The Rise of Legal Protection

3

Courtesy Everett Collection

Learning Objectives

After completing this chapter, you should be able to:

- Explain how legal processes such as yellow dog contracts, injunctions, and antitrust legislation restrained labor.
- Examine the legislation that was passed prior to World War II that helped unify and protect workers, including the Norris-LaGuardia Act, the National Industrial Recovery Act, and the National Labor Relations Act of 1935.
- Summarize the major events that occurred after World War II that affected organized labor, such as the Taft-Hartley Act, the merger of the American Federation of Labor and the Congress of Industrial Unions, and President John F. Kennedy's administration.
- Describe the position of labor at the end of the 20th century.

Introduction

At the end of the 19th century, intense animosities continued between workers and management. Events like the violent Great Railway Strike of 1877, the Haymarket Square Riot, and the Homestead Strike exemplify these tensions.

With the turn of the 20th century, these animosities did not disappear; on the contrary, they heightened, but there was eventual progress. The next sections discuss the legal processes that were used to keep labor in check, followed by a slow evolution toward the other end of the spectrum: recognition that labor should have a voice in the workplace.

3.1 Impeding Union Activity

There were three key ways in which the law was used to shut down union activity between the 1870s and 1930s. These methods included yellow dog contracts, injunctions, and antitrust legislation. Each method was sanctioned by the courts and upheld as a legal way to stop workers from organizing.

Yellow Dog Contracts

Starting around 1870, employers began using what are referred to as **yellow dog contracts**. These contracts stated that as a condition of being hired, the employee agreed not to participate in a union while in the employ of the owner. Refusing to sign such a contract resulted in not getting the job, so workers complied with these terms. After the contract was signed, if a union attempted to get workers to join, the owner could sue the union for attempting to breach the contract between the employee and employer, a wrong known as interference with a contractual relationship.

Although these contracts were initially upheld as legal and constitutional, they were finally laid to rest when Congress passed the **National Industrial Recovery Act (NIRA)** in 1933, which stated that employees have the right to organize and bargain collectively, free from interference, thus making it illegal to use yellow dog contracts. Until that time, however, the yellow dog contract was a highly effective way to halt union activity.

Injunctions

In addition to yellow dog contracts, courts during this era also employed another weapon to effectively quash union activity—that of the injunction. An injunction is an order issued by a court that commands the enjoined party either to do a specific act or to refrain from doing a specific act. For example, an injunction might order a union to cease its strike (commanded to refrain from doing a specific act) and return to work (commanded to do a specific act). One of the earliest and most successful uses of the injunction can be found in the **Great Pullman Strike** that occurred in 1894.

The Great Pullman Strike

At this time, train travel in the United States was dirty, noisy, and cramped. **George Pullman**, a carpenter and engineer, was traveling overnight on a train, uncomfortable as he sat up for the entire night. He was struck by the fact that train travel could be vastly improved with luxurious accommodations. This revelation led him to create what he called Pullman sleeping cars, railroad cars with comfortable chairs and cabins with beds for overnight sleeping. He then leased these specialized Pullman cars to various train companies, who attached them to their line of cars. Patrons could travel in luxury and sleep overnight in a bed while the train continued its journey.

The resulting **Pullman Palace Car Company** was successful and profitable; so much so that in the 1880s Pullman founded a town outside of Chicago named Pullman, Illinois. There he built his factory and provided company housing for his workers and their families, as well as churches, schools, and stores. The town still exists today and can be viewed in pictures at **http://www.pullmanil.org/town.htm (http://www.pullmanil.org/town.htm)** . Workers paid rent to Pullman and bought their groceries from his stores so that, in effect, much of the money they earned was paid back to Pullman; this arrangement became known as a company town.

Pullman Palace Car workers were members of the **American Railway Union (ARU)**. The ARU represented most railroad workers and was founded in 1893 under the leadership of **Eugene Debs**. It had been previously successful in a strike against the Great Northern Railway, shutting it down for 18 days. In 1894 George Pullman lowered his workers' wages. The ARU called a strike and asked every train worker in the nation to join in. Eventually, the successful strike shut down the entire railway system in the Northeast, causing a major disruption in interstate commerce, rail travel, and the economy. Strikes of this significance

made a long-lasting impression on the American people. It is one thing for workers to shut down a plant, but when commerce comes to a halt, people's daily lives are disrupted—rather than feeling allegiance to the workers and their cause, the public's reaction is one of anger (Illinois Labor History Society, 2010).

In the case of the Pullman strike, the managers of the railroad had a novel idea: They attached the Pullman cars to the back of the mail trains. When the strikers delayed the trains, they delayed the mail, which then became a federal issue. As a result, President Grover Cleveland had jurisdiction to act under the commerce clause. He called in federal troops, and a huge melee ensued. An injunction was issued to stop the strike, and Debs was arrested and held in contempt for failing to abide by the injunction when he refused to end the strike. The resulting 1895 case, ***In re Debs*** (In the Matter of Debs) was significant because the U.S. Supreme Court approved the use of an injunction to stop a labor strike.

Samuel Gompers

An injunction was next used effectively against American Federation of Labor (AFL) president Samuel Gompers in the 1909 case ***Gompers v. Buck's Stove & Range Company*** (*Gompers v. Buck's Stove & Range Company*, 1911). The AFL published a monthly magazine called the *American Federalist*, which contained a "We Don't Patronize" (which is another way of saying **boycott**) list of companies that the union designated as unfair to labor. Buck's Stove & Range had refused to give its workers a 9-hour day. As a result, the company appeared on the magazine's list. When readers saw that the company was unfair to labor, word spread and sales at Buck's Stove & Range dropped. The company saw its profits fall and sought an injunction against Gompers, his fellow officers, and the AFL.

The court agreed, issuing an injunction that prohibited Gompers and the AFL from publishing the list. Gompers had other ideas, however. He refused to obey the order and continued to publish the list, arguing that his First Amendment free speech rights were impeded by the issuance of the injunction and that free speech was more important than Buck's Stove & Range's appearance on the list and subsequent loss of business. The court did not agree, holding that the injunction did not prohibit free speech; rather, it prohibited the boycott. As a result, Gompers was sentenced to jail for contempt of court for refusing to honor the injunction. However, he was released on bail; the case was appealed to the U.S. Supreme Court, where it was eventually struck down, so Gompers never served any jail time (*Gompers v. Buck's Stove & Range Company*, 1911).

