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THE RAILWAY LABOR ACT AND THE NATIONAL LABOR RELATIONS ACT — A COMPARISON

HARRY H. BYRER

The general purposes of these two Acts are very similar, but the philosophy of the two Acts is quite dissimilar.

The general purposes of the Railway Act are stated in Section 2 as follows:

"Sec. 2. The purposes of the Act are: (1) to avoid any interruption to commerce or to the operation of any carrier engaged therein; (2) to forbid any limitation upon freedom of association among employees, or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization; (3) to provide for the complete independence of carriers and of employees in the matter of self-organization to carry out the purposes of this Act; (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions."

Under this Act it is made

"the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the

* Address of the President of the West Virginia Bar Association, delivered at the fifty-third annual meeting of that Association at White Sulphur Springs, West Virginia, on September 17, 1937.

** President of the West Virginia Bar Association 1936-37; member of the bar of Martinsburg, West Virginia.
application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof."

Another general duty of both the carrier and the employees is that

"All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute.

"In case of a dispute between a carrier or carriers and its or their employees, arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, it shall be the duty of the designated representative or representatives of such carrier or carriers and of such employees, within ten days after the receipt of notice of a desire on the part of either party to confer in respect to such dispute, to specify a time and place at which such conference shall be held . . . ."

Thus, it is the purpose and plan of this Act to avoid interruption to commerce or to the operation of any carrier engaged therein by considering all disputes as they arise, in conference between representatives of the employees designated by them and representatives of the carriers, and thereby to avert the possibility of more serious consequences resulting from delay in the prompt consideration of complaints and grievances.

The entire philosophy of the Railway Labor Act is to avoid industrial conflict by means of conference, conciliation, mediation, voluntary arbitration, and other peaceful methods which I shall hereafter discuss.

As to the National Labor Relations Act, commonly known as the Wagner Act, the policy declared in the Act is as follows:

"It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection."
The philosophy of this Act is that obstructions to the free flow of commerce and the mitigation and elimination of these obstructions, after they have occurred, can be removed by the sole means of encouraging the right, practice and procedure of collective bargaining and by protecting employees in their full freedom of association, self-organization, and designation of representatives of their own choosing. The Act further states that

"Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees."

The Act suggests the encouragement of practices

"fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions,"

but it does not provide the machinery or procedure whereby these fundamental practices may be carried into operation, at the inception of complaints and grievances as to wages, hours, or working conditions. It undertakes and has for its principal objective the protection of the undoubted right of employees, everywhere well recognized, to bargain collectively, and for such purpose to select their own representatives without intimidation, restraint, or otherwise.

Unlike the Railway Act, it places upon neither the employee nor the employer the obligation or duty to resort to means of negotiation, conciliation, mediation or voluntary arbitration in order to remove the causes of industrial unrest and turmoil at their inception.

The Wagner Act is primarily punitive in its nature, and operates against the employer alone. It takes no note of any possibility that an employee organization could be guilty of any acts of intimidation, coercion or violence either toward an employer or toward other employees which might result in industrial unrest, disturbance or conflict.

The Act is directed against the employer, to restrain him from interfering with the right of employees to self-organization, to
collective bargaining and to engaging in concerted activities for
the purpose of collective bargaining or other mutual aid or pro-
tection; to prevent the employer from dominating or interfering
with the formation or administration of labor organizations, or
from contributing financial or other support to any labor organi-
ization; to restrain the employer from discrimination in regard to
hire or tender of employment or any term or condition of employ-
ment.

All of these acts of interference, restraint, coercion or intimida-
tion on the part of the employer are designated as unfair labor
practices and subject the employer to prosecution before the Na-
tional Labor Relations Board.

