THE ACADEMY OF ELECTRICAL CONTRACTING

Paper presented by

George A. Harter

Two Hundred Years of Labor Law History
in the United States
July, 1978

"We have no ultimate goal----"

Adolph Strasser

This monograph examines 200 years of labor law history in the United States. Early "policy" of labor groups grew from efforts to set "just prices" for wages. Early emphasis on "market forces" led to the development of centralized action by employers largely to counter the mass organization of workers.

"It is a fair statement that effective 'policy' is a common goal of both workers and employers." anon

Strife, strike, bloodshed, and legal action inevitably led to a demand for the protection of law. Law originally tailored to specific labor markets and geographical areas rapidly spread to the larger areas of a growing nation, and the changing needs of an industrial revolution.

The ebb and flow of the nation's economy were of no less importance than the developing philosophy of the workers in creations of labor law.

Office seekers and legislators quickly learned the power of the labor vote, and just as quickly labor groups became politically oriented.

The opposition of employers grew with union demands, first for higher wages, and then for changes in working conditions.

The courts of Philadelphia, New York, and Pittsburgh between 1806 and 1814 were the scenes of legal fighting against unions by employers. In these battles, unions were prosecuted under an old English common law doctrine that combinations of workman to raise wages could be regarded as a conspiracy against the public.

The attempts to apply the conspiracy doctrine aroused controversies that were to last 100 years.

These controversies resulted in a slow shift of judicial question as to whether the combination of workers created a conspiracy, to the broader question of the methods used by the unions in attempting to secure their goals.

It was in this period (1800-1850) unions achieved recognition as lawful organizations, while the actions of unions such as strikes and boycotts were the continuing basis of legal action.

Understandably, union membership under these challenges fell off drastically. Some unions passed out of existence.

After the Napoleonic wars in Europe, when the young nation's economy improved, the unions began to re-assess their political position. Union leaders realized the need for laws to guarantee their "rights."

It was in this time period (1827-1840) that "property qualifications" on the right to vote which had been written into the first State constitutions were abandoned.

This meant working men would have a chance to vote. Small wonder, then, that unions quickly advanced the idea of establishing the hours of labor at 10 hours per day by legislation rather than by strike. Many years were to pass before state legislatures were to establish the 10 hour day. But the political power of labor was being felt to a growing extent for other changes in the laws. Political programs were being advanced by labor papers, especially in the more industrialized areas of the nation.

These programs advanced the ideas of restriction of child labor, abolition of imprisonment for debt, exemption of wages and tool from seizure from debt, the right of mechanics to file liens on property to secure payment of wages, abolition of convict labor competition, free and equal public education, and abolition of home and factory sweatshops.

Collective bargaining, resulting, in some instances, in signed agreements were now becoming more numerous in the leading trades.

Presidential orders helped form the basis of many labor changes. One of the earliest, by President Martin Van Buren in 1840, stated: "The 10 hour system, originally devised by the mechanics and laborers themselves, has by my direction been adopted and uniformly carried out at all public establishments."

By the late 1850's the factory workers and building trades in the larger cities were working the 10 hour day.

Many early attempts at organization failed because they were not protected by law. Others failed for economic or financial reasons. Each, however, played a role in the great tableau of labor law.

Some groups sought strength through secrecy, such as the Noble Order of the Knights of Labor, primarily to evade the "blacklisting" by other elements of society. Some of these early groups (and some more recent ones) had far reaching socio-economic aims, some idealistic, some bordering on socialism. Philosophies ranged from basic benefits to utopian dreams. In some of those early programs were the ideas of an 8 hour day, equal pay for equal work for women and, again, abolition of convict and child labor.

Chronological review of events leading up to the present body of labor law also reveals the "props" used in this unique tableau as well as the names of many of the actors. Let us look, briefly, at the action: (We will underscore the actors and the props)

1791

First recorded strike in the construction building trades-----by carpenters. The place, Philadelphia. The issue, 10 hour day and overtime pay.

1792

Philadelphia shoemakers was the first union formed for collective bargaining.

1805

New York Cordwainers union included a closed shop clause in its constitution.

