can motivate workers to look for alternative forms of protection and voice, they are no guarantee that union representation will be the route actually taken. I suspect that one reason for this reluctance is the widespread feeling that employees face some risk of arbitrary treatment at the hands of union officials as well as from management, that union members do not have much more democratic input into the actions of their union than of their employer. This is not to suggest that these feelings accurately reflect the typical conduct of union affairs (the polls I referred to earlier show a very high level of satisfaction on the part of current members with the operation of their own unions). But the *existence* of these feelings (which do reflect occasional and well-publicized real-life examples) is as important as their *truth*. If I am right about this, then American unions are going to have to think seriously about some pretty substantial changes in their mode of governance: e.g., to consider more widespread adoption of such constitutional mechanisms as the Public Review Board of the United Auto Workers (in the interest of full disclosure, I must add that I am a member of that Board). This is so not just because we have the right to expect better guarantees of protection and participation from trade unions, whose *raison d'être*, after all, is insuring fair treatment and employee voice in the workplace.[21] Just as important, some such dramatic steps as these are probably necessary to persuade the American people, and the politicians whom they elect, that union representation is a sufficiently worthwhile institution that it deserves once more the kind of legal lifeline which it received in the Wagner Act, fifty years ago. Otherwise, I fear, fifty years from now there will be few left to celebrate the centennial of our national labor law.

II. THE PENDULUM SWINGS

LEE C. SHAW*

The National Labor Relations Act of 1935 (the Wagner Act) was amended by the Labor-Management Relations Act of 1947

[21] I do not mean to downplay the difficulties many unions now face in displaying both economic restraint towards management and democratic accountability towards their membership. For a sustained argument that the latter value must always trump the former, *see* Hyde, *Democracy in Collective Bargaining*, 93 Yale L.J. 793, 833–854 (1984).

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(the Taft-Hartley Act) and by the Labor-Management Reporting and Disclosure Act of 1959 (the Landrum-Griffin Act).

When the Wagner Act was passed in 1935, the Roosevelt Administration, the Democratic Congress, and labor union leaders, believed strong unions were necessary to protect workers; and that long-term, strong unions would be good for our economy. Many labor law professors favored laws which supported unions, but I believe primarily because unions, as they viewed it, were representing the underdog employee in the employment arena. I can tell you without any fear of contradiction that most managements in 1935 predicted that the Wagner Act would cause long and costly strikes and that labor agreements would result in both high labor costs and *some* form of joint management. And they were right. But those who believed this Act was the end of our industrial economy were, of course, wrong. After all, our labor law is a mixture of law, economics, and sociology and is both regulatory and substantive.

Since the passage of the Wagner Act in 1935, the labor law pendulum has been swinging. It has been swinging over the past 50 years from both a legal point of view as well as a pragmatic point of view.

The Wagner Act was revolutionary legislation because it provided the opportunity for labor unions to organize and to negotiate labor agreements. This Act required management (1) to recognize a union which represented a majority of its employees in an appropriate bargaining unit and (2) to negotiate with that union in good faith. Taft-Hartley and Landrum-Griffin did not change this *basic* concept, except that Taft-Hartley also required *unions* to negotiate in good faith. When Congress was considering repealing the Taft-Hartley Act in 1949, I spent two months in Washington, D.C. trying to persuade members of Congress *not* to repeal this law and to reenact the Wagner Act. Even those members of Congress who had declared they would vote to repeal Taft-Hartley did not deny that unions should also be required to bargain in good faith. It was my impression that this provision in the Taft-Hartley Act played an important role in retaining Taft-Hartley.

Supreme Court Cases Which Have Been Important in the Development of the Collective Bargaining Process and Arbitration*

1. *NLRB v. Jones & Laughlin Steel Corp.*:[1] Upheld the constitutionality of the NLRA against challenges based on the Commerce Clause and the Due Process Clause.[2] The Court ruled that the Act was within the congressional power to regulate commerce between the states, that the NLRB's jurisdiction was coextensive with that power, that employees have a "fundamental right" to organize, and that employers have a right to select and discharge employees for legitimate, nonpretextual reasons (the right to manage).

a. Regarding the Commerce Clause, the Court rejected respondent's argument that the Act was not a true regulation of interstate commerce but rather an attempt to place all industrial labor relations of the nation under the compulsory supervision of the Federal Government. Noting that if this argument were sound, the Act "would necessarily fall by reason of the limitations upon the federal power which inheres in the constitutional grant," the Court nevertheless concluded that the Act could be construed so as to operate within the "plenary" congressional authority to regulate interstate commerce. According to the Court, that power may be exercised "no matter what the source of the dangers which threaten [interstate commerce]." Although "[t]he question is necessarily one of degree," "it is primarily for Congress to consider and decide the fact of the danger and to meet it." To require that the danger be immediate and direct would be "inconsistent with the maintenance of our federal system."

The Court then stressed that "the recognition of the right of employees to self-organization and to have representatives of their own choosing for the purpose of collective bargaining is often an essential condition of industrial peace. Refusal to con-

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*Gary S. Kaplan, Associate in the Chicago Office of Seyfarth, Shaw, Fairweather & Geraldson, is the author of the analysis of these Supreme Court cases. I edited Gary's analysis of these cases and concur in his opinions.

[1]301 U.S. 1, 1 LRRM 703 (1937).

[2]The Court also considered and rejected the argument that the NLRB's procedural powers violate the Seventh Amendment right to jury trial. Because NLRB proceedings are not "suits at common law" but rather statutory proceedings unknown to the common law, the Court held that the Seventh Amendment did not apply.

fer and negotiate has been one of the most prolific causes of strife." Drawing support from the "large measure of success of the labor policy embodied in the Railway Labor Act," the Court stressed the practical ramifications of the nominally "local" industrial strife at Jones & Laughlin's Aliquippa operations:

> In view of respondent's far-flung activities [the Company had 19 subsidiaries engaged in an "integrated enterprise" of mining, transporting, and manufacturing], it is idle to say that the effect [on interstate commerce] would be indirect or remote. It is obvious that it would be immediate and might be catastrophic. We are asked to shut our eyes to the plainest facts of our national life and to deal with the question of direct and indirect effects in an intellectual vacuum . . . [I]nterstate commerce itself is a practical conception. It is equally true that interferences with that commerce must be appraised by a judgment that does not ignore actual experience.

b. Concerning the Due Process Clause, the Court rejected as fallacious the employer's argument that the NLRA subjects its right to conduct business in an orderly manner to "arbitrary restraints." The Court affirmed the employer's general right to manage the enterprise by organizing its business, selecting its agents, and employing and discharging employees. The employer's rights are limited, however, by an equally clear "fundamental right" of employees "to organize and select their representatives for lawful purposes . . . Discrimination and coercion to prevent the free exercise of the right of employees to self-organization and representation is a proper subject for condemnation by competent legislative authority." The Court therefore concluded that the Act's restraints upon employer interference with those employee rights "cannot be considered arbitrary or capricious."