While the Wagner Act restrains the employer from interfering
in any way in labor organizations and particularly of so-called
company unions, it expressly provides

"That nothing in this Act, or in the National Industrial
Recovery Act . . . as amended from time to time, or in any
code or agreement approved or prescribed thereunder, or in
any other statute of the United States, shall preclude an
employer from making an agreement with a labor organization
(not established, maintained, or assisted by any action de-
fined in this Act as an unfair labor practice) to require as
a condition of employment membership therein, if such labor
organization is the representative of the employees as provided
in Section 9 (a), in the appropriate collective bargaining unit
covered by such agreement when made."

In other words, while it precludes the employer from in any
way participating in the organization of a union or in contributing
financial or other support thereto, it authorizes and encourages the
employer to enter into an agreement with any union or organiza-
tion for a "closed shop," if such organization is the representative
of the employees as provided under Section 9 (a) of the Act.

In the Railway Labor Act, while the carrier is likewise re-
strained from dominating or interfering with labor organizations
and shall not in any way question the right of employees to join,
organize or assist in organizing labor organizations of their own
choice and shall not make contribution of the funds of the carrier
for such purposes, the carriers are expressly prohibited from de-
ducting

"from the wages of employees any dues, fees, assessments,
or other contributions payable to labor organizations, or to
collect or to assist in the collection of any such dues, fees, assessments, or other contributions."

Moreover, there is nothing in the Railway Labor Act which in any way suggests or encourages the carrier to operate either an open shop or a closed shop.

Another very striking difference in the philosophy of the two Acts is that under the Railway Labor Act the *status quo* is maintained throughout all of the various steps of negotiation, conciliation, mediation and voluntary arbitration, and in the event all of these agencies and instrumentalities fail, the *status quo* is still further maintained to give an opportunity to the President to appoint an Emergency Board for the purpose of investigating and reporting both to him and to the public the facts relating to any dispute that may arise; and

"After the creation of such board and for thirty days after such board has made its report to the President, no change, except by agreement, shall be made by the parties to the controversy in the conditions out of which the dispute arose."

On the other hand, in the Wagner Act although it is declared to be the policy of the United States

"to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining . . . .""

the Act makes no provision for retaining the *status quo*, but, on the contrary, expressly provides that

"nothing in this Act shall be construed so as to interfere with, or impede or diminish in any way the right to strike."

So that, in effect, despite all of the provisions of the Act which are asserted therein to be intended for the purpose of

"encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions,"

instead of providing machinery whereby a conflagration may be averted by starting at the friction point which causes the first spark, the Act, as above quoted, provides there shall be no interference with and no impediment to a strike, and therefore does not provide any method of averting a strike for a limited time until
the cause of a particular disturbance may be inquired into or acted upon.

There is no injunction in the Act, no requirement and no provision thereof for the creation of voluntary boards, employer-employee boards, mediation boards, voluntary arbitration boards, emergency boards, or any other sort of governmental agency to get at the seat and cause of a particular complaint with respect to wages, hours or working conditions, which are at the root of practically all labor disturbances.

**The General Provisions of the Railway Labor Act**

The present Railway Labor Act is the culmination of nearly fifty years of legislative trial and experience to govern the relations of employers and employees on the railroads of the country. It is an amendment of the Act of 1926. That Act was the result of the concerted efforts of the representatives of the carriers and the representatives of employees, working in concord to the desired end.

The first Act dealing with railway labor relations was that of 1888 providing for voluntary arbitration and investigation of labor disputes. During the ten years it was in effect the arbitration provisions were never used and the provisions respecting investigations were used only once, and then without any effect, to prevent the disastrous strike of 1894; by the subsequent Act of 1898, known as the Erdman Act, the policy of mediation and conciliation by the government was inaugurated, with a temporary board for each case; voluntary arbitration was retained for use where mediation failed; by the Act of 1913, known as the Newlands Act, for the first time a full-time Board of Mediation and Conciliation was established, and upon this Board was technically placed the main reliance for settlement of disputes; under the provisions of this Act the Mediation Board was required in any case where dispute arose as to the meaning or application of any agreement reached through mediation to render an opinion when requested by either party; arbitration procedure for use when mediation failed was materially strengthened.