1806

Philadelphia Cordwainers were tried and found guilty of combining to raise wages and combination to injure others. The resulting fine for criminal conspiracy broke the union.

1840

Van Buren issues a Presidential Order establishing a 10 hour day for the Federal workers on public works----no reduction in pay.

1842

The Massachusetts Court made a landmark decision in the case of Commonwealth v. Hunt. In the decision, the court held that labor unions were legal organizations, that "a conspiracy must be a combination of two or more persons, by some concerted action, to accomplish some criminal or unlawful purpose, or to accomplish some purpose, not in itself criminal or unlawful, by criminal or unlawful means." The court also ruled that an attempt to establish a closed shop was not unlawful or proof of an unlawful aim.

Massachusetts and Connecticut passed laws prohibiting children from working more than 10 hours per day.

1847

New Hampshire fixed by State law the 10-hour day as a legal work day.

1848

A State child labor law set the minimum age for workers in a commercial occupation at 12 years; raised one year later to 13 years.

1852

A State law limiting working hours of women to 10 hours a day was enacted in Ohio.

1862

Violence, acts of terrorism against mine bosses were charged against a secret socity of Irish mine workers called the Molly Maguires. (They went out of existence six years later when 14 of their leaders were imprisoned and 10 were executed.)

1867

A protective group calling themselves the Knights of St. Crispin was formed to protect journeyman shoemakers against the "green hands" and apprentices in the operation of new fangled machinery in their trade.

This group existed in some form during this period of industrialization for almost 11 years.

1868

Congress passes the first Federal 8-hour day law applying to laborers, workmen and mechanics employed by or on behalf of the Federal Government.

This same year the first State Labor Bureau was established in Massachusetts.

1869

Another secret society calling themselves the Noble Order of the Knights of Labor was established in Philadelphia. For 9 years it maintained secrecy, and then began openly organizing skilled as well as unskilled workers. By 1886 it claimed over 700,000 members no doubt gaining support through its campaign for an 8-hour day and winning strikes against the Gould rail lines. With the emergence of the American Federation of Labor it rapidly declined.

1870

Sliding pay scales in the first written contract between coal miners and operators were negotiated based on the price of coal.

1874

The Union Label was first made use of by the Cigar Makers International Union.

1881

The organization which later became the American Federation of Labor was organized in Pittsburgh. It called itself the Federation of Organized Trades and Labor Union (FOTLU).

1882

The first Labor Day celebration was held in September in New York City.

1884

A Bureau of Labor was established in the Department of the Interior. This "bureau" later achieved Cabinet rank as a Department of Labor. In 1903 it was absorbed into the newly created Department of Commerce and Labor where it was to remain until the present Department of Labor was established in 1913.

1886

The Chicago Haymarket riot seriously aroused public opinion against unionism and radicalism. The meeting called as a peaceful protest against the killing of strikers during a strike for an 8-hour day escalated into mob violence killing one policeman and wounding several others.

This same year in December in Columbus, Ohio the American Federation of Labor was organized, replacing FOTLU and assimilating other unions and city councils of workers.

1888

The first Federal Labor Relations Law was enacted this year applying to railroads. It provided for arbitration of disputes and the authority to create Presidential boards of investigation.

1892

More violence resulted in the death of several strikers and guards (Pinkerton) when the Amalgamated Association of Iron, Steel & Tin workers struck the Carnegie Steel Mills in Homestead, Pa.

(The strike failed, and the Union was ousted from most mills in the area)

1898

Ten years after the first Labor Relations act a new act was passed by Congress called the Erdman Act. The act provided for mediation and voluntary arbitration on the railroads. The United States Supreme Court later declared unconstitutional a portion of the Act which had made it a criminal offense for railroads to dismiss employees or discriminate against applicants for work because of union membership or union activity.

1902

A Presidential Commission arbitrated a strike by the United Mine Workers. The commission was called the Anthracite Coal Commission, and recommended a 10-percent wage increase and conciliation machinery.

The Union has pressed for union recognition, but the request was denied.

1903

The Congress created the Department of Commerce and Labor, and gave its Secretary Cabinet status.