In this regard, the Court stressed that the Act imposed on employers only the obligation to confer and negotiate with employee representatives, not a duty to agree:

> The theory of the Act is that free opportunity for negotiation with accredited representatives of employees is likely to promote industrial peace and may bring about the adjustments and agreements which the Act in itself does not attempt to compel . . . The Act does not interfere with the normal exercise of the right of the employer to select employees or to discharge them. The employer may not, under cover of that right, intimidate or coerce its employees with respect to their self-organization and representation, and, on the other hand, the Board is not entitled to make its authority a pretext for interferences with the right of discharge when that right is exercised for other reasons than such intimidation and coercion.

Finally, the Court answered the employer's argument that the Act is one-sided in its application and fails to address abuses for which employees are responsible. The Court stated that such criticism fell beyond the judicial pale, since the issue was the power of Congress to act, not the *extent* to which policy should go within constitutional limits. "[L]egislative authority, erected within its proper field, need not embrace all the evils within its reach."

Dissent: Justice McReynolds, joined by three of the four so-called "four old men," dissented. Relying on the principles of substantive due process and the fundamental rights to contract, he stressed that "[t]he right of a person to sell his labor upon such terms as he deems proper is, in its essence, the same as the right of the purchaser of labor to prescribe the conditions upon which he will accept such labor from the person offering to sell it." (Quoting *Adair v. United States.*) Justice McReynolds concluded that the Act unduly abridged the right to contract by depriving the private property owner of his "power to manage his own property by freely selecting those to whom his manufacturing operations are to be entrusted." To him, the Court's reliance on the congressional power to regulate interstate commerce "goes beyond the constitutional limitations heretofore enforced." "[A] more remote and indirect interference with interstate commerce or a more definite invasion of the powers reserved to the states is difficult, if not impossible, to imagine."

Analysis of merits: This case is the famous so-called "switch in time that saved nine" widely thought to be the result of Franklin Roosevelt's proposal of his "court-packing scheme" a week before oral argument in the case. The majority opinion seems to be open to criticism on a number of counts. First, it overcomes the Commerce Clause, at least in part, by stressing Jones & Laughlin's "far-flung activities." As the dissent points out, however, the Court's decision broadly affirmed the constitutionality of the Act as to *all* manufacturing concerns, large and small, empowering the Board with "control over purely local industry beyond anything heretofore deemed permissible." Indeed, the majority opinion makes no reference at all to the companion cases, one of which (as the dissent noted) involved a "small" clothing manufacturer. In the years since *Jones & Laughlin,* the Court has in fact made it clear that the Commerce Clause power and, hence, the Board's jurisdiction, extends to "small" and

"local" enterprises.[3] In 1950, with revisions in 1954 and 1958, the Board promulgated standards prescribing monetary jurisdictional minimums for various industries. These standards have generally avoided serious tests of the outer boundaries of the Board's jurisdiction under the federal commerce power.

2. *NLRB v. Mackay Radio & Telegraph Co.*:[4] Upheld the right of employers to respond to strikes by hiring permanent replacements for economic strikers.

In a unanimous opinion, the Supreme Court held in *Mackay Radio* that an employer, in order to carry on his business, could lawfully hire permanent replacements for his employees who were engaged in an economic strike, and that the employer was under no obligation to create positions for such replaced strikers by discharging their replacements at the termination of the strike. Thus, although the act of replacement undoubtedly has the ultimate effect of discouraging union activity, the employer has the lawful right to retain the replacements who were hired to protect his interest. As the Court stated:

> Although section 13 . . . provides, "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.

The Court went on to hold, however, that the employer violated Sections 8(1) and 8(3) by filling post-strike vacancies on a basis that discriminated against union activists.

Analysis. Mackay Radio is a very important case in the development of the NLRA, and for obvious reasons it has always been much reviled in union circles. The Court's holding is noteworthy in that the Court reached the broad question of the employer's right to retain the permanent replacements even though the Board refused to do so, ruling instead on the narrower grounds of whether the employer's filling of vacancies was discriminatory. Under *Mackay Radio,* the Court takes seriously the *Jones & Laughlin* rationale that the NLRA seeks only to induce recognition and negotiation. Thus, where an employer meets its obligations, as did the employer in *Mackay Radio* prior to the strike, it

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[3]*See, e.g., NLRB v. Reliance Fuel Oil Corp.,* 371 U.S. 224, 52 LRRM 2046 (1963); *Meat Cutters v. Fairlawn Meats, Inc.,* 353 U.S. 20, 39 LRRM 2571 (1957); *NLRB v. Denver Bldg. & Constr. Trades Council,* 341 U.S. 675, 28 LRRM 2108 (1951).

[4]304 U.S. 333, 2 LRRM 610 (1938).

retains the right to continue its business by hiring permanent replacements for strikers. Without such a right, the Act would allow little or no employer countermeasure to union bargaining intransigence or unreasonableness.

The impact of *Mackay Radio* is well illustrated by the recent decisions by several unions not to strike because of the ease with which the employer would be able to hire permanent replacements for the strikers. Indeed, some unions have publicly stated that their decision not to strike rested upon the fact that strikers would be permanently replaced. Thus, current developments in many industries have made *Mackay Radio* an even more important factor in the overall collective bargaining calculus between the employer and the union. It has clearly been a strong employer counterpoise to the right to strike.

On the other hand, *Mackay Radio* carefully avoids tipping the balance too far in the other direction. Thus, the Court affirmed the Board's holding that the employer committed unfair labor practices by applying antiunion discriminatory criteria in filling vacancies not already occupied by permanent replacements. Replaced strikers, the Court held, remain "employees" who are entitled to the organizational rights guaranteed by the Act. Accordingly, the Court affirmed the Board's order of reinstatement and back pay as to such discriminatees.

3. *NLRB v. Sands Mfg. Co.*:[5] Held that a strike during the term of an agreement to force the employer to accept a modification of the agreement's provisions is not a lawful strike entitled to the Act's protection.

The Court held that "[t]he Act does not prohibit an effective discharge for repudiation by the employee of his agreement, any more than it prohibits such discharge for a tort committed against the employer." Thus, where the employer "rightly understood that the men were irrevocably committed not to work in accordance with their contract," the employer "was at liberty to treat them as having severed their relations with the company because of their breach and to consummate their separation from the company's employ by hiring others to take their places."

