent with the law passed by Congress. They at least show respect for a democratically elected Congress to adjust public policy consistent with the constitution and will of the people.

Alito makes no attempt to justify taking up the cause of disgruntled losers angry with the results of a democratic election. Around the country many states and localities require a voter referendum to pass bond funding for public projects like streets and highways. If a majority votes yea, I am unaware disgruntled losers can deduct their share of project costs from their property taxes. I am unaware in democratic votes for bond funding that objectors can claim a violation of free speech. I find no mention of examples of democratic elections where Supreme Court justices protect the losers from the normal process of majority rule.

Alito paid homage to precedent – stare decisis - in his opening lines but it was a patronizing reference. In Janus the majority ignores precedent entirely and responded as politicians to their union hating right wing constituency they were appointed to please and protect. Federal judges take an oath to hear cases without regard to persons, which suggests in Janus v AFSCME five of them in this 5 to 4 ruling violated their oath. (11)

Labor and the Courts – the Right to Strike

In spite of the length and complexity of the labor law and the varied terminology that goes with enforcing it, corporate legal strategy opposing labor relations fit into two broad categories. The first category attempts to evade or eliminate the legal duty to bargain. To evade bargaining corporate American can apply varied election campaign strategies to defeat union representation elections and refuse to accept authorization card majorities. If a union gets past the election and card hurdle to win union representation, it will need a collective bargaining contract, but the Supreme Court defined impasse as a procedure to evade bargaining. Recall the previously mentioned rulings starting with the case of NLRB v. American National Insurance Co. from 1952. There followed the case of the NLRB v. Borg-Warner Corp. of 1958 and H. K. Porter Co., Inc. v. NLRB of 1970. Where an anti-union election campaign fails to defeat union organizing, impasse will be a back up to evade bargaining. While unfair labor practice disputes have a variety of names, the names that apply to disputes during organizing campaigns and before signing a first union contract primarily attempt to evade the duty to bargain.

In the second category of corporate America's legal strategy attempts to deny an organized union the legal right to strike, boycott or picket. In 1935 Congress wanted a labor law that would avoid the economic disruption from strikes used to get corporate America to the bargaining table. Strikers knew they could be fired and replaced before 1935 but the 1935 law created a legal right

to strike that protected strikers from dismissal and replacement. The previously mentioned 1938 Supreme Court ruling in NLRB v. McKay Radio severely limited the right to strike. Strikers could be dismissed and later reinstated after the Board determined the strike was caused by an unfair labor practice of management. Legal and political efforts to restore the right to strike to bargain for better wages and benefits have continued in various forms since then. All have failed.

The National Labor Relations Act (NLRA) Section 13 defines the right to strike: "Nothing in this Act shall be construed so as to interfere with or impede or diminish in any way the right to strike." Since 1947 NLRA Section 8(d) provides that collective bargaining contracts cannot be modified except by serving notice on the other party sixty days in advance including an offer to meet and negotiate. The existing contract must be continued in operation during the sixty days after notification and continued without a strike or lock-out. Any employee that strikes during the 60 day period will no longer be an employee by stipulation in sub section 8(d)(4).

Section 8(d) appears to ban all strikes during the contract period, but that idea got an early test in the case of **Mastro Plastics v. NLRB** of 1956. Mastro Plastics, a New York based manufacturer, operated a single plant with employees organized in Local 3127, of United Brotherhood of Carpenters and Joiners of America. In August 1950, Local 65 of the Wholesale and Warehouse Workers Union started an organizing campaign at Mastro to replace the existing union. Mastro opposed the effort claiming Local 65 was a communist union.

To halt this campaign Mastro management sought to remove Local 3127 as the bargaining unit and install Local 318 of the International Brotherhood of Pulp, Sulphite and Paper Mill Workers, but local 3127 refused to go along. While Mastro actively assisted Local 318 officials to transfer their employees to Local 318, other employees worked against that transfer. Mastro management made threats of reprisal and offers of benefits to stop them and ultimately fired the leader of the opposition, employee Frank Ciccone. The firing brought a strike of all employees on November 10, 1950.

On December 11, some employees returned to work and 76 others lost their job. In January 1951 Local 3127 filed unfair labor practice charges given the flagrant violations of Section 8(a)(1), (2) and (3). The administrative law judge agreed and the Board affirmed and voted to reinstate fired employees with back pay. Mastro petitioned the Second Circuit Court arguing that a no strike clause and Section 8(d)(1-4) justified the firings. The 2nd circuit affirmed the Board's order; the Supreme Court took the case on certiorari and affirmed as well.

Both the circuit court and the Supreme Court followed the 1938 McKay ruling, which recall allows firing and replacement of strikers "to protect and continue his business" and as long as a strike occurs without an unfair labor practice violation, which defines an economic strike. In this case the Board ruled rather quickly and so the petition to the circuit court occurred after the Board's finding of an unfair labor practice. To apply the word strike as written in 8(d) to be all strikes, regardless of misconduct, would give incentive to management to break strikes with unfair labor practice methods, which the justices refused to

allow. (12)

The Mastro case was an easy case, but retained the status quo while passing up the opportunity to address the definition of a strike and the contradictions in the MacKay ruling. One often cited opportunity to re-examine McKay came in the 1963 case of **NLRB v. Erie Resistor Corporation** In this case Erie Resistor had a collective bargaining contract with Local 613 of the International Union of Electrical Radio and Machine Workers set to expire March 31, 1959. When the contract expired all 478 employees working at that time left work in a strike. Even though there were 450 employees on layoff the company had to transfer clerks, engineers and other non-bargaining unit employees to production jobs to have 15 to 30 percent of normal production. On May 3 the company notified union members it would begin to hire replacements who would not lose their jobs when the strike ended. Over a month later on June 10, the company announced a hiring policy that awarded 20 years' more seniority to replacements and to strikers who returned to work, a. k. a. crossovers, "which would be available only for credit against future layoffs[.]"

The union opposed the "super seniority" clause as an unfair labor practice discrimination, but after June 10 management succeeded in finding enough replacements and crossovers to resume production. By July 17 the union capitulated and signed a collective bargaining contract with 20 years super seniority included but with the understanding their discrimination charge would go to the National Labor Relations Board.

In their defense, Erie attorneys cited the McKay ruling, which justified hiring replacements for strikers as a business necessity, which made it an economic strike. The evidence in the Erie case suggests Erie Resistor adopted the super seniority policy out of business necessity. Erie Resistor of Erie, Pennsylvania manufactured electronic components, electromechanical assemblies, and custom molded plastics for sale to other companies, but the employment numbers cited in the court opinions suggests a cyclical business subject to repeated layoffs. When the strike started 478 employees were working and 450 were on layoff. For Erie to break the strike they needed to reassure replacements and crossovers they would be the last laid off and the first recalled in order to lure them back to work and break the strike. By September, 442 were back to work. By May 1960, 202 were laid off suggesting further that super seniority was a business necessity as defined in McKay. The administrative law judge agreed with Erie attorneys and applied the McKay precedent. Accordingly, he dismissed the case.

The Board refused to agree and treated super seniority as a Section 8(a)(3) unfair labor practice, which recall prohibits an employer from discriminating "in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization. The Board weighed employee rights to be free of discrimination against the employers right to operate out of business necessity as defined in McKay. The Board decided in favor of the union, after which all three – Erie Resistor, Local 613, NLRB – petitioned the Third Circuit Court for review.

The Third circuit justices declared "An employer in the ordinary management

of his affairs may be required to make business decisions discriminatory in their probable consequences. Such discrimination is not in and of itself illegal." The justices knew perfectly well super seniority was designed to lure scabs to break the strike, which fits the McKay definition of business necessity. They also knew breaking a strike by the discriminatory use of seniority discriminates in tenure of employment and discourages membership in a union in violation of Section 8(a)(3) of Taft-Hartley Act. Instead of weighing the interests of the employer's business necessity against the interests of employees to be free of discrimination the justices said discrimination must show an "illegal motive" but whether Erie had an illegal motive they did not know. They returned the case to the Board to determine motive, i.e. Remand.

The case moved to the Supreme Court where Justice Byron White writing for the Court declared the Third circuit "erred in holding that, in the absence of a finding of specific illegal intent, a legitimate business purpose is always a defense to an unfair labor practice charge." . . . Justice White declared this case requires the court to weigh "the interests of employees in concerted activity against the interest of the employer in operating his business in a particular manner and of balancing in the light of the [NLR]Act and its policy the intended consequences upon employee rights against the business ends to be served by the employer's conduct." The majority opinion ignored "illegal motive" and reversed and remanded the case to the Third circuit on condition of this ruling.

To an outside observer it might appear replacing strikers by offering permanent jobs to crossovers and scabs out of business necessity as in McKay Radio could hardly differ from replacing strikers by offering permanent jobs to crossovers and scabs that includes a seniority benefit against layoffs as in Erie Resistor.

Justice White asserts it makes a difference that super seniority in Erie Resistor affects the job tenure of all strikers while asserting in McKay it affects only some strikers, but the claim is irrelevant even if its true. He offers this assertion as a transparent excuse to ignore the replacement issue in the MacKay ruling while helping unions just a little. To avoid confusion he added "We have no intention of questioning the continuing vitality of the Mackay rule, but we are not prepared to extend it to the situation we have here." It was politics all the way but the howling from corporate America would have been unbearable for the justices to endure. Economic strikers can still be dismissed and labor law says ok. (13)

Two more permanent replacement disputes followed the Erie Resistor ruling, In the first the **NLRB v. Great Dane Trailers** of June 1967 the union gave the required 15 days notice the contract required for a strike that began May 16, 1963 when 350 of 400 employees left work. Great Dane continued to operate with nonstrikers, replacements and some crossovers. The union contract provided accrued vacation benefits will be paid on the Friday nearest July 1 of each year even for cases of "lay-off, termination or quitting." On July 12, strikers requested their vacation pay while the strike continued. Great Dane stalled but then decided to pay vacation benefits to all those employed July 1, 1963 based on a "new policy" determined by management without consulting the union. This

new policy excluded strikers.

The union filed an unfair labor practice claiming discrimination against the union in violation of Section 8(a)(3). A hearing followed and the administrative law judge ordered accrued vacation pay for strikers and the Board agreed. The NLRB had to petition the Fifth Circuit Court for enforcement. The justices there agreed the facts showed discrimination against the strikers, but with insufficient evidence to prove unlawful motivation in the discrimination. The Fifth Circuit would not enforce the order; the Supreme Court took the case on a writ of certiorari.

Justice Earl Warren writing for the majority agreed there was discrimination in favor of replacements and against strikers, which discourages union organizing in violation of Section 8(a)(3). However, Justice Warren argued the court should consider the motivation behind a management decision if the effect of discrimination was "comparatively slight," then the union must show definite anti-union motivation. If the employer can show some legitimate and substantial business justifications rather than anti-union bias the court will need to evaluate motivation in their decision. However, in this case, Great Dane made no attempt to justify their decision, which made motivation irrelevant. The Supreme Court reversed and enforced the Board's order, but again ignored MacKay. (14)

In a similar case of **NLRB v. Fleetwood Trailer Co., Inc.** decided December 1967 collective bargaining efforts failed to reach agreement and around half of 110 employees left work in a strike on August 6, 1964. Management cut production from twenty trailers a week to ten, and cut material orders accordingly. The strike ended August 18 when the union accepted a new contract offer. The union requested reinstatement of strikers but management refused to reinstate strikers "right at that moment." All agreed it was Fleetwood's intention "at all times" to increase production to the full pre-strike volume "as soon as possible."

On August 20 six strikers applied for reinstatement, and numerous times afterward, which Fleetwood managers rejected with the explanation they had no jobs available at that time. However, from October 8 to October 16, Fleetwood hired six new employees while ignoring the applications of the qualified strikers. Then, from November 2 to December 14, Fleetwood reinstated the six strikers.

The union filed an ULP claiming discrimination against union members as a violation of Section 8(a)(3). A hearing followed and the administrative law judge found discrimination against union members and ordered back pay for the time from their October dates until reinstatement. The Board agreed, but the Board had to petition the Ninth Circuit Court for enforcement. The Ninth Circuit held the right of reinstatement applied only to the date of application, which in this case was August 20. Since no jobs were available at the time the justices would not enforce the Board's order. The Supreme Court took the case on a writ of certiorari.

Justice Fortas writing for the majority reversed the Ninth Circuit. Recall from Section 2(3) a striker continues to be an employee if he or she has not obtained regular and substantially equivalent employment. In NLRB v. Fleetwood management hired only 21 replacements for 55 strikers, assuring jobs were open at the end of the strike. The Supreme Court agreed with the Board that the strikers

were still employees because the employer had neither abolished nor filled their jobs, but intended at all times to return to full production "as soon as practicable." Unfilled jobs following a strike does not support a claim for a "legitimate and substantial business justification" for refusing to rehire strikers.

Recall from the 1938 McKay rulings that strikers lost their jobs, which were filled by people promised employment as permanent replacements in order to continue operation of the business. Both the Great Dane and Fleetwood rulings use the phrase "legitimate and substantial business justifications." In this Fleetwood case jobs remained open following a strike, which shows strikers can expect to retain a right of first refusal. Notice though if Fleetwood had been able to replace everyone with permanent replacements, the McKay and Erie Resistor rulings makes it an easy matter to claim a "legitimate and substantial business justification."

In the federal courts a strike is not just a strike, but either an unfair labor practice strike or an economic strike. A strike to protest an unfair labor practice defines an unfair labor practice strike that follows a Board ruling. Unfair labor practice strikers are entitled to reinstatement with back pay if they offer to return to work, even if permanent replacements for them have been hired. Without an ULP ruling a strike becomes an economic strike. Economic strikers keep their employee status but the employer does not have to offer reinstatement if they can show "legitimate and substantial business justifications." These legal definitions were quite important in the case of Belknap v. Hale. (15)

In the 1983 case of **Belknap v. Hale**, the International Brotherhood of Teamsters, Local No. 89 represented warehouse and maintenance employees at Belknap, an incorporated seller of hardware and building materials. The union contract expired January 31, 1978, but negotiations reached impasse instead of agreement. A strike followed February 1 with 400 employees leaving work. Belknap made a unilateral $.50 an hour wage increase to employees that did not strike and placed an advertisement in a local newspaper offering jobs that "permanently replace striking warehouse and maintenance employees." Those who applied and took jobs signed their name under a single sentence that made them "a regular full time permanent replacement." They did not call the replacements scabs even though they were.

The union filed unfair labor practice charges with the NLRB, claiming that the unilateral wage increase was an unfair labor practice in violation of sections 8(a)(1), (3), and (5) of the NLRA. Belknap filed countercharges against the union claiming union misconduct during the strike. Belknap continued to make written claims to replacements in letters April 4 and April 27 asserting replacement agreements would be honored. An NLRB hearing followed July 19, 1978 where the regional NLRB director negotiated a compromise that settled the strike. Belknap agreed in writing to rehire 25 strikers and lay off the replacements.

The laid off replacements filed suit in a Kentucky state court for breach of contract and misrepresentation demanding compensatory damages of $250,000 per person and an equal amount in punitive damages: $500,000 per person. The Kentucky Circuit court granted Belknap summary judgement, arguing it was

a matter for federal labor law that preempted state law. Appeal was taken and the Kentucky Appeals court reversed arguing federal labor law was preempted as a peripheral concern to deeply rooted local feelings and the damage suit can proceed. The Kentucky Supreme Court accepted the Appeals court ruling. The U.S. Supreme Court accepted Belknap's petition for a writ of certiorari and affirmed the Kentucky Appeals court opinion.

In resolving the Belknap labor dispute Justice White wrote a majority opinion for five justices affirming that a lawsuit can go forward in state court. Justice Blackmun wrote a separate concurring opinion and Justice Brennan wrote a dissent for the remaining three justices. All nine justices could not help but notice that Belknap and the union settled their differences and ended their strike with a voluntary agreement. Federal labor law broadly intends for labor and management to reach an independent settlement based on the free play of their economic powers rather than regulation. The rights in Section 7 and unfair labor practices in Section 8 define the primary federal rules for the conduct of a collective bargaining contest and here was an example of its good effect.

However, for reasons unknown, but made clear early in Justice White's opinion, the majority decided to sympathize with the scabs at the expense of Belknap and the union. The justices called the scabs "innocent third parties" and took up their cause with consistent fervor and the elaborate excuses necessary to ignore federal court preemption of state courts.

The U.S. Constitution defines Federal court preemption of state courts. Article VI declares "[T]he Constitution and Laws of the United States ... shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." Federal law preempts state law or blocks the use of State Law in conflict with federal law. Applied to American labor law that means the National Labor Relations Act should apply in place of any state law conflicting with the rights defined and protected by NLRA.

As all can expect, the disgruntled scabs from Belknap were not the first group to attempt to take their labor dispute into a state court. In times past management has tried to get disputes over conduct in a labor dispute not specifically addressed in federal labor law into state courts, and with some success, which has forced the U.S. Supreme Court to develop a preemption doctrine for federal-state preemption questions. Like so many doctrines in the law, the justices found excuses to make exceptions in Belknap v. Hale.

The majority cited two cases as precedent for Belknap: **Sand Diego Building Trades Council v. Garmon** from 1959 and **Machinists v. Wisconsin Employment Relations Commission** from 1976. In Machinists the Board ruled a refusal to work overtime was permitted conduct in a strike under Section 7 and Section 8 of the NLRA. The Wisconsin Employment Relations Commission explained that refusing to work overtime was a violation of Wisconsin Employment law and the Wisconsin courts including the Wisconsin Supreme Court agreed. The U.S. Supreme Court reversed. In both cases the Supreme Court ruled against state court jurisdiction and did so in clear and emphatic terms. As so often happens

the U.S. Supreme Court in their San Diego and Machinists rulings left open the possibility of exceptions. They could allow states the power to regulate activity that was of a "peripheral concern" of the NLRA or allow conduct "deeply rooted in local feeling" as long there is no compelling congressional direction. These exceptions in Garmon and Machinists, rather than the precedent from these rulings, became the justification for state court intervention in Belknap.

In Belknap v. Hale the NLRB regional director intervened to help reach a settlement before an administrative law judge and the Board could resolve the ULP claims already filed under Section 8(a) of the National Labor Relations Act. To Belknap and the union this assured federal law preempts state law, but left the type of strike indeterminate. If the strike was an unfair labor practice strike the strikers were entitled to reinstatement with back pay. If the strike was an economic strike, striking employees continue to be employees, but employers will not be required to offer reinstatement if permanent replacements were hired because of "legitimate and substantial business justifications."

Given the legal cases from MacKay through Fleetwood that define and distinguish ULP and economic strikes, federal law does not permit making unconditional promises of permanent employment to scabs. Either type of strike means scabs could lose their jobs when the law requires strikers to be reinstated. The majority opinion excused this concern with the claim that employers can offer conditional employment, warning of layoffs in advance. Since management hires scabs to pressure a union to break a strike, conditional offers would need to have the Supreme Court define them as a "legitimate and substantial business justification" to justify replacing strikers.

The majority stated and restated their conclusion in slightly different phrasing over and over. For example, "It is one thing to hold that the federal law intended to leave the employer and the union free to use their economic weapons against one another, but is quite another to hold that either the employer or the union is also free to injure innocent third parties without regard to the normal rules of law governing those relationships."

To introduce bounties for scabs in state courts in 1983 and suggest that does not, and could not, conflict with the National Labor Relations Act sounds like an oxymoron not law. The three dissenters called for preemption and politely commented the "breach of contract claim seeks to regulate activity that may well have been required by federal law. . . . This sort of regulation is intolerable." Since the Board has considered unilateral wage changes an ULP violation many times, Belknap would have been expected to reinstate strikers with back pay if the case had not been settled, which we can suspect is one reason they settled. No where in federal law do scabs have rights to contract damages, a notion that conflicts with any state court that decides they do.

In spite of Belknap arguments for preemption and the amicus briefs in support by the AFL-CIO and the Board, the majority remained adamant; lawsuits by scabs pose no burden on, or conflict with, labor-management negotiations. They declared "[E]ven had there been no settlement and the Board had ordered reinstatement of what it held to be unfair labor practice strikers, the suit for

damages for breach of contract could still be maintained without in any way prejudicing the jurisdiction of the Board or the interest of the federal law in insuring the replacement of strikers."

The majority did not attempt to define or address the meaning of permanent replacement for legal purposes. Since Americans work at will and can be fired at anytime with or without cause, it can reasonably be asserted there is no such thing as permanent replacement. Unions negotiate contracts in order to give some job protections against arbitrary dismissal or dismissal without cause. Unless a written contract defines permanent replacement, it use in strikes means management has no legal obligation to rehire strikers and lay off the scabs, but it does not grant rights to scabs under any definition. This Belknap case illustrates a Supreme Court with a self righteous "bee in its bonnet." but it further complicates strikes and makes a settlement harder to get for labor and management, but especially for labor that wants their members to keep their jobs. (16)

In 1989 in **Trans World Airlines, Inc. v. Independent Federation of Flight Attendants** the contract between TWA and the Independent Federation of Flight Attendants (IFFA) ended July 31, 1984. However, a strike of flight attendants did not start until March 7, 1986, primarily over issues of seniority rights. Seniority allowed flight attendants priority over their schedules, base of operations and order of layoffs for the many furloughs common to their work. TWA informed their flight attendants before and during the strike it would continue operations by hiring permanent replacements, by continuing to employ crossovers, and by rehiring any striker who abandoned the strike to return to any available vacancies. Management also warned that senior full-term strikers would not be permitted to displace permanent replacements or junior crossovers, and could be left without an opportunity to return to work.