The next step which followed federal control of the railroads was the Transportation Act of 1920. This Act created the United States Railroad Labor Board of nine members, three of whom were selected to represent management, three to represent labor and three to represent the public, with authority to hear and to decide
disputes that could not be disposed of in conference between representatives of the carriers and the employees. The weakness of this Act, however, was that it did not make obligatory the decisions of the Board. By this Act mediation was discarded and in its place provision was made for hearings and investigations of disputes by the Board, with recommendations in the form of decisions, in expectation that the pressure of public opinion would bring about the acceptance of such decisions. This Act did not accomplish its desired purpose, although it pointed the way.

By the Act of 1926 mediation was re-established as the basic method of government intervention in labor disputes, with provision that in the event mediation failed, voluntary arbitration should be urged upon the parties. This Act made it obligatory upon both carriers and employees to exert every reasonable effort to make and maintain agreements through representatives chosen by each party without interference by the other; it also made provision for the establishment of Adjustment Boards by voluntary agreements of carriers and employees for the purpose of construing and applying agreements between the carriers and employees.

The principal amendment in the Act of 1934 provides for the creation of an Adjustment Board consisting of thirty-six members, eighteen of whom are selected and paid by the national labor organizations of the employees, and eighteen selected and paid by the carriers. This Board is divided into Four Divisions. Division No. 1 consists of five members selected by the carriers and an equal number selected by the national employee representatives. This Division has jurisdiction over disputes involving train and yard service employees, that is, engineers, firemen, hostlers, outside hostler helpers, conductors, trainmen and yard-service employees. Division No. 2, likewise consisting of ten members equally divided, has jurisdiction over disputes involving machinists, boilermakers, blacksmiths, sheet-metal workers, electrical workers, car men and helpers and apprentices of all of these and other employees engaged in similar work. Division No. 3, likewise consisting of ten members equally divided, as stated, has jurisdiction over disputes involving telegraph employees, train dispatchers, maintenance of way employees, clerical employees and certain other employees engaged in various classes of employment. Division No. 4, consisting of six members, three of whom are selected by the carriers and three by the national labor organizations of employees, has jurisdiction over disputes involving employees engaged in transporta-
tion by water and all other employees not covered in any of the other divisions.

When a grievance of any kind is filed by an employee or his representative it is taken up at once by his immediate superior in an effort to make an adjustment of the grievance, whether it relates to the interpretation of an operating rule, an agreement for wages, hours or working conditions or any other similar complaint. In the event an adjustment can not be satisfactorily made in this manner, the employee has the right to take the matter either personally or through his brotherhood representative, by appeal, to the highest operating official on the road. In the event the matter is not satisfactorily adjusted there, either the carrier or the employee, or both jointly, may present their respective contentions to the National Adjustment Board, which sits at Chicago. There the complaint goes to the particular division having jurisdiction of the case.

A very large percentage of the cases thus submitted to this Board are submitted upon the joint submission of both parties. Each party has the right to appear personally, by representative or by an attorney. All of the facts are presented and exchanged between the parties before the hearing and no new matter is permitted to be presented at the final hearing until it has first been submitted to the opposing party.

In the event the Board should become deadlocked, as very frequently happens, by reason of a split between the representatives of the carriers and the representatives of the employees on the Board, it becomes the duty of the Board to select a referee, who must be a person in no wise connected with any carrier and, likewise, in no wise interested in any labor organization. In the event the Board is unable to agree upon the referee, it becomes the duty of the Mediation Board to select a referee who, when selected, sits with the Board, considers the case and finally determines the question at issue.