These cases are representative of the many in which injunctions were used to shut down workers who called for either a strike or a boycott. Subsequent legislation eventually prohibited this particular use of an injunction in a labor dispute, but it would be some years until that occurred.

Antitrust Legislation

The third weapon in the antiunion arsenal was the application of **antitrust legislation** to union activity. Antitrust laws are concerned with stopping monopolies, or combinations, so that consumers can buy goods at a price based on the marketplace. Following the Civil War, numerous business entities combined to form powerful **trusts or monopolies**. One such business was the Standard Oil Company, founded by John D. Rockefeller. The creation of such entities stifled competition by acquiring competitors until none were left. This allowed the business to set a price for its goods without any other business remaining to compete and offer a lower price. Under increasing pressure from the general public to end such combinations, in 1890 Congress passed the **Sherman Antitrust Act**.

Another typical Sherman Antitrust Act case would be one in which two competing businesses conspired together to diminish competition. Say, for example, that Tire Company A and Tire Company B had a meeting of their top management in which they decided not to compete against one another, but instead agreed to set their prices at the same amount. As a consumer, you would see the effect of such price fixing if you shopped around for tires. Instead of varying prices, you would find that the cost of a tire from Company A is exactly the same as a tire from Company B.

Therefore, competition between the two businesses is not encouraging them to lower prices. Instead, by working together, the tire companies have set the price of products, so there is no competition. When there is no competition, product price does not fluctuate, but instead is set by the sellers. Standard Oil was one of the first industries to feel the effects of the Sherman Antitrust Act in the 1911 case *Standard Oil Co. of New Jersey v. United States*, in which the court divided the company into smaller entities that could then compete against one another.

It may seem strange to think that the same law used to break up combinations and monopolies would apply to unions, but the courts soon applied the act under the theory that unions behaved like monopolies when they set prices for their wages. The first application of this theory was in the 1908 Danbury Hatters case, ***Loewe v. Lawlor*** (1908/1915). The Danbury Hatters factory in Connecticut manufactured hats and sold them to buyers within and outside the state, thus making the business engaged in interstate commerce and subject to federal law. The United Hatters of North America, a union that consisted of 9,000 members and was affiliated with the AFL, had organized most of the hat factories in the country but was not successful at the Danbury Hatters plant, despite the fact that the plant featured dismal working conditions and treated its workers poorly (American Federation of Labor, 1914).

The AFL, the United Hatters, and the workers considered how to respond to the conditions at the plant. If they went on strike, they reasoned, the company would just replace them with new workers, which was not prohibited at the time. They decided instead to declare a nationwide boycott. They publicized that Danbury Hatters treated its employees unfairly and asked the general public not to buy its product. (Since union-made hats had a union label attached to them, the American public would be able to discern if the hats were union made or not and could respect the boycott.)

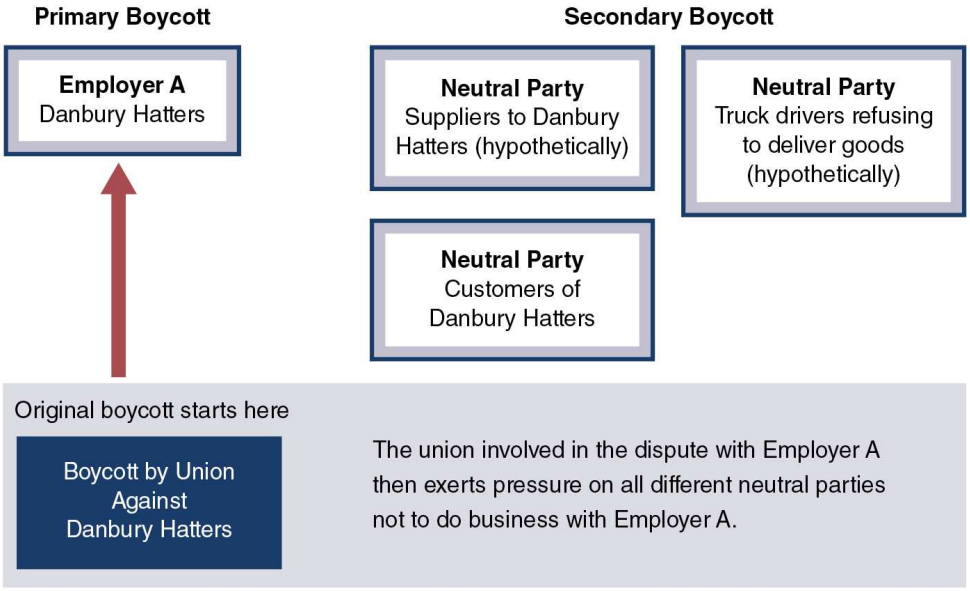
The boycott ensued, and it was a success. Profits at Danbury Hatters dropped significantly. Searching for a way to recover their losses, the owners of the factory decided to sue the union and its members for financial damages incurred during the boycott. The lawsuit characterized the boycott as a **combination in restraint of trade**, which was in violation of the Sherman Antitrust Act.

Since the union asked consumers throughout the United States not to buy the hats, the union engaged in what is deemed a **secondary boycott**. In a secondary boycott, neutral parties such as consumers are asked to apply pressure to the employer, in this case Danbury Hatters, to force the employer to comply with the union's wishes. The concerted, or united, activity between the union and consumers was used to determine that the union was "united in a combination" and that it was "restraining and destroying interstate trade and commerce," thereby violating the act (Danbury Hatters Case, 1908).

Secondary boycotts can be effective tools for unions to employ against owners. They are still used today in limited circumstances. Figure 3.1 depicts how a secondary boycott works.

Figure 3.1: Diagram of a secondary boycott

A secondary boycott relies on neutral parties to apply pressure to the employer, forcing the employer to comply with union wishes.