After 72 days on May 17, 1986, the Independent Federation of Flight Attendants (IFFA) made an unconditional offer to have the nearly 5,000 striking flight attendants return to work. At that time there were 1,220 flight attendants that did not strike or that returned to work before May 17 and 2,350 newly trained flight attendants. TWA accepted the IFFA offer, but refused to displace crossovers who were working as of May 17. Initially TWA recalled only 197 full-term strikers to fill available vacancies. By May 1988, 1,100 full-term strikers had been reinstated and by a post strike deal they returned with full seniority.

However, IFFA wanted all the full-term strikers rehired by displacing the newly hired flight attendants and less senior crossover employees. The new dispute over incentives for crossovers acting as strike breakers renews the identical discrimination issue from Erie Resistor. The union took the replacement issue to federal district court rather than an unfair labor practice claim because airlines come under the jurisdiction of the 1926 Railway Labor Act similar to, but not identical to, the National Labor Relations Act (RLA). Congress wanted to avoid national transportation shutdowns from railroad labor disputes and included the airline industry with railroads in 1934. The RLA like the NLRA has a subsection defining the right to strike and bars discrimination against union members in the exercise of their right to strike.

The district court ruled the full-term strikers were not entitled to displace the junior crossovers with less seniority or the 1,220 new hires employed by TWA immediately after the strike commenced. The 8th Circuit Court agreed that full-term strikers could not displace the 1,220 fully-trained new hires, but concluded full-term strikers could displace crossover employees, which ruling followed the discrimination ruling in Erie Resistor. The Supreme Court took the issue of discrimination on a writ of certiorari and reversed the circuit court. There were two vigorous dissents by Justice Brennan and Justice Blackmun.

Justice O'Connor wrote the opinion for the majority where she decided "[C]arefully drawn analogies from the federal common labor law developed under the NLRA may be helpful in deciding cases under the Railway Labor Act." She selected her precedents favoring TWA by using the MacKay ruling to support replacing strikers, but refused the precedent in Erie Resistor for management's use of crossovers. Instead of defining the financial incentives management used in Erie Resistor as discrimination, she made them a right for employees to break with their union and do as they please.

Her declaration included "[I]n virtually every strike situation, there will be some employees who disagree with their union's decision to strike and who cannot be required to abide by that decision. . . . To distinguish crossovers from new hires in the manner IFFA proposes would have the effect of penalizing those who decided not to strike in order to benefit those who did. . . . We see no reason why those employees who chose not to gamble on the success of the strike should suffer the consequences when the gamble proves unsuccessful."

The RLA subsection defining the right to collective bargaining is much longer and more descriptive than the definition in the NLRA. IFFA attorneys noted this difference as a reason to deny crossovers the right to replace full-term strikers. The clause reads in part "[I]t shall be unlawful for any carrier to interfere in any way with the organization of its employees . . . or to influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of a labor organization. . . ." The words "influence" and "coerce" appear relevant to the management use of financial incentives to influence strikers to leave the strike and cross a picket line.

Justice O'Connor noted "[T]he NLRA cannot be imported wholesale into the railway labor arena. Even rough analogies must be drawn circumspectly, with due regard for the many differences between the statutory schemes." She refers to management and union strategies to prevail in a labor dispute as "self-help" and that some of the self-help strategies used under the guise of the RLA are "wholly inexplicit as to the scope of allowable self-help." She further notes that some previous and wholly inexplicit cases go for the union and some for management, but in this case of TWA versus IRRA we will be justified for them to go for management.

Justice Brennan saw right through the majority position. He explained Justice O'Connor objected to "penalizing those who decided not to strike in order to benefit those who did" by allowing TWA to single out full-term strikers faithful to their union for penalty in order to benefit crossovers who abandoned

the strike and their union. She ignored mention of the court's basis for doing that. Justice Brennan concluded there was none, and added "unless it is perhaps an unarticulated hostility toward strikes."

Justice Brennan made note "the NLRA does provide a basis for resolving this question. It requires simply that, in making post-strike reinstatements, an employer may not discriminate among its employees on account of their union activity." . . . "If an employer may not discriminate -- in either direction -- on the basis of the employee's strike activity, then it follows that the employer must make decisions about which employees to reinstate on the basis of some neutral criterion, such as seniority."

Justice Blackmun added additional dissent by noting that the ruling does not define or even suggest "any limit on a carrier's exercise of self-help during a strike" and that any limits to employer conduct that might result comes from "the most extraordinary circumstances." He reminded the majority that union representation comes from a democratic vote of a majority that binds all to the benefit and burden of a collective decision. The ruling makes crossovers into free riders, showing the Court's contempt for the principles of democracy at least for the working class. (17)

The right to strike and then be replaced continued to be a contentious matter for labor unions after these strike and replacement law cases petered out around 1990. Legislative efforts failed during the Carter and Clinton administration and then President Clinton wrote Executive Order 12,954 asserting authority under the Federal Property and Administrative Services Act, a.k.a. the Procurement Act, to bar government contractors from hiring permanent replacements. Corporate America immediately challenged this obviously political move in federal court. The president claimed the Procurement Act allowed him broad authority to make procurement decisions and have the secretary of labor administer the E.O. If the Secretary finds a contractor has replaced lawfully striking workers, it will be "appropriate to terminate the contractor." Contractors will remain debarred from further contracts until the dispute with the lawfully striking workers is resolved. The Procurement Act does allow authority for the President to make unchallenged decisions while deciding for one government contractor over another, but no great expertise will be needed to realize the Clinton E.O. turns part of the administration of the NLRA over to the secretary of labor.

The case ended February 2, 1996 in the District of Columbia Circuit Court, which invoked preemption doctrine and even mentioned the Garmon and Machinists precedents concluding "No state or federal official or government entity can alter the delicate balance of bargaining and economic power that the NLRA establishes, whatever his or its purpose may be." . . . "We, therefore, conclude that the Executive Order is regulatory in nature and is preempted by the NLRA, which guarantees the right to hire permanent replacements." So much for the Clinton E.O. but we have to wonder why Bill Clinton with has Yale law school credential would push something like this? Your right to strike includes the right to be fired. (18)

The wording of the NLRA that protects the right to strike remains as

written in 1935, but the federal courts have turned it into an opportunity to be fired. Congress could restore the unadulterated legal right to strike but given the power of minority votes in Congress and corporate America's determination, Congress has done nothing and no sign exists they ever will. Many circuit court and Supreme Court justices have come and gone since 1938, but no majority of five has stepped forward to modify the MacKay ruling or restore the right to strike. The longevity of the ruling suggests Supreme Court justices find no sympathy toward solidarity in the working class. Their rulings reflect their views that management always knows best and should have its way against the working class.

The Sorry State of the Working Class

On April 13, 2016 during the presidential primaries the New York Times ran an op-ed piece entitled "Foiling Obama, Congress Made Trump." In it journalist Steven Rattner chastised Republicans for failing to have an alternative to counter Trump's message to his base, which he defined as white, middle aged working class men without college degrees. "[Y]ou created the anger that lifted his candidacy by years of systematically and effectively preventing passage of legislation that might have ameliorated the tough economic state of Mr. Trump's core voters."

The Rattner Republicans can be defined as the small number of Republican Party officials that have their own self-serving agenda, but expect to ignore the Republican voters that do not necessarily agree with them. Do not assume Republican voters want to do away with Social Security or Medicare and Medicaid and they might even support a higher minimum wage. While Trump offered some economic protections to the working class, his ability to take over the Republican Party and its agenda comes primarily from the same racist agenda as George Wallace back in 1968, and from the Jim Crow south before that. He is also more violent and more vulgar.

Trump might not be so powerful if Democrats would protect the working class as their primary agenda. Obama did have some success with his efforts to benefit the working class, which Rattner graciously summarized. They included a cut in the payroll tax, an infrastructure bank to create construction jobs, a larger child tax credit, community college investments, an expanded earned income tax credit, making retirement plans portable across employers, tax credits for manufacturing communities, and wage insurance; all opposed by Republicans

The Earned Income Tax Credit provides relief for individuals and families earning poverty level wages without costing corporate America a dime. The government supplies additional income through the personal income tax bureaucracy, which subsidizes employers that continue to pay lower than self-supporting wages. Senator Russell Long of Louisiana first sponsored the idea as an alternative to the minimum wage, which makes Republican opposition an especially grimy form of class warfare.

Further, Obama was able to raise the minimum wage to $7.25 an hour during his first two years in office but could not get cost of living adjustments

after 2009 from Republican opposition. Obama tried to amend the overtime rules in the Fair Labor Standards Act to get more people a chance to earn time and half for work over forty hours, but the Republicans howled against it and with the help of the courts ended it. Anyone earning over $23,660 has no right to overtime if an employer chooses to put them on a salary. Two people working sixty hour weeks equal three people working forty hour weeks. Unpaid overtime helps add to the already massive oversupply of labor. Two decades of higher productivity has eliminated millions of jobs and helped add to the surplus of labor, which Republicans were happy to ignore.

"Foiling Obama" helps establish he tried harder and did more for the working class than his two democratic predecessors, but Democrats had the 111th Congress and did little with it for labor beyond a raise in the minimum wage. His last six years were a struggle and he did nothing to turn back the tax blunders of 2003, when he had the chance. (19)

The tax blunders of 2003 came from the George W Bush era tax cuts that had a ten year expiration date, a necessary concession to get the additional votes for passage by Congress. If the expiration date passed without a legislative renewal then the Personal Income Tax reverted to what it was right before the Bush tax cuts. Negotiations for renewal and adjustments began as the 2013 deadline approached, which created a position of enormous advantage for President Obama. All he had to do was let the thing expire and keep talking if he could not get the changes he wanted. If he had done that one especially disgusting feature of the Bush tax cuts would have expired with it. The especially disgusting feature favored income earned from corporate dividends with lower tax rates that did not, and still do not, apply to wage income, or social security income or pension income.

A dollar of personal income provides a dollar of spending power without regard to its source or label. Taxing dividends less than wages has no financial advantage funding government, but it cuts tax rates in favor of those with stock portfolios rather the jobs with wages. It makes the federal personal income tax less progressive, or regressive – tax rates fall as incomes rise - and means those with the same income will pay different taxes depending on how they earn their income rather than how much.

In 2003, the first year of the Bush Tax cuts, the tax rate on general dividend income was capped at 15 percent. A worksheet was added to the Form 1040 instructions with an algorithm that separated dividend income from other taxable income. Taxable income without the dividends, such as wages, was taxed at rates starting at 10 percent and rising to 35 percent for taxable income over $311,950, while dividend income was taxed at 15 percent, or 20 percent lower than the 35 percent applied to the highest personal income. Since the median family income in 2003 was $43,318, the 20 percent rate reduction applied for those with taxable income over $311,950, a reduction that means a large savings for the highest incomes. Many years of annual tax savings reinvested in the stock market year by year might be a tidy little nest egg. However, there is no reason to speculate how much it might be. It is not difficult to generate dollar amounts from the tax rate schedules and stock market returns for the years after 2003.

If a couple had $2,500,000 in taxable income in 2003 and $1,500,000 in dividend income but all the $2.5 million of taxable income paid tax at the same tax rates as wages, the personal income tax would be $849,643.00. However, with the favor lower rate for dividends on the $1,500,000, the personal income tax drops to $549,643.00, a savings of $300,000 given the tax rate for dividends drops from 35 percent to 15 percent. In 2003 that $300,000 would have purchased just over 11,961 shares of Microsoft Corporation stock at $25.08 a share, the price on April 1, 2004. On April 1, 2021 the 11,961 shares had a value of $2,820,045.00. If we have our hypothetical couple continue purchasing shares with their annual dividend tax savings each April until 2021 they would own 147,190 shares of Microsoft stock worth $ 34,703,091.65.

Dividend tax savings and the advancing inequality they create helps explain a new term in the United States: the Teardown. Teardown has become a noun that defines a house about to be demolished and replaced in the same space with another house between four and eight times bigger. For example, drive or walk through north Arlington, Virginia and there will be treeless squares of plowed ground along streets in every neighborhood where the day before there stood a three bedroom brick rambler home built for the burgeoning middle class of the 1950's. Dividend tax savings help turn these neighborhoods into construction zones with mostly Hispanic crews coming to build 7,500 to 10,000 square foot mansions. They generally have boxy shapes where the zoning permits an average four-corner height of forty feet. They have finished space in basements and typically three finished above ground floors with six and seven bedroom, six or six and a half baths and two or three car garages. Yard space shrinks but these homes always include elaborate driveways, walkways and landscaping on what space remains.

The replacement mansions sell with little in the way of bargaining and the new owners soon contract with landscaping and housekeeping services to keep houses, lawns and gardens in glorious perfection. Other crews arrive with ladders and lifts to install elaborate holiday lighting or equipment for party events. These "transition" neighborhoods feature a steady stream of UPS, FedEx, and Amazon delivery vans with drivers who scurry up the walkways balancing the days pile of boxes. Lots of cardboard fills recycling tubs.

Arlington County makes it convenient to study this new trend by graciously putting building and demolition permits in a downloadable text file for importing into an Excel spreadsheet. The files have application and approval dates, project address, and a description of the project along with contractor information. For a file with permit application dates from June 2019 until June 2021 I found 465 records from a filter containing DEMO for demolition and SFD for single family dwelling. Demolition valuations given in the file were typically $10,000 to $15,000.

No one will ask buyers if they need a six or seven bedroom house, it's impolite and probably embarrassing among the always appearance conscious well-to-do. No one dares to say these people have too much money, there is no such thing in the politics of the 21st century. In his 1946 autobiography national

journalist and writer William Allen White wrote that the "decade which climaxed in 1912 was a time of tremendous change in our national life[.] . . . "The people were questioning the way every rich man got his money." . . . "Some way, into the hearts of the dominant middle class, of this country, had come a sense that their civilization needed recasting, that their government had fallen into the hands of self-seekers, that a new relation should be established between the haves and the have nots[.]"

No more. American politics no longer supports a constructive discussion of inequality. and the well-to-do work to avoid and evade discussion of class. William Allen White would have no trouble informing these new mansion dwellers they got rich and joined the upper class exploiting tax favors, not available to the working class. Mr. White would not regard their conspicuous consumption as a result of work in a meritocracy. No doubt many give to charities but they ought to be smart enough to know the dangers of extreme inequality and take some responsibility for the country's bitter and angry divisions and the peril it brings.

For the first ten years of Bush tax cuts the wealthy paid a rate of 15 percent on dividends instead of 35 percent at the highest marginal tax rate. While President Obama could have attacked the whole idea as an indefensible attack on working families, he did not. Instead he negotiated an increase of the marginal tax on dividends to 20 percent for 2013 taxable incomes over $450,000 while raising the highest tax bracket on taxable income from 35 to 39.6 percent. For my hypothetical couple with $2.5 million of taxable income and $1.5 million of dividend and capital gains, their tax savings dropped from $300,000 to $294,000. Apparently $6,000 of additional taxes on $2.5 million of taxable income passes for Democratic Party liberalism in 2013. (20)

Trump

Figuring out Trump turned into a parlor game during his years holding office. Groups of family and friends would lounge on their upholstered sofas and chairs sharing trays of comestibles and a pleasing beverage to debate if Trump was a smart, shrewd, calculating schemer, or a dumb, deranged, impulsive lunatic. Evidence abounds on both sides.

Trump proved to be smart enough to exploit America's always lingering racial and ethnic hatreds to unify a mass of followers, his base. His years in office resembled his campaign with regular appearances directing personal abuse at objectors and preening himself as a genius. He continued as well to hold true believer rallies filled with lies and fabrications. The lies came so fast the Washington Post assigned staff to count and document them. With no previous experience in government and so much of his time spent talking or tweeting he did remarkably little governing. The opportunists around him arranged political appointments of people with their own agenda. Actual civil servants went to work and did their jobs as best they could while two Federal Reserve Bank chairs did a remarkably good job managing the money supply.

Trump campaigned with a list of Democratic proposals the Republican establishment hates and blocked during the Obama years. He attacked American

business moving jobs overseas during the campaign along with the NAFTA trade agreement and trade agreements in general. Neither the Republican nor Democratic parties, nor any of its presidents have challenged the demand of corporate America to shut down plants and operations in the United States and move them to Mexico or China or anywhere they want to go, but his threat attracted angry and alienated opponents. Trump insisted he would build a border wall to cut immigration in direct opposition to corporate America that can't get enough of that cheap foreign labor.

NAFTA Revisited

During the 2016 presidential campaign candidate Trump asserted the NAFTA trade agreement needed significant improvements, calling it a "disaster" and the "worst agreement ever negotiated," He threatened to have the United States withdraw without the changes he demanded. On May 18, 2017 he gave the legally required 90-day notification to begin re-negotiation.

From the 1994 start of NAFTA until 2017 U.S. exports to the other two NAFTA countries, Canada and Mexico, increased from $142 billion to $497.8 Billion dollars while imports increased $151.1 billion to $572.2 billion. The biggest single export was motor vehicle parts with $40.9 billion. Other significant exports included automobiles, petroleum and coal products, computer equipment, and semiconductor components. Service industry exports increased 320 percent to $87.9 billion. Canada and Mexico accounted for 34 percent of total United States exports in 2016 and 26 percent of U.S. imports.

The 1994 NAFTA agreement included easing barriers to foreign domestic investment (FDI). United States Foreign Direct Investment (FDI) in Canada increased from $69.9 billion in 1993 to $352.9 billion in 2016. In Mexico, FDI increased from $15.2 billion to $92.8 billion in 2016. Canadian and Mexican FDI in the United States also increased in these years. Canadian FDI was $40.4 billion in 1993 and $268.9 billion in 2016; Mexican FDI was $1.2 billion in 1993 and $16.6 billion in 2016.

Reducing trade and investment barriers for countries that share borders as NAFTA countries do has helped promote trade in intermediate inputs creating a supply chain between NAFTA countries. Intermediate inputs such as motor vehicle parts produced in Mexico can then be exported to the United States for assembly into finished automobiles and finished automobiles exported back to Mexico. These relationships guarantee that Mexican and Canadian imports into the United States have a significant share of content and value that originate in the United States. A high share of domestic content assures further benefit from production and employment for NAFTA countries.

The experience with NAFTA since 1994 suggests it has succeeded increasing trade, FDI and GDP in the United States, Canada and Mexico. The total of United States trade with Canada and Mexico remains less than 5 percent of GDP, which makes NAFTA's economic growth potential modest but definitely positive. However, growth is not what makes NAFTA or free trade controversial. NAFTA controversy comes from distribution not growth. NAFTA opponents

suspect benefits flow to corporate America at the expense of U.S. jobs and the working class, as Ross Perot insisted, and so contribute to inequality in income distribution. U.S. Trade deficits with Canada and Mexico - imports greater than exports - occurred year after post-NAFTA year. Even though Canada and Mexico make significant capital investments in the United States, the United States FDI in Canada and Mexico remained higher by comparison and so investible capital flowed out of the United States year after year.

How much NAFTA trade deficits and investment flows hurt American jobs remains hard to quantify but Trump claimed he could benefit American labor by eliminating NAFTA trade deficits with new policy in a new NAFTA agreement. Keeping corporate America's production and investible capital in the United States creating American jobs had appeal for an angry working class even without proof of employment effects.

NAFTA negotiators realized trade deficits have a variety of causes that cannot be corrected by higher import tariffs or a simple change of NAFTA policy. When real negotiations got underway all parties proposed moderate changes with revised language without changing NAFTA's free trade philosophy. Corporate America was there watching to make sure changes would be acceptable while giving public relations deference to their brush off to Trump's populist appeal.

The whole episode demonstrates Republican presidents do not, and can not, serve populist appeals. It also leaves corporate officials to continue doing as they please to invest abroad or to pressure cities and states to compete against each other to get socialist subsidies for roads, water, sewers, property tax cuts and other benefits as a condition of investing capital in one place over another. They make these demands expecting to leave at any time and wreck lives, housing and property markets in the process. Leaving includes leaving for a foreign country.

The dollars of investible capital that go abroad are not all the same but vary in their effect on labor markets. When corporate America wants to expand their foreign operations and fund their expansion internally with corporate profits, they create jobs abroad rather than the United States, but there could be other advantages to justify serving foreign markets with new capacity abroad. However, if corporate America closes an American factory reducing its United States production in order to expand that production in a foreign country, it is quite reasonable to conclude corporate America does so in pursuit of cheap foreign labor. Maybe Trump had a point: unregulated free trade equals cheap labor at the expense of the working class. Too bad he did nothing about it. (21)

Immigration, Corporate America and the Right Wing

Corporate America wants foreign immigration to provide cheap labor, whether immigrants come skilled or unskilled, documented or undocumented. Trump's presidential election night television coverage repeatedly mentioned the angry working class. Trump voters were characterized as working class whites with a high school education struggling to get by on low paid jobs. Corporate decisions to hire undocumented Mexican immigrants or to close a factory and move to Mexico figured in their loss of employment in cities and towns across

the mid-west that featured house for sale signs and empty strip malls. Trump campaigned with a populist appeal to cut immigration that corporate America does not want and the Republican establishment blocked during the Obama years.