Analysis: See discussion following *Fansteel.*

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[5]306 U.S. 332, 4 LRRM 530 (1939).

4. *NLRB v. Fansteel Metallurgical Corp.*:[6] Outlawed sit-down strikes, even in response to employer unfair labor practices.

In response to what was later held to have been a refusal to bargain by their employer, the employees engaged in a prolonged sit-down strike, forcible seizure of the plant, and violence and destruction of the employer's property. The Court held that, notwithstanding the employer's unfair labor practice, the employer was entitled to discharge the strikers. The Court distinguished *Mackay Radio*, concluding that the Act's definition of "employee"—which includes individuals "whose work has ceased as a consequence of, or in connection with, any current labor dispute"—does not apply to workers who undertake a strike which is "illegal in its inception and prosecution." Because the policy of the Act is to safeguard the rights of self-organization and collective bargaining and thus promote industrial peace, lawless and violent conduct is unprotected by the Act. Thus, the Board's attempt to order reinstatement or reemployment of the strikers "would directly tend to make abortive [the Act's] plan for peaceable procedure." "When the employees resorted to that sort of compulsion they took a position outside the protection of the statute and accepted the risk of the termination of their employment upon grounds aside from the exercise of the legal rights which the statute was designed to conserve."

Analysis: Sands and *Fansteel* are significant steps in the development of NLRA law, less because of their specific holdings than because of their recognition that some degree of reciprocity is necessary if the objectives of the Act are to be achieved. Together, *Sands* and *Fansteel* serve as early indicators that these objectives would not be well-served by a statute which was, as the employer in *Jones & Laughlin* complained, "one-sided in its application" and "[left] untouched the abuses for which employees may be responsible."

5. *J.I. Case Co. v. NLRB*:[7] Held that the collective bargaining agreement supersedes individual contracts between the employer and its employees.

While a union certification petition was pending, the employer offered uniform, one-year employment contracts to its employees. Seventy-five percent accepted. When the union

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[6]306 U.S. 240, 4 LRRM 515 (1939).
[7]321 U.S. 332, 14 LRRM 501 (1944).

was certified and asked the employer to bargain, the employer refused, relying on the individual contracts and offering to bargain when those contracts expired. The Court held this conduct to be a refusal to bargain under Section 8(5), declaring that:

> Individual contracts, no matter what the circumstances that justify their execution or what their terms, may not be availed of to defeat or delay the procedures prescribed by the [NLRA] 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.

Although noting that the Act leaves room for individual contracts under some circumstances—for example, where a majority of employees fail to choose a representative—the Court left no doubt that "individual contracts may [not] survive or surmount collective ones."

The Court's holding was premised on the principles of majority rule embodied in the Act:

> The very purpose of providing by statute for the collective agreement is to supersede the terms of separate agreements of employees with terms which reflect the strength and bargaining power and serve the welfare of the group . . . [A]dvantages to individuals may prove as disruptive of industrial peace as disadvantages. They are a fruitful way of interfering with organization and choice of representatives . . . The workman is free, if he values his own bargaining position more than that of the group, to vote against representation; but the majority rules, and if it collectivizes the employment bargain, individual advantages or favors will generally in practice go in as a contribution to the collective result.

Analysis: The concepts of exclusive representation and majority rule so strongly endorsed in *J.I. Case* are now commonplace elements of American labor law. However, in 1944 *J.I. Case* was a substantial advance for the American labor movement, especially given the absence of such concepts in European countries. The Court's holding clearly was correct, given the structure and objectives of the Act.

On the other hand, it is difficult to justify, as a matter of first principles, the utilitarianism and paternalism that inheres in a rule that subjects the individual worker to the will of the collective when it comes to the means of earning his or her livelihood. The duty of fair representation, a doctrine that inevitably followed as a counterpoise to exclusive representation and majority

rule[8] merely limits, rather than prohibits, the majority's power to subjugate the individual's interests to those of the union.

These issues are currently being litigated, in a somewhat different context, with respect to whether unions may impose a fine or otherwise restrict a member's right to resign from the union during a strike or while a strike is imminent.[9]

6. *Textile Workers v. Lincoln Mills*:[10] Held that Section 301 is both jurisdictional and substantive and requires the development of federal common law to effectuate federal labor policy.

The Court held that Section 301(a) of the Labor-Management Relations Act of 1947 "is more than jurisdictional." Rather, "it authorizes federal courts to fashion a body of federal law for the enforcement of . . . collective bargaining agreements and includes within that federal law specific performance of promises to arbitrate grievances under collective bargaining agreements." Section 301(a), the Court held, recognizes that "the agreement to arbitrate grievance disputes is the *quid pro quo* for an agreement not to strike." It therefore expresses the "federal policy that federal courts should enforce such agreements on behalf of or against labor organizations and that industrial peace can be obtained only in that way."

The Court further made clear that "the substantive law to apply in suits under Section 301(a) is *federal* law, which the courts must fashion from the policy of our national labor laws" (emphasis added). Although the federal courts may resort to state law for guidance in finding the rules that best effectuate federal policy, state law "will not be an independent source of private rights," and "[f]ederal interpretation of federal law will govern."

Finally, the Court held that Section 7 of the Norris-LaGuardia Act does not withdraw from the courts their jurisdiction to compel arbitration of grievance disputes. The failure to arbitrate was held not to be among the abuses at which the Norris-LaGuardia Act was aimed. To the contrary, the Court noted that the Act indicates "a congressional policy toward settlement of labor disputes by arbitration, for it denies injunctive relief to any person who has failed to make 'every reasonable effort' to settle

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[8]*See Steele v. Louisville & Nashville R.R.*, 323 U.S. 192, 15 LRRM 708 (1944).

[9]*See Pattern Makers v. NLRB*, 724 F.2d 57, 115 LRRM 2264 (7th Cir. 1983), *aff'd* ___ U.S. ___, 119 LRRM 2928 (1985) (holding that such rules are invalid).

[10]353 U.S. 448, 40 LRRM 2113 (1957).

the dispute by negotiation, mediation, or 'voluntary arbitration.' " (Quoting Section 8 of Norris-LaGuardia).

Analysis: Lincoln Mills is clearly a seminal case in the development of the collective bargaining process and in the field of grievance arbitration. Prior to that decision, the state courts often frustrated enforcement of the arbitration process by applying rules such as those generally disapproving specific performance of obligations. These courts reflected the traditional view of arbitration as simply another means of resolving controversies subject to adjudication under the general law of contracts. *Lincoln Mills* used federal jurisdiction to step in to halt the inroads that state courts had been making. The decision also set the stage for the development of a federal common law that would place the imprimatur of public law upon the labor arbitration process.