1905

The maximum hours law (bakery workers) was held to be unconstitutional by the Supreme Court under the due process clause of the 14th Amendment. (Lochner v. New York)

1908

The Erdman Act had declared the "yellow-dog" contract unlawful and forbidden employers to discharge railway employees for union membership. In the case of U.S. v. Adair, the Supreme Court declared Section 10 of the Erdman Act, the section dealing with these matters, unconstitutional.

United Hatters of Danbury, Conn. boycott D. E. Loewe and Co. Held in restraint of trade under the Sherman Anti-trust Act, the Union, and its members, were assessed damages and costs of over a quarter of a million dollars.

1909

The first use of an impartial chairman resulted in preferential union hiring, a grievance board, and a board of arbitration in settling a 2-month strike of International Ladies Garment Workers' Union (AFL).

1911

The Supreme Court upheld an injunction ordering the AFL to cease to promote an unlawful boycott and to eliminate Bucks Stove and Range Co. from its unfair list.

1912

The first minimum wage act for women and minors was adopted in Massachusetts.

A Commission on Industrial Relations to investigate and report on industrial turmoil and strife was appointed. Four years later it made report.

1913

The United States Department of Labor was created by Congress. The Board of Mediation and Conciliation for handling railway disputes was created by the passing of Newlands Act.

1914

Clauses in the Clayton Act, inserted at the "insistence of the AFL, exempted unions from prosecution under restraint of trade claims and sought to limit the use of injunctions in labor disputes. Samuel Gompers called the Act labor's "Magna Charta." The courts nullified most of the provisions of the Act in the following years.

1915

The La Follette Seamans Act was passed regulating conditions of employment.

1916

A Federal child labor law was enacted.

A threatened nationwide railroad strike was averted by the enactment of the Adamson Act providing for a basic 8-hour day on railroads.

1917

An Industrial Workers of the World strike in the Bisbee, Arizona copper mines was ended when 1200 strikers were deported by the sheriff.

A Presidential mediation commission to adjust wartime labor problems was headed by the Secretary of Labor.

In the case of Hitchman Coal & Coke Co. v. Mitchell the court upheld the "yellow-dog" contract and held union efforts to organize workers under such contracts to be unlawful.

1918

The Federal Government seized control of the railroads December 1917.

The Secretary of Labor was named War Labor Administrator.

The National War Labor Board was created by the President.

The minimum wage law of the District of Columbia was approved (only to be declared unconstitutional in 1923).

1919

The Bituminous Coal Commission appointed by the President arbitrated a UMW strike.

The commission awarded a 27-percent wage increase, but denied the 6-hour day and 5-day week.

1920

A Kansas court experiment in compulsory arbitration was tried for the first time in the United States.

Three years later, it was declared unconstitutional.

Rail controls terminated.

1921

The Supreme Court held that nothing in the Clayton Act legalized secondary boycotts or protected unions from being sued for conspiracy in restraint of trade. (Duplex Printing Press v. Deering)

A Presidential Conference on Unemployment blamed local communities and held them responsible for relief.

The Arizona law forbidding injunctions and permitting picketing was held unconstitutional under the 14th Amendment. (Truax v. Corrigan)

1922

Strike action was held not a conspiracy to restrain commerce within the meaning of the Sherman Anti-Trust Act. (Coronado Coal Co. v. UMWA)

1926

Employers were required to bargain collectively and not discriminate against employees for union membership under the Railway Labor Act.

1927

The Longshoremen's and Harbor Worker's Compensation Act was enacted.

In Bedford Cut Stone Co. v. Journeyman Stonecutters Association, the union's action in trying to curtail purchase of non-union cut stone was held to be illegal restraint in interstate commerce.

1929

Convict-made goods in interstate commerce was regulated by the Hawes-Cooper Act.

1930

Supreme Court upheld the prohibition of employer interference or coercion in choice of bargaining representatives as provided in the Railway Labor Act. (Texas & N.G.R. Co. v. Brotherhood of Railway Clerks)

1931

The Davis-Bacon Act providing for the payment of prevailing wages to employees of contractors and sub-contractors on public construction was enacted by Congress.