Not only was the union held in violation of the act, but the union and its members were also held personally liable for the loss of profits sustained and were assessed damages in the amount of $252,000. Personal liability means that once the assets of the union were depleted, the workers themselves would have to pay back the money. In addition, the Sherman Antitrust Act awards treble damages, so the amount owed was then tripled. These were enormous sums at the time, and workers made very little money. The court's holding must have been devastating to the employees and their families and undoubtedly made them, and other workers throughout the country, think twice about ever conducting an open and visible campaign again.

After this decision, there was a public outcry about what was perceived to be a misapplication of the law. In response, Congress amended the Sherman Antitrust Act with the **Clayton Antitrust Act** of 1914, a federal statute that added language specifically excluding labor unions from being deemed a combination or conspiracy:

> The labor of a human being is not a commodity or article of commerce. . . . Nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the antitrust laws. (Clayton Act, 1914)

Unions and labor leaders alike heralded the Clayton Act. Gompers declared it the "industrial Magna Carta upon which the working people will rear their construction of industrial freedom" (as cited in Craver, 1995, p. 21). However, the rejoicing was short lived, and labor was taken aback when a subsequent court decision in 1921, ***Duplex Printing Press Co. v. Deering***, held that the Clayton Act did *not* provide statutory protection to secondary boycotts. The court not only outlawed labor's ability to legally engage in secondary boycotts, it also gave employers the right to sue any union that did so. Declaring secondary boycotts illegal while also giving employers a right to sue proved to be effective in halting these types of boycotts.

3.2 Turning the Tide Toward Labor

With the use of injunctions and antitrust laws to prohibit union activity as well as the public's general disdain resulting from the many strikes, it must have seemed like a discouraging time for labor. After all, they had seen their leader, Samuel Gompers, jailed for contempt of court and watched as the courts imposed personal fines on Danbury Hatters employees. History is never without its twists and turns, however, and just as the labor movement seemed at its lowest ebb, the early 20th century heralded the beginning of labor's greatest strides toward unification and legal protection.

The Railway Labor Act of 1926

Between 1917 and 1920, during which time the United States was engaged in World War I, there was widespread fear that labor unrest could lead to a shutdown of the nation's railroads. Mindful that if the railroads shut down, the economy would suffer, the government nationalized the railroads under the **Federal Possession and Control Act** in 1916. By taking over the railroads, the government could ensure that no strikes would take place (because military personnel would be available to take over the job of any striking workers). The government argued that national security was at risk, the quality of the railroads had been degrading, and the president and Congress, under their war powers, had to do something to ensure the railroads' viability. As a result, the federal government took the railroads out of the hands of their owners until 1920, after the war had ended and the threat to national security had diminished.

That same year, Congress passed the **Transportation Act of 1920**, which created a Railroad Labor Board to hear disputes between railroad owners and workers, a forerunner to today's arbitration process. Although creating such a board represented tremendous progress, parts of the act were so criticized that the president sought revisions. This time, however, the process was much different. In an extraordinary recognition of labor, President Calvin Coolidge called for the railroads and unions to work together on a bill that would ensure peace in the railroad industry, which culminated in the **Railway Labor Act of 1926** (Barrett & Barrett, 2004). Today the Railway Labor Act governs labor relations in both the airline and railway industries.

The significance of including labor in these meetings cannot be overstated. This was the first time that labor and management sat down at the behest of the government and worked out an agreement together. The Railway Labor Act is still in effect today and guarantees "effective and efficient remedies for the resolution of railroad–employee disputes arising out of the interpretation of collective-bargaining agreements" (Railway Labor Act, 2012). The **Adjustment Board** (which replaced the Railroad Labor Board) "was created as a tribunal consisting of workers and management to secure the prompt, orderly, and final settlement of grievances that arise daily between employees and carriers regarding rates of pay, rules and working conditions" (*Union Pacific Company v. Sheehan*, 1978).

In short, the federal government recognized the importance of unions enough to include representatives in both the formulation and establishment of this agency, signaling a newfound and profound respect for unions and their concerns.

Norris-LaGuardia Act of 1932

Just a few years later, the United States underwent a major economic depression, beginning with the stock market crash in 1929. Much pressure was on President Herbert Hoover's administration to turn the economy around. Hoover recognized that labor was an essential ingredient to revitalization and that the laws would have to change for that to occur. Under his auspices, new legislation that bolstered workers' rights was passed in 1932, named the **Norris-LaGuardia Act**.

Few laws have served to change the face of labor relations as much as this act, in part because it granted explicit rights that were previously denied. For example, the law stated that the federal courts could no longer issue injunctions to prevent nonviolent strikes or keep workers from becoming members of labor

organizations and peaceably assembling. Furthermore, the act outlawed yellow dog contracts and allowed secondary boycotts as long as they were not violent.

Norris-LaGuardia did not ban injunctions altogether, but it did stop the practice of issuing injunctions without any notice to the union. Without notice, of course, the union could not know to appear in court or that a court was contemplating the issuance of an injunction, and therefore could not contest its issuance. With the new requirement mandating notice, however, the union could now testify about the nonviolent nature of its strike or that its strike would not cause property damage. Such testimony could then result in the court refusing to issue the injunction and allowing the strike to take place.

In one of the first cases to test the new law, ***New Negro Alliance v. Sanitary Grocery Co.*** (1938), a group of African Americans formed an alliance, not a union, which picketed a grocery store that refused to employ African American clerks. The protesters were not employees of the store but were concerned about its discriminatory employment practices. They carried placards that read, "Do Your Part! Buy Where You Can Work! No Negroes Employed Here!" Because the picketers were not workers or employees of the store, the question of whether Norris-LaGuardia protected them arose in court. In its opinion, the court stated:

> It was intended that peaceful and orderly dissemination of information by those defined as persons interested in a labor dispute concerning "terms and conditions of employment" in an industry or a plant or a place of business should be lawful; that, short of fraud, breach of the peace, violence, or conduct otherwise unlawful, those having a direct or indirect interest in such terms and conditions of employment should be at liberty to advertise and disseminate facts and information with respect to terms and conditions of employment, and peacefully to persuade others to concur in their views respecting an employer's practices. (*New Negro Alliance v. Sanitary Grocery Co.*, 1938)

Note that the language clearly expands Norris-LaGuardia to "persons interested in a labor dispute" and does not thereby limit the application of the law to just employers or employees. In addition, the court stated that injunctions may not be issued if the actions of the protesters are peaceful and orderly. Thus, the right to protest and express views about the unfair treatment of labor was greatly expanded by this case.