Justice Frankfurter's lengthy dissent in *Lincoln Mills* urged that the Court's decision transformed a plainly procedural, jurisdictional provision into a mandate for the intervention of a massive body of substantive federal law. According to Justice Frankfurter, this reading of Section 301 ignored both the language and the legislative intent of Section 301. The decision seems to me, however, to be well-founded, not only from a practical retrospective viewpoint, but also in light of the purported goals of the NLRA as first explicated in *Jones & Laughlin.* If, as Chief Justice Hughes wrote for the Court in that case, federal labor policy is to create a legal context conducive to "bring[ing] about the adjustments and agreements which the Act itself does not compel," then arbitration does indeed stand as the *quid pro quo* for a no-strike pledge and is an integral part of the atmosphere of industrial peace that the NLRA seeks to foster.

7. *Steelworkers Trilogy (Steelworkers v. American Mfg. Co.,*[11] *Steelworkers v. Warrior & Gulf Navigation Co.,*[12] *Steelworkers v. Enterprise Wheel & Car Corp.):*[13] Announced a strong federal policy of judicial deference both to the process of arbitration and to the outcome of that process, marking what may have been the highwater mark of the "Golden Age of Arbitration."

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[11]363 U.S. 564, 46 LRRM 2414 (1960).
[12]363 U.S. 574, 46 LRRM 2416 (1960).
[13]363 U.S. 593, 46 LRRM 2423 (1960).

Clearly, these three cases are of fundamental importance to the topic under discussion. I shall summarize their holdings separately, and then evaluate their merits together.

a. *American Mfg.* In a suit brought by the union to compel arbitration of a grievance, the Court held that "[t]he 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." Thus, the Court reversed the holding of the circuit court, which had refused to compel arbitration because the grievant's claim was "a frivolous, patently baseless one, not subject to arbitration under the collective bargaining agreement." According to the Supreme Court, so long as the parties have agreed to submit all questions of contract interpretation to the arbitrator, "the courts have no business weighing the merits of a grievance," even an apparently frivolous one, since "it was [the arbitrator's] judgment and all that it connotes that was bargained for." "The processing of even frivolous claims may have therapeutic values of which those who are not a part of the plant environment may be quite unaware."

b. *Warrior & Gulf.* In a case to compel arbitration of grievances concerning contracting-out, the employer resisted on the grounds that the subject matter was nonarbitrable under a provision excluding from arbitration "matters which are strictly a function of management." The Court held that the grievance was arbitrable, declaring that "[i]n the absence of any express provision excluding a particular grievance from arbitration, we think only the most forceful evidence of a purpose to exclude the claim from arbitration can prevail, particularly where, as here, the exclusion clause is vague and the arbitration clause is quite broad." "An order to arbitrate the particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage." Stressing that the arbitrator, unlike a judge, has the "parties' confidence in his knowledge of the common law of the shop and their trust in his personal judgment," the Court reiterated that the judicial inquiry under Section 301 must be confined to whether the reluctant party agreed to arbitrate the grievance or to give the arbitrator the power to make the award

he did. Distinguishing labor arbitration from commercial arbitration, the Court cited *Lincoln Mills* and emphasized the role of arbitration in promoting the industrial stabilization that the NLRA seeks to foster through collective bargaining.

c. *Enterprise Wheel & Car.* In a case involving a suit to compel compliance with an arbitration award, the Court carved out a very narrow scope for judicial review under Section 301. Noting that the policy favoring arbitration would be undermined if courts had final say on the merits of awards, the Court declared that "the question of interpretation of the collective bargaining agreement is a question for the arbitrator. It is the arbitrator's construction which was bargained for; and so far as the arbitrator's decision concerns construction of the contract, the courts have no business overruling him because their interpretation of the contract is different from his." In now-famous language, the Court stated the standard as follows:

> [A]n arbitrator is confined to interpretation and application of the collective bargaining agreement; he does not sit to dispense his own brand of industrial justice. He may of course look for guidance from many sources, yet his award is legitimate only so long as it draws its essence from the collective bargaining agreement. When the arbitrator's words manifest an infidelity to this obligation, courts have no choice but to refuse enforcement of the award.

Analysis: The *Trilogy* has evoked a mammoth body of legal literature. Conspicuous among the commentaries is Judge Paul P. Hays'[14] indictment of arbitrators. In many respects the criticism of Judge Hays, himself a former arbitrator, appears well founded and undercuts the rationale upon which the *Trilogy* was partially based. For intance, it seems clear to me that the Supreme Court overstated not only the "experience and competence" possessed by arbitrators as an abstract collective entity, but also the faith that parties to collective bargaining agreements repose in arbitrators. Similarly, it also seems clear that the parties to collective bargaining agreements are far more realistic than the Court concerning arbitrators' dispensation of their "own brand of industrial justice." Taking a cue from the legal realists, in choosing among arbitrators the parties *begin* with an assumption that arbitrators, to varying degrees, necessarily dispense *some* brand of industrial justice. They then endeavor to select that arbitrator who appears to have the brand most amenable to

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[14]Labor Arbitration: A Dissenting View (New Haven: Yale Univ. Press, 1966).

their side of the case. When one considers other criticisms such as the undeniable phenomena of award-splitting and scorecarding (which are—conscious or unconscious—products of the *consensual* selection of arbitrators by the parties), one is left with considerable doubts as to the soundness of the Court's bases for cloaking arbitration with the special, almost *mystical* status and qualities expressed in the *Trilogy*.

I believe the more accurate explanation of arbitration's acceptance to be that it is relatively inexpensive, quick, provides a forum that is fair in form, and allows both sides to a dispute to walk away armed with a facially neutral resolution and without coming to blows. To this extent, then, the rationale of the *Trilogy* seems correct: "[A]rbitration is the substitute for industrial strife."

8. *NLRB v. General Motors Corp.*:[15] Held that insistence upon an agency shop arrangement is not an unfair labor practice and, therefore, is a proper subject of collective bargaining.

When the employer refused to meet with the union to bargain over an agency shop proposal, the union filed an unfair labor practice charge. The Court agreed with the Board in holding that the agency shop is not prohibited by Section 8 of the Act and that the employer therefore committed an unfair labor practice by refusing to bargain over the proposal. The Court began by noting that the Taft-Hartley addition to the original Section 8(3) proviso had two intended purposes: First, it eliminated the most serious abuses of compulsory unionism by abolishing the closed shop. Second, "Congress recognized that in the absence of a union security provision 'many employees sharing the benefits of what unions are able to accomplish by collective bargaining will refuse to pay their share of the cost.' "

Thus, the new Section 8(a)(3) proviso sought to strike a balance between reducing the evils of union security provisions and preventing "free riders." "Under the second proviso to § 8(a)(3), the burdens of membership upon which employment may be conditioned are expressly limited to the payment of initiation fees and monthly dues. It is permissible to condition employment upon membership, but membership, insofar as it has significance to employment rights, may in turn be conditioned only upon payment of fees and dues." Thus, the Court concluded

[15]373 U.S. 734, 53 LRRM 2313 (1963).

that " '[m]embership' as a condition of employment is whittled down to its financial core."