1932

The Norris-La Guardia Act (Anti-Injunction) was enacted, prohibiting Federal injunctions in labor disputes except in certain specified cases, and outlawed "yellow-dog" contracts.

Wisconsin adapted the first unemployment insurance act in the United States.

The National Industrial Recovery Act provided, in part, for every NRA code and agreement to guarantee the right of employees to organize, select their own representatives without any interference restraint or coercion by their employers and to bargain collectively with them.

(In 1935, Title I of the Act was declared unconstitutional in Schecter v. United States.)

The United States Employment Service in the Department of Labor was created by the Wagner-Peyser Act.

1935

The Wagner Act-National Labor Relations Act was enacted establishing the first national policy protecting the rights of workers to organize and elect their own representatives for collective bargaining, without restraint or coercion or undue influence by employers.

The Federal Social Security Act was passed by Congress.

1936

The Anti-Strike Breaker Act was enacted making it unlawful to transport or aid in transporting strike breakers in interstate or foreign commerce.

The Walsh-Healy Act established labor standards on Government contracts, including minimum wages, overtime pay for hours in excess of 8 hours a day or 40 hour per week, health and safety requirements, and child and convict labor provisions.

1937

Supreme Court holds the National Labor Relations Act constitutional (NLRB v. Jones & Laughlin Steel Corp.)

Railroad Retirement Act was enacted.

National Apprenticeship Act (Fitzgerald) was enacted, establishing the Bureau of Apprenticeship in the Department of Labor.

1938

A minimum wage of 25-cents per hour and time and one-half for hours over 40 per week were provided by the passage of the Fair Labor Standards Act.

1940

Sitdown strike was held not to be illegal restraint of trade when no attempt was made to impose market controls. (Apex Hosiery Co. v. Leader).

1941

Carpenters held protected in jurisdictional disputes by the Clayton Act from prosecution under the Sherman Act.

1942

National War Labor Board created by the President. Board established "Little Steel" formula for settling wage issues.

The Stabilization Act gave the President power to stabilize wages and salaries.

1943

Executive order by the President created a Committee on Fair Employment Practices to eliminate discriminations in the employment of persons in Government or the war industries by reason of race, creed, color, or national origin.

1944

The Railway Labor Act which authorized a labor union chosen to represent a majority was held to also require union protection to the minority in that class.

Discrimination against certain members on grounds of race were held enjoinable (Steel v. Louisville & Nashville Railroad).

1947

Portal to Portal Act was enacted.

Norris-La-Guardia Act prohibitions against issuance of injunctions in disputes was held to be inapplicable to the Government as an employer. (U.S. v. John L. Lewis)

The Labor Management Relations Act (Taft-Hartley) was passed by Congress over presidential veto.

1949

Child Labor was expressly prohibited by amendment to the Fair Labor Standard Act.

The Supreme Court by refusing to review a lower court action upheld a decision that the Labor Management Relations Act requires employers to bargain with unions on retirement plans. (Inland Steel Co. v. United Steelworkers of America.)

1951

The first amendment to the Taft-Hartley Act permitted negotiations of Union Shop agreements without previous poll of employees.

1952

Steel strike resumes after Supreme Court rules President exceeded his constitutional powers when he ordered seizure.

1953

The Supreme Court upheld the right of the International Typographical Union to compel a newspaper to pay for the setting of the type not used and of the Federation of Musicians to demand that a "standby" orchestra be hired when a traveling orchestra was hired for an engagement.

The Court held that neither practice violated the "feather-bedding" ban in the Taft-Hartley Act.

1958

A Welfare and Pension Plans Disclosure Act was enacted.

1959

The Labor-Management Reporting and Disclosure Act of 1959 to eliminate certain improper activities by labor or management was passed. The law amended the Taft-Hartley Act to clarify questions of secondary boycotts and eliminate certain "no mans land" in NLRB cases.

1961

The Fair Labor Standards Act extended over $3\frac{1}{2}$ million workers, mostly in retail and construction.