The National Industrial Recovery Act of 1933

Just one year after Norris-LaGuardia, President Franklin D. Roosevelt took office in the midst of the continuing depression. Roosevelt's administration is viewed as one of the strongest pro-union presidencies in history (Library of Congress, 2012).

Courtesy Everett Collection

Franklin D. Roosevelt is typically viewed as a pro-union president.

During his 12 years in office, Roosevelt supported and stewarded numerous bills through Congress in support of labor—none more short-lived than the National Industrial Recovery Act of 1933 (National Industrial Recovery Act, 2012), in which he asked businesses and workers to suspend the antitrust laws, fix prices, and work together to create codes of fair competition to get the economy moving. The grand experiment did not last long, however, because the Supreme Court declared the act unconstitutional in ***Schechter Poultry*** (*A.L.A. Schechter Poultry Corp. v. United States,* 1935) because it gave the president powers beyond the scope of those granted to him by the U.S. Constitution.

The National Labor Relations Act of 1935 (the Wagner Act)

With the NIRA held unconstitutional, Roosevelt needed comprehensive legislation that spoke to the rights of labor to organize and collectively bargain. It was not long before he replaced the defunct NIRA with a new law, the National Labor Relations Act (NLRA) of 1935, sometimes referred to as the Wagner Act after its author, New York senator Robert F. Wagner.

This law guarantees employees four historic and fundamental rights: first, the right to join a labor union; second, the right to collectively bargain through representatives of their own choosing; third, the right to go on strike; and fourth, the right to refrain from union activity. At the same time, the law prohibits employers from refusing to bargain with unions, interfering with or restraining the right to join or form a union, attempting to dominate or influence a union, interfering with collective bargaining, and discriminating against union members or union activity.

In short, the act gave labor many of the rights it had been so eagerly seeking but, in contrast, did not expand the rights of managers. As a result, business was eager to see the law overturned and challenged it in the landmark case ***NLRB v. Jones & Laughlin Steel Corporation*** in 1937. Here the Supreme Court upheld the constitutionality of the act. An excerpt follows:

> ***N.L.R.B. v. Jones & Laughlin Steel Corp.***
>
> 301 U.S. 1, 57 S.Ct. 615 (1937)
>
> **Mr. Chief Justice HUGHES delivered the opinion of the Court.**
>
> In a proceeding under the National Labor Relations Act of 1935 the National Labor Relations Board found that the respondent, Jones & Laughlin Steel Corporation, had violated the act by engaging in unfair labor practices affecting commerce. The proceeding was instituted by the Beaver Valley Lodge No. 200, affiliated with the Amalgamated Association of Iron, Steel and Tin Workers of America, a labor organization. The unfair labor practices charged were that the corporation was discriminating against members of the union with regard to hire and tenure of employment, and was coercing and intimidating its employees in order to interfere with their self-organization. The discriminatory and coercive action alleged was the discharge of certain employees. . . .
>
> The National Labor Relations Board, sustaining the charge, ordered the corporation to cease and desist from such discrimination and coercion, to offer reinstatement to ten of the employees named, to make good their losses in pay, and to post for thirty days notices that the corporation would not discharge or discriminate against members, or those desiring to become members, of the labor union. As the corporation failed to comply, the Board petitioned the Circuit Court of Appeals to enforce the order. The court denied the petition holding that the order lay beyond the range of federal power. We granted certiorari. We think it clear that the National Labor Relations Act may be construed so as to operate within the sphere of constitutional authority. The jurisdiction conferred upon the Board, and invoked in this instance, is found in section 10(a), 29 U.S.C.A. s 160(a), which provides: "The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice affecting commerce.". . .
>
> Section 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.
>
> Thus, in its present application, the statute goes no further than to safeguard the right of employees to self-organization and to select representatives of their own choosing for collective bargaining or other mutual protection without restraint or coercion by their employer.
>
> That is a fundamental right. Employees have as clear a right to organize and select their representatives for lawful purposes as the respondent has to organize its business and select its

> own officers and agents. 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. Long ago we stated the reason for labor organizations. We said that they were organized out of the necessities of the situation; that a single employee was helpless in dealing with an employer; that he was dependent ordinarily on his daily wage for the maintenance of himself and family; that, if the employer refused to pay him the wages that he thought fair, he was nevertheless unable to leave the employ and resist arbitrary and unfair treatment; that union was essential to give laborers opportunity to deal on an equality with their employer. . . . Fully recognizing the legality of collective action on the part of employees in order to safeguard their proper interests, we said that Congress was not required to ignore this right but could safeguard it. Congress could seek to make appropriate collective action of employees an instrument of peace rather than of strife. (*NLRB v. Jones & Laughlin Steel Corporation*, 1937)

Why was *NLRB v. Jones & Laughlin Steel Corporation* such an important case? At issue was the constitutionality of the National Labor Relations Act, with some commentators believing that the law exceeded the scope of the president's powers. The case settled once and for all the constitutionality of the NLRA and the right of workers to collectively organize.

In addition to the sweeping guarantees promised to labor, the National Labor Relations Act established the National Labor Relations Board, which is the federal administrative agency that has oversight of labor relations in the United States.

The National Labor Relations Board has two principal functions: (a) to determine and implement through secret ballot elections the free democratic choice by employees as to whether or not they wish to be represented by a union dealing with their employers and, if so, by which union; and (b) to prevent and remedy violations of the NLRA, called unfair labor practices, by employers, unions, or both (NLRB, 2013). Unfair labor practices can occur against employees, employers, unions, individuals, or a combination of any of these entities.

As previously noted, although the National Labor Relations Act was another step forward for labor, it was not popular with owners or management. The perception that the NLRA and the NLRB favored labor and that management and owners were disregarded in the legislation became a pervasive drumbeat that did not diminish until the act was amended by the Taft-Hartley Act in 1947.