The Act provides that the award made by the Adjustment Board shall be final and binding upon both parties to the dispute, except in so far as it may contain a money award. In case of an award by any division of the Adjustment Board in favor of an employee, such division makes an order, directed to the carrier, to make the award effective, and, if the award includes a finding for the payment of money, the order requires the employer to pay the sum awarded on or before a date named.
In the event the employer fails to comply with the order, within thirty days, the employee may file in the proper district court of the United States a petition in a suit setting forth, briefly, the causes for which he claims relief and the order of the division of the Adjustment Board. Such suit proceeds in all respects as all other civil suits, except that upon trial the findings and order of the division of the Adjustment Board shall be *prima facie* evidence of the facts therein stated, and, except, further, that the petitioner, the employee, shall not be liable for costs except under certain limited conditions. In the event the petitioner finally prevails, he is allowed a reasonable attorney's fee, to be fixed and collected as part of the costs of the suit. The district court is clothed with power to make such order and to enter such judgment by writ of mandamus, or otherwise, as may be appropriate to enforce or set aside the order of the division of the Adjustment Board.

There were sixteen-hundred-and-sixteen awards handed down by the four divisions of the Adjustment Board from its creation, in 1934, up to the 30th day of July, 1936. More than half were in favor of the employees. Out of this total number not a single case was taken by either party to a federal court upon an application for an enforcement order. Since that date very few cases have gone to the federal courts for such purpose. It would not be correct, however, to assume that in all instances the railroads acquiesced in the awards and willingly complied therewith, because the fact is that in some instances involving very important awards the employees declined to go into court, and used what they designate as their "economic strength"—threat of a strike vote—to bring about a final adjustment, which is not a salutary thing.

The Act provides that only the winning party may go into court for the purpose of enforcing the award made by the Board. The carrier, if it desires to controvert the award, can take no appeal therefrom, if the award is against it. This is becoming generally recognized as a serious defect in the Act.

On the whole, however, the plan has, undoubtedly, averted many a more serious complication that might have followed if adjustment and settlement were not thus provided for.

One of the men who has been selected probably more frequently than any other to sit as referee in deadlocked cases, Mr. Lloyd K. Garrison, Dean of the Law College of the University of Wisconsin, recently made suggestions of needed changes in the provisions of this Act, which are now generally well recognized.
One of them is the appointment of full-time referees. He points out that the appointment of a separate referee for the consideration of specific deadlocked cases is unsatisfactory, for the reason that a referee to qualify must be drawn from outside the railroad world. He comes to the Board without any practical experience in railroading and without familiarity with the vocabulary, customs, or terms of railroading; by reason of the fact that he, sitting only temporarily, is not likely to be reappointed to the division in which he sat, because he is likely to be unwanted either by the labor members or the carrier members of the Board, or both, naturally the National Mediation Board would not be disposed to select a referee unwanted by either or both classes constituting the Adjustment Board. He therefore makes the suggestion that there should be a certain number of referees definitely assigned to the Board to act in deadlocked cases and be permanently appointed for such purpose.

Another defect in the Act is that it provides no statute of limitations, and as a result in some instances very stale demands, in some cases six to fourteen years old and some of which have involved questions of paramount importance in the interpretation of operating rules and conditions of employment, have resulted. An amendment to remove this unsatisfactory situation is very much needed.

Procedural improvement, which is very much desired, is a modification of the rules of procedure so as to provide for service of the employee's complaint upon the carrier before the carrier is required to answer the same. As it now is, the submissions of the employee's representatives and of the carrier are prepared and filed independently of each other. The procedure in this respect necessarily results, in many instances, in cases being presented in a very unsatisfactory manner. Moreover, the right of appeal should be afforded where questions of law are involved in money awards. As I have stated, however, these defects in procedure are of minor importance in view of the generally satisfactory work of this Adjustment Board.

The duties of the Mediation Board are entirely different from those of the Adjustment Board. This Board has nothing to do with complaints and grievances as they relate to interpretation and construction of operating rules or contracts of employment. Its duties relate, primarily, to two functions. One is to provide for the settlement of controversies between employees, and the holding of
elections, if necessary, relating to the selection of representatives for the purpose of collective bargaining. The other relates to any dispute concerning changes in rates of pay, rules or working conditions not adjusted by the parties in conference.