Mexico and Mexicans have supplied California with cheap labor since WWI, or a good hundred years before the latest Trump tirades against it. As early as 1850 California required large amounts of cheap, seasonal labor as part of America's first "Factories in the Fields." A steady flow of Chinese immigrants filled those needs well as one farm employer William Blackwood explained in the periodical Overland Monthly: "the laborers of China are born to servitude – it has become ingrained in their nature." Blackwood went on to explain "The simple and only question affecting our welfare, in connection with the Chinaman is 'Can we use him profitably in developing our industries without contamination?' "

Chinese immigrants generated enough public opposition that Congress passed the Chinese Exclusion Act in 1882 freezing the supply of cheap Chinese labor, a rare setback for large scale employers. California's industrial farmers tried to lure East Coast small farmers to come west and be their cheap labor, but the few that came did not meet their needs. By 1900 the Japanese began arriving in large enough numbers to be a new source of farm labor. Farm employers expressed great satisfaction with the hard working Japanese, but that did not last once they organized opposition. Their plan had their leaders negotiate with farm labor contractors and accept low wages, but only at first. Once they had taken over most, or all, of a region's labor needs, they waited until the harvest was ready to pick and demanded better wages and working conditions. Confronted with losing an entire harvest the growers had to yield.

The Japanese never intended to remain as cheap labor, they intended to become landowners and be independent. By 1907, disillusioned farm employers took the lead in demanding restrictions on Japanese immigration. One commented at a 1907 fruit growers convention "The Japanese coming in are a tricky and cunning lot, who break contracts and become quite independent. They are not organized into unions, but their clannishness seems to operate as a union would."

For ten years until WWI the Industrial Workers of the World tried to protect and organize west coast farm workers, but that brought violence and failure such as the Wheatlands hopfield rioting already described. By 1917, WWI farm employers turned to nearby Mexico to meet their cheap labor needs. It did not matter whether they came as documented or undocumented labor as it still does not. In WWII they came as part of a Bracero Program after Congress agreed it would help expand agricultural needs for WWII. Later Hispanics came as part of the H2-A foreign labor certification for agriculture. Nothing new from the last hundred years took place when Trump arrived, but that did not matter for politics.

Trump's attacks on immigration and American corporations moving jobs overseas during the campaign came as a complement to his attacks on the NAFTA trade agreement. His campaign promises to the working class that voted for him required that he fight corporate America and the Republican Party establishment and be aggressive in his efforts to restrict the flow of immigrants, especially Hispanic immigrants coming from and through Mexico. He did make some

populist proposals after he took office. One announcement proposed to cut the number of immigrants coming in through the foreign labor certification program, especially professionals using the H1-B program.

The foreign labor certification programs permit U.S. employers to hire foreign workers on a temporary or permanent basis to fill jobs considered essential to the U.S. economy. Department of Labor certification requires some evidence of an insufficient number of qualified U.S. workers available and willing to work at the prevailing wage for an occupation in the region employment. Other foreign labor certification programs include H-1C, nurses in disadvantaged areas, H-2A, temporary labor certification for seasonal jobs in agriculture, and H-2B, temporary certification for non-agricultural employment. The prevailing wage requirement attempts to keep employers from cutting wages to fill jobs with immigrants, but certification necessarily increases the supply of labor and puts downward pressure on wages.

Once in office Congress and corporate America remained silent and let Trump and Republicans demonize and debase Mexicans and Mexican families to suit his political purposes. He tried to make building a barrier wall something of substance and evidence of his commitment to cut immigration. He decided separating families and holding young children in detention would be good threat and public relations strategy for his purposes while corporate America looked the other way knowing his threats were tall talk that changed nothing for them, or the working class.

Corporate America has always expected accommodation from the Republican Party, access to foreign labor being one accommodation. The press has continuously reported on the millions of undocumented Mexicans coming across the border knowing perfectly well corporate America will hire them and that hiring undocumented aliens had minimal sanctions for violating the law, even if enforced.

How much Mexican immigrants lower wages and take jobs from Americans makes no difference in the politics. With the self-promoting Trump everything gets pushed to extremes and with immigration he reached levels of abuse and vulgarity not seen from a previous president. Be sure to notice, corporate America did not object to these new extremes, did not attack Republicans or Trump, and remained satisfied pursuing their status quo: cheap labor no matter what. (22)

The aftermath of the January 6, 2021 assault on the Capital brought a sober, if temperate, assessment of politics. Long before the November 2020 election many expected Trump would not concede an election loss and speculated on other types of misconduct, but few, if any, expected he would plan and promote an organized assault on the U.S. capital. Anyone familiar with America's labor history will recognize the connection of the January 6 events to examples of vigilante violence at places like Ludlow, Colorado, Everett, Washington, Butte, Montana, Coeur D'Alene, Idaho and Bisbee, Arizona to name only a small part of mob violence in America's labor history.

Through labor history mob violence directed at strikers and picketers seldom occurred as spontaneous response to the events of a strike. Corporate interests with

the economic power to assert authority took steps to organize vigilante forces to break strikes and their recruits recognized their recruiters had the political power to protect them from criminal prosecution. They acted in lawless violence with confidence and impunity. They used their vigilante privileges to express a broad ranging hatred and generalized anger without a political agenda of the own. In 2021, Trump supplied the authority for his base to attack the capital on January 6 and extensive video footage establishes they acted with confidence and impunity as a merry band of hooligans expecting to be protected by Trump as part of their devotion to his authoritarian ways. They offered no agenda beyond over throwing a national election in Trump's behalf, nor a word or a thought of policy.

Trump's determination to end democracy and constitutional government can no longer be doubted after the assault on the U.S. Capital followed by months attacking votes counted and recounted ad nauseam and years more planning revenge against political opponents. Unlike his sycophant followers Trump has an agenda, which corporate media reports day after day. The Trump agenda provides him with arbitrary authority to direct government without tolerating opposing views or respecting civil or political rights, or swearing to the presidential oath of office. Authoritarian men like Trump have always found it difficult to persuade or deceive a majority of a country to surrender their civil rights voluntarily; they need force; they need violence.

Trump promoted violence giving orders and expecting obedience from his appointed minions. I recall a television report showing Trump attempting to cajole his Secretary of Defense into shooting street protestors in downtown Washington: "Well, you could just shoot 'em in the legs," he intoned, but the secretary showed a strain of independence and refused. Trump orders used the language of gangsters - "Get rid of her! Get her out tomorrow. I don't care. Get her out tomorrow. Take her out. OK? Do it." - while encouraging others to do his violent bidding from him. He was about to leave office January 6, 2021 when he finally found some of his base ready to be violent and obey his instructions.

Assaulting the capital has generated only a few cautious objections from corporate America that ignores Trump abuses no matter what he says or how vulgar or threatening he might be. Corporate money continues to fund Republican candidates, but no corporate officials question how Trump can be on a presidential ballot or take the presidential oath of office after assaulting the U.S. capital and threatening to terminate the Constitution. The power of money and capital allows corporate America to exploit the weakness of constitutional government and obtain every advantage and privilege without any need for Trump. The status quo serves them perfectly and they have all the power they need to get rid of him, if they want.

Part VII - Labor History's Deja vu

The problem of self-identity is not just a problem for the young. It is a problem all the time. Perhaps the problem. It should haunt old age, and when it no longer does it should tell you that you are dead.

----------Writer-professor, Norman Maclean, from his story Young Men and Fire, 1984

Déjà vu comes from the French language that characterizes a feeling of something already seen. Dictionary elaboration varies with "tedious familiarity," or "something overly or unpleasantly familiar," or "a feeling that one has seen or heard something before." A current event sparks a memory of past events. Déjà vu applies perfectly to American labor history and the working class that has never escaped the tedious familiarity with a repetition of events overly and unpleasantly familiar.

Every strike and labor dispute narrated here from the great upheaval of 1877 and onward through the pitched battles of 1892, 1894, 1902, 1911, 1913, 1919, 1934, 1937, 1946 to J.P. Stevens, Phelps-Dodge, Hormel, International Paper, the Trifecta in Decatur, Detroit Newspapers and on and on finds a repetition of familiar events. Labor history's record of the working class follows a repetition of corporate opposition or indifference to collective bargaining, restrictions on child labor, equality for black Africans, equality for women, work place health and safety, universal health care, progressive taxes, proportional taxes, minimum wages, a living wage, overtime pay and legislative efforts to relieve suffering among the working class no matter how destitute they have become and no matter how much they are caught in forces beyond their control. Corporate owners and managers have never respected union organizing, nor collective bargaining, nor acknowledged the double standard in their economic and antitrust views, nor acquiesced or respected any labor legislation, nor an adverse court ruling, nor limit to corporate prerogatives in their employee relations. Nothing in labor relations gets resolved in the corporate mind, but carries forward as part of renewed attacks and battles. Déjà vu.

Divisions and Class Identity

The social and labor relations divisions of today started in the U.S. Constitution when the founding fathers defined separate constitutional rights for a class of white men while ignoring women and defining a separate class of black slaves with no civil or political rights. Class differences in the Constitution continue to rule America's labor relations. At the time of the revolutionary war slaves worked as farm labor, domestic servants and gradually some of them as craftsmen trained by owners to exploit as contract labor. Historian Ron Cherno reports George Washington hired out his surplus slaves. Their legal status as property for wealthy white entrepreneurs and plantation owners does not change their working class standing in the economy, nor does it matter they received a

bare subsistence wage in kind, they had to work to live and survive.

The slaves of 1787 made up a significant minority of the population. By 1860 almost four million blacks lived and worked in the United States as the lowest class of the working class. Almost all worked as slaves; resistance brought immediate reprisal as physical abuse and corporal punishment from colonial times. These habits of arbitrary rule over slave labor made it easy for America's capitalists to expect obedience for the hired help long after slavery ended. It can be no surprise the south provides the greatest resistance to job rights and union organizing. The lingering effect of more than a century of arbitrary rule during slavery make it easy for contemporary capitalists to expect they have arbitrary authority over today's employment and the right to devise various types of reprisals against working class demands for a measure of respect and the job rights to go with it. Slavery lives in the employer expectations of today.

America's post civil war politicians never sufficiently connected labor relations with race relations. Abraham Lincoln saw the connection in his house divided speech already quoted. In the decades before the civil war when southern plantation owners had a surplus of slaves they contacted out as cheap labor they showed no respect for the white working class they impoverished and embittered in the process. These bitter and angry white working class directed their anger at blacks, even though plantation owners controlled the southern economy and the labor relations system that impoverished both blacks and whites.

The north refused to allow the extension of the south's cheap labor system into the territories. No serious politician ever suggested abolishing slavery where it already existed. Lincoln ran and won the 1860 election as the representative of northern capitalists that opposed the extension of slavery into the territories. They all knew slavery was obsolete as a labor force for a capitalist economy attempting to expand manufacturing. The north needed better-educated labor they could hire and fire in response to changing productivity and business conditions. Slaves can not be laid off in response to market fluctuations; only sold for a loss or hired out for declining revenues.

The southern plantation owners stayed happy controlling what amounted to a feudal system of land ownership operated by slaves instead of serfs. They expected to be the upper class in a backward economy while the northern industrialist wanted to have a labor system suitable to a developing economy and economic growth. American high school and college history students learn of the moral and ethical views of the abolitionists against slavery, but abolitionists did not have the economic or political power to abolish slavery. They needed the power of northern commercial interests. Northern capitalists fought the civil war against southern plantation owners determined to maintain a feudal economy and divided racist society. Never assume as economists like to do that capitalists want to maximize profits; a depressed economy generates inequality as a perk of the upper class.

From 1865 to 1877 northern Republican members of Congress, often identified as radical Republicans, tried to provide a measure of safety, dignity and education to vulnerable blacks during the reconstruction years, but concerns

for humanity played a secondary role to commercial interests. Northern business got what they wanted with a military victory: the right to hire and fire as needed from a labor supply that included the entire working class: north or south, black or white. Southern plantation owners did their best to continue exploiting blacks as farm and domestic labor in a divided labor market of racial discrimination nearly identical to slavery. Unlike the pre-war years, plantation owners in the post-war had no incentive to protect slave investments from hostile low class whites. They went along with the police state known as the Jim Crow south, took no leadership role in the larger society and forced blacks to endure daily discrimination and the devastation of unchecked racists in the working class. Today's racial divisions among the white working class acting with the acquiescence of authoritarian commercial interests and their political operatives did remain as they have been through all these years. Racial antagonisms remain as a legacy of the same working class divisions of 1787 and 1861. Déjà vu.

America's corporate autocrats have always known the arbitrary, abusive and demeaning use of authority directed down through a hierarchy to the farm fields, the mines, the shop floor, the cashier's check out, or the secretary's desk brings a variety of reactions. It brings anger and resistance from some, but fear and hesitation from others. Corporate America promotes these internal divisions when they look the other way and encourage or ignore the abuses of supervisors and managers. Organizing a union requires solidarity, but from people subject to immediate threats of arbitrary dismissal, unemployment or confrontation with hired vigilantes. The more assertive will fight the abuses, while the timid and cowardly withdrawal or adopt the stance of their authoritarian employers. The historical record of union busting documents the deliberate and useful effect of intimidation and verbal deceit for dividing the working class. Sowing division among the working class through internal dissension on the job works well as a continuous disruptive force in opposition to labor organizing and solidarity.

Encouraging a personal identity as part of a middle class qualifies as deception in spite of its popularity among politicians, the media and suburban America. It helps people think of their identity and their status in society based on what they can buy as reflected in what they own: houses, cars, clothes, vacations. The more people think this way the less likely they will notice their lack of legal rights on the job or that millions do middle class work "at will" and can be fired at any time without legal recourse. Millions of the middle class have jobs and college degree skills that pay well enough to live comfortably with necessities covered and some, or many, luxuries added. These middle class are encouraged in daily advertising and media discussions to identify with the upper class and join in their excess, but change requires all Americans that live primarily on their wage or social security income to think of themselves as members of the working class. No economic, political or social change can occur until the "middle class" joins the working class.

The term "class" has many connotations given the emotional response it can generate in public discussions. Webster will only define class as the process needed to classify something into categories: a verb. To account for classes in

the sociology context that Americans use it, Webster defines class-consciousness: a noun. Class-consciousness defines someone "actively aware of ones common status with others in a particular economic or social level of society."

Americans have never been comfortable with the broader discussion of class-identity in the larger society. The upper class hopes for an acceptable justification for their wealth, but upper class levels of ostentation have varied over the decades. Some of the wealthy work to keep their wealth out of the public domain and deny classes even exist. More recently wealth and the political privileges and economic power it confers has become something to flaunt. The visibility of the wealthy does not change the economic and political power that control of corporate assets confers. Corporate wealth translates into the political power to give orders and expect they will be obeyed, as both employees and politicians recognize from the labor battles narrated here make so bluntly clear The majority remain too divided to resist; too many just go along.

Nothing in the definition of class requires race to be a matter of class, except in the United States where race defines a subset of the many divisions in the larger battles of class warfare. Many in today's white community expect black people to be in, and stay in, the lower class, or be underneath them in the social hierarchy. Recall the American civil war where mostly poor white boys 18 and 19 years old from poor white families of the Confederate south fought the civil war and died by the tens of thousands to preserve the plantation economy and the privileges of the wealthy white aristocracy that controlled the south.

Nothing in civil war history suggests these rebel soldiers expected to earn the respect of the plantation aristocracy in a post war Confederacy or live a better life than they had in the United States they fought so hard to destroy. Southern writers filled the books and journals of the ante-bellum south with proslavery ideologies that defined a feudal society of rigid classes. George Fitzhugh in his Sociology for the South, or The Failure of Free Society and later in Cannibals All! or Slaves Without Masters rejected political and economic freedom in favor of explicitly adapting European feudalism to southern society.

In the Fitzhugh south, black slaves continued as plantation workers in the lowest class, but white families would provide the labor for a developing manufacturing industry. Fitzhugh decided to position whites in a feudal class just above the slaves in a society guided by an aristocracy of rich and privileged landowners, and he actually expected the south could develop a prosperous manufacturing economy without the energy that freedom brings to capitalist innovation and growth. (1)

The southern journals of the day joined in publishing plans and ideas for manufacturing well before the civil war; one was DeBows Review. An especially good example appeared in the January 1850 edition by a Mr. J.H. Taylor entitled "Manufactures in South Carolina." Mr. Taylor explains "There is, in some quarters, a natural jealousy of the slightest innovation upon established habits; and, because an effort has been made to collect the poor and unemployed white population into our new factories, fears have arisen, that some evil would grow out of the introduction of such establishments among us. Let us, however, look

at this matter with candor and calmness, and examine all its bearings before we determine that the general introduction of a profitable industry, will endanger our institutions."

Mr. Taylor explains "The poor man has a vote as well as the rich man; and in our state, the number of the first will largely over balance the last. So long as these poor, but industrious people, could see no mode of living, except by a degrading operation of work with the Negro upon the plantation, they were content to endure life in its most discouraging forms, satisfied that they were above the slave, though faring often worse than he."

Certainly, Mr. Taylor predicts, if the white working class up to 1850 would endure a degrading life without protest or comment, they will not threaten southern institutions if proffered a job in a factory. He goes on to offer his own explicit plan. "Let the slaves be continued where they have been, and where they are of immense value; let them raise from the earth the cotton, rice, corn & c, which they are so well fitted to do, and then furnish the white population with employment in the manufactory and mechanical arts; and every man, from the deepest principle of self interest, becomes a firm and uncompromising supporter of our institutions. But crowd from these employments the fast increasing white population of the South and fill our factories and our workshops with our slaves, and we have in our midst those whose very existence is in hostile array to our institutions."

Mr. Taylor writes on to give us an example of successful manufactory in Graniteville, a town with a cotton mill 124 miles from Charleston and 12 miles from Hamburg, which we are assured is a "pioneer" in the great work of southern manufactory. Mr. Taylor: "In Graniteville, the system of labor requires the attendance of everyone in the mill and offices at the ringing of the second bell in the morning. Work is begun as soon as there is light sufficient for running the machines. The instant the second bell ceases to ring the gates are locked, and tardy ones are required to pass through the office. But it is not a characteristic of these people to be tardy; it is rare that one ever passes through the office to their work." . . . "Work is continued in the evening until half past 7, when the mill is closed for the day." . . . "This system of labor employs about 12 hours, and under it, the operatives are as cheerful and well disposed as any in the world." Mr. Taylor goes on to describe the rules of life in the "strictly temperance" town of Graniteville and how mom, dad and the kids all work by the rules and live in happiness.

The pre-civil war south with its plantations and company towns resembles feudalism, not capitalism or socialism either. Mr. Fitzhugh and Mr. Taylor describe a social and economic system designed to deliver cheap labor to the aristocracy: slaves out in the fields and whites to go in the factories. The white working class fought and died by the thousand to preserve this system with black slaves in the lowest class below them in the Confederate States of America. (2)

The wealthy white men leading the south into the 20th century allowed the white working class to maintain their class superiority using racial discrimination and unrelieved violence to keep "free" blacks in their place. Violence diminished some after the 1960's protests, but the connection of race and class in the social structure and in labor markets has never disappeared. Martin Luther King

expressed that clearly when he tried to persuade whites they would be better off economically if they would ignore class. Recall he addressed class specifically in his speeches when he spoke in Mississippi in 1968: "Widespread white poverty should demonstrate to Mississippi whites that you can't keep me down unless you stay down yourself." King did not succeed getting the white working class to put their economic interests above their class, or for whites to abandon their racial advantage originally defined for them in the pre-civil war south. Bobby Kennedy argued the same cause and they both ended up dead.

In the years after the 1980 presidential election the growing concentration of news media, especially radio, parallel the rise of commentators like Rush Limbaugh, Sean Hannity and Ann Coulter ready to attack the arrogant liberal elite as the cause of white male anger and frustration. They make the white working class victims in a carefully stylized class war by diverting attention from their dreary low wage employment while defending their religion, their education, their "family" values and way of life against the eastern snobs, their Ivy League degrees, their expensive cars and European vacations.

These commentators never attack corporate America and the almighty free market or they would be gone in a flash. People like Limbaugh knew their job and succeeded breeding enough discontent to get the working class to identify and join authoritarians and vote in large numbers for Republicans and corporate America. It would help too if Democratic Party would offer an alternative. Working class divisions provide votes for the political power for corporate America to do as they please. Arbitrary control of a plentiful supply of cheap labor improves profits and suits the corporate ideal of upper class power over others. Corporate contempt for labor continues from the slave era. Converting jobs to part time work and the gig economy allows employers to evade their social security responsibilities, overtime rules, health care, workmen's compensation while avoiding union negotiations and any notion of job security all at the expense of the working class.