1962

The Equal Pay Act of 1963 was approved, prohibiting wage differentials based on sex for workers covered under the act.

1964

The Civil Rights Act of 1964 was signed on July 2 by the President to become effective one year later.

1968

The Age Discrmination in Employment Act went into effect.

Restrictions on wage garnishment were enacted as part of the Consumer Credit (Truth in Lending) Protection Act of 1968.

1969

The President issued Executive Order 11491-Labor Management Relations in the Federal Service. This established a Council to administer the program and a Federal Service Impasse Panel to resolve disputes over new contract terms.

1970

After 195 years of operation the Post Office Department had its first mass work stoppage. This stoppage involved over 200,000 of the 750,000 postal workers, and paralyzed mail service in 3 of our largest cities. A National Emergency was declared and military units were used to move mail.

The first state in the Union to allow State and local government workers to strike was Hawaii.

The President signed the Occupational Safety and Health Act.

1973

The Comprehensive Employment and Training Act of 1973 was enacted. It was designed to consolidate overlapping Federal programs.

1974

The President signed the Employee Retirement Income Security Act of 1974 which regulated all private pension plans.

1975

The Trade Act of 1974 was signed by the President on January 2. This Act assisted workers displaced because of imports and companies hurt by foreign competition.

California becomes the first State to pass legislation covering farm workers.

And now the nation is faced with pressure for more "labor law" reform. Reforms that would make it easier for unions to organize and reforms that would speed up the process of handling allegations of violation of labor laws.

After 200 years of change----and 200 volumes of interpretations and decisions pertaining to the Taft-Hartley Act, we are no closer to eliminating the destructive force of labor strife.

We have inventoried the "props":

Work stoppage
Strikes
Coercion
Bribes
Violence
Injunctions
Seizures
Arbitration
Mediation
"Yellow Dog Contracts"
Sitdown
Lockout
Conciliation
Executive Orders
Presidential Orders
Presidential Investigative Commissions
Controls
Jawboning
Slowdown

Of all these, the strength and power of the "strike" is the most devasting and destructive socio-economic force in our labor-management affairs.

We have witnessed the "coming together" of labor law, first as it appeared in a single community, and finally as it engulfed the entire nation.

We have seen the growth of labor forces, forces which have successfully thrown off the Marxist advocates and resisted with heroic patriotism the thrust of socialism. Largely non-partisan, labor organizations have worked within our democratic system to secure the benefits now protected by law.

So as we evaluate our present position (re: labor law) we do so knowing full well that many more changes are just around the corner.

"We have no ultimate ends----"
(Labor philosophy as expressed by Union Leader, Adolph Strasser, in the 1880's)

"The kind of labor movement we want is not committed to nickel-in-the-pay envelope philosphy. We are building a labor movement, not to patch up the old world so men can starve less often and less frequently, but a labor movement that will remake the world so that the working people will get the benefit of their labor."
(Philosophical view expressed by Walter Reuther)

The direction in which we are moving is more important than where we are!

"Strike" can mean

Whole cities can now be immobilized.
Police and firemen can leave communities unprotected.
Garbage can rot in the streets.
School children can find no teachers in the class rooms.
Patients in hospitals can find themselves without nursing care.
Public transportation can come to a halt.

The direction in which we are moving is more important than where we are!

The early court battles in New York, Philadelphia and Pittsburgh and the decisions that were made then that "combinations of workmen" to raise wages were not a conspiracy against the public, surely "cast the die" for this nation. From them came the rationale of the right to organize, and, later, the right to strike.

The Taft-Hartley Act imposes restraints on both Labor and Management--in all instances where they are covered by the Act.

There is a rising tide of non-union activity competing for a great portion of our work by worker and employers largely not affected by the regulations and restraints of the Taft-Hartley Act.

We are not going to try here to explore the entire Taft-Hartley Act. That, also, would be a project by itself. We will point to some areas that could improve, in our opinion, the position of both parties.

"Goodfaith bargaining" within the meaning of the act is supposed to be bargaining with the sincere intent and effort to reach agreement. "Bad faith" and employer "hostility" toward the union may be "motivations" for acts which can lead to unfair charges by the union, especially if the employer decides on lockout.