Either party to a dispute between an employee or group of employees and a carrier may invoke the services of the Mediation Board in the respects that I have mentioned and may also invoke the services of this Board in any other dispute not referable to the National Railroad Adjustment Board and not adjusted in conference between the parties or where conferences are refused. In addition to this, the Mediation Board may proffer its services in case any labor emergency is found by it to exist at any time.

"In either event the said Board shall promptly put itself in communication with the parties to such controversy, and shall use its best effort, by mediation, to bring them to an agreement. If such efforts to bring about an amicable settlement through mediation shall be unsuccessful, the said Board shall at once endeavor as its final required act . . . . to induce the parties to submit their controversy to arbitration in accordance with the provisions of this Act."

In the event arbitration, at the request of the Board, is refused by one or both parties, the Board shall thereupon notify both parties in writing that its mediatory efforts have failed,

"and for thirty days thereafter, unless in the intervening period the parties agree to arbitration, or an Emergency Board shall be created under Section 10 of this Act, no change shall be made in the rates of pay, rules or working conditions or established practices in effect prior to the time the dispute arose."

As I have heretofore said, in the event both mediation and voluntary arbitration fail, the Mediation Board shall notify the President, who may thereupon, in his discretion, create an Emergency Board to investigate and report respecting any dispute. It has thirty days in which to make its investigation and report, all of which is disclosed to the public, and during the time covered by its deliberations and the making of its report, and for thirty days after the Board has made its report to the President, no change, except by agreement, shall be made by the parties to the controversy in the conditions out of which the dispute arose.

For the year ending June 30, 1936, over two hundred disputes were serious enough to require the intervention of the National Mediation Board.
The report of that Board for the second year of its administration under the 1934 amendments of the Act ended June 30, 1936, disclosed that

"the peaceful adjustment of labor disputes on the railroads that has been maintained since the enactment of the Railway Labor Act in 1926 has not only been continued under the amended law, but there has developed a broader spirit of cooperation between men and management that gives promise of an ever increasing tendency to settle disputes on the several properties by the parties themselves without the necessity of intervention by government agencies.

"With the exception of the hasty action on a small industrial railroad of less than forty employees, who, before ceasing work failed to request mediation in keeping with the intent of the law, there was no strike and no interruption of railroad service on account of labor disputes. All differences were settled peacefully either directly between men and management or by the agencies provided by the Railway Labor Act."

For the year ended June 30 of this year, in only three instances were strike votes taken, in all of which no strike resulted; and in only three other cases did strikes of a very limited scope take place.

**Procedure and Results Under the Wagner Act**

I have pointed out that there has been little recourse to the courts to enforce the awards made by the Adjustment Board under the Railway Labor Act. In contrast to this, since the enactment of the Wagner Act the district courts of the United States, the various circuit courts of appeals and the Supreme Court of the United States have been loaded down with all manner of questions involving not only the constitutionality of the Act, but also the interpretation of the powers conferred under that Act.

The first report of the National Labor Relations Board disclosed the fact that of the fifty-six controverted cases which were finally heard by the Board, and in which "cease and desist" orders were entered, in not a single one of them was the order of the Board complied with, without resort to the courts to compel compliance, and few of those cases have been finally heard. It is said that when the recent decisions were handed down by the Supreme Court upholding the constitutionality of the Wagner Act and extending the definition of interstate commerce as it relates to labor controversies, there were approximately two hundred cases which
had been passed upon by the Board in which "cease and desist" orders had been entered and in none of which there had been compliance.

The reason for this is to be found in the fact that the Act operates, as I have said, for the benefit of only one party to a dispute. It is, primarily, a punitive statute. More than that, in operating under the procedure which has been established and under the provisions of the Act itself, the Board and its agents become investigators, inquisitors, prosecutors and judges.

When a charge is filed by an individual employee or a labor organization, charging any unfair labor practice under the provisions of the Act, a complaint is issued by the Board, which is served upon the employer, and he is required to answer within five days, and thereafter to be ready for a hearing before an unnamed examiner within ten days from the date of the service of the complaint. The time for filing an answer may be extended by the Regional Director (who, himself, is an investigator and a prosecutor) or by the Board.