On this basis, the Court held that an agency shop proposal, by "requiring the payment of dues and fees, imposes no burdens not imposed by a permissible union shop contract and compels the performance of only those duties of membership which are enforceable by discharge under a union shop arrangement." In short, the Court concluded that for purposes of the proviso to Section 8(a)(3), the difference between a union shop and an agency shop "is more formal than real."

Analysis: General Motors reflects the Court's continuing efforts to balance the competing and often conflicting interests of the employer, the employee, and the union. The case raised the sort of inevitable questions that will always be present under the NLRA and that were also seen in *J.I. Case*: to what extent does the Act require that the interests of individual employees be subjugated to those of the union in the interest of fostering the Act's goal of "industrial peace"? By validating the agency shop as a permissible bargaining topic, the Court gave unions—particularly incumbent unions—an additional new tool in consolidating and enforcing their positions, not only against the employer but also against rival unions and the employees themselves. One may properly ask, I believe, "what price 'industrial peace'?" One also notes in this regard the precipitous decline in union membership of recent years. Richard Epstein concludes that this decline can best be explained "by the simple observation that [unions] do not provide their membership with benefits that exceed their costs."[16]

9. *H.K. Porter & Co. v. NLRB*:[17] Held that although the NLRB does have the power under the NLRA to require employers and employees to negotiate, "it is without power to compel a company or a union to agree to any substantive contractual provision of a collective bargaining agreement."

The case arose after the Board held that the employer violated the Act when it refused to bargain over the union's checkoff proposal and did so in bad faith, solely to frustrate the making of any collective bargaining agreement. As part of the remedy, the Board ordered the employer to grant the union a contract clause

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[16]Epstein, *A Common Law for Labor Relations: A Critique of the New Deal Labor Legislation*, 92 Yale L.J. 1357, 1407 (1983).

[17]397 U.S. 99, 73 LRRM 2561 (1970).

providing for dues checkoff. The Supreme Court found this order to be beyond the remedial powers conferred upon it by the Act. Citing *Jones & Laughlin,* the Court reiterated the familiar principle that the Act was not intended "to allow governmental regulation of the terms and conditions of employment, but rather to insure that employers and their employees could work together to establish mutually satisfactory conditions. . . . It was recognized from the beginning that agreement might in some cases be impossible, and it was never intended that the government would in such cases step in, become a party to the negotiations and impose its own views of a desirable settlement." Stating that one of the "fundamental policies" of the Act is "freedom of contract," the Court found that "to compel agreement when the parties themselves are unable to agree would violate the fundamental premise on which the Act is based—private bargaining under governmental supervision of the procedure alone, without any official compulsion of the actual terms of the contract."

Accordingly, the Court rejected the reliance by the Court of Appeals on its belief that the employer was trying effectively to destroy the union by refusing to agree to what the union may have considered its most important demand. "It may well be true, as the Court of Appeals felt, that the present remedial powers of the Board are insufficiently broad to cope with labor problems. But it is the job of Congress, not the Board or the courts, to decide when and if it is necessary to allow governmental review of proposals for collective bargaining agreements and compulsory submission to one side's demands."

Analysis: This is an important case because it leaves no doubt that the final terms of a collective bargaining agreement—or, indeed, whether there will be an agreement at all—are for the parties themselves to decide. I disagree that the Act is premised upon the "freedom of contract" in any meaningful sense[18] of that term; the Act does place substantial reliance upon the parties' own consensual ordering of their relationship. *H.K. Porter* preserves this modified freedom of contract from further abridgement in the absence of legislative authority.

10. *Allied Chemical & Alkali Workers Local 1 v. Pittsburgh Plate Glass Co.:*[19] Held that retirees are not bargaining unit "employ-

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[18]If there were *true* "freedom of contract," the employer would be free to contract for his labor with whom he could make the *best* deal—but he is not—by law he *must* contract *only* with the union that represents his employees.

[19]404 U.S. 157, 78 LRRM 2974 (1971).

ees" under the NLRA, and that retiree benefits are therefore permissive rather than mandatory subjects of bargaining. The case arose when the union filed unfair labor practice charges alleging that the employer unilaterally modified retiree benefits in violation of the duty to bargain. The Court began by noting that the NLRA is concerned with preventing "the disruption to commerce that arises from interference with the organization and collective bargaining rights of *workers*—not those who have retired from the work force" (emphasis added). Similarly, the Court noted that the term "employee" as used in the Act embraces "only those who work for another for hire," not retired workers. Thus, "pensioners are not 'employees' within the meaning of the collective bargaining obligations of the Act." The Court also stressed that retired employees are not and could not be included with active employees in a bargaining unit, since "they plainly do not share a community of interests broad enough to justify inclusion."

Based on the conclusion that retirees are not bargaining unit "employees," the Court held that retiree benefits cannot be considered to be among the "terms and conditions of employment" of active employees in the unit. The Court stated that mandatory subjects of bargaining "includes only issues that settle an aspect of the relationship between the employer and employee." (Citing *NLRB v. Borg-Warner Corp.*) The Court rejected the theory that active employees undertake to represent retirees in order to protect their own retirement benefits. It stated that "[h]aving once found it advantageous to bargain for improvements in pensioners benefits, active workers are not forever thereafter bound to that view or obliged to negotiate on behalf of retirees again. . . . By advancing pensioners' interests now, active employees, therefore, have no assurance that they will be the benefits of similar representation when they retire."

Thus, because the retiree benefits in question were a permissive rather than mandatory subject of bargaining, the employer's unilateral modification was not an unfair labor practice. "The remedy for a unilateral mid-term modification to a permissive term lies in an action for breach of contract," the Court concluded, "not in an unfair labor practice proceeding."

Analysis: With the so-called "graying of America" that is currently under way and expected to continue for many years to come, *Pittsburgh Plate Glass* has important ramifications. By freeing employers of a mandatory duty to bargain over retiree benefits, the Court removed from the NLRB's jurisdiction a

broad range of issues and instead placed the responsibility for enforcing legally vested retiree rights in the hands of the judiciary. The decision also helped set the stage for the landmark passage of ERISA, the Employee Retirement Income Security Act of 1974.