Today the National Labor Relations Act is regarded as the most comprehensive and important foundation of labor relations and labor law in the United States. Interpretations of the act take up volumes of administrative and case law. Although we cannot address every aspect of the law, we will nevertheless consider the most important foundational pieces of the act in Chapter 4.

3.3 Post–World War II Developments in Labor Relations

Following World War II, union membership was at an all-time high; but the perception of unions by the general public became mixed as more and more strikes took place. As a result of these strikes, Congress felt compelled to pass legislation that limited union power, clamped down on the right to strike, and imposed internal controls on financial dealings of unions. Labor had some victories with the merger of the AFL and the **Congress of Industrial Organizations (CIO)** in 1955, making it the largest umbrella organization in the country, but suffered setbacks as well. By the end of the century, private unions were decreasing in size and power.

The Labor Management Relations Act of 1947: Taft-Hartley

The United States entered World War II in 1941 when Roosevelt was still president. He was mindful that strikes by workers or lockouts by employers could shut down vital industries while the war was in progress. He therefore created the **National War Labor Board** to take over major industries for the duration of the war (and thereby ensure that the jobs could be staffed by military personnel, if necessary) and freeze the wages of workers.

Roosevelt died in office in 1945 while the country was still at war. He was succeeded by Harry S. Truman. When the war came to an end, workers wanted the wage freezes lifted and felt it was unfair for them to remain in place. Membership in labor unions was at an all-time high, but so was labor unrest, resulting in numerous strikes.

The frequency of these strikes led this period to be characterized as one of the most tumultuous in labor history. At the end of World War II, more than 14.5 million workers were union members, or 35% of the overall population in the United States, the highest figure ever in the history of the country. Yet in 1946 alone there were more than 4,985 strikes. The frequency of strikes greatly affected the nation's economy and disrupted commerce. It also exposed the growing tension between unions and management and placed labor in a negative light because the American public blamed the workers for the disruptions caused by the strikes (Ludwig, 2007).

This era was called the **Great Strike Wave of 1946**. One colorful event during these strikes was Truman's address to Congress in which he asked not only for the power to take over the striking railroads but also the power to take every striker and put them into the army. In that speech, Truman asked Congress to develop a long-term labor policy to "prevent the recurrence of such crises and . . . reduce the stoppages of work in all industries for the future" (Word Has Just Been Received, n.d.). You can listen to Truman's speech here: **http://historymatters.gmu .edu/d/5137 (http://historymatters.gmu.edu/d/5137)** . While Truman was delivering his speech, he received a note that the railroad workers had capitulated and ended their strike. Even though that strike ended, the enormity of 4,985 strikes in 1 year tarnished public perception of unions, resulting in a groundswell of support to change the law.

It was in this context of great union unrest and public sentiment condemning the continual strikes and shutdowns by labor that Congress passed the **Labor Management Relations Act of 1947**, better known as Taft-Hartley. The act was named for its two sponsors, Robert Taft, a Republican senator from Ohio, and Fred Hartley, a Republican representative from New Jersey. Interestingly, Truman vetoed the act, believing that it would infringe on workers' free speech. Despite his opposition, Congress overcame his veto and garnered enough support for passage.

Taft-Hartley is considered tilted in favor of management and is therefore characterized as antiunion because it restricts unions' powers. It gives workers the right to refuse to participate in a union except when becoming a union member is a condition of employment. It imposes on unions the same duty to bargain in good faith as management and prohibits unions from charging excessive dues. Supervisors are excluded from bargaining units. It gives the president the right to halt strikes if he or she can show that doing so is in the national interest; and at the same time it outlaws numerous types of labor activities, as follows:

1. **Jurisdictional strikes**

   A jurisdictional strike is when a union refuses to work. These strikes occur to protest work assignments. For example, suppose a business assigned the electrical work on its new office building to a company that had no union. Union A goes on strike in protest that its own members were not given the job.

2. **Wildcat strikes**

   Wildcat strikes occur when workers go on strike without their union's permission.

3. **Solidarity or political strikes**

   Solidarity or political strikes do not occur because of wages or issues of employment, but to protest a political event in the country.

4. **Secondary boycotts**

   As previously explained, a secondary boycott occurs when workers of one company exert pressure on another company with whom they deal and refuse to perform any work that may impact that other company, such as delivering goods.

5. **Closed shops**

   Closed shops are workplaces that make joining a union a condition of employment. Taft-Hartley declared the closed shop illegal. Another type of shop is a union shop. In a **union shop**, the employee may be hired without being a union member but must join the union within a certain amount of time after he or she is hired.

   A union shop is legal under Taft-Hartley only if the union and the employer make it part of the collective bargaining agreement (CBA). There are, however, right-to-work states. These states make a union shop illegal. Therefore, union shops are legal under Taft-Hartley only if the union and the employer agree on it as part of the CBA and only if not outlawed by state law. Table 3.1 illustrates the application of Taft-Hartley and **right-to-work laws** to closed and union shops.

6. **Monetary donations**

   It is illegal for unions to donate money to federal political campaigns.

Table 3.1: Application of Taft-Hartley and state laws to closed and union shops

	Definition	Application of Taft-Hartley	Application of state law
Closed shop	Employee must join the union before he or she can be hired.	Illegal under Taft-Hartley	Illegal in all states
Union shop	Employee must join the union after he or she is hired.	Legal under Taft-Hartley if the employer and the union make it a part of the CBA	24 states prohibit union membership or payment of dues as a condition of employment

Taft-Hartley survives to this day in the current National Labor Relations Act. One important change Taft-Hartley made was giving the NLRB the power to determine the direction of U.S. labor policy by making decisions in court-like hearings. These hearings, which are described in greater detail in Chapter 5, are presided over at the NLRB by a board of five people appointed by the president, often referred to as the board.

An **agency shop** hires both union and nonunion members. However, employees who are not members of the union must still contribute to the union dues to cover the costs of collective bargaining. In a public or governmental union, this payment covers the costs of collective bargaining and is often referred to as a fair share fee.