If a preliminary motion raising a question of jurisdiction, insufficiency of the charge set out in the complaint or for a bill of particulars is made, such motion must be made before the examiner. As I have stated, he is generally not named in advance of the hearing and, in most instances, is brought from some remote city and knows little, if anything, about the issues until he reaches the scene of the hearing.

The rules of evidence are not observed, and the door is thrown wide open to the admission of evidence, not only without bearing on the issue involved, but, in many instances, pure hearsay. The trial is conducted, in some cases, without decorum, without restraint, in the midst of confusion, in an atmosphere of prejudice, passion and animosity. Generally, the place of hearing is packed by friends and sympathizers of the complainant, and the employer on trial occupies the position of the prisoner at the bar.

In this sort of atmosphere the record must be made up. It goes without saying, this is not an orderly hearing; it is an inquisition.

After the evidence is completed, although the rules provide for oral argument before the examiner, the futility of such an argument is made apparent long before the hearing has been concluded. When exceptions are taken, as they may be, to the report filed by the examiner, a hearing may be had and briefs may be filed
before the Board. In the nature of things, however, with all the multiple and manifold duties devolving upon the Board, consisting of only three men, it is utterly impossible for it to give such attention and consideration to individual cases as they demand, and, as I have no doubt, the Board would desire.

This Act is clearly designed as a weapon of enforcement, and, by reason of the fact that the Board has held that it can not be resorted to by the employer (although the Act does not so provide), it naturally operates to stir up all the resentment, in the nature of defense, that the average employer possesses. It can not be resorted to by the employer even in a case where labor organizations are contesting among themselves as to which is entitled to the right of selecting representatives for the purpose of collective bargaining, although his business may be practically destroyed while the inter-union struggle takes place.

It is clearly demonstrated by this time, beyond any question, that the Act should be amended in certain and numerous material respects. It should be amended so that it shall be an unfair labor practice for any labor organization or any officer or agent of any labor organization to coerce or intimidate any employee, whether it be by acts of physical violence, or otherwise, into joining or refusing to join, any labor organization.

The Act itself does not require that there be a labor organization, either local or national, within a plant, and it makes it an act of unfair labor practice for an employer to become active, either in promulgating or promoting a labor organization, or in dissuading his employees from engaging in such organizations.

In view of the express provisions of the Act itself to that effect, every employee should be guaranteed the free and untrammeled right to join or not to join a labor organization, as he may determine.

The unlawful and malicious practice which has prevailed in recent months, known as the "sit-down strike," should be made an unfair labor practice.

Some provision should be made to maintain the status quo for a reasonable time before either a strike could be called or a lockout could be instituted, during which time complaints should be taken before a Board for adjustment.

Mr. Donald R. Richberg, who was the original draftsman of the Railway Labor Act, in an article recently published in the Magazine Section of the New York Times (April 11, 1937), in
speaking about the application of the provision of the Railway Labor Act maintaining the status quo, made this very trenchant statement:

"Of course, it may be claimed by a biased critic that this is 'anti-strike legislation.' A more accurate term would be that it is anti-coercion legislation. It stops the arbitrary exercise of an employer's power to exactly the same extent and for exactly the same time as it stops the exercise of arbitrary power by the employees.

"It would be absurd to suggest that the government should set up courts for the determination of rights of property and permit the parties to the dispute to carry on a private war over the property while the court was seeking to adjudicate their rights. The effectiveness of any governmental machinery for the peaceful settlement of labor disputes would be absolutely destroyed if it were left to the advantage of the contending parties to seek to win a decision by force in the meantime."

Another provision clearly in the interest of the promotion of the declared policy of the Act would be that no strike of any kind could be lawfully called unless it resulted from a refusal of an employer to confer and negotiate with respect to complaints, grievances, rates of pay, hours of employment, working conditions, or otherwise. In other words, without a basis of complaint on the part of individual employees or groups of employees, it ought to be provided in the Act that it shall be an unfair labor practice for a strike to be called where no bona fide labor dispute exists and no attempts at collective bargaining have been made.