Journalist and writer Thomas Frank wrote of these culture and class wars applied to his native Kansas back in 2004. He noticed that discontent encouraged by these carefully crafted class wars "pulls in only one direction: to the right, to the right, farther to the right. Strip today's Kansans of their job security, and they head out to become registered Republicans. Push them off their land, and next thing you know they'll join a protest in front of an abortion clinic. Squander their life savings on manicures for the CEO, and there's a good chance they'll join the John Birch Society. But ask them about the remedies their ancestors proposed (unions, antitrust, pubic ownership), and you might as well be referring to the days when knighthood was in flower." (3)

Frank quotes others defending and attacking these same politics and they all speculate about the causes without arriving at definite conclusions, but they wrote before the rise of Trump. Trump made racist talk a primary tool to enlarge his base and secure his Electoral College win. Since the 1960's and the 1972 demise of George Wallace to the years before Trump, race and class lurked in the background, tamed and subdued somewhat, but still present. In 2016, race and class returned in open opposition to equality based on race, creed and color. In

the Trump era large numbers from white America make no secret of their efforts to maintain political control for white men using the authoritarian Republican Party. They want their elected politicians to suppress voting rights, maintain confederate monuments, attack Black Lives Matter and critical race theories. They want support for their divisive agenda. These modern authoritarians work and talk to keep minorities in a lower social class in the same way as Mr. J.H. Taylor predicted the plantation aristocracy could do, and just as southern white boys fought to do in the civil war long, long ago. Déjà vu.

The pre-civil war south did not believe in or discuss capitalism or socialism. In the post-civil war they had to adapt their brand of feudalism and gradually accept capitalism as the best alternative. Today the politics and politicians fight over capitalism and socialism, but do not be confused, the fight continues to be inequality in the distribution of income and wealth, and the policies and practices to control and exploit labor through political and social division in the working class.

Capitalism and the Economy

The advantage of capitalism derives from the opportunities it allows for individuals to pursue their interests, ideas, inspirations, aims, dreams. Having the advantage of capitalism requires an economy with enforceable contracts and the ability for individuals to acquire and use natural resources and real property, but the requirements are not themselves the advantage as so much corporate propaganda suggests. Capitalism allows individuals the independent freedom to think and then act. Freedom to think and act gives the best chance for innovation, advancing technologies, higher productivity, new products and economic growth.

The United States has mostly capitalism mixed with some very popular socialism. Social Security is one vital and popular program where government provides and administers one of America's last benefits received pension plans. Recall how everyone that works for wages or is self employed pays premiums to a government administration and receives benefits from the same government bureaucracy, all established by Congress. Social Security meets every single requirement that defines socialism, but millions who take their social security benefits rant in vague terms of the evils of socialism.

No country with a successful economy operates at extremes of capitalism or socialism. Extreme socialism most likely goes with an authoritarian dictator. Extreme capitalism generates monopoly that ignores the common good and also breeds authoritarian arrogance. Every society has to debate capitalism versus socialism in its production of products and services. American socialism has many examples: national defense, public schools, colleges and universities, interstate highway system, harbors, waterways, airports, national, state and local parks and parts of health care. The presence of socialism in some services does not prevent individuals from pursuing their capitalist aims.

Education in the United States has both capitalism and socialism. Private schools that pay the costs of providing their classes and degrees in exchange for tuition fit the conditions of capitalism. Local primary and secondary public

schools pay the costs of providing their classes and degrees with property taxes, and some state and federal government appropriations. Everyone can attend and everyone helps pay through their government, which defines socialism.

Education from pre-school to graduate and professional school could be all capitalism bought and sold like cable television or tickets to the cinema. Without public schools parents of children would continue to recognize the importance of education and continue to send their children to school. The need to make a living and desire to earn a profit would motivate individuals and groups to start schools and enter the education business. Tuition would be charged, costs covered, profits made and students educated.

However, the long historical record of education from many countries finds that no society has ever achieved reasonable levels of literacy without publicly supported compulsory education. Apparently where a society shifts the burden of education to individuals it becomes such a crushing burden that many parents are forced to make short run decisions and do not invest, or do not invest adequately, in the long run benefits of education. Capitalist markets always have some unique characteristics that make it difficult to apply capitalist principles uniformly across many markets without broader considerations. The allocation of public and private education deserves regular discussion.

The share of capitalism and socialism in the economy for services like education, parks and recreation can be discussed in American political debate but only by avoiding the term socialism. Corporate America through its media control has spent decades condemning what it does not want, or does not like, as socialism or less often lately communism. A socialist in American politics defines a derogatory term used to condemn political opponents. Anyone or any politician who believes the government should do something, or anything, to relieve the inequality of income that capitalism inevitably generates can expect to be condemned as a socialist. Politically it puts a candidate on the defensive, even though the accusation has nothing to do with socialism and everything to do with capitalism.

American Eugene Debs ran for President as a socialist five times between 1900 and 1920, the last time he polled almost a million votes from federal prison where he was serving ten years for voicing his opposition to WWI. Debs spent most of his adult life traveling and speaking to condemn capitalism for its failure to generate self supporting employment for millions that remained poor or in abject poverty in spite of working ten and twelve hour days. His socialism was more opposition to capitalism than detailed plans for a socialist economy or society. He wanted government to intervene in the economy to reduce the inequality of income and wealth.

Another famous socialist, Karl Marx, admired the British economist David Ricardo. Ricardo developed an engine of economic analysis using deductive reasoning that appealed to Marx who spent decades developing his own engine of analysis that predicted capitalism would fail by its own terms and be displaced by socialism. Like Debs he hated the inequality of income capitalism generates but he had little to say about the socialist economy and society he preferred.

If America's corporate officials lived and worked following the ethical principles of Mother Teresa and the Boy Scouts, the American economy would still generate unequal income and wealth. Capitalists take risks and confront competition from competitors investing in plant and equipment for productive enterprise, which by its nature generates random inequality. Financial markets function to return savings to the spending stream as borrowing and investment, which also attracts gamblers and speculators that contributes further to inequality. The record of inequality speaks for itself.

Economic inequality in either capitalism or socialism can be relieved through private charity or collective public action. Progressive taxes or a government guarantee of self- supporting income are two ways that will work over the long term. Collective bargaining usually raises relative wages. President Herbert Hoover insisted the unemployed and destitute could only be helped through donations from private charity. Any other policy he argued would destroy the benefits of free enterprise. In the great depression the Roosevelt Administration experimented with programs with cash benefits - the dole - and had programs providing employment.

Corporate America has tolerated direct public aide as preferable to any interference with market operations, but in practice has attacked these programs by attacking their administration. Republicans complain governmental benefits go to cheats who falsify their eligibility for benefits. Recall President Reagan and his attacks on "Welfare Queens" allegedly receiving benefits from Aide to Families of Dependent Children under false pretense.

In 1966, Congress held hearings where they found children in some southern states with the swollen bellies of starving and malnourished children. The Congress developed the food stamp program based on their findings. Those eligible for the program get a discount on essential food by presenting what amounts to government coupons at the grocery store. Notice tax funds pay the discount for the groceries, while corporate America's grocery chains receive a boost in revenue without interfering in market operations. The program continues today under a new name, Supplemental Nutrition Assistance Program (SNAP), while over the decades the Republicans have cut benefits and the Democrats have raised them.

The Food Stamp or SNAP program relieves the symptoms of the real problem: income inequality from a failure of the economy to generate enough self-supporting jobs. Many of the domestic programs from the federal government result from low wages and the lack of full time work. Include all federal, state and local housing programs and Medicaid among them.

Back in 1938 Secretary of Labor Francis Perkins persuaded a Democratic Congress to address low and falling wages. She convinced them to pass the Fair Labor Standards Act(FLSA). FLSA established a federal minimum wage to prevent competition from reducing wages to very low levels. To spread the work to more people Congress approved over time pay at time and half for work over forty hours a week.

The program has never provided an automatic cost of living adjustment, or

COLA. As a result what the minimum wage will buy declines during Republican administrations or during periods with a Republican majority in either the House or Senate. Democratic administrations with Congressional majorities raise the minimum wage, but during more than eighty years since minimum wage legislation passed it has never been a self supporting wage. The state legislatures in selected states do somewhat better but none equal a self supporting wage.

From the beginning of FLSA in 1938 there were occupations and employees exempted from overtime. Executive, administrative, professional and sales employees were exempted from the beginning but as time passed Congress agreed to put more occupations on the overtime exempt list. In 2003, the Bush administration rewrote the overtime regulations to make it possible for corporate America to eliminate overtime as they might choose to do for any employee in any occupation. The new rules made an employee paid a salary of $23,665 or more a year exempt from over time where the "employee can be considered to be paid on a 'salary basis' within the meaning of these regulations if the employee regularly receives each pay period on a weekly, or less frequent basis, a predetermined amount constituting all or part of the employee's compensation, which amount is not subject to reduction because of variations in the quality or quantity of the work performed." The conditions are easy to meet for full time employees. Employees paid by the hour have a right to overtime pay, but they can expect to be part time or work overtime only as needed for seasonal and irregular employment. The Bush regulations neutralize the Fair Labor Standards Act and leave job markets to capitalism and free competition.

The decades of experience with the Fair Labor Standards Act(FLSA) and the National Labor Relations Act(NLRA) illustrate the ability of corporate America to defeat policies that regulate markets and especially job markets. FLSA and NLRA require executive branch enforcement, which Republican Administrations refuse to do the job as intended or to do it at all. Democratic administrations try harder but both laws allow for court suits where long drawn out court proceedings and appellate court appeals that go on for years, typically end with erratic results. The same is true of the Antitrust Laws, which have also proved to be useless to prevent the concentration of industry or the decline of product competition.

None of the policies toward labor and policies designed to equalize the distribution of income eliminate or even compromise the benefits of capitalism defined above as the freedom to pursue individual interests, ideas, inspirations, aims, dreams. The capitalism versus socialism debate remains the same in income distribution debate and can be carried on as it has been for decades. Capitalism works well if growth is the primary aim for an economy. Still economists typically oppose labor organizing, minimum wages and policies that interfere with their system of free markets and the distribution of income that results. Economists expect to be respected as social scientists but they should be more careful how they apply their analysis and scientific methods, especially to labor and employment.

Economists and the Economy

Millions of American college students required to take economics classes

often have assigned reading by Milton Friedman, the well known University of Chicago economist. One of his often assigned works titled "The Methodology of Positive Economics" provides an elaborate and useful discussion of the scientific method applied to empirical study in economics.

Methodology in Economics

Dr. Friedman writes "Positive economics is in principle independent of any particular ethical position or normative judgments." He quotes British economist John Maynard Keynes that it deals with "what is," not with "what ought to be." It should make "correct predictions about the consequences of any change in circumstances." Friedman asserts positive economics can be an 'objective' science, but cautions "that the investigator is himself part of the subject matter being investigated" ... so that "raises special difficulties in achieving objectivity." Déjà vu.

Further Dr. Friedman explains "Viewed as a body of substantive hypotheses [in economics], ... the only relevant test of the validity of a hypothesis is comparison of its predictions with experience. The hypothesis is rejected if its predictions are contradicted ('frequently' or more often than predictions from an alternative hypothesis); it is accepted if its predictions are not contradicted; great confidence is attached to it if it has survived many opportunities for contradiction." . . . "Perhaps the most obviously important example is the evidence from inflation on the hypothesis that a substantial increase in the quantity of money within a relatively short period is accompanied by a substantial increase in prices."

An economy is nothing but a flow of transactions measured over time. Production creates income and income supports spending for the entire economy all measured over a day, week, month, year - macroeconomics. The study of money and inflation in macroeconomics was Dr. Friedman's specialty. His book the Monetary History of the United States tracks the money supply and its changes over the years from the civil war to 1960. His work allowed him to make predictions based on the relevant experience from available evidence. He argues his evidence supports specific predictions about the quantity of money and rising prices across the economy.

Economists also study supply and demand for individual product markets always measured as a flow of transactions over a day, week, month, year – microeconomics. Excellent data allows the detailed empirical study of individual product and service markets because sales of products are recorded day after day. Prices recorded for each sale allow sales to be cumulated week by week, year by year, or whenever. Testing the validity of a hypothesis following Dr. Friedman's methodology requires data from transactions. If we hypothesize the quantity of sales of a product per unit of time will go up with a lower price, empirical study requires comparing the price and sales for a period or periods with a higher price to the price and sales for a period or periods with a lower price. If we are in the cereal isle at the grocery store and ask the shoppers there if they would buy more corn flakes at a fifty percent discount the answer is irrelevant to economic study. What someone might do, or say they will do, could be useful in the marketing

department, but not in economics. Economists study recorded transactions after they occur and use them to understand the present and make predictions for the future.

The requirements of empirical study helps pressure economists to prove their theories because economists do at times become devoted to the predicted conclusions of their theories. In the theory of supply and demand buyers and sellers pursuing self interest in markets cause price to find its own level in a self regulating process just as Adam Smith noted in his book the Wealth of Nations back in 1776. Students of history might recall he described the self regulating process of price determination as like an "invisible hand." Presented without evidence economic theory appears to be scientific, and so like water flowing downhill or the flow of electrons through a copper wire and therefore correct beyond dispute. Accepting an economy as a self regulating scientific process without evidence supplies the pretext for free markets and the free market policy of laissez-faire - let the thing alone, or let the market process proceed - but economist's like Milton Friedman want evidence and proof.

In the great depression of the 1930's economists held that a national economy, like its individual microeconomic parts, would be self-correcting. They advised that interest rates would fall to low enough levels to stimulate investment spending and that prices would fall far enough to stimulate consumer spending and so production, income and employment would be recovering. Even though unemployment spiked to 25 percent for many months while wages and prices were dropping toward extreme lows, economists counseled wait.

Wait is the only policy of doctrinaire economists. The idea that an economy can reach a self-correcting equilibrium like the physical sciences in the laws of gravity or Newtonian physics ignores entirely the role of money, definitely a human contrivance and not part of the natural world. By 1936 British economist John Maynard Keynes had enough of the economist's status quo when he published his famous book the General Theory of Employment Interest and Money. His book is not actually a general theory at all but instead a chapter by chapter discussion of special cases. One by one he outlined the problems and reasons an economy will not necessarily be self-correcting.

Since virtually all transactions use money, nothing guarantees money received in transactions will be returned to the spending stream, or returned without long delays. If business and individuals save and hoard money rather than return it to the spending stream recession and depression follow. Hoarding money was a rational response to the 1930's depression and potentially a much stronger impulse than the enticement of lower interest rates or lower prices, especially for the unemployed who had no wages to spend. To relieve the depressions around the world Keynes was so bold as to council governments could help by putting funds directly into the spending stream to restore the economy. Since then Republicans and free enterprisers have hated Keynes.

Keynes died in 1945, but the General Theory of Employment, Interest and Money lived on mostly as a post WWII policy debate for and against monetary or fiscal policy with Milton Friedman on the monetary side and Keynesians

on the fiscal side. Today macroeconomics has become less controversial with monetary policy designed to keep a steady flow of production, income and employment. In Macroeconomics the use of supporting evidence guides monetary policy following the advice of Milton Friedman in the methodology of positive economics. Doctrinaire economists now find themselves limited to free enterprise doctrines in microeconomics. Here evidence has not calmed the arguments over free enterprise versus regulation, nor the practice of using unproven theory to support policy making, especially in labor markets and the minimum wage. (4)

The Minimum Wage

For doctrinaire economists a minimum wage interferes with their free market system and their devotion to it. They predict in sinister tones that higher minimum wages lead to job loss and falling employment, and they give silent promotion to fears these unemployed souls may never work again. Corporate America predictably opposes any increase in the minimum wage. Higher wages converts profits to costs and alters the distribution of income between labor and capital. Telling people they are better off with lower wages remains a tough sell among wage earners. The continued popularity of a higher minimum wage suggests there are many who work for wages that understand employers and employees have opposing economic interests.

Economists repeatedly offer theoretical justification against a minimum wage by insisting the supply and demand in product and service markets can be applied in identical fashion to labor markets, but an economic transaction for a product differs from a transaction for employment. When shoppers leave the grocery store with a box of corn flakes, we can feel confident their box of corn flakes will no longer be part of product supply and will not be a part of another transaction. Even when job hunters find a job they continue to be a part of the labor supply; they can leave a low paid job anytime for a higher paying job. If they are subjects of layoff or dismissal they remain as part of labor supply by looking for another job.

Empirical study in a product market like corn flakes does not require a researcher to identify one box of corn flakes from another: it does not need a name. To be able to identify a higher minimum wage as the cause of unemployment among many causes of unemployment, and the many ways to lose or leave a job, we need to know names: Jerry, Larry, Mary. The Bureau of Labor Statistics(BLS) produces and publishes excellent establishment data, but it does not have names. Employment data, long known among insiders as ES202 data, provides covered payroll employment numbers for the day of the month when the data is compiled, and occupational staffing ratios allow estimated counts by occupation, but BLS does not have names. Jerry, Larry and Mary might be in a July employment data file but not an August data file, or they might be in the August file but not the July file, but there could be many reasons for changes in their employment status.

Suppose we know a state government or the federal government has a scheduled increase in the minimum wage to take effect in July. If employment numbers decline in the August file, it does not tell us why they decline. Jerry might

have quit refusing to work the night shift; Larry might have moved to another city or town; Mary might have found a higher wage job somewhere else. The change in employment numbers does not provide a cause of reported lower employment. Turnover rates among low wage occupations can be high and exceed 100 percent on occasion. There is no excuse for declaring a higher minimum wage caused the decline in reported employment even the month after an increase in a minimum wage. It would be quite possible for the August employment numbers to be higher than the July numbers, but we have to doubt economists would declare an increase in the minimum wage would cause an increase in employment.

It is absolutely impossible to do minimum wage research with published data. In spite of this reality many economists for many decades have devised some new angle to give it a try. Their conclusions split between yes, higher minimum wages cause unemployment, and no, higher minimum wages do not cause unemployment. The yes people tend to outnumber the no people, but in truth neither side has an answer. The answer is indeterminate.

Economists persist in using labor market demand to explain the presumed evils of the minimum wage. They argue that individual employers will lay off employees and produce with fewer people per unit of time - hour, day, week, month, year – with a minimum wage above a prevailing market wage. Even when the claim applies to some employers and employees, it suggests people who lose their job should care about the cause. In the United States, non-unionized employees work “at will” without a contract and can be dismissed at any time for any reason. People can lose their job for a bad haircut or they could lose their job because of a higher minimum wage, but in either case, or any case, the unemployed return to the market and start looking for a job. In other words, they remain as part of labor supply and start looking for work in other higher wage occupations in other job markets. They are not used up like a box of corn flakes and they do not disappear.

The long term problem of wages too low for self-support and the need for a minimum wage in job markets derives from the use of labor saving technologies that build a surplus of labor among employers in some industries, which surplus becomes an increase in the supply of labor in other industries. The productivity of labor in some industries across hundreds of occupations increases over time. Even moderate rates of productivity increase like one or one and a half percent a year will make an enormous difference in employment compounded over decades. It decreases the demand for labor in high productivity industries year by year, and forces the laid off to be part of a surplus in other industries and occupations. If the demand for corn flakes goes down cereal makers cut production to avoid the surplus. In labor markets the laid off increase the supply of labor that become part of a surplus of labor that brings a general decline in wages.

Capital investment abroad adds to the productivity driven decline in the demand for labor and helps make a surplus of labor here in the United States. Corporate America closes factories here and shifts their investible capital to China and other foreign countries to profit from lower wage employees in China or elsewhere. The Chinese make enticing offers loaded with subsidies for American

investors at the expense of American wage earners, until corporate America complains the Chinese steal American technology.

The slow secular decline over decades in the need for labor from productivity advancements contrasts with employment decisions for short term periods. Employment decisions by managers and proprietors depend primarily on the prospects for sales and revenues in the present and near future. Changes in employment and unemployment resulting from business cycles and recession affect unemployment compensation policy as well as monetary and fiscal policy, but the problem of low wages and the need for a minimum wage comes from continuing employment practices and policies designed to generate a surplus of labor. A surplus of labor among employers in some industries will increases the supply of labor in other industries. Here corporate America works constantly, continuously, always to increase the supply of labor to build a surplus of labor and depress wages. Free trade puts American products in competition with foreign companies and countries making it harder to raise prices to increase profits. More and more in recent decades corporate America trolls for profits with cost cutting to depress wages.

During the New Deal of the 1930's President Roosevelt's Secretary of Labor Francis Perkins took FDR administration responsibility for passing minimum wage legislation, still known as the Fair Labor Standards Act (FLSA). Senator Hugo Black and House member William Connery sponsored the bill introduced May 24, 1937. AFL President William Green did not support the bill but offered the Samuel Gompers claim that the minimum wage will become the maximum. The bill stalled in committee until President Roosevelt took up the cause by calling Congress into session November 17, 1937 to address the need for the bill. He supported a minimum wage but not to assure a self-supporting wage or to guarantee a minimum standard of living. Secretary Perkins quoted his address to Congress in her memoir The Roosevelt I Knew. He said in part "I believe that the country as a whole recognizes the need for immediate congressional action if we are to maintain wage increases and the purchasing power of the nation against recessive factors [depression] in the general industrial situation. The exploitation of child labor and the undercutting of wages and the stretching of the hours of the poorest paid workers in periods of business recession has a serious effect on buying power."

The president wanted to use a minimum wage and overtime pay to support buying power to help lift the economy out of a decade of depression. The bill passed Congress June 14 and President Roosevelt signed it June 25, 1938. The initial minimum wage was set at $.25 an hour for a 44 hour week, or $572 a year for a full time job, an amount too small to buy more than the barest survival in 1938. The final bill provided for a three year increase to $.40 an hour and a reduction in the workweek to 40 hours.