8 (a) (5)

"Goodfaith" is very hard to evaluate. Many times employer negotiators are accused of "not negotiating in good faith" simply because they won't concede to a union request. Efforts to identify an individual's mental "attitudes" and "intents" are poorly handled in the law and should be removed.

"Relevant and necessary" employer supplied information is subject to wide variations of interpretations. Poorly handled, and subject to ambiguity, this provision in the law should be evenly applied to the parties and more narrowly defined.

Once a multiemployer bargaining unit has been established, any of the participating employers, or the union, may retire from the multiemployer bargaining relationship by mutual consent or by a timely submitted withdrawal. Sounds O. K. doesn't it? What's wrong with "employer certification" elections to stop the practice of an employer-----for whatever reason, including some preferential treatment or promise from the union, withdrawing from the multiemployer unit and signing an individual contract with the union? (The question of "breakdown" in the negotiations is open to interpretation at this point.)

The employer is precluded from taking unilateral action. This should be part of an "employer certification" procedure and should apply equally to union activity.

8 (b) (4)

Why should the exception (bordering on hot cargo) be allowed in the garment and construction industry to secure work which is "fairly claimable"?

A union in the construction industry may engage in a strike and picketing to obtain but not to enforce contractual restrictions of this nature. (Typically a provision that if the work is subcontracted by the employer it must go to an employer who has an agreement with the union.)

Admittedly, there are good arguments on both sides of this question. Do we have a policy?

8 (b) (1) (B)

How can the prohibited acts of striking against several members of an employer association that had bargained with the union as the representative of the employers with the result that individual contracts are signed by the struck employers be more universally enforced? Where is the "weak link"? Could "employer certification" help?

8 (b) (2)

Even "informal" arrangements with a union under which an employer gives preferential treatment to union members are violations of this section. The employer is really on the spot here.

This whole area is subject to wide interpretation and should be eliminated or more precisely defined, to better protect the actions of the employer, and to avoid charges of discriminations.

8 (b) (3)

Even in the absence of employer consent a union may withdraw from multi-employer bargaining by giving the employers unequivocal notice of its withdrawal near the expiration of the agreement but before bargaining on a new contract had begun. (who mentioned equal treatment under the law?)

(You say "what's sauce for the goose, is sauce for the gander?)

8 (b) (4) (B)

The test of "ally" relationships and "closely integrated operations" between primary and secondary employers is sometimes based on the "conduct" of the secondary employer in determining if they may be classed as a single employer under the act. An employer may claim neutrality in a dispute, but he better be careful because if he does anything that indicates he has abandoned his neutral position he can be subject to primary action by the unions. What a tight rope the employer walks!

The whole area of common situs picketing has been explored, and we will not address that subject here, nor will we explore, again, the efforts of labor to remove or change 14(B) from the act. These matters will be debated in many other forums.

We must draw this monograph to a close, but not before one more look at our beginnings.

Of all the events we have reviewed, which stands out as the most important as to the shaping of labor law?

Was it the abolition of voting restrictions to non-property owners to give the vote to the working man? Was it the court decisions removing unions from prosecution as "in restraint of trade"? Or was it something else?

You be the judge.

We do not present any of our statements here other than to provoke some thought about our present circumstance. Our views are our own.

The labor movement has long held to a powerful political position sometimes quoted as "Reward our friends and destroy our enemies," (politically).

Well organized and politically powerful labor organizations will continue to influence our legislators and help to mold labor law.

Hopefully, management can more adequately in the future unite in policy and more forcefully press for equal treatment under the law.

The direction in which we are moving is more important than where we are?

"It is a fair statement that effective 'policy' is a common goal of both workers and employers" anon

Is it time for us to review our policy?

References and credits:

U.S. Dept. of Labor Statistics Bulletin 1000
Kenneth C. McGuiness 4th Ed. How to take a case to the National Labor Relations Board
Trade Union Wage Poli·y, Ross
The Lean Years, Bernstein
The Turbulent Years, Bernstein
Wage Determination under Trade Union, Dunlap