Development of Private Grievance Arbitration

Under Executive Order 9017,[20] all unresolved *grievances* arising under labor agreements had to go to arbitration. Finally, deferring to private arbitration, the War Labor Board enforced the arbitration awards without reviewing the decisions of the arbitrators.

There is no question but that the arbitration of grievances under the auspices of the War Labor Board established private arbitration as the way to resolve grievances.

The NLRB Deferral Cases: 1955–1984

Spielberg Manufacturing Co.:[21] Established a three-prong test in unfair labor practice cases for deferral to an arbitrator's award: "[1] the proceedings appear to have been fair and regular; [2] all parties had agreed to be bound; and [3] the decision of the arbitration panel is not clearly repugnant to the purposes and policies of the Act."

Raytheon Co.:[22] Added as a fourth factor to the *Spielberg* test, that is, whether the unfair labor practice issue before the Board was both presented to and considered by the arbitrator.

Dubo Manufacturing Corp.:[23] Extended the deferral principle by deferring action on Section 8(a)(3) allegations pending the parties' completion of arbitration which had been ordered by a federal court.

Collyer Insulated Wire:[24] A divided NLRB deferred action on Section 8(a)(5) allegations where the dispute arose in the context of a "long and productive collective bargaining relationship"; there was no claim of employer animosity to employee exercise

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[20] 7 Fed. Reg. 237 (1942).
[21] 112 NLRB 1080, 36 LRRM 1152 (1955).
[22] 140 NLRB 883, 52 LRRM 1129 (1963), *set aside on other grounds*, 326 F.2d 471, 55 LRRM 2101 (1st Cir. 1964).
[23] 142 NLRB 431, 53 LRRM 1070 (1963).
[24] 192 NLRB 837, 77 LRRM 1931 (1971).

of protected rights; the contract contained a broad arbitration clause that clearly encompassed the dispute; and the employer was willing to submit the dispute to arbitration.

National Radio Co.:[25] Extended the *Collyer* deferral policy to Section 8(a)(3) cases and set the groundwork for a series of subsequent cases that would apply the *Collyer* principles to virtually every category of unfair labor practice.

Electronic Reproduction Service Corp.:[26] Overruled the *Raytheon* requirement and held instead that the Board would generally defer to arbitration awards so long as the unfair labor practice issues *could have been* presented to arbitration and the *Spielberg* standards are met.

General American Transportation[27] and *Roy Robinson, Inc.*:[28] NLRB overruled *National Radio* and its progeny by declining to defer to arbitration in cases alleging violations of Sections 8(a)(1), 8(a)(3), and 8(b)(1)(A) and 8(b)(2) and limiting the *Collyer* deferral doctrine to Sections 8(a)(5) and 8(b)(3) refusal-to-bargain allegations.

Suburban Motor Freight, Inc.:[29] Expressly overruled *Electronic Reproduction* and returned to the requirement that "the unfair labor practice issue before the Board was both presented to and considered by the arbitrator."

United Technologies Corp.:[30] Expressly overruled *General American Transportation* and reestablished the *National Radio* policy of deferring alleged violations of Sections 8(a)(1), 8(a)(3) and 8(b)(1)(A) to arbitration under *Collyer*.

Olin Corp.:[31] Expressly overruled *Suburban Motor Freight* and established a policy of deferral to arbitration award under the *Spielberg* principles so long as "(1) the contractual issue is parallel to the unfair labor practice issue, . . . (2) the arbitrator was presented generally with the facts relevant to resolving the unfair labor practice," and (3) the award is not "palpably wrong," i.e., the award is "susceptible to an interpretation consistent with the Act" and "the party seeking to have the Board ignore the determination of an arbitrator has the burden of affirmatively demonstrating the defects in the arbitral process or award."

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[25]198 NLRB 527, 80 LRRM 1718 (1972).
[26]213 NLRB 758, 87 LRRM 1211 (1974).
[27]228 NLRB 808, 94 LRRM 1483 (1977).
[28]228 NLRB 828, 94 LRRM 1471 (1977).
[29]247 NLRB 146, 103 LRRM 1113 (1980).
[30]268 NLRB 557, 115 LRRM 1049 (1984).
[31]268 NLRB 573, 115 LRRM 1056 (1984).

Pattern Bargaining

The process of collective bargaining, in my experience, has been much the same over our 50-year period, at least until the recent union concession bargaining. Concession bargaining is not new. The only difference is which party is making the concessions. For 40 years or more, it was the employer making the concessions. None of the scholarly articles I have read comment on this aspect of the history of concession bargaining.

In the 1940s, 1950s, 1960s, and 1970s, unions were successful in negotiating inflationary increases in wages and fringe benefits.[32] Some of them, like the UAW, were successful in establishing pattern bargaining. For example, the target company settlement in the automobile industry was quickly adopted by the other automotive companies and then by farm and construction equipment companies. As a matter of fact, in almost every negotiation, the UAW usually got a little more than the auto settlement from those two industries.

When the auto and steel settlements were imposed in whole or in large part on smaller manufacturing plants in the 1940s, 1950s, and 1960s, many of these companies were either forced out of business or they moved to geographical areas where there were no pattern-setting plants and very few union organized plants.

Managements in smaller plants in strong labor areas realized that decertification of the union would not happen, so they *reduced* their operations or closed them by opening plants in nonunion areas and *most of these plants have remained nonunion to this day*. The settlements in some of these situations were forcing them out of business. They could not compete with nonunion competitors, most of whom were located in nonunion areas, because the latter had considerably lower labor costs. In the nonunion plants, wages were lower, fringe benefits were less costly, and in many instances productivity in the nonunion plant was substantially higher by as much as 25 percent.

Management explained this problem of noncompetitive labor costs to the international and local union representatives and to the employees themselves. In some instances, this dialogue went on for years before these plant closings were made.

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[32]A Table of the Automotive/UAW wage increases appears at the end of this presentation.

One of the problems was the mix of companies in the same area—for example, there would be one or two large companies that followed the steel or auto patterns, and smaller companies with the same unions. These smaller companies could not follow the pattern year after year. On the other hand, the union had a hard time explaining to its members, who paid the same union dues, why they should not receive these pattern settlements.

Decline in Union Membership[33]

In a recent article, Professor Paul Weiler of Harvard Law School comments on the decline in union representation, saying, "the unionized share of the work force is now about half of what it was just a quarter of a century ago." He attributes this decline to "management's determined resistance to the growth of collective bargaining" and "the [Board's] failure to protect the right of employees to a fair certification process."[34] I agree that many employers have learned how to become or remain nonunion; however, in my opinion, there are a number of other reasons, some of which are economic, for this decline. These reasons fall into four general categories: (1) the impact of foreign competition on the U.S. economy; (2) the composition and character of today's work force; (3) the enactment of state and federal employment laws; and (4) the improvement of employee relations, or, as it is being called today, "human resource planning."