There was discussion of House and Senate conferees during the last days before the final vote to have a bureaucratic commission set minimum wages at different levels in different places. That did not make it into the final bill, which left it to Congress to consider and raise a single minimum wage by majority vote

assuming the sitting president signaled he would sign it. The argument that the federal minimum wage should be a living wage or self-supporting wage came well after 1938.

In practice, the minimum wage over 84 years has remained too low, or much too low as now, to be a living wage. The 2009 to 2024 minimum remained constant at $7.25 an hour. For a full time job the minimum wage equals $15,080, but adjusted for inflation from 2009 equals a 2024 buying power of $11,982.18. People do live in families but double the minimum wage and a family of two has a 2024 income of $23,964.35, but still too low to be more than a bare subsistence. The full time work week remains at 40 hours but when one wage does not pay the bills individuals and families may start looking for a second or third job adding more surplus to the surplus of labor and further driving down wages. Corporate America has successfully fought to keep the minimum wage below prevailing wages and below a living wage. (5)

Building a Surplus of Labor

If we believe employees will prefer to leave a low wage job for a higher wage job, we can expect they will take the higher wage job if they have the necessary skills and they live close enough to commute to work. Employers can get the labor they want by offering a higher wage if current sales will be lost, but holding wages down requires policies and practices to build a pool of surplus labor all the time.

Current Population Survey data proves a plentiful supply of labor. The Bureau of the Census and Bureau of Labor Statistics report the civilian population since 1990 was up every year with an annual growth rate of 1.05 percent. A growing population allows an increase in the supply of labor, but the actual increase depends on the numbers who enter the labor force. In 2023, an adult civilian population of 266.9 million people supplied 167.1 million adults to the labor force, leaving 99.8 million adults not in the labor force (NLF); adults not children. Those not in the labor force can change their mind and enter the labor force to look for work and become part of the labor supply.

In the years from 2013 leading through 2023 the adult civilian population increased at .83 percent a year while the labor force increased at a rate of only .73 percent. In the same period the labor force increased at .73 percent the adults not in the labor increased at 1.01 percent.

In a labor shortage we would expect the opposite. In a shortage the labor force grows faster than population as employers lure some of those 99.8 million adults back into the labor force by offering higher wages and maybe a few benefits as well. We can conclude that wages and working conditions are substandard and do not generate enough people able or willing to return to the labor force. The United States does not have a shortage of labor; shortages are a myth offered by the cheapskates of corporate America, always trolling for people they can coerce to work for lower wages. (6)

The list of corporate America's schemes for assuring lots of cheap labor can start with immigration, which goes back into the 19th century when Chinese

immigrants built America's transcontinental railroads.

Immigration---------- At the beginning of his 1912 book Immigration and Labor author Isaac Hourwich, comments on findings of a three year investigation by the U. S. Immigration Commission concluded in 1911. The Commission and the Hourwich book resulted from complaints that immigration needs to be restricted to keep "undesirable immigrants" out and the "American workingman busy."

Dr. Hourwich did not believe the record of immigrants in the economy justified these complaints. He cites Immigration Commission evidence of growth in coal and steel production, the growth of ton-miles of railway freight, railway employees, and the growth in bank clearings that exceeded population growth and the demand for labor. He cites Immigration Commission findings from interviews that "sought to ascertain from employers of labor the reason for employing immigrants" . . . and "they found it necessary either to employ immigrant labor or delay industrial advancement."

The Commission did not find evidence of employers recruiting contract labor from Europe, except "that in the case of a strike a great corporation might have resorted to the importation of a force of strikebreakers regardless of cost." They found emigration during depression years and immigration during recovering years and concluded "The supply of immigrant labor is regulated by free competition, like that of any other commodity." The Commission reached the conclusion that our immigration policy "should be based primarily upon economic or business considerations." Fast forward to the present and find corporate America silently exploiting immigration on identical principles and with the economics profession ready with the same analysis.

The Department of Homeland Security(DHS) now maintains detailed immigration data and graciously compiles it in spreadsheet files available for download. DHS reports annual nonimmigrant admissions in many categories of temporary workers and families but separate spouses and children from those that take jobs as part of the labor supply.

Some details are given below for those interested in details. In 2020 admissions totaled 2,572,000 with 626,000 as spouses and children leaving 1,946,000 taking jobs, but the Pandemic reduced the numbers from previous years. In 2019 temporary workers total 4,106,000 with 1,188,000 as spouses and children leaving 2,290,000 taking jobs. These include 725,900 North American Free Trade Agreement (NAFTA) professional workers, (TN) visas; 601,600 temporary workers in specialty occupations, (H1B) visas; 442,800 Agricultural workers. (H2A) visas, 129,100 agricultural workers, (H2-B) visas; 127,900 workers with extraordinary ability or achievement, O1 visas.

DHS reports those obtaining Lawful Permanent Residents (LPR) each year, which was down for 2020 due to Pandemic restrictions but stilled totaled 707,362. It is typically a little over a million. The employment-based preference above has a limit of 140,000 a year plus any unused visas in the family-sponsored preference categories from the previous year. The 2020 total for employment

based Permanent Residents was 148,959, and so a small share of the Lawful Permanent Resident(LPR). Employment-based preferences apply to multinational executives and managers, aliens of extraordinary ability, outstanding professors and researchers, and professionals with advanced degrees.

Undocumented immigrants can only be estimated, but the DHS defines them as foreign-born non-citizens who are not legal residents and then makes estimates of their totals. The Pew Research Center also makes estimates. A loose consensus suggests eleven million undocumented immigrants in the United States.

When economists argue that immigrants go to work and promote economic growth, they are correct, they do. In their role as corporate apologists, economists avoid entirely the issue everyone cares about: wages and the distribution of income between capital and labor. As every economist knows documented and undocumented immigrants by the million increase the supply of labor. Devotees of free enterprise and supply and demand have a tough sell turning immigrants streaming across the border into a shortage of labor rather than the surplus it is and will continue to be. For corporate America immigration policies like the ones mentioned above will continue to help build a surplus of labor. (7)

Overtime----------Building a surplus of labor from the Fair Labor Standards Act (FLSA) results from exemptions to the overtime rules rather than the minimum wage. The Fair Labor Standards Act includes overtime rules that define overtime pay at wages not less than one and half times regular pay rates after 40 hours of work in a workweek. Any use of overtime means more work for some that could go for more jobs for others. Requiring higher overtime pay for employers gives financial incentive to avoid the added cost of overtime and to hire more employees at regular pay. The incentives will be more effective if overtime rules apply to all employment without exemption, which they do not.

Exemptions from overtime bring the largest increase in the supply of labor of all the corporate pressures to build a surplus of labor. The standard full time workweek remains at 40 hours as it has been for more than eighty years. Without reducing the workweek the steady march of higher productivity builds a surplus of labor, but exemptions in the regulations permit unpaid overtime as a major source of cheap labor. Where two people work 60 hour weeks, three people could be working 40 hours a week, or four people could be working 30 hours a week.

Overtime exemptions rules go back to the 1940's but changes drafted during the George W. Bush administration and adopted in August 2004 revised Fair Labor Standards Act rules with broad new language referred to as white collar rules. The new regulations in Title 29 Code of Federal Regulations (CFR) Subtitle B, Chapter 5, subchapter A, Part 541 define an employee's duties into categories of overtime exemptions, which define work and occupations that do not qualify for overtime pay.

The title to Part 541 reads "Defining and delimiting the exemptions for executive, administrative, professional, computer and outside sales employees." These regulations start with a paragraph defining those occupations that will not be exempt from over time pay. They read "exemptions and the regulations

in this part do not apply to manual laborers or other 'blue collar' workers who perform work involving repetitive operations with their hands, physical skill and energy." To avoid any confusion about the working class occupations that will qualify for over time pay, the Bush Administration listed the occupations as "non-management employees in maintenance, construction and similar occupations such as carpenters, electricians, mechanics, plumbers, iron workers, craftsmen, operating engineers, longshoremen, construction workers and laborers are entitled to minimum wage and overtime premium pay."

The list also specifically includes "police officers, detectives, deputy sheriffs, state troopers, highway patrol officers, investigators, inspectors, correctional officers, parole or probation officers, park rangers, fire fighters, paramedics, emergency medical technicians, ambulance personnel, rescue workers, hazardous materials workers and similar employees, regardless of rank or pay level[.]" The non-exempt employees are clearly defined.

All the exempt employees must be "compensated on a salary basis at a rate of not less than $455 per week," or $23,665 a year, a very easy condition to meet, but that is the only condition necessary to deny overtime to employees not already defined above. The pages and pages defining overtime exemptions apply to job characteristics that employers control and can change anytime. The regulations provide the means to adjust work or duties of employees to deny overtime pay if necessary should an exempt status be challenged.

The final Bush regulations for the five categories – executive, administrative, professional, computer employees, outside sales employees – defined sub categories and identify specific occupations as examples just in case there might be someone confused. The professional subdivisions apply as learned professionals, creative professionals, teaching professionals and law and medicine.

Learned professionals in the "fields of science and learning include law, medicine, theology, accounting, actuarial computation, engineering, architecture, teaching, various types of physical, chemical and biological sciences, pharmacy and other similar occupations." Additional learned professionals specifically cited include certified medical technologists, registered nurses, licensed practical nurses, dental hygienists, physician assistants, accountants, chefs, paralegals, athletic trainers, funeral directors or embalmers.

Chefs? Embalmers?

Creative professionals specifically cited as exempt from over time will be actors, musicians, composers, conductors, and soloists, painters, cartoonists and journalists. Teaching professionals exempted from overtime will be regular academic teachers; teachers of kindergarten or nursery school pupils; teachers of gifted or disabled children; teachers of skilled and semi-skilled trades and occupations; teachers engaged in automobile driving instruction; aircraft flight instructors; home economics teachers; and vocal or instrumental music instructors. Professional employees include those that "hold a valid license or certificate permitting the practice of law or medicine or any of their branches and is actually engaged in the practice."

Computer employees except those engaged in the manufacture or repair

of hardware will be exempt from overtime. Outside sales employee must be customarily and regularly engaged away from the employer's place of business except if sales by telephone are merely an adjunct to personal calls. Personal calls mean a home or office can be considered the place of business, and the exemption will apply if displaying samples in a hotel room or trade show during trips.

The George W Bush Administration wrote the 2004 regulations to allow corporate America to deny overtime, or to pay overtime, exactly as it suits their cost cutting needs. Notice those with a right to overtime are seasonal employees or those with irregular schedules that need overtime to assure employees will be available during peak periods, but neither a forty hour week nor year round employment will be assured. Otherwise the regulations allow employers to deny overtime to any and all employees as suits their cost cutting purpose. It amounts to a repeal of the overtime sections of the FLSA. The option to avoid overtime to millions of people puts millions more in the job market and helps to build a surplus of labor. Democrats remain mute. (8)

Child Labor----------Using child labor goes back many years. Congress passed the Keating-Owen Child Labor Act back in 1916, an age when the courts would not do anything to impede business in their eternal quest for cheap labor. Reformers tried to use the commerce clause of the U.S. Constitution to prohibit the transportation of products through interstate commerce if they were produced with child labor.

Use of the commerce clause was a practical strategy intended to defer to, or satisfy, the judicial review they were certain would come. In previous cases the court repeatedly ruled that the commerce clause of the constitution provided Congress with unqualified power to regulate interstate commerce. Even though the court had previously upheld a ban on the interstate transportation of adulterated drugs, and another banning the interstate sale of lottery tickets, and still another banning the interstate transportation of women for immoral purposes, the justices searched for previously unheard of excuses to undo the child labor legislation.

In the Supreme Court case known as **Hammer v. Dagenhart** the court wrote that the interstate transportation of adulterated drugs, lottery tickets, and prostitutes created "harmful results" but the new law that restricted children under 14 from working more than 8 hours a day, or more than 6 days a week, or before 6 a.m. or after 7 p.m. in textile mills did not create "harmful results" and was therefore beyond the power of Congress to regulate.

In the wrap up to their long and convoluted written opinion of June 3, 1918 the justices declared the Keating-Owen Child Labor Act "repugnant" to the constitution. American business has a long history exploiting child labor. Factory production in the textile mills in places like Lowell, Massachusetts long ago, used young women off neighboring farms. They worked from dawn to dusk breathing cotton lint and the smoke from oil lamps. It was widely regarded as a progressive place that paid cash wages instead of scrip for the company store.

Mother Jones took up the cause against child labor many times in both the 19th and 20th century; she led a march of underage textile workers to President

Theodore Roosevelt's home at Oyster Bay where she said "Fifty years ago there was a cry against slavery and men gave up their lives to stop the selling of black children on the block. Today the white child is sold for two dollars a week to the manufacturer." If she were alive today she would be unhappy to learn of the 21st century need for Child Labor Coalitions and children's rights councils. Even so she was a realistic women who understood the relentless quest of corporate America for cheap labor.

Two sections of the Fair Labor Standards Act of 1938 concern child labor. Section 212 has Child Labor Provisions that bans employment defined in Section 203 as "oppressive child labor" and Section 213 has a long list of exemptions from the ban on oppressive child labor. Oppressive child labor will be employment of anyone under 16 years of age and anyone between 16 and 18 years of age in an occupation deemed hazardous by the Secretary of Labor. Those between the ages of 14 and 16 years of age can work in occupations other than mining or manufacturing but limited to periods that will not interfere with schooling or health and well-being as deemed by the Secretary of Labor

On April 30, 2012 the Associated Press wrote a story titled "Move to kill planned rules on child farm labor draws criticism." The article tells readers the Obama administration has abandoned a proposal to restrict the use of child labor on dangerous farm jobs. Restrictions for 16 year olds banned them from operating power driven farm machinery especially tractors, working at heights to protect against falls, and from castrating farm animals. Other limitations among 15 rules that banned 18 year olds from working in grain silos, feet lots and stock yards. Exemptions allowed exclusion for children working on their parent's farm.

Proponents of the restrictions argued that four times more children are killed while performing farm work than those in all other industries combined. Republican opponents called the plan "impractical, heavy-handed regulation that ignored the reality of small farms." Democrat Al Franken from a farm state offered his opposition. Sarah Palin chimed in from her Facebook page with her own apocalyptic worry: "If I wanted America to fail, I'd ban kids from farm work." Gee?

The Washington Post covered recent developments in child labor in stories during the winter and spring of 2023. The captions on the stories tell all we need to know. February 11 had "In a tight labor market, some states look to another type of worker: Children. Bills advancing in the Iowa and Minnesota state legislatures would roll back child workplace protections to address worker shortages." March 8, had "Arkansas Gov. Sanders signs law loosening child labor protections." April 23 had "The conservative campaign to rewrite child labor laws: The Foundation for Government Accountability, a Florida-based think tank and lobbying group, drafted state legislation to strip child workplace protections, emails show." April 30 had "The Conservative Campaign to rewrite Child Labor Laws: Policy Group gains traction in its efforts to promote state legislation eliminating workplace protections for minors." (9)

The Keating-Owen Child Labor Act tried to limit the hours of work of children doing the same dangerous and repetitive jobs as adults, which limits

might drive up the wages of adults doing the same work in exactly the same way as in 2012 and in 2023. Worries about children cannot be allowed to interfere with one more way to build a surplus of labor.

Welfare----------During the first Clinton Administration Congress passed the Personal Responsibility and Work Opportunity Reconciliation Act of August 1996 that converted the decades old program called Aid to Families of Dependent Children (AFDC) into a new program called Temporary Assistance to Needy Families (TANF). Under Aid to Families of Dependent Children, single mothers got a stipend to take care of their dependent children under eighteen. Although the stipend was never enough to live on, it would be hard to think of another government program that generated more consistent public scorn.

A significant public welfare effort like AFDC did not start in the United States until Franklin Roosevelt became President in 1933. During the years 1929 to 1933 President Herbert Hoover would not agree to have the federal government provide financial assistance to the poor and the destitute in spite of mass unemployment. He thought government should assure equality of opportunity but no more. Individuals must expect to compete and accept whatever "his intelligence, character, ability, and ambition entitle him." Apparently, Mr. Hoover did not worry there might be inequality of opportunity.

When Franklin Roosevelt took over as President in March 1933 he treated the depression as an emergency and proposed a Federal Emergency Relief Act (FERA), which Congress passed in the first 100 days. The President appointed his long time aid Harry Hopkins to manage the Federal Emergency Relief Agency and create some "work" to justify handing out money to the destitute or otherwise risk a rampage of rioting and civil disorder. Former President Herbert Hoover opposed FERA as a harm to the "moral fiber" of the unemployed. Many from corporate America opposed it as breaking down "self reliance."

Two years later, President Roosevelt apparently agreed the emergency and the need for emergency relief ended, when he addressed Congress on January 4, 1935. He said "Continued dependence on relief induces a spiritual and moral disintegration fundamentally destructive to the national fiber. To dole out relief in this way is to administer a narcotic, a subtle destroyer of the human spirit." . . . "The federal government must and shall quit this business of relief." . . . "We must preserve not only the bodies of the unemployed from destitution but also their self-respect, their self-reliance and courage and determination." The president's speech brought a new government agency, the Works Progress Administration (WPA), and work more resembling jobs, but his WPA policy implied the government should furnish employment or welfare relief if the private sector fails to have jobs at a self supporting wage for all who need them.

Different versions of means tested programs from the great depression continued after WWII until the 1980's when President Reagan discussed welfare programs exclusively as waste and fraud. By speaking only of welfare abuses, he successfully characterized recipients as welfare queens and welfare cheats. By the 1990's, the media image of welfare moms sitting around a tax supported apartment

eating frosted flakes and watching soap operas became politically intolerable. Bill Clinton submitted his reform proposal in 1994, but the Republican controlled Congress revised his more moderate bill to suit themselves, and President Clinton went along and signed it.

In the 1990's with millions out on the highways commuting to jobs in plasterboard cubicles we might suspect growing resentment toward welfare moms and the allegations of free time and refusals to work. Welfare moms never had social, economic or political influence so all this resentment is more surprising given the pedestrian reality of life on a pittance from welfare. Few, if any, of the middle class have contact with mothers on welfare, but the Reagan allegations had the power of truth.

Some in Congress had reservations about cutting off welfare, but I do not recall much discussion of their worry. Their worry was ending up with ragged hungry children on the street. Americans do not want to hear about abandoned children, at least then. Congress decided to increase the earned income tax credit to relieve their worry. The big increases in the earned income credit go to adults with dependent children. Look at the tiny earned income tax credit for people without children and you cannot miss their point.

The new TANF came with federal rules in exchange for federal government block grants to the fifty states, four territories and Indian tribes, but remains as a means tested program. The law requires states to contribute additional funds known as a Maintenance of Effort, which must be at least 75 percent of 1994 AFDC or related programs. The block grant started as $16.6 billion dollars in 1997 and remains that amount in 2022 in spite of inflation. Total federal and state funding in 2020 was $31.6 billion.

The block grant funds can be legally spent for cash assistance but states have broad authority to fund child care, work-education-training, earned income tax credits, head start, child welfare, administration and emergency or other benefits. During fiscal year 2018 only 21.4 percent of combined federal TANF funds and state maintenance-of-effort (MOE) funds went to "cash assistance."

Families eligible for TANF cash assistance generally have to have income below the Federal Poverty threshold, which in 2022 is $1,526 a month for a single mom and one child, and $1,919 a month for a mom and two children. Cash assistance benefits vary widely by state. TANF rules require the states to impose work or work "activities" to receive benefits and imposed a five year lifetime benefit cap for cash assistance using federal funds; states could impose a shorter limit, which some have done. Recipients exceeding the time limit do not have access to cash assistance, a public sector job, nor a right to continue in a subsidized welfare job.

Department of Health and Human Services (HHS) data indicates welfare recipients were 14,200,000 in 1995 before the new program, but down to a little over 10,000,000 when the new program started. The Health and Human Services web site dated May 5, 2004 published commentary much like President Roosevelt back in 1935. It bragged "millions of families have moved from dependence on welfare to greater independence through work." . . . "Among single-mothers with

children under age 6 - a group particularly vulnerable to welfare dependency - employment rates are still 13 percentage points higher than in 1996."

Totals continued to drop steadily to 4,400,000 by 2011, to 3,800,000 by 2014 and to 2,400,000 by June 2021. The new TANF welfare had many defenders as well as detractors, but they wrote primarily from a political perspective. From an economic perspective the new rules add millions to the supply of labor helping to build a surplus of applicants in already low wages jobs. Resentment and opportunism ended welfare, but the term, "welfare reform," translates into one more way to build a surplus of labor.

Means tested programs like TANF that support able bodied citizens subverts free market doctrines and limits corporate access to cheap labor. Corporate America has always resisted income support programs that pay cash benefits and provide the ability to avoid or delay entering the job market. In order to minimize interference to cheap labor corporate America lobbies Congress to keep benefits below prevailing wages, and to limit the eligibility for individuals and households.

Corporate America universally believes eligibility for a program like TANF should include work and the discipline of showing up on time even if program administrators cannot find jobs for their clients and have little for them to do but warm up a chair. These corporate beliefs dilute other means tested programs that support people unable to find self supporting work. The list includes Supplemental Nutrition Assistance Program (SNAP), better known as food stamps, Supplemental Security Income, Social Security Disability Benefits, Medicaid, and unemployment compensation.