One problem with allowing workers to opt out of paying union dues is that by law, a union has the duty to represent everyone. Yet if it has such a duty but not all of the workers pay for this representation, then some workers receive the benefit of union representation free of charge (Becker, 2014).

Landrum-Griffin Act of 1959

The successor to Truman was President Dwight D. Eisenhower. During his second term, in the late 1950s, it came to light that there was much corruption occurring in labor organizations. The American people were made aware of this widespread corruption thanks in part to a new invention named television, which carried daily congressional hearings that featured the testimony of colorful persons such as Teamsters president Jimmy Hoffa. Hoffa talked and acted like a gangster during the hearings, and his responses were considered crude and disrespectful by many of those watching, especially toward Attorney General Robert F. Kennedy. To watch testimony from these congressional hearings click **here** (http://www.youtube.com/watch?v=tsWVzTK0__s&list=PLhFd1Avy_vKGa0vf6jtRUx8AHYLKd0H-b&index=2) . For an excellent biography of Hoffa, click **here** (http://www.youtube.com/watch?v=w6bcro9f5ak) .

A general chorus of outrage followed the hearings, and Congress took action with passage of the **Landrum-Griffin Act** in 1959, which amended the Labor Management Relations Act of 1947 (Taft-Hartley). Landrum-Griffin had two main purposes: (a) to make the internal governance of labor unions more democratic, and (b) to protect the "rights and interests of employees and the public generally as they related to the activities of labor organizations, employers, labor relations consultants, and their officers and representatives" (Labor Management Reporting and Disclosure Act, 1959).

The end result of the legislation was that labor organizations became accountable for their activities. The law now required them to disclose their financial transactions, protect union funds and assets, and have standards for the election of officers. Unions must file information reports, constitutions, and bylaws as well as annual financial reports with the Office of Labor-Management Standards. These documents are all a matter of public record and are available at **http://www.dol.gov/olms/regs/compliance/rrlo/lmrda.htm** (http://www.dol.gov/olms/regs/compliance/rrlo/lmrda.htm) .

Merger of the AFL and CIO, 1955

In 1955 the AFL and the CIO merged, becoming today's AFL-CIO. The history of the AFL was discussed in **Chapter 2**

© Bettmann/Corbis

The AFL-CIO was formed in 1955 and continues to operate today. Here New York governor W. Averell Harriman speaks to

members of the AFL-CIO the year the group was founded.

(http://content.thuzelearning.com/books/AUBUS372.15.1/sections/ch02sec2.2#ch02sec2.2) . Recall that 38 trade unions formed under one umbrella organization that called itself the American Federation of Labor, under the leadership of Samuel Gompers. As a craft union, the AFL was committed to embracing members who were skilled tradesmen; in this way, their belief was that they could demand more money for their workers.

The CIO, on the other hand, was not formed around craft unions, but instead favored **industrial unionism**. Rather than unionize around a particular skill, members would form in a particular type of industry, as is indicated by the organization's name. The CIO also had a much different ideology than the AFL. Whereas the AFL embraced the notion of capitalism, the CIO welcomed socialism and communism.

In the early 1930s three successful strikes led to the creation of the CIO: the Minneapolis Teamsters Strike of 1934, the 1934 West Coast Longshoremen's Strike, and the 1934 Toledo Auto-Lite Strike. These strikes showed that industrial unions could be successful at both organizing and holding a strike. As a result of those successes, John L. Lewis, a labor leader, organized a subgroup under the AFL that consisted of the International Typographical Union; the Amalgamated Clothing Workers of America; the United Textile Workers; the International Union of Mine, Mill and Smelter Workers; the Oil Workers International Union; and the United Hatters, Cap and Millinery Workers International Union.

At first, the thinking was that the industrial unions could remain in the AFL. Although these unions formed the initial CIO under the auspices of the AFL, the AFL opposed the CIO. One reason for the schism between the two organizations was that the AFL was a much more conservative organization (at that time) compared to the CIO, which had liberal leanings that embraced communism. While two separate organizations, the CIO continued to pick up steam, be successful, attract members, and hold meaningful strikes, leading to its independence from the AFL.

The AFL and the CIO continued as separate entities until Taft-Hartley was passed in 1947, requiring that all union members sign a pledge that they were not Communists. This presented a unique problem for the CIO because many of its members were Communists. Those members were expelled, which resulted in great internal strife for the organization and its leadership. Finally, new leaders took over the CIO, and coincidentally, new leadership also headed the AFL, making talks of a merger possible in the 1950s. The CIO also became more conservative and the AFL more liberal, making them more politically aligned. For instance, the AFL started to support Democratic platforms. In 1955 both unions officially merged; the AFL-CIO was formed and continues to this day, with more than 12.5 million members representing 56 unions (AFL-CIO, 2014). To learn more about the AFL-CIO, visit its website at **http://www.aflcio.org** (http://www.aflcio.org) .

The Kennedy Administration, Federal Organizing, and Civil Rights (1960–1963)

John F. Kennedy succeeded Eisenhower and served as president from 1961 to 1963, when he was assassinated. His presidential term is marked by numerous important and far-reaching legislative enactments. In terms of labor relations, Kennedy was responsible for passing **Executive Order 10988**, which gave federal workers the right to organize and collectively bargain. This is extraordinary legislation, because up until this time, the right to form a union and bargain was limited to the private sector.

To ensure its success, Kennedy brought in labor experts from outside his administration to write the legislation. These outsiders included Ida Klaus, a labor lawyer highlighted in this **informative link** (http://legalhistoryblog.blogspot.com/2010/10/ida-klaus-1905-1999.html) . She was an attorney and expert in labor law at a time when it was very rare for women to be admitted to law school or practice law in the United States. "In some classes the men would stomp their feet so that we could not be heard" (Brozan, 1996, para. 2), she recalled of her days at Columbia Law School. Kennedy was successful in implementing this executive order, which ultimately became part of Title VII of the Civil Service Reform Act of 1978.

Another momentous piece of legislation Kennedy signed in 1963 was the **Equal Pay Act**. This was an amendment to the Fair Labor Standards Act and was the first law in the history of the United States to address the inequality of pay based on gender. This law provides that people in the same workplace be given equal pay for equal work (U.S. Equal Employment Opportunity Commission, n.d.).