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[33]The AFL-CIO reports this decline has been from 35% in 1954 to under 19% in 1984. 1985 Daily Lab. Rep. (BNA), 37:D–1. When one considers the fact that the growth of public sector labor organizations representing federal, state, and local government personnel accounted for a substantial portion of the absolute union gains over the past 10 to 15 years, it becomes apparent that the position of organized labor in the private sector has deteriorated more rapidly than the data would otherwise indicate. Professor Craver reported some interesting statistics in his recent article. He wrote:

> The internationalization of the world economy will also involve the exportation of American production jobs to low-wage underdeveloped countries. At the present time, 20 percent of cars, 40 percent of glassware, 60 percent of sewing machines and calculators, almost all cassettes and radios, and large portions of shoes, textiles, and many other products being used in the United States are being manufactured in foreign nations, often on equipment exported from America. Wearing apparel is being manufactured in the Caribbean by labor costing 24 percent of that employed in the United States and in Mexico by workers earning only 32 percent of American wages. Electrical goods are being produced in the Far East by personnel costing eight percent of United States workers.

Craver, *The Current and Future Status of Labor Organizations,* 36 Lab. L.J. 210, 213 (1985) (footnotes omitted).

[34]Weiler, *Striking a New Balance: Freedom of Contract and the Prospects for Union Representation,* 98 Harv. L. Rev. 351 (1984).

1. Foreign Competition

• Foreign competition for the U.S. market has resulted in fewer U.S. jobs in smokestack industries where unions have been strong and where there were large numbers of union employees. Some of these laid-off union members have found jobs in non-union plants. For example, steel mill workers at U.S. Steel are the highest paid industrial workers in the world. Their total labor costs are approximately $24 per hour, and there are three categories of U.S. steel mill workers: 32,000 currently employed workers; 60,000 currently laid off; and 97,000 receiving pensions.[35]

• There is less employment in many companies which *service* these smokestack industries. For example, there are many small forge shops in the northeast and midwest, and most of them are organized. However, at the present time, more than 50 percent of the forgings purchased by U.S. companies are being imported from other countries, such as South Korea and Brazil. The major U.S. customers of these forge shops, such as the farm and construction equipment companies, make no apology for shopping for forgings on a worldwide basis. Lower labor costs make such worldwide shopping very attractive.

• Over the past 20 to 30 years, many U.S. companies have moved some or all of their operations to our sunbelt states where the labor movement has never had the strength it enjoyed in the northeastern and midwestern states. Several years ago, the AFL-CIO went all out to organize in Houston, but with little success. There is no question but that *some* of these moves to southern states were to avoid having to deal with a union.

• Another reason U.S. companies moved to sunbelt states was to reduce their labor costs. However, labor costs in the sunbelt states are still much higher than labor costs in many other countries in the world. Accordingly, worldwide competition has caused some U.S. companies to operate not only in the sunbelt states, but in one or more of these low labor cost countries. We may be seeing only the "tip of that iceberg."

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[35]From 1948 through 1967, U.S. productivity increased at an annual rate of 3.1%. This rate of growth dropped steadily thereafter to only 0.8% from 1978–80. In the 12-year period 1970–81, hourly compensation in the U.S. nonfarm sector grew at an annual average rate of 9.4% per year. In the same 12 years, labor productivity increased at an annual rate of only 1.2% per year. 1985 Daily Lab. Rep. (BNA), 97:D–1.

2. Today's Work Force

• A growing percentage of workers are employed in high-tech and service industries where there is relatively little union membership. According to the American Electronics Association, unions won 14 out of the 57 elections held between 1970 and 1977 and, from 1978 through 1981, unions won only 7 out of the 37 elections held. High-tech competitive wages, some with profit sharing, generous benefit packages, and a company-family atmosphere have kept many high-tech workers from becoming union members.

• More and more employees will be replaced by sophisticated equipment, such as robots—in other words, the substitution of capital for labor. This probably means more salaried professional and technical employees in the work force, who will be less inclined to become union members. As noted by Professor Charles B. Craver, Professor of Law at the University of Illinois at Urbana-Champaign, the percentage of white-collar workers in the work force has been growing steadily for the past 50 years. Professor Craver writes:

> The substitution of capital for labor in the manufacturing area will cause substantial employment declines in one of the most highly organized portions of the industrial sector, and it will produce a concomitant expansion of white-collar positions. Between 1900 and 1980, the white-collar segment of the American economy grew from 26 to 63 percent of the labor force, and this trend will continue. Future employment opportunity will clearly be found in the service and high technology information fields, which have generally not been receptive to unionization efforts.[36]

• The composition of the work force has been changing as more and more women have entered the labor market. In 1950, only 24 percent of all married women were in the work force, but by 1977 over 46 percent were so employed. Historically, women have been reluctant to join labor unions, but recently there are some indications this may not be true.

• Younger employees, both male and female, have a life style that does not include attending union meetings and having another "boss."

3. Employment Laws

• Statutory employment laws, such as the Occupational Safety and Health Act, ERISA, Federal Contract Compliance Pro-

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[36]Craver, *supra* note 33.

grams, Title VII, Age Discrimination in Employment Act and other laws, as well as administrative agencies, such as the Equal Employment Opportunity Commission and other federal and state agencies, regulate and enforce significant elements of the employer-employee relationship, thereby reducing the need for union representation.

- Unions have had difficulty organizing in right-to-work states.[37] Since more than half of all union members presently reside in six states—California, Illinois, Michigan, New York, Ohio and Pennsylvania—organized labor will have to seek new members in other states, many of which have right-to-work statutes.

4. Employee Relations

- Management in some companies have unilaterally improved working conditions substantially to attract better workers, thus reducing the need for unions to negotiate such changes.
- Some nonunion companies, high-tech and otherwise, have adopted profit sharing plans and have convinced their employees that with profit sharing in place they do not need a union because they will share in the company's profits.

Interest Arbitration in the Private Sector

In the 1950s and 1960s, I was involved in three interest arbitrations in the private sector and neither party was ecstatic with the arbitrators' awards in any one of these cases. However, neither party received a body blow and bargaining subsequent to each such case resulted in settlements without a strike.

I am not advocating interest arbitration in the private sector, and I understand *why* both parties have not used it. They believe the parties and only the parties have the responsibility to negotiate the labor agreement. The parties, some say, should not delegate this responsibility to a third person. There is also the question as to whether the parties will be serious about their negotiations if a neutral is going to decide the unresolved issues.