Food stamp benefits have a work requirement for individuals and families that meet its low income and asset requirements, with income below Federal Poverty levels depending on family size. Food stamp recipients must register for work and cannot voluntarily quit a job or reduce hours. They must take a job if offered, or participate in employment and training programs if required. Single adults without dependents must work or participate in a work program at least 20 hours per week to receive SNAP benefits for more than 3 months in a 36-month period. The United States Department of Agriculture that administers the program reported 42,100,000 Americans receiving SNAP benefits in 2017, a number that contradicts anyone that doubts America has lots of low wage jobs and a surplus of labor.

The Social Security Administration administers means tested Supplemental Security Income and Social Security Disability Programs. Beneficiaries tend to be retired, but working age adults can qualify if their income and assets are low enough. Both the Carter and Reagan Administrations cut the disability roles claiming thousands did not have disabilities that would prevent them from "substantial" work. In 2010, the Washington Post reported the "Jobless are straining Social Security's disability benefits program." Applications surged 21 percent, to 2.8 million, in 2008, as the W. Bush depression cut employment by millions. Social Security officials admit a bad economy brings an increase in applicants when those "who might otherwise struggle through with their ailments

try to secure disability benefits." Only about half make it onto the disability rolls, but with a reported average age of 49 and less than 1 percent return to work. Officials acknowledge the pressure to approve the surge of applicants, "[But] we have kept our standards exactly the same." Corporate America wants to prevent people from getting on the disability rolls as one more way to force people to stay in the labor force. Congress accommodates them knowing tougher eligibility rules help build a surplus of labor.

Corporate America also attacks unemployment compensation as too generous for the same reasons they attack means tested programs. The Bureau of Labor Statistics (BLS) defines the unemployed for their monthly household survey as someone not working at all during the week of the survey but actively looking for work. Not all these BLS unemployed will receive unemployment benefits. For starters, the unemployed must have worked during the first four of the last five completed calendar quarters before filing a claim; the unemployed must be on layoff through no fault of their own. Claimants cannot not quit, or god forbid, be on strike, or be discharged for employer allegations of misconduct, or other failures like being tardy or failing to follow orders as some state offices write on their web sites. Some states do not begin benefits until the second week of unemployment. Benefits are limited to 26 weeks and extended benefits beyond 26 weeks need a high unemployment rate to qualify. Unemployment benefits remained untaxed until the 1980's; now they are fully taxed.

During the pandemic millions of the unemployed lost their jobs due to no fault of their own, but corporate America objected to unemployment benefits anyway. Andy Puzder, Trump's first choice for Secretary of Labor and former chief executive of CKE Restaurants, complained about pandemic enhanced unemployed benefits in the Washington Post, June 3, 2020: "Unemployment benefits are causing a worker shortage." He claimed the Pandemic Unemployment Assistance Program caused a shortage of labor because benefits were too high.

In a May 2021 interview Senator Ron Johnson of Wisconsin demanded a cut to unemployment compensation to alleviate "labor shortages." Johnson remarked on WKOW-TV that he supported slashing Wisconsin's $300-per-week federal unemployment subsidy. "Unemployment benefits are not meant to provide replacement wages." . . . "Wages are set in the marketplace. Businesses pay what wages they can afford based on the competitive situation, whether it's in a restaurant, whether it's in manufacturing, where they're competing against foreign manufacturers versus domestic suppliers. I just have greater faith in the marketplace setting appropriate wage rates." Senator Ron Johnson, spokesman for corporate America.

The idea that people should have the personal discipline to work and contribute to the country and its economy can be defended as part of adult citizenship, the right to vote, run for office and participate in government. However, corporate America expects more than work they expect millions of Americans to accept corporate economic power to force them to work at wages too low for any reasonable self-support. The demand to work in tandem with their ferocious opposition to a living wage displays their true intention to maintain a

surplus of labor and control the working class for their own purposes. (10)

Prison Labor--------Exploiting prison inmates for cheap labor goes on today as it has for hundreds of years. Professor and writer Lynn Waltz reports on the 1990's strike at Smithfield meatpackers in her book Hogwild: "Smithfield was so desperate that it hired prisoners by the hundreds from a prison in Lumberton. In fact, the company became the largest employer of inmates in the state, unnerving workers and residents alike, especially when a prisoner escaped."

In 1877, the state of Georgia guaranteed 300 convicts to a Dade County coal mine in a 20-year lease at $.08 cents per day. In Tennessee in 1883, the Tennessee Coal, Iron, and Railroad Company leased an entire penitentiary with 1,300 convicts at $60 a head a year. Company General Counsel, Arthur S. Colyar, a Tennessee Democrat, liked convict labor because of "the great chance which it seemed to present for overcoming strikes."

Since the Tennessee Coal, Iron, and Railroad Company could not use all the convicts under contract they leased some of their surplus to the Tennessee Coal and Mining Company. Management promptly refused to renew a labor contract with their Knights of Labor local. That was near Briceville, Tennessee in April 1891 when they locked out the union and evicted the rank and file from company housing. On July 5, the company announced 150 convicts would arrive to take their jobs and live at the mine in a stockade constructed by convicts. On July 15, approximately 300 well armed miners over whelmed guards and marched them and the convicts five miles to Coal Creek where they put them on a train for Knoxville.

Next, Governor John Buchanan called out three companies of the National Guard to remove the miners and return the convicts, which they did. Shortly Colonel Sevier, commanding the troops, had to surrender when 1,500 well armed miners showed up ready for battle. Then the Governor called out the entire National Guard, fourteen companies in all. On July 25, he arrived with his troops to personally deliver the convicts for work. Then on October 31, 1891 the 1,500 well armed miners returned and forced the outnumbered guards to turn over the convicts, which were supplied with civilian clothing and released. The miners burned the stockade to the ground.

The mine in Briceville decided to give up hiring convict labor, but burning the stockade was only a pause in the use of convict labor in Tennessee. It would pick up again at other mines in the summer of 1892 and with similar results. The 19th century miners of Tennessee apparently understood that a public responsibility should not be used to subsidize corporate mining at the expense of private citizens trying to make a living.

In 2022, most state prisons require their inmates to work with various threats of reprisal, like solitary confinement, for those who might refuse. Federal law requires able bodied inmates to work for the federal prison industry known as UNICOR. In 2021 inmates earned between $0.23 to $1.15 per hour. A National Correctional Industries Association (NCIA), have members representing federal, state, county and international correctional industry agencies. Their website

provides a review of the Training and Technical Assistance Project of the Private Sector/Prison Industry Enhancement Certification Program (PIECP) sponsored by the U.S. Department of Justice. NCIA publishes reports on their work. Reports show inmates doing farm work such as to sort, grade, and pack fresh fruits and vegetables. They work in the production of upholstered sofas, and chairs, wood furniture, mattresses, pillows, covers, shower curtains, signs, corrugated boxes, dental products, eyeglasses, cleaning supplies, printing operations, an apparel to name only a few.

Prisoners in the labor supply add to the supply of labor producing products that compete with products produced by civilian labor in the private sector. The Department of Labor, Bureau of Justice Statistics reports 6.34 million Americans under correctional supervision, or 2.17 million in prisons and jails, 878,900 on parole and 3.49 million on probation for 2019. Those under correctional supervision already total 3.9 percent of the civilian workforce and 4.3 percent of establishment employment, but those on parole, probation or with a criminal record add up to more than 3.9 percent of the labor force. Prisoners do their jobs at lower or much lower wages. Inmates make a significant contribution to building a surplus of labor. (11)

Health Care----------Corporate America fights hard to block universal health care in part because they know many of their experienced employees have managed their finances well enough to retire before they are 65 years old. They might even retire at the age of 55 or god forbid 50. To discourage leaving the labor force and to keep their employees on the job and in the labor supply they conspire to make sure they will lose access to their group health insurance. One day a 55 year old has health care coverage for a few hundred dollars a month with few or no co-pays. Few retirees want to be without health care coverage, but these early retirees find replacement health care coverage mysteriously and suddenly jumps to $14,000 or $17,000 a year, very likely with new limits on coverage and more co-pays. Blocking health care coverage helps maintain labor supply and prevents bidding up wages for replacement hires across many occupations. Given the higher skills of the older labor force, denial of health care coverage acts as an important element in building a surplus of labor.

Immigration, unpaid overtime hours, means tested welfare, the use of prison labor, health care puts significant millions of people into labor markets to help corporate America in their search for cheap labor. These types of increase in labor supply build a surplus of labor without even considering the destructive effect of discrimination in hiring and employment. As long as people prefer higher wages to lower wages and they can look for and take other jobs without discrimination, then low wage employers will have to raise wages to keep their employees. As all economists know bidding up low wages helps equalize wages between employers and between occupations with similar skills.

Hiring based on equality of opportunity implies people own and use their skills and time in the same free enterprise way capitalists expect to own and use their capital. Discrimination by race, creed, color and gender that restricts

black and minority employment opportunities to a limited number of occupations creates a surplus in those occupations and provides corporate America with another source of cheap labor.

Discrimination within a corporation or any establishment generates a dual labor market where management has an incentive to replace higher paid white employees with lower paid black employees when both black and white employees do the same work. That is why so much prejudice has worked to reserve some work for blacks only. It is the same when white men act to limit women to a low paid list of women's work.

Employers can and do continue to pay lower wages for minorities and women in the same occupations with white men, which gives a financial measure of management's preference for discrimination. Since employers have the financial incentive to replace their higher paid white employees with lower paid black employees doing the same work, the wage differential between white and black gives a financial measure of corporate preference for discrimination. Maintaining white male domination of higher wage jobs for long periods gives a measure of the value they place on discriminating against women, blacks and minorities, and lower class white men they regard as inferior. Oddly enough some labor union officials in the 1980's agreed to create a dual labor market by accepting a wage cut for new hires while leaving current union employees doing the same work at a higher wage. It allows management a quick opportunity to save money replacing the higher paid union members with the lower paid recruits and encourages reprisals by new hires that can petition the NLRB for a de-certification election.

The practices and policies that build a surplus of labor outlined above has generated a pool of cheap labor that has no hope of decreasing over time given current labor market practices and policies. Some may escape their low wage jobs, but millions will always be left struggling at wages below a living wage, just as millions have since the 1877 upheavals. Nothing in a free enterprise economy prevents wages from falling to extremely low levels for million required to meet the necessary expenses of a living wage. That would be true even without corporate America's determination to make it worse by encouraging policies to build a surplus of labor.

The Living Wage

Doctrinaire economists can be counted on to oppose any government policy to insure a living wage in labor markets. They have to discount corporate America's influence on public policy especially through executive branch administration where laws can be ignored instead of enforced, or laws like the Fair Labor Standards Act that can be used against labor instead of for it. A living wage requires public policy, which can be easily fit into the operation of the current economy.

Education will not be the answer to America's low wage jobs. For years during his tenure as Federal Reserve Chair Allan Greenspan would testify at public hearings and tell Congress the answer to inequality of income was more education and jobs skills. It was his way of deflecting pressure to answer for the millions

of low wage jobs, but he was speaking as chief spokesman for the status quo on behalf of corporate America. President Obama and others in the Democratic Party have offered some of the same blather, but they ought to know by now they sound like snobs and debase the working class and the Democratic Party in the process.

Evidence abounds that higher education will not solve the problem of inequality given the limited number of jobs needing college degree skills. First, the Bureau of Labor Statistics(BLS) has developed a slate of eight job skill categories with the educational requirements necessary to qualify for employment in the 848 detailed occupations in their Standard Occupational Classification, for which they identify and maintain occupational employment data. The skill requirements by occupational category come from direct consultation with a large sample of employers. Only 267 of those 848 occupations need college degree skills, which includes BA, MA, Ph'D, and professional degrees such as a law degree or a medical degree. The employment in occupations needing these college degrees skills total just over 20 percent of the total of occupational employment reported by the Bureau of Labor Statistics. There are 49 additional occupations that employer's report need associates degree skills. These represent just under 6 percent of the total of occupational employment, which brings the total occupational employment needing some college degree skills to only 26 percent.

The Bureau of Labor Statistics also reports in their current population survey that 32.9 percent of the adult population over 25 years of age have a baccalaureate degree or higher. Recent data puts that total at just under 62,800,000 people while the 26 percent of employment in occupations needing college degree skills equals 37,500.000. The surplus of educated Americans has motivated many to compete for the shortage of college degree skill jobs by going back to college to pursue a master's degree to help gain a competitive advantage in the job mart. The National Center for Education Statistics reports degree data showing masters degrees as the category with the highest growth rate; MBA beginning the most important category.

When Mr. Greenspan started making statements to Congress that education will relieve inequality, it was during an on-going campaign to restrict access to higher education that can be traced to the Vietnam War era. The nation's boomers should remember California Governor Ronald Reagan attacking students at the University of California at Berkley for protesting the Vietnam War. As Governor, he successfully convinced the legislature to cut the state budget and raise tuition for California's public universities. Like many economists and corporate America, Greenspan helped promote the idea that higher education primarily benefits the individual and generates few public benefits for the larger society. As President, Ronald Reagan promoted that view helping to justify state after state cutting higher education budgets amid rapidly raising tuition; tuition started rising much faster than inflation. Federal tuition grants like Pell grants were cut as well. Interest bearing student debt started to rise. The original student loan program began with a revolving pool of federal funds to be loaned to, and repaid by, students, but in 1993 Congress allowed private banks to make student loans guaranteed by the

federal government. Interest rates mysteriously began to rise and student loan debt started to soar.

State universities around the country began attempting to make up for budget shortfalls began admitting a higher percentage of out of state students at the much higher out-of-state tuition rates, and concurrently refusing admission to more in-state students. State universities actively recruit out of state students and accept corporate research funds and corporate influence as well. Ronald Brownstein, writing for Atlantic Monthly in May 2018, cited 2017 data from the State Higher Education Executive Officers showing 28 state university systems with tuition revenues more than public appropriations. Since the well to do are the most likely to have the extra funds while the working class hoping to pursue college degree skills will confront fewer and more expensive opportunities for in state tuition, the 21st century system of higher education encourages more inequality, not less.

Public primary and secondary schools have always relied on local property tax revenue as a primary source of funding. Since the wealthier neighborhoods have more revenue for better schools and much higher home prices to keep the working class out of their neighborhoods, the primary and secondary schools already resemble the inequalities that unchecked free enterprise will always generate. In spite of these advantages the wealthy have been known to complain their private school tuition should count for property tax support for public schools. Either Mr. Greenspan practices the art of self deception or he tells bald faced lies hoping to cover up the demise of America's educational opportunities and the inequality it generates. (12)

Current labor law will not be the answer to America's low wage jobs, nor has it ever been. The NLRA as passed in 1935 had fatal flaws even before the amendments of 1947 and 1959 made it much worse for labor. The law requires enforcement by a NLRB of political appointees confirmed by the Senate. The Republican appointees can be trusted to be in sympathy with management or occasionally aggressively hostile to organized labor. Democratic appointees can be trusted to be in sympathy with labor, but like so many of America's statutes vague language allows corporate challenge with a long process of Board review and threat of years of delay with federal court review when people have to have a job and cannot wait. If the Board finds corporate violators their cease and desist orders and back pay provide no incentive to obey the law.

The Fair Labor Standards Act as its currently written will not be the answer to America's low wage jobs either. The minimum wage remains fixed until both Houses of Congress and the president agree to raise it, making it a partisan decision the Republicans oppose. Democrats seldom have the votes to increase it, while the Republicans stall and let inflation effectively lower the wage automatically. Corporate America wants a minimum wage below a prevailing wage to assure a plentiful supply of cheap labor, which the history of the minimum wage over the last thirty years proves they can do.

The minimum wage rarely gets up to the poverty income threshold. In 1990 when the minimum wage went from $3.80 to $4,25 an hour a two person

household could remain above the poverty threshold with one person working for one year, but the federal minimum wage remained above the poverty threshold only 4 of the next 32 years for a two person household. The poverty threshold in 2022 for a two person household is only $18,310, but one person at a full time minimum wage earned $15,080. With a minimum wage at $7.25 an hour two people in a household have to work to stay out of poverty, which intentionally forces two instead of one to work at low wages increasing the surplus of cheap labor.

A Household with two adults below the poverty threshold might qualify for some of the means tested welfare programs, but mostly households without children will have to fend for themselves and the Fair Labor Standards Act does nothing for them. However, the means tested programs in the United States result primarily because households with children and a single parent or grandparent cannot earn enough to keep ragged hungry children off the street and out of sight. The possibility of destitute children and visible signs of starvation still bring a humanitarian response from a significant share of the polity.

A country with a slate of means tested programs and one with a living wage differ in their distribution of income and wealth. A country that accepts severe economic inequality for decades accepts the failure of their political institutions to relieve class warfare and the antagonism they generate.

All of the means tested programs in the United States exist because the operation of a capitalist economy generates millions of jobs that leave people in poverty or leaves people destitute without a steady job, or any job. The annual federal, state and local government budgets for means tested programs – TANF, SNAP, SSI, Medicaid, CHIP housing vouchers – measures the government subsidy to corporate America that pays for a part of what they will not pay: a living wage. These budget totals equal the return from their economic and political power to control the operation of product and labor markets and the wealth to direct the votes in Congress to control taxation, property rights and the terms of trade for a corporate directed economy in a government oligarchy.

While a living wage remains a mirage in current American politics, the advantages of it over alternatives like socialism can be easily listed. It does not require a budget of billions to fund multiple administrative bureaucracies, nor require intrusions into personal affairs intended to demean recipients as part of class warfare. It can be carefully defined and enforced without years of wrangling and legal challenge. A living wage does not change the operation of free markets for all jobs and employment above the living wage minimum. It does not change property or contract rights except for employers that treat their jobs as part of their property right to bestow on others. Since Americans work at-will without job rights employers like for us to think of their jobs as a privilege and good fortune. It would help the media to stop counting new jobs as a great benefit we should all love.

A living wage relieves the inequality of income and wealth in silence as part of daily operation of the national economy. Exchanging means tested programs for a living wage eliminates the need for all, or nearly all, government spending

on poverty, while shifting corporate profit to a cost. Like all economic policies that anyone cares about, the living wage would change the distribution of income and wealth in ways corporate America does not want and has the economic and political power to prevent. It will not happen in the United States without a complete overhaul of party politics and substantial change or replacement of our obsolete Constitution.

Labor and the Founding Fathers

Americans owe a debt of gratitude to our founding fathers for drafting a constitution to make thirteen sovereign states into one United States. Given the claims on state rights, we owe a second debt of gratitude for getting enough states to ratify their work and put a national government into operation. The men who drafted the constitution distrusted democracy given the potentially destructive impulses they saw in the larger society. The legislative, executive, and judicial positions they defined in our constitution create entrenched power that allows one or a few people in positions of authority to block the will of a democratic majority. The founding fathers were unquestionably better educated than the general population of 1787 and perhaps justified in their paternalistic view that a few wise and worldly men should be able to step in and block democracy. Paternalism for the greater good worked at least until the sixth president, John Quincy Adams, but that was 1828, an age before paternalism died and corporate America took over elective politics. The same constitution remains today, but for those who believe in democracy it is obsolete and needs to be drastically amended or replaced.

Every public school student in the United States will be told their Constitution establishes three branches of government with a separation of powers between the legislative, executive, and judicial branches of government. Article I defines legislative powers; Article II executive powers in a President; Article III judicial powers in federal courts. In reality, the separation of power gives each of the three branches power to interfere with the other two. Presidents have a legislative veto but lack independent authority to make decisions without the potential for interference by Congress or the courts. Federal courts overrule the laws of Congress and decisions of Presidents.

Congress – Article I

This country is fast becoming filled with gigantic corporations, wielding and controlling immense aggregations of money, and thereby commanding great influence and power. It is notorious in many State legislatures that these influences are often controlling, so that in effect they become the ruling power of the State. Within a few years Congress has, to some extent, been brought within similar influences, and the knowledge of the public on that subject has brought great discredit on the body.

----------Report of the Select Committee to Investigate the Alleged Credit Mobilier Bribery, Made to the House of Representatives, February 18, 1873, (Washington, D.C: G.P.O. 1873), a.k.a. Luke Poland Report, page x

A true democratic republic needs elected representatives that represent the same number of voters, which our Congress does not do. The Senate with two Senators per state dilutes the votes in large states and magnifies the votes of small states. Rule 22 and its variants allows for a Senate Filibuster to empower even tiny minorities to block the will of the majority.

In our bicameral Congress the House of Representatives provides a procedure for proportional representation that a democratic republic requires, but in practice the end of the decade redistricting allows the majority party in a state to defeat democracy by maneuvering boundaries to pick the voters that keep them in office, the gerrymander. This defect could be easily remedied by having a computer determine rectangular boundaries based on census population data, the same data the worthies in the state legislatures use to do it incorrectly.

Our obsolete Congress makes it difficult for a majority to pass legislation while making it easy for a minority to block legislation. Recall in 1947, Republicans had veto proof majorities for the 80th Congress for the first time since 1933 when they seized the opportunity to pass the Taft-Hartley Act. Once passed it needed only a minority to stop any majority efforts to amend or repeal it. Labor amendments went before the Congress during the Truman, Carter, Clinton, and Obama administrations, but were easily blocked by minority votes representing corporate America. This defect allows a minority to block essential up dates in cost of living for the minimum wage part of the Fair Labor Standards Act.