The Act should also define what constitutes lawful and unlawful picketing, and any unlawful picketing as defined by the Act should be declared to constitute an unfair labor practice.

Certainly it should be provided that every labor organization be required to submit to audits of its accounts at stated periods and to require a detailed statement of receipts and disbursements to be made to its members, and, above all, the Act should provide that the funds of a labor organization should not be used for political purposes.

I want to say to you, however, that in my opinion even if these much needed and salutary amendments were provided in the Act, it would still fall far short of accomplishing the policy and purpose declared in the Act itself, and that is to prevent industrial disputes and to settle industrial conflicts. Until provision is made whereby
the employer and his employee or his representative be required to sit down and negotiate at the source of the complaint—the cause thereof—and until provision is made for appeals to be taken in individual cases from the immediate superior of the employee to some authority in the employer’s organization created for that purpose, and further provision is made for carrying such appeals or complaints to an adjustment board or some other similar governmental agency for final adjustment and enforcement, the objectives of the statute will not be accomplished.

The great difficulty, in practical operation, of the Wagner Act, is that it is the product of revolution and not evolution. It has no history except Section 7 (a) of the National Industrial Recovery Act. It is not the result of trial and error in legislation over a period of years. Although the recent decisions of the Supreme Court in extending the definition of interstate commerce as applied to this particular Act have operated to clarify to a certain extent the powers of the Labor Board, there is still a wide expanse of "no man’s land" between the principles laid down in the Schechter case, on the one extreme, and the Carter Coal Company case, on the other extreme, which must be taken and re-taken many times by contending forces before a clear line of demarcation is established as to the legal rights of all parties in interest under this Act.

Meantime, the far more important fact, that of peaceful and happy human relationship in industry, will continue to remain in chaos and contention unless there is provision for reaching the trouble at its very source and inception.

Much has been heard in recent years of human rights being superior to property rights. It remains a fact, however, that in drafting the Wagner Act resort was had to the provisions of the Federal Trade Commission Act which relate entirely to unfair practices in commerce and to unfair competition—property rights and not human rights. Fundamentally, human relationships can not be dealt with by the same sort of procedure that applies to the suppression of unfair competition and unfair practices in commercial relationships. Despite the fact that the Federal Trade Act can be resorted to only when the rights of the public are involved, the philosophy of that Act is to be found in almost every provision of the Wagner Act.

As I have said, it is primarily a punitive statute. It has been usurped and used as a governmental instrument, by certain ruth-
less labor leaders and agitators who have adopted the philosophy of Leon Trotsky, which is "We need only a handful of men who are sufficiently disciplined and sufficiently ruthless." With the use of this instrumentality of government, we have seen a single labor royalist bestride the industrial world like a great colossus, turning loose irresponsible and uncontrolled lieutenants, using every method of coercion, intimidation, violence and ruthlessness known to the communistic world, in an effort, not only to subject industry itself to his domination, but, even worse, to intimidate and coerce men who want to work, in the exercise of their fundamental rights.

All of this has been done under the pretext of the establishment of an "industrial democracy." As a matter of fact, as we well know, "industrial democracy," like any other form of democracy,

"depends upon action freely taken, not action taken under coercion. It provides for the protection of minorities. It sets standards by which the majorities are permitted to rule and the minorities are permitted to exist."

This Wagner Act, however, in the hands of a ruthless labor dictator is used as an instrumentality of government to put under foot the rights of minorities, and to bring into shame and derision the very term of democracy itself as applied to industrial relationships.

The weapons of warfare can never bring a state of peace either in industry or in society. In industrial relationships the spirit of negotiation and of conciliation is far more important than the instrumentalities of legalistic coercion and punishment. Such legislation is not and can not be the road to industrial peace.