Kennedy fought for civil rights but did not live to see passage of the landmark Civil Rights Act of 1964, which makes it illegal to discriminate on the basis of race, color, religion, sex, or national origin in employment. The legal ramifications of this legislation have been profound and far reaching, affecting all people in the United States. It is a little-known fact that unions played an essential role both in the civil rights movement and in the passage of this act. To read about the role of the Teamsters in passage of the law, as well as civil rights throughout U.S. history, click **here (http://teamster.org/content/civil-rights-and-labor-movement-historical-overview)** .

In the News: Royal Tire Will Pay $182,500 for Wage Discrimination

Based on the article by Marta Jewson in the SC Times on August 5, 2014.

Although the Equal Pay Act was passed in 1963 and may seem like an outdated law, it is still invoked frequently when women are paid a lower salary than men for the same job. In a 2014 case brought by the Equal Employment Opportunity Commission (EEOC), Christine Fellman-Wolf, Royal Tire's human resource director, was paid $35,000 less per year than her predecessor and $19,000 less than the minimum salary for the position under Royal Tire's own compensation system.

Trial attorney Jessica Palmer-Denig, who handled the litigation for the EEOC, said in a statement:

> Employers should carefully examine the actual job duties of their employees, not just employee or job titles, to determine if wages are really equal. If a pay disparity exists between men and women doing the same work, the employer is well-advised to raise the salary of the lower-paid employees immediately. (Greenwald, 2014, para. 7)

Discussion Questions

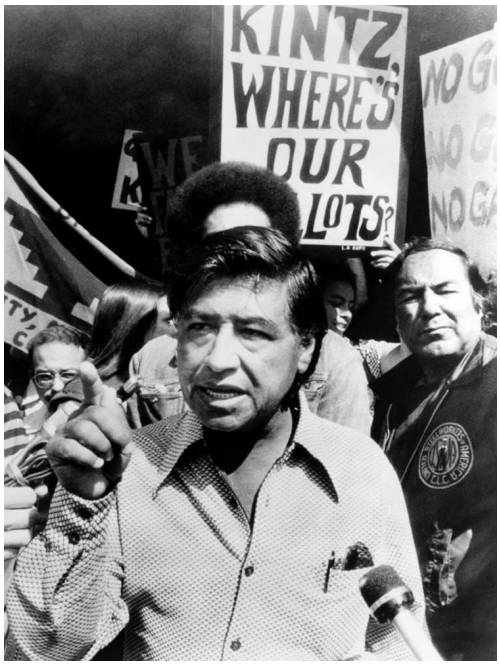
1. The Equal Pay Act is limited to discrepancies on the basis of gender. Do you agree that workers' salaries deserve such protection? If so, why? If not, how would you go about ensuring equity in the workplace?
2. The Equal Pay Act was passed in 1963, yet the case against Royal Tire was settled more than 50 years later. Are you surprised that such salary discrepancies still exist? If yes, what legislative actions would you suggest to remedy the situation? If no, why not?
3. After realizing that the Equal Pay Act has not solved the problem of gender pay inequities, what other suggestions can you think of, in addition to legislative enactments, that could make pay more equal?

3.4 The End of the 20th Century

The years from the end of the Kennedy administration in 1963 until the start of the 21st century may be characterized as a national awakening. The plight of the disenfranchised—be they African Americans, women, migrant farmworkers, or Latinos—were suddenly in the forefront. The following descriptions depict the rise of some of these workers as they fought to gain recognition and equality.

Cesar Chavez and the National Farm Workers Association

No one brought home the issues of poverty, injustice, and the hopelessness of migrant workers like **Cesar Chavez** in the 1960s. Born to migrant workers, he possessed an extraordinary ability to organize fellow workers through local community grassroots organizing and a philosophy of nonviolence.



Courtesy CSU Archives/Everett Collection

Cesar Chavez was known for his highly successful organizing methods.

Chavez first came to national prominence when he allied California farmworkers with another coalition, the Agricultural Workers Organizing Committee, to protest the horrendous working conditions in the grape industry. Both groups later merged in 1966 to become the United Farm Workers Organizing Committee, a highly successful organization that publicized the plight of migrant workers to the American people. Chavez himself engaged in numerous fasts to gain sympathy and publicity for his cause, and he succeeded.

One boycott against the grape industry resulted in 14 million Americans refusing to buy grapes. Chavez's highly successful organizing methods resulted in contracts with growers that gave the workers wage raises, more safety on the job, and a medical plan (PBS, 2004). The alliance later became a member of the AFL-CIO in 1972 and changed its name to the **United Farmworkers Union.** At the height of its powers, the union was also successful in getting California state legislation passed requiring growers to bargain (PBS, 2004).

Other Coalitions

Three coalitions founded during this same era represented groups that had been long ignored: African Americans, Latinos, and women. The **Coalition of Black Trade Unionists** formed partially in reaction to dislike of AFL-CIO president George Meany's stand on the 1972 presidential elections, in which he supported the conservative Richard Nixon, who ultimately won the presidency. This organization continues today as a "progressive forum for black workers to bring their special issues within unions as well as act as a bridge between organized labor and the black community" (Coalition of Black Trade Unionists, 2011, para. 4).

Watch This

A film depicting the life of Cesar Chavez and the movement, The Fight in the Fields: Cesar Chavez and the Farmworker's Movement*, is available at* **https://www.youtube.com/watch?v=HgMkX4eE3bs (https://www.youtube.com/watch?v=HgMkX4eE3bs)** .

That same year, the **Labor Council for Latin American Advancement** was founded as the grassroots organization of the Latino labor force. This group has more than 1.7 million members and its own television channel on YouTube.

Women in the workforce also felt disenfranchised and in 1974 started their own group called the **Coalition of Labor Union Women** to bring attention to issues unique to working women such as equity in pay and family leave (Coalition of Labor Union Women, 2014). These three groups represent the efforts of

minorities to have a voice in their conditions of employment that they felt was lacking with traditional labor organizations.