Those who believe in democracy will want a new Congress, but the flaw lies deeper when democracy confronts one-issue voters. Back in the 19th century the Women's Christian Temperance Union conducted a one-issue campaign to eliminate alcoholic beverages from the United States. When they finally succeeded in 1919 with the 18th amendment followed by the Volstead Act, they had learned and perfected the technique of minority control of democracy.

Temperance advocates prevailed on their supporters to vote for a candidate based solely on their support for prohibition of alcoholic beverages. Even where supporters represented only a few percentage of the electorate, voting in a two party system tends to cluster around the 50 percent median voter. Many elections are won or lost by one, two or three percentage points. The one issue voter has power to reverse an election and coerce all party candidates go along to avoid losing the small percentage of voters that can decide winning or losing an election.

Efforts to enforce prohibition brought widespread opposition and considerable violence, both by and against enforcers. Gun control remains today's primary contest for one-issue voters. There can be absolutely no doubt a substantial majority of the United States supports gun control, but enough districts and states with enough votes to reverse a close election make legislation impossible and Congress irrelevant. Notice too the extremes of both subjects. Legislation in a democracy requires the give and take of compromise consensus to get a majority. Extreme views will not prevail in a democracy. The Volstead Act defined intoxicating beverages as any with .001 percent alcohol, but defining a beverage that cannot be intoxicating is an extreme that signals a failure of democracy. Likewise for gun advocates, owning military weapons ready for

use by anyone at any time is an extreme that signals a complete breakdown of democracy.

Advocates of political extremes gained influence during the Reagan administration and took over the Republican Party after the mid term elections of 1994. The announcement came that Republicans will no longer compromise but instead work to obstruct using the defects in the Congress to block Democratic Party efforts to pass legislation. The success of Republican practices shows how dangerously obsolete our Congress has become.

A new Congress will need to be a true Democratic Republic using a unicameral legislature with proportional representation and rectangular districts established by computer using census data. Majority votes become decisions of the Congress. A new House of Representatives will need procedures to restrict the destructive power of one-issue voters. This could be accomplished by empowering a group of one or two dozen members of the House to co-sponsor a carefully defined constitutional amendment for a national referendum as part of regular election cycles. Gun control, abortion rights, single pay health care, a minimum wage would go before the public in a national vote. A voting majority would make the rights defined a part of the constitution, not subject to repeal by court ruling.

The closet vote America has to a democratic vote of a republic is the popular vote for president, but it does not count under the undemocratic Electoral College. Our federal government ignores many national needs as part of minority rule and corporate America's domination of politics. The suggestion above is one of many possibilities for making Congress democratic, but Congress has to be changed to have democracy. Our constitution does not allow for a run off election in presidential elections, but instead a minority vote can elect a president as happened in November 1860. Of course, majority voting does not assure peace and tranquility, but America has proved minority rule can be violent and dangerous.

The Presidents – Article II

Power is Poison. Its effect on Presidents has always been tragic, chiefly as an almost insane excitement at first, and a worse reaction afterwards; but also because no mind is so well balanced as to bear the strain of seizing unlimited force without habit or knowledge of it; and finding it disputed with him by hungry packs of wolves and hounds whose lives depend on snatching the carrion.

----------Henry Adams, from The Education of Henry Adams, 1907

Article II, Section 1 defines the Electoral College and the method for election presidents. Presidential elections fail the test of democracy. The Electoral College should be abolished in favor of a popular vote as democracy requires. The record of presidents since 1877 finds fourteen presidents have won in the Electoral College with less than 50 percent of the popular vote, and four of those won while losing the popular vote. Americans live in country where a minority or

losing candidate rather routinely takes office: 14 of 27 elections, more than half the time.

A democratic republic requires a majority vote of adult citizens but electing a president by popular vote does not end the risk of three or more candidates failing to get a majority. That risk requires a provision for a run off election. Under the Electoral College system a failure to get a majority throws out democratic voting in favor of a state by state majority vote of the House of Representatives. The U.S. Constitution cannot support a viable third party without a runoff election for president. America needs runoff elections for all elected positions.

Article II, Section 1 has the requirement that a president must be a natural born citizen. It should be eliminated. Probably that restriction expected to keep the British immigrants from becoming president. It should be removed in favor of a defined period of citizenship.

The vice-presidential office defined in Amendment Twelve should be recognized for the mistake it is, and abolished. We can excuse the founding fathers for wanting a president-in-waiting given the primitive state of medicine and the opportunities for death in 1787. Still designating the next president in advance unmistakably resembles monarchy, or royal succession, not democracy. The founding fathers had nothing for their V-P to do, just like a British Prince, and so gave him a vote in the Senate in the event of a tie. Ho Hum! Death, assassination and one resignation have given us six unelected presidents since 1877 that include Chester Arthur, Theodore Roosevelt, Calvin Coolidge, Harry Truman, Lyndon Johnson, Gerald Ford. Party officials chose these six vice presidents in order for party bosses to "balance the ticket" as an aide to electing someone else. If we are a democracy we should prefer voting for all our presidents rather than the erratic events that put these men in office. A new constitution should include a procedure for an election while naming an interim designee.

Article II, Section 2 makes the president the commander and chief of the army and navy with the power to call into service the state militias. They left Congress with the power to declare war, which became obsolete at the end of WWII and the atomic bomb. Recall the Korean War was a police action and none of the wars since then have followed from a declaration of war. Our presidents since WWII have asserted the power to direct U.S. military forces at their discretion, which many regard as a dangerous concentration of power in a nuclear age that needs correction.

Article II, Section 2 includes authority to grant reprieves and pardons, to make treaties, to nominate ambassadors, other ministers or consuls, Supreme Court Justices, and other officers established by Congress. Treaties and appointments require, or can be required to have, the advice and consent of the Senate. Section 3 allows the president to address, convene or adjourn Congress, receive ambassadors, in addition to the duty to see the laws of Congress will be faithfully executed.

Article II, Section 2 defines advice and consent as a two thirds majority of the Senate to confirm appointments. This defect could be corrected by having a simple majority to confirm, or better yet a majority of the Senate in the same

political party as the President. This procedure allows for the review of credentials and protects against corruption while avoiding deliberate political obstruction.

The founding fathers found little to like about the concentrated executive power of British Kings. Except for the veto power defined in Article I, Section 7 and their role as commander and chief, the constitution defines a presidential office primarily with administrative functions, not independent power. They need guile and ability as speakers and persuaders: the "bully pulpit" Theodore Roosevelt called it. While presidents like to take credit for a thriving economy, they do not create jobs in the private sector and will be attacked as socialists for advocating jobs in the public sector. They do not control the money supply or interest rates, nor control federal taxes or tax rates; they only propose federal spending in a budget to Congress.

Given the spare list of formal presidential powers, what presidents actually do varies with the presidents we put in office and their ability to exploit the informal powers the office confers. Informal powers and duties leave opportunities for misconduct. However, Article II, Section 4 makes it nearly impossible to remove presidents during their term of office. Recall the president, vice president, and all civil officers can only be removed in a two part process of impeachment and conviction for Treason, Bribery or other high crimes and misdemeanors.

The severe requirements to remove a president assume, in effect, that voters can and should trust the honesty and integrity of their presidents for four years, and leave them alone no matter what they do. The record of presidents since the civil war finds that President Andrew Johnson should have been removed for engaging in heinous political misconduct but his misconduct likely fell short of a high crime. Woodrow Wilson should have been removed from office after having a debilitating stroke that left him unable to carry out the duties of president. Doubts about his vice president, Thomas R. Marshall, relieved some of the pressure for him to resign, which helps show the folly of the vice presidential office. Wilson's energy and mental state made him unfit for office, but the vice presidential office did not permit acting as president while still vice president. Richard Nixon engaged in criminal misconduct and then abandoned most of his presidential duties working on a cover up. Even with a Democratic Congress it took the publicity from Nixon's tape recorded evidence and two years of relentless political pressure to get him to resign. Questions of President Reagan's mental health late in his second term were brushed off and ignored.

Bill Clinton was impeached solely for political reasons, and remained in office solely for political reasons since Democrats had the votes to acquit him. Recall Congress used the same political abuses as the House Un-American Activities Committee(HUAC); they demanded sworn testimony as an excuse to attack him without accusing him of a crime, and then defined his goofy answers as perjury. The House impeached Donald Trump twice for committing crimes, but Senate Republicans kept him in office for political reasons. Article II, Section 4 makes crime a matter of political debate.

Two amendments to the Constitution attempt to address the removal and succession failures in the Constitution: twenty-two and twenty-five. Amendment

twenty-two limits presidents to two 4 year terms, not necessarily in succession. Amendment Twenty-five defines one group and a method for forming an alternative group, where either group has authority to declare a president "unable to discharge the duties of his[sic] office." Whether the inability would be a mental or physical breakdown, a threat of violence or other danger was not addressed. However, if the president disagrees then a two-thirds vote of Congress removes the president and the vice president becomes acting president, presumably until the current term of office ends and a new election takes place.

Presidents can be dangerous. The 25th amendment confirms that conclusion by providing Congress with the authority to remove a defiant president they deem "unable to discharge the duties of the office." The two-thirds vote for removal for any reason at any time should be an absolute minimum for removing a president, but a simple majority would be better.

The current method of limiting the president to two terms with the 1951 22nd Amendment suggests a poorly thought out Republican revenge against the New Deal and Franklin Roosevelt. If we want our presidents to govern then how we elect and remove them should help minimize the time they spend campaigning and their time as a lame duck. The two term limit fails this test badly. Presidents spend the last half of their first term raising funds and campaigning for the second term. Long campaigns require more campaign funds and increase the influence of corporate America. A second term without a chance of reelection produces a four year long decline in presidential influence with the whole term as a lame duck.

Consider a proposal to have America elect a president by popular vote with an indefinite term of office, but every two years the country votes to have their sitting president remain in office for two more years, or votes for removal and a new election in two months. Presidential candidates would be pressed to run on their record with a short campaign and the period as a lame duck limited to two months, roughly the same as the one now. A lame duck president could be denied veto and appointment power and defined as a custodian to avoid the acts of revenge that go on now. Presidents could remain in office as long as a majority wants to keep them, or get rid of them anytime.

If we could remove a president for political reasons, much like the British remove their prime ministers, presidents would be pressured to govern all the time with minimal time as a lame duck. With presidential longevity continuously in doubt presidents might pursue what they believe in and go on the offensive rather than using their defensive power to protect the status quo as they do now. It's just one proposal among many, and not necessarily the best one, but that is just the point. Politicians, the media and corporate America suppress discussions to change the presidential office.

The Judiciary – Article III

I think that the judges themselves have failed adequately to recognize their duty of weighing considerations of social advantage. . . . I cannot but believe that if the training of lawyers led them habitually to consider more definitely and explicitly the social advantage on which the rule they lay down must be justified,

they sometimes would hesitate where now they are confident, and see that really they were taking sides upon debatable and often burning questions.

----------Oliver Wendell Holmes, from his speech the Path of the Law, 1897

Article III defines the judicial power of the United States vested in one Supreme Court and such inferior courts as Congress may determine. Judges get lifetime tenure. Article III also defines the jurisdiction for cases brought before the federal courts and establishes an original jurisdiction of the Supreme Court, meaning the court where a case may begin. The wording also specifies "appellate Jurisdiction as to law and fact, with such Exceptions, and under such Regulations as the Congress shall make." Recall the Norris-LaGuardia Act of March 1932 utilized that wording to eliminate Federal Court jurisdiction to hear cases growing out of a labor dispute. The same wording could eliminate federal court jurisdiction for abortion or gun control, but no politician has the courage to say so and Congress will not discuss it.

The federal courts are every bit as obsolete as the Congress. Lifetime tenure should be abolished and Supreme Court justices increased to an even number as just a minimal change. If there were sixteen justices and each president makes an annual appointment, then each justice serves a sixteen year term, assuming a presidential term of four years. It should take a two-thirds vote of both the House and Senate to prevent a new justice from joining the court, not to confirm. A bigger court dilutes individual power as everyone knows. Tie votes would leave a circuit court ruling as final and eliminate the single "king maker" majority vote we have now.

The first Congress defined the federal courts as district courts and appeals courts. Appeals courts are still divided into geographic districts known as 13 circuit courts but the need to "ride" circuit disappeared long ago and the need for circuit court districts with it. We should put all the circuit court judges, 179 of them, into a pool and any appeal from a district court ruling would go before a computer generated random selection of three appellate justices. That would eliminate the "forum shopping" and the divided circuit court rulings we have now. The reality of forum shopping helps prove that circuit court districts are a sham. A second appeal could be permitted before another random selection of appellate justices. At some point appellate review would end, but such a procedure eliminates the need for a Supreme Court. We could abolish the Supreme Court and end all of its abuses with such a procedure.

Before the controversial 1973 case of Roe v. Wade, the Pro-life coalition used the advantages of a minority to block abortion legislation in Congress. After Roe v. Wade they soon learned passing anti-abortion legislation requires a majority, which they still do not have. It was 1973 when right wing complaints that the Supreme Court legislates began to intensify. The federal district courts and the circuit courts lean more toward settling the disputes before them, but the Supreme Court legislates quite often, as they did with Roe v. Wade. (13)

Those who bother to read the Roe v. Wade opinion know it reads like

legislative debate. Justice Blackmun who wrote the opinion for the majority included a long history of the abortion where he returned to ancient Greece and the Roman Empire and described English and American common law and then the state statutes from the 19th century. After considering the views of the pro-life and pro-choice extremes as of 1973, he hued out a legislative compromise disguised as a court ruling. Justice Blackmun refused to recognize the unborn as a person, but defined a process of conception to birth that reaches a point of "compelling state interest" that justifies regulating the abortion procedure at the end of the first trimester, but not before. If we had a democratic Congress without a filibuster, one issue voters and a presidential veto then a democratic compromise of a compelling state interest in abortion could have been worked out, but compromise is exactly what our defective Congress cannot do. Justice Blackmun tried to fill the legislative gap.

States that find a compelling interest in regulating abortion can also find a compelling state interest in setting maximum speeds on streets and highways to protect public safety. If a state legislature sets a maximum speed at 5 miles per hour and a disgruntled driver sued to end the restriction, it would be the court's duty to consider if a speed that low met the requirements of a compelling state interest. If the court decided 25 miles per hour on residential streets could meet the compelling state interest standard, then the court's ruling would be precedent for any later disputes. It would not be expected for the court to rule that speed limits are an unconstitutional limitation on freedom that denies speeding drivers the due process of law.

Justice Rehnquist wrote about due process in a dissent in Roe v. Wade that does not receive the attention it deserves. His dissent includes a discussion of the judicial abuse of the Fourteenth Amendment that has remained in the shadows all these years. Justice Blackmun applied the due process clause of the 14th Amendment to bolster his decision. Blackmun wrote "A state criminal abortion statute of the current Texas type, that excepts from criminality only a lifesaving procedure on behalf of the mother, without regard to pregnancy stage and without recognition of the other interests involved, is violative of the Due Process Clause of the Fourteenth Amendment."

Justice Rehnquist replied directly to that. He wrote, "By the time of the adoption of the Fourteenth Amendment in 1868, there were at least 36 laws enacted by state or territorial legislatures limiting abortion. While many States have amended or updated their laws, 21 of the laws on the books in 1868 remain in effect today [1973]. Indeed, the Texas statute struck down today was, as the majority notes, first enacted in 1857 and 'has remained substantially unchanged to the present time.' There apparently was no question concerning the validity of this provision or of any of the other state statutes when the Fourteenth Amendment was adopted. The only conclusion possible from this history is that the drafters did not intend to have the Fourteenth Amendment withdraw from the States the power to legislate with respect to this matter."

The Fourteenth Amendment and the role of Thaddeus Stevens in getting it through Congress right after the civil war make the history Justice Rehnquist

refers to absolutely clear. The Fourteenth Amendment intended to guarantee the individual rights of freed slaves [persons] against arbitrary abuse by the white majority. All five sections of the Fourteenth Amendment attempt to bring an end to discrimination against persons.

Notice above Justice Rehnquist refers to the power to legislate with respect to "this matter." He objects to his colleagues legislating on this matter, but does not mention that his many predecessors on the court have not hesitated to pervert the Fourteenth Amendment to other legislative matters that suit their purpose. Recall, for example, the case of Truax v. Corrigan where Justice William Howard Taft claimed peaceful picketing at a restaurant during a strike denied the business owner the right of due process under the Fourteenth Amendment and also justified declaring an Arizona anti-injunction statute unconstitutional. The use of Fourteenth Amendment for corporate purposes such as union busting is an invention of the judicial mind. Declaring a law unconstitutional is legislating as Justice Rehnquist has so bluntly declared in the case of Roe v. Wade.

Courts are supposed to settle disputes brought to them, which settlements become precedent for the future. Precedent helps create settled, and therefore, predictable law. Settled law encourages compromise without resort to lawsuits when both sides can predict a ruling in advance. Recall the two cases of Harris v. Quinn from 2014 and Janus v. AFSCME in 2018 where Justice Alito wrote the opinion to throw out established precedent from three labor law cases from 1956 to 1977. Recall the last of the three cases was Abood v. Board of Education of Detroit, which established rules for using union dues for political campaigns.

In Harris v. Quinn Justice Alito wrote summaries of the Abood case arguments followed by personal declarations such as "The Abood Court's analysis is questionable" . . . "The Abood Court seriously erred" . . . "Abood failed to appreciate the conceptual difficulty." He did much the same in his Janus v. AFSCME opinion. After announcing "we recognize the importance of following precedent, unless there are strong reasons for not doing so," he followed with "Abood was poorly reasoned, " which he announced three times. As before he summarized Abood arguments and offered his personal conclusion. "This argument is clearly wrong." . . . "Abood is something of an anomaly." "Neither of these arguments is sound." In the Janus case Justice Kagan wrote a dissent, where among other things, she complained "[A]fter ostensibly turning to stare decisis, the majority spends another four pages insisting that Abood was 'not well reasoned,' which is just more of the same."

Justice Alito and the justices that voted for his opinion do not like unions, nor the working class. The two cases provided them with the opportunity to legislate against union rights, but none show the slightest respect for established law or precedent offering nothing but lamebrain excuses for over turning Abood. In the recent Dobbs v. Reproductive Health the Supreme Court should have affirmed the Roe v. Wade opinion but only because of precedent. Here is what they should have explained. The Roe v. Wade decision was an improper use of Supreme Court authority but we can respect the effort the Justices made to hew out a workable legislative compromise that Congress remains unable to do. We

do not believe after 50 years with this compromise we should disturb established precedent even though Roe v. Wade was a legislative ruling and not a judicial matter. If the Congress ever legislates a compromise we will respect that in any future litigation.

Instead they abandoned law altogether and left a vacuum because they personally oppose abortion, apparently for religious reasons since the six votes to overturn all came from followers of the Catholic faith. With our defective Congress paralyzed the anti abortion campaign turned to packing the courts with justices predisposed to deny abortion rights. The six justices that voted to overturn had to commit perjury to be confirmed. They were successful in their abuses, but like Justice Taney in the Dred Scott case long, long ago, they had to debase honesty, the Supreme Court, Democracy and the Country in the process.

Article III of the Constitution concentrates power in five appointed justices that has nothing to do with voting or democracy. This power presumes the faith our founding fathers had that appointments would be for wise and impartial justices that honor their judicial oath to rule without regard to persons. Looking back it is surprising how many judges and justices have tried to make responsible use of their power and how often the Supreme Court had five votes to make decisions that follows the law. Looking back also finds Supreme Court majorities with rigid and doctrinaire views, and a bias toward corporate wealth and against the working class and organized labor. The law can often be found in minority dissents. The Supreme Court of the 21st century proves the founding fathers failed us in their faith. We can and should deny them appellate jurisdiction as the Constitution allows, or better yet, get rid of them as only a constitutional amendment can do.

Amendments – Article V

Article V constitutes what may be the most important bars of our constitutional iron cage precisely because it works to make practically impossible needed changes in our polity.

----------Law Professor Sanford Levinson, from his book Our Undemocratic Constitution.

Proposals to change the Constitution come with suggestions for individual amendments to change the Congress or the courts, or suggestions in books proposing comprehensive changes in a new constitution. Two of these books proposing a new constitution are by law professor Sanford Levinson and another by political science Professor Larry Sabato. The Sabato book is somewhat longer with moderate suggestions for change compared to the shorter and more aggressive suggestions of the Levinson book. However, every one of the suggestions in both books would be improvement over what exists now, that is for those who believe in more democracy rather than concentrated minority power we have today. (14)

Both authors recognize the two methods in Article V for amending the U.S. Constitution have cumbersome two step procedures that require super majorities to be ratified. The few amendments so far have all come by the first of the two

methods in spite of the difficulties built into it. The second method establishes a process within the current constitutional framework to call a constitutional convention to revise the constitution. It calls for two-thirds - thirty four - of the state legislatures to petition Congress to call a convention to revise the constitution, which both authors suggest as a way forward. Congress would call the convention, debate and revise the Constitution, and submit a new constitution to the states. It takes three-fourths of the states to ratify a new or revised constitution.