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[37] Alabama, Arizona, Arkansas, Florida, Georgia, Iowa, Kansas, Louisiana, Mississippi, Nebraska, Nevada, New Jersey, North Carolina, North Dakota, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, and Wyoming.

Perhaps this is the real reason why private sector interest arbitration will not be acceptable.

But, as I said earlier, in the 1950s and 1960s, I saw a number of companies forced out of business because of strikes after negotiations failed. Of course, everyone loses when that happens.

I wonder if there is a way to structure interest arbitration so that it will provide a solution to what otherwise could be a disaster. The parties could agree the arbitrator's authority was limited to adopting the last proposal of one of the parties. In effect, this would be some form of final-offer arbitration. In other words, no compromise, which otherwise probably would happen in the majority of cases.

I would be opposed to either the NLRB or a court ordering the parties to arbitrate the terms of a contract. But there may be situations where the parties would be wise to agree to do so. However, my guess is that interest arbitration in the private sector will not be any more acceptable in the future than it has been in the past.

A number of scholars on labor law, including Professor Weiler, have been critical of the failure of our labor law to protect the union which is attempting to obtain a first contract and the employer commits unfair labor practices in his resistance to union proposals. Some of these authors believe this situation *should* be corrected in some way to protect this fledgling union.

But what about the situation where a strong union strikes the employer in the first negotiation to obtain wage and fringe benefits and/or restrictions on the right to manage and this strike results in the closing of the plant to the loss of everyone including the public? I understand that unreasonable union demands backed up by a strike are not in themselves unfair labor practices; however, these plant closings were devastating to those communities where this occurred.

Recently, labor leaders and others have been complaining bitterly about recent NLRB decisions, some of which simply restored the law which was in effect at an earlier date. They say the majority of the present Board is pro-employer. I remember the decisions of the first Board members, who were Edwin S. Smith (July 1935 to August 1941); J. Warren Madden, Chair (August 1935 to August 1940); and John M. Carmody (September 1935 to May 1936). Believe me when I say this original

Board was not friendly to those of us who were presenting our employer-clients' point of view and, yes, we complained bitterly.

Some Random Concluding Thoughts

1. Was the Wagner Act a mistake? No. And neither was Taft-Hartley nor Landrum-Griffin.
2. Our labor laws give unions the right to organize and to bargain, and both of these rights have created very serious problems for our economy, not the least of which is pricing many U.S. products out of both U.S. and world markets. *"Capital has no home."*
3. However, I think that most labor lawyers representing management agree with me that labor laws are necessary because union representation was and is inevitable and we need laws to regulate this process.
4. Recent union concession bargaining is recognition of this problem of worldwide competition. Companies—not unions—made concessions for most of the past 50 years.
5. Unions are *not* going to go away. Employer resistance to fixed increased labor costs is *not* going to go away. And foreign competition is *not* going to go away. If I am right in this assessment, is there a solution? I believe the solution *may be* negotiated profit sharing and job security arrangements in lieu of fixed labor cost increases.
6. I am well aware that "the jury is still out" on both negotiated profit sharing and some meaningful form of job security.
7. In a recent article I wrote entitled "Profit Sharing—New Horizons for the Players," I reported 47 recently negotiated profit sharing plans in a number of industries.
8. I have spent a considerable amount of time in the past three years reading and writing about negotiated profit sharing and I have convinced myself—if not anyone else—that it will continue to spread. It may be the answer. Who knows?

Table of Automotive/UAW Wage Increases

Calendar Year	*COLA*	*General*	*Total*
1948*	+ 1¢ (1.14)[1]	11¢	22¢
1949	− 3	3	0
1950*	+ 6	4[2]	10
1951	+10	4	14
1952	+ 4	4	8
1953*	+ 2 (0.6)	5	7
1954	− 2	5	3
1955*	+ 1 (0.5)	6 (2.5% with minimum 6)	7
1956	+ 6	7	13
1957	+ 6	7	13
1958*(strike)	+ 6	8	14
1959	+ 3	8	11
1960	+ 4	8	12
1961*	+ 1	8	10
1962	+ 3	9	12
1963	+ 3	9	12
1964*	+ 3 (0.4)	9[3]	3
1965	+ 4	9	13
1966	+11	10 (2.8% with minimum 6)	21
1967*(strike)	+ 2	25	27
1968	+ 8	12 (3.0%)	20
1969	+ 8	12	20
1970*(strike)	0[4]	51	51
1971	+14	14	28
1972	+11	15	26
1973*	+22 (0.3)	27	49

*Indicates contract negotiation year.

[1]The 1.14 (based on 1937–39 Index), .6, .5, .4 and finally .3, which is based on the 1967 Index (=1?), indicates the amount of change in the CPI, which determines the COLA increase.

[2]In 1950, the annual productivity increase was raised from 3¢ per hour to 4¢ per hour; in 1953, to 5¢; in 1955, to 8¢ or 2.5%, whichever was greater, in 1966, to 6¢ or 2.8%, whichever was greater; and finally in the 1967 contract to 3%.

[3]This 9¢ per hour general increase was diverted to pay for insurance benefits.

[4]No COLA in 1970, because the 1967 three-year contract had a 16¢ cap which was realized in 1968 and 1969.

Table of Automotive/UAW Wage Increases—*Cont'd*

Calendar Year	*COLA*	*General*	*Total*
1974	+53	15	68
1975	+41	16	57
1976*	+21	39	60
1977	+39[5]	17	56
1978	+51[6]	18	69
1979*	+80[7]	22	$1.02
1980	+93[8]	27	1.20
1981	+93 (0.26)[9]	30	1.23
1982*	+15[10]	0	15
1983	+40[11]	0	40
1984*	+64[12]	24	88

[5]Includes 3¢ diverted to pensions and fringes.
[6]Includes 3¢ diverted to pensions and fringes. The 6¢ thus diverted in 1977 and 1978 was restored to the COLA payment effective December 1978.
[7]Includes 1¢ diverted to fringes. The 1979 agreement provides for the unrecoverable diversion to fringes of an additional 13¢ over its term.
[8]Includes 4¢ diverted to fringes.
[9]Includes 5¢ diverted to fringes in 1985. The 1979 Chrysler agreement provides for a deferral of all COLA increases effective after March 1981.
[10]Includes 24¢ diverted to fringes.
[11]Includes 1¢ decrease under escalator and 8¢ June 1982 deferred COLA.
[12]Includes 23¢ September 1982 deferred COLA and 10¢ December 1982 deferred COLA.