The Levinson book was published in 2006 and the Sabato book in 2007 and, of course, nothing has happened. The U. S. Constitution has helped build entrenched wealth and the continued status quo helps protect it. Corporate America maintains minority control of the federal government by virtue of its wealth rather than powers of persuasion. Among the states all but Nebraska have bicameral legislatures and constitutions that imitate many of the defects of the U.S. Constitution. Many states have modified the constitutions or ratified a new one. Local governments provide better opportunities for Democracy, but all local governments are the creation of the state legislatures. State legislatures pass enabling legislation that defines the duties and powers of local county and city government. If corporate wealth wants to change or end democracy in local government they can do so through their control of state legislatures that amend the state enabling legislation. Some states have done just that. No local governments have sovereign power in the United States.

A few members of Congress might be elected without the aid of corporate wealth, but it has never been necessary to control everyone in Congress to control what it does, or refuses to do. Both the Democrats and the Republicans accept campaign contributions from multiple parts of corporate America; corporate America controls politics. In the rare occurrence that legislation passes they oppose, they are able to prevent enforcement. When we hear the Democrats opposing the Republicans, we might suppose important differences exist among the parties, but Democrats of the last forty or fifty years operate only as defense against the latest line of Republican threats. Both parties remain frozen in their status quo; Democrats are Republicans with a smile instead of a sneer.

Americans have a vote but they live in a corporate oligarchy without whatever benefit a democratic majority might bring. Nothing in United States politics can change minority rule without a change in the Constitution, but corporate America will easily block amending or replacing the constitution. Current politicians do not even mention the idea, much less do anything about it. With both parties' paralyzed and corporate wealth in control, there will need to be an alternative source of economic power to bring a hope of constitutional change.

In the century and a half since 1877 street protest has brought some political moderation, but the record establishes public protest as a dangerous and fleeting path to change: the Vietnam War to wit. Labor history clarifies corporate America's readiness to beat and shoot labor's protesting strikers and picketers and for elected politicians to step forward to justify it. Unlike Street protest that does nothing to threaten corporate wealth, the labor strike poses an economic threat like no other source of non-violent power not directly related to money. Never

underestimate how much corporate profit comes directly out of wages.

Rolling strikes and working class boycotts across industries by organizers connected through digital means, where strikers and boycotters commit to supporting each other economically, has never been successful as the IWW so clearly demonstrates. It remains only as a theoretical possibility, even in a digital age, and a small one at that. Still, strikes and boycotts have economic power to counter the economic power of corporate America. All other forms of protest against corporate domination can be ignored as impotent political rage compared to the strike. The strike continues to be a unique protest, as corporate America knows so well.

Remember the United States had a Civil War where two sides lined up and slaughtered each other for four years. We have the same constitution today with only a few minor amendments. The same class divisions continue along with the threat of violence with the danger they pose. Our obsolete Constitution with its minority rule desperately needs to be replaced; otherwise minority rule and our tortured politics.

Labor Solidarity in American Politics

"Not by compromise with the propertied classes, or with the other political leaders; not by conciliating the old government mechanism, did the Bolsheviki conquer the power. Nor by organized violence of a small clique. If the masses all over Russia had not been ready for insurrection it must have failed."

----------John Reed, from Ten Days that Shook the World, 1919.

Unions need solidarity except solidarity remains elusive in a competition obsessed society. Early industrialization during and after the civil war generated working class organizers who recognized and spoke successfully for a broad working class solidarity. Some developed into excellent, speakers, writers and fund raisers: Ira Steward, William Sylvis, Samuel Gompers, Uriah Stephens, Terrence Powderly, Albert and Lucy Parsons, Bill Haywood, Mother Jones, Eugene Debs and others. They organized groups with bylaws, boards and budgets to promote and lobby for labor rights: the Workingmen's Party, the Ten Hour Republican Association, Eight Hour Leagues, the National Labor Union, the Breadwinner's League and others.

Recall the Industrial Workers of the World achieved a remarkable solidarity among their rank and file made up of immigrants, women and blacks that could not vote, and some of the nation's poorest and most disaffected white men. The source of their considerable economic power derived solely from experimenting and perfecting the techniques of mass protest during strikes, later adopted by Saul Alinsky, Martin Luther King and others. Their solidarity created an economic power that could not be defeated by any legal means. Recall the many free speech protests and IWW strikes narrated here: McKees Rocks, Pennsylvania, Grabow, Louisiana, Bisbee, Arizona, Butte, Montana, Lawrence, Massachusetts, Akron, Ohio, Paterson, New Jersey, Mesabi Range, Minnesota, Everett, Washington. All

but the strike at Lawrence failed as a result of corporate, vigilante, court and government sponsored violence. Low wages and terrible working conditions made strikers impossible to replace leaving them vulnerable to attack. Strikes ended with strikers variously bashed, clubbed, shot, jailed, deported or killed. Their solidarity prevailed until the IWW ceased to exist under the onslaught of the Wilson Administration, which continued into the 1920's.

In spite of these successful solidarity division has always plagued the labor movement and some of it through mistakes, internal competition and dissention. Socialism, communism, anarchism, syndicalism all have their origins in the labor movements of the 19th century. The writers and speakers that called themselves socialists, communists, anarchists or syndicalists rarely got beyond protesting the miserable inequalities of capitalism, but their calls to replace it rather than reform it was a serious tactical mistake. Their opponents in politics and corporate America had, and continue to have, little trouble using their terms and terminology against them to generate opposition, fear in the middle class and division in the working class. Solidarity within organized labor comes and goes like ocean tides while corporate solidarity came to stay after the Civil War and continues today in a remarkably unified search for advantage, and opposition to the working class.

Abraham Lincoln supported free enterprise and economic development as part of Whig Party politics before becoming the first Republican President. In his life before the civil war the economy supported large numbers of small entrepreneurs producing and selling in competitive markets. Entry into these markets required skill and individual initiative, but not large amounts of expensive capital. Equality of opportunity could be expected to generate self supporting income for many in a society of economic and social equals.

Lincoln saw the United States as a place where the working class could make the transition from hired labor to successful capitalist entrepreneur. Opportunity combined with hard work and thrift could bring economic success. In his speeches Lincoln would argue "There is no permanent class of hired laborers among us. Twenty five years ago I was a hired laborer. The hired laborer of yesterday labors on his own account today, and will hire others to labor for him tomorrow. Advancement – improvement in conditions - is the order of things in a society of equals."

Lincoln sounded a little like an American Karl Marx when he explained the value of labor: "In as much as good things are produced by labor it follows that all such things of right belong to those whose labor has produced them. But it has so happened, in all ages of the world, that some have labored, and others have without labor enjoyed a large proportion of the fruits. This is wrong and should not continue." (15)

Lincoln predicted correctly that those who work for wages can become successful entrepreneurs actively managing an enterprise they own, but he did not realize the economy he was describing was about to end in an industrial revolution that would make small entrepreneurs unable to compete with manufacturing combinations requiring millions of dollars of capital. He did not foresee the growth of modern stockholding corporations and how much it would contribute

to income inequality and divide the country into separate and unequal classes in the 20th and 21st century. Few knew capitalists as a mass of passive stockholders in 1860, nor of a class of professionals in occupations that pay high enough wages to turn large numbers of wage earners into doctrinaire advocates of the status quo willing to justify entrenched inequality or ignore the class divisions it brings.

All of those who live on their wages need to be in solidarity, but the term middle class has a long history of defining people and families aloof from unions and the working class. Journalist William Allen White wrote of the middle-class as the deciding factor in the defeat of populist Williams Jennings Bryan in the 1896 presidential election, the first of his three defeats that included 1900 and 1908. White wrote in his memoir "No one can doubt that labor sympathized with Bryan, even though it was persuaded more or less with crass coercion to vote against him. It was our first class election, [William] McKinley's victory was due to the fact that he could unite to a political solidarity the American middle class." (16)

The middle class with their middle class identity continue to generate inequality and to find the same excuses to ignore it as Andrew Carnegie did back before the Homestead strike. In June of 1889, Carnegie wrote his views on class in the North American Review entitled "Wealth." The first sentence reads "The problem of our age is the proper administration of wealth, so that the ties of brotherhood may still bind together the rich and poor in harmonious relationship." From this he concedes the laws of competition create inequality, but concludes material development requires it. He writes "We accept and welcome, therefore, as conditions to which we must accommodate ourselves, great inequality of environment, the concentration of business, industrial and commercial, in the hands of a few, and the law of competition between these, as being not only beneficial, but essential for the future progress of the race." (17)

Carnegie believed those who object to inequality threaten the foundations of society. Specifically he wrote "The Socialist or Anarchist who seeks to overturn present conditions is to be regarded as attacking the foundation upon which civilization itself rests[.]" . . . "One who studies this subject will soon be brought face to face with the conclusion that upon the sacredness of property civilization itself depends – the right of the laborer to his hundred dollars in the savings bank, and equally the legal right of the millionaire to his millions."

The continuing attack on socialists in American politics, applied as a slur against political opponents, originates from the 19th century and people like Andrew Carnegie. Anyone who believes elected representatives should support relieving the inequality of income and wealth will be attacked as "socialists." Through the years attacks on the New Deal are nothing but attacks on redistribution by a new group of "Carnegie" capitalists. Some politicians attack the policies relieving inequality like the minimum wage, the living wage, or progressive taxes, but they are doing nothing but defending upper class wealth and supporting inequality when they call their opponents socialists.

Carnegie wrote five pages to justify existing class differences and then went on to propose his solution to inequality that he predicted will bind the rich

and poor in harmony. He does not believe the wealthy should leave their estates to their children. Children may not be as smart as their parents and lead a life of indolence. He does not believe the wealthy should plan for the distribution of their wealth after death. The executor of their estate cannot be trusted to honor their wishes. The correct method he insists requires the wealthy to give away their money during their lifetime, which Carnegie defines as the true antidote for the "temporary unequal distribution" of wealth and the "reconciliation of the rich and the poor." The surplus revenues the man of wealth is called on to administer should be distributed in a way, "which in his judgment, is best calculated to produce the most beneficial results for the community – the man of wealth thus becoming the mere agent and trustee for his poorer brethren, bringing to their service his superior wisdom, experience, and ability to administer, doing for them better than they would or could do for themselves."

Carnegie did not believe the working class could be smart enough to know what they need: "Neither the individual, nor the race is improved by alms-giving." Instead he declared "[T]he best means of benefiting the community is to place within its reach the ladders upon which the aspiring can rise – parks, and means of recreation, by which men are helped in body and mind; works of art, certain to give pleasure and improve the public taste, and public institutions of various kinds, which will improve the general condition of the people; - in this manner returning their surplus wealth to the mass of their fellows in the forms best calculated to do them lasting good. Thus is the problem of Rich [sic] and Poor [sic] to be solved."

When I hear of charity I remember the quotation from one of Andrew Carnegie's destitute mill workers following the Homestead strike of 1892. Recall his comment about the Carnegie park and library in Homestead: "We'd rather they hadn't cut our wages and'd let us spend the money for ourselves. What use has a man who works twelve hours a day for a library, anyway?" This man understood charity does nothing to relieve the inequality of income and wealth, nor help people be independent and support themselves with a job; charity perpetuates the status quo.

Today's vast network of charitable trusts and foundations and the elaborate tax rules that go with them originates from efforts to silence 19th century critics of concentrated wealth. Charity grows as profits grow and tax rules are adjusted to encourage it. The profits that go to charity could have been better wages. For corporate America charity has always been an excellent public relations advantage – as Andrew Carnegie knew so well – while maintaining corporate control over resources without disturbing their supply of cheap labor or the inequality of income and wealth.

Some of the suburban middle class turn to fund raising for local charities – food banks, zoning, affordable housing - hoping to address the needs they see around them that neither the federal government, nor corporate America will solve. In contrast some of the suburban middle class continue denouncing federal subsidies for food, housing and health care as a socialist evil, apparently thinking of them as a threat to their class status. They support tax cuts on dividends over wages and donate to private schools and colleges, and "Carnegie" improvements

to the public taste. Meanwhile corporate America keeps their tax bill down letting the government support food, housing and health care programs for those who cannot afford basic needs, which also subsidize corporate America by increasing buying power and allowing them to keep paying low wages. Charity cannot derail the eternal truth going back to antiquity: inequality generates classes and class warfare.

Three strictly economic changes would be sufficient to bring gradual relief from the failure of government policy and charity to address inequality and the risks it continues to generate; inequality that continues now and will continue to get worse without political intervention.

1. The Fair Labor Standards Act needs to be changed to establish a living wage protected from inflation by an automatic cost of living adjustments. The full time work week needs to be reduced year by year to spread work to more people. Remember two people working sixty hour weeks equal three working forty hour weeks. To prevent the use of overtime, the overtime wage will be set at double or triple the living wage.

2. There will have to be restrictions on the absolute control of investible resources concentrated now in a small group of largely invisible and unaccountable corporate elite. America cannot have self supporting employment by closing domestic operations that move abroad looking for socialist subsidies and cheap labor. Investment abroad will have to be managed in the public interest and profits used for domestic investment. Ross Perot was correct as they know so well in Decatur, Illinois.

3. It will be necessary to replace the present tax system with something at least slightly progressive in which all dollars of income are treated equally, as they are not now. There well need to be an estate tax.

These policies need detail to be operational but there is no point going on because none will occur. Corporate America does not want them and there is currently no alternative source of economic or political power to counter corporate control. The working class has no political power; politicians ignore working class needs and views. Street protest is dangerous and will bring Joe Hill sacrifice without effect. There remains mass slowdowns and strikes organized through anonymous computer media has political power.

Corporate America has always expected the Republican Party to acquiesce to its agenda. In a two party system the Republican Party represents capital, which leaves the Democrats as the only alternative, but the Democratic Party has repeatedly failed to protect the minimal legal rights of the working class and failed as an opposition party in the process. In a two party system those who live on their wages have to choose between a vote for their Republican oppressors or the Democrats who decade after decade take them for granted and fail them. The people that go to work and live on their wages through most or all of their adult life make up the majority of the country, but the Democratic Party provides minimal resistance to Republican politicians treating them, and attacking them, as

though they are a powerful and dangerous special interest.

Democrats had the Trifecta of the president and both sides of Congress twice during the Carter administration, once during the Clinton Administration and again during the Obama administration. They not only accomplished nothing for labor; they constantly divided and treated the working class as a political risk. Corporate America long ago neutered the Fair Labor Standards Act and the National Labor Relations Act and more recently destroyed the tax system, but Democrats cower in fear of even discussing these troubles. They try to be different than Republicans but without protecting labor and the taxation of labor, it amounts to nothing as so many in the working class and Trump voters understand.

Class division favors Republicans and keeps the working class in a pathetic weakness and a seething anger. Democrats do not need to build a coalition; their core constituents can win elections. In the restrictions of the two party system America has always needed leadership from a party representing the needs of labor as a defiant opposition to Republicans, not just an alternative. The class resentments and the hatreds of the twenty-first century remain unaddressed among the aimless blather of party politics and the white suburban middle class. If whatever part of this divided society that respects democracy and orderly constitutional processes cared to absorb the history of United States labor relations, maybe more of them would realize that Trump merely gives visible expression to the many authoritarian men present in corporate America using the same racial and working class divisions that existed in 1860 and down through history; Trump did not drop from the clear blue sky, he is rooted in American culture and the defects in our constitution.

The names Rockefeller, Carnegie and Ford remain in the public domain given the visibility of their charitable trusts, as their misconduct has faded from view. While their first generation grew up in humble circumstance their economic success allowed them and many others like them to be new and different people. Wealth brought opportunity to adopt a different self-identity and to choose a public image they fancied for themselves. With depressing consistency wealthy white men were permitted to leverage their control over wealth and employment to enforce obedience from their employees without regard to law or social equality. Presidents, governors and judges made excuses to step aside and allow brute force to be used to enforce their concept of class and class relations. National Guard troops, police and hired vigilantes shooting into strikers and picketers continued as late as 1937 at the Republic steel mill in Chicago.

The authoritarian domination these white men exercised with ease requires a following of people ready to be subservient and carry out orders as directed. Always the working class divides and takes opposing and antagonistic sides in labor disputes; always enough of the working class identifies with the wealthy to reject their identity as members of the working class. Back in the 19th century one of the more famous of the rogues and scoundrels of the era, Jay Gould, remarked on his leadership “I can hire one half the working class to kill the other.” Abraham Lincoln was the last advocate for a united working class.

Beating and shooting union members declined significantly as America

entered WWII. Corporate America became more sophisticated, apparently realizing they could keep the working class divided and defeat them with less shooting and more attention to politics, the courts and public relations. During the WWII assertive union officials or their rank and file could be redefined as unpatriotic traitors. John L. Lewis was the only labor leader to stand up to them and corporate America made sure he took a terrible public relations beating for demanding respect for the working class.

After WWII authoritarian capitalists and their politician friends defined and exploited the communist bogeyman. Union members found themselves with a new identity: dangerous subversives attempting to over throw the American way of life. That one had a thirty run of union busting success, but at least it was less violent. The 1920's prohibition era with its police state attempts to eradicate alcoholic beverages served to expand organized crime, which made its way into organized labor. The McClellan hearings help redefine organized labor and the working class as violent gangsters.

Primarily though, violence subsided because corporate America turned to the National Labor Relations Board and the Federal Courts to help them neutralize unions. Recall how labor law introduced long delays with vague wording that brought judicial review by generally white and male upper class judges with consistently hostile views of collective bargaining and the working class.

Compare some of the strikes of the 1980's – Phelps-Dodge, Hormel – and the 1990's – Pittston Coal, Detroit Newspapers – with the 1913 strike at Ludlow, Colorado. In all these strikes management refused to bargain with labor, they treated their working class employees with undisguised contempt, and in all of them they enlisted government and the courts to break the strikes. The 1913 Ludlow strike turned out to be an extremely well documented strike; the Commission on Industrial Relations began operation in 1912 and recorded days and days of sworn testimony and preserved extensive archives. That evidence helps establish that nothing significant has changed defeating strikes from these separate eras, but we might wonder in these eras about the self identity of the people on the capital and property side.

After the Ludlow Massacre John D. Rockefeller Jr. took the blame for the murders and assassinations, which among other things hurt his feelings. He fancied himself as a gentleman who taught Sunday School and put his inherited millions in a charitable trust to benefit the larger society. At first he tried to deflect the public's anger, but when that failed he hired Ivy Lee, a public relations specialist, and Canadian, William Lyon Mackenzie King, to be his personal coach to help him appear as a better person and rehabilitate his public identity. He wanted to have the public respect him again and shed his identity as the ruthless tyrant. Contrast that to the belligerent and contemptuous men we met in the 1980's and 1990's that set out to exploit the weakness of labor law to provoke strikes and bust unions. In the 1980's and 1990's union busting became a competitive triumph for people that delight in class warfare as part of their self-identity.

Since WWII corporate America has put millions into funding political campaigns, especially the Republican campaigns. Candidates for Congress find

it difficult to get elected without corporate funds. The few now arriving there with ethical principles, find them hard to maintain. Claims that money does not influence Congress annoy and disgust millions, as do claims that Antitrust law protects competition, or labor law benefits labor unions, or that taxes are fair and equitable. Corporate wealth buys the power to control politics and the economy, a reality widely known, but aggressively denied through the media and the body politic. Corporate America's power affords them the opportunity to be leaders on behalf of the common good. They could take an interest and relieve the inequality and poverty they create, but refuse to regard and choose to attack.

Lately Trump and his Republican sycophants have branched into disrupting or ending elected government by cultivating hatred and violence for their own personal aims, January 6 to wit. These changes are unnecessary for corporate America to continue their control over the economy and the country, but the new Republican Party challenges their long standing corporate domination, while Trump make fools of them and the country, and edges toward civil warfare in the process.

American politics could be wondering more how people define themselves given the consequences for the country and how it functions. Few people define themselves as obedient or gullible, or foolish. More often people define their identity through their work: lawyer, carpenter, driver, nurse, welder. Some like to define themselves with what they like: tennis, painting, reading, running, car racing. People think of themselves and identify themselves variously as accepting, diligent, reliable, funny, ethical, studious, laid back.

These typical forms of self-identity are benign and suggest people who might curb their class differences and get along within the confines of an elected government. None suggest differences that bring hatred and violence in a divided society. The hatred built into class warfare needs a deliberate campaign and grows from small to large with intentional leadership by the upper class in control of corporate wealth and by political cowardice as American labor history so clearly proves.

The American obsession with social class and self-identity brings division while adding to inequality of income and wealth and to the inequality of civil rights, legal rights and social relations. Norman Maclean saw the connection of social class and self-identity as I quoted him above: "The problem of self-identity is not just a problem for the young. It is a problem all the time. Perhaps the problem." Your social class is part of that problem, but it's not just your private problem. The America Civil War was fought over class and the hatred it generates, as were all the labor rights and civil rights protest and violence since then. What class are you in?

End Notes

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1. The Missouri Pacific Railroad from St. Louis to Omaha including the Texas and Pacific Railroad from New Orleans to El Paso

2. The St. Louis, Iron Mountain and Southern from St. Louis to Texarkana

And three leased lines

3.The Missouri, Kansas and Texas from Hannibal, Missouri to Taylor, Texas, the "Katy"

4. The International and Great Northern through southeast Texas

5. Central branch of the Union Pacific from St. Joseph, Missouri to western Kansas

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