Wins and Losses

Despite the many successes enjoyed by labor, the latter half of the 20th century also saw setbacks. One such event occurred in 1981 when President Ronald Reagan fired more than 12,000 striking air traffic controllers who were protesting their pay and long hours on the job. Air traffic controllers are public (governmental) employees who are prohibited from going on strike. Reagan threatened the workers with the loss of their jobs if they did not return to work within 48 hours. When the controllers refused Reagan, he not only fired almost all of them, but also mandated that they not be rehired. Supervisors and nonstriking workers took over the control towers until others could be trained and hired.

In essence, Reagan's actions undermined the power of the strike because once he fired the workers, the strike had no impact on their demands. Professor and labor author Joseph A. McCartin believes that Reagan's actions set a tone for the relationship between business and labor. For example, two private companies, Phelps Dodge and International Paper, followed suit and also replaced strikers rather than entering into negotiations with workers or their unions (McCartin, 2011).

On the other hand, a labor strike at the end of the 20th century involving members of the United Mine Workers at the Pittston Coal Company was considered a win for labor. Pittston had stopped contributing to a trust established in 1950 for the women and children of retired coal miners, leaving them without health care. The company also refused to pay overtime and eliminated clauses in their worker's contracts that ensured job security if the mines were ever sold. When the strikers walked off their jobs in 1989, just as in the air traffic controller strike, Pittston immediately brought in replacement workers.

The strikers employed other methods, however, including sitting down in the roads and blocking coal shipments, throwing rocks, popping tires, and other acts that damaged property. These actions drew national attention to the strike. At one point, there were 2,000 United Mine Workers striking and 37,000 to 40,000 wildcat strikers. A sit-down strike by union members that caused the plant to cease production for 4 days ultimately led to the reinstatement of health and retirement benefits and was considered a victory for labor; but at the same time, the United Mine Workers were penalized more than $64 million for actions during the strike, and Pittston had to sell many of its plants to nonunion companies, effectively going out of business and causing the coal miners to lose their jobs (Coalminers Strike, n.d.).

Thus, the 20th century concluded with the biggest strides in federal legislation. The National Labor Relations Act set up a framework of protection for labor unions, only to be tempered by Taft-Hartley, which outlawed closed shops, and Landrum-Griffin, which held unions more accountable. Public unions were recognized but then saw much of their power diminished when Reagan fired all of the striking air traffic controllers and replaced them. The many strikes in the private sector led to greater negative opinion among the American public about unions in general.

Summary & Resources

Summary of Chapter Concepts

- Owners of businesses employed many methods to keep unions out of their shops, including yellow dog contracts, in which employees agreed not to join a union as a condition of employment. Another tactic used by employers was injunctions, or orders from the court to stop labor strikes such as the one that took place in the Great Pullman Strike.
- Antitrust legislation was applied to boycotts and strikes because the courts characterized them as restraints on trade that were in violation of the Sherman Antitrust Act.
- The Clayton Act specifically excluded labor unions from being deemed a combination or conspiracy, but the subsequent case *Duplex Printing* said that unions were not protected from secondary boycotts.
- President Calvin Coolidge had labor and owners meet together to determine the terms of the Railway Labor Act of 1926, legislation that ensures the peaceful settlement of disputes in the railroad industry.
- In 1932 the Norris-LaGuardia Act gave labor many rights, including the right to strike (as long as it was peaceful), the right to peaceably assemble, and the right to receive notice before an injunction is issued.
- The National Industrial Recovery Act of 1933 asked businesses and workers to suspend the antitrust legislation and to set prices, as long as they were fair; this act was deemed unconstitutional in the 1935 *Schechter Poultry* case.
- The National Labor Relations Act of 1935, also called the Wagner Act, granted employees the right to form and join a labor union, the right to collectively bargain, and the right to go on strike. It was upheld in the 1937 case *NLRB v. Jones & Laughlin Steel*.
- The National Labor Relations Act created the National Labor Relations Board, which oversees elections on whether or not workers wish to be represented by a union. It holds hearings similar to court cases to oversee unfair labor practices.
- The Labor Management Relations Act of 1947 (Taft-Hartley) is federal legislation that put restrictions on labor by outlawing most types of strikes.
- Taft-Hartley was amended by the Landrum-Griffin Act of 1959, which imposed new restrictions on labor unions in terms of reporting their financial transactions, constitutions, bylaws, and internal governance.
- The AFL and CIO merged in 1955, making this a powerful union with millions of members.
- Legislation passed during John F. Kennedy's presidency granted to all federal workers the right to unionize and collectively bargain under Executive Order 10988. Kennedy's administration was also responsible for the Equal Pay Act, which granted gender-neutral pay at work, and the Civil Rights Act that was ultimately passed in the Lyndon B. Johnson administration in 1964, which prohibited workplace discrimination on the basis of race, color, sex, national origin, or religion.
- Labor suffered a setback when President Ronald Reagan fired striking air traffic controllers in 1981, but the resolution of a contract dispute by the United Mine Workers with Pittston Coal was considered a victory for labor.
- By the end of the 20th century, labor had gained many legal protections but lost favor with the public due to the many strikes in the last half of the century.

Chapter 3 Review Quiz

Chapter 3 Flashcards

View this study set

Choose a Study Mode ▼

Key Terms

Adjustment Board
A tribunal established to hear grievances between railway workers and management; it replaced the Railroad Labor Board.

agency shop
A business that hires both union and nonunion members; employees who are not members of the union must still contribute union dues to cover the costs of collective bargaining.

American Railway Union (ARU)
A union consisting of railway workers founded in 1893; one of the largest industrial unions of its time, it participated in the Great Pullman Strike.

antitrust legislation
State and federal legislation intended to outlaw monopolies, trusts, and combinations.

boycott
The refusal by consumers to buy the goods of a specific manufacturer, usually due to political, ethical, or religious beliefs about the manufacturer or its product.

Cesar Chavez
An activist and successful organizer of migrant farmworkers who formed the United Farmworkers Union.

Clayton Antitrust Act
A 1914 amendment to the Sherman Antitrust Act that specifically excluded labor from being deemed a combination or conspiracy.

closed shops
Places of employment that make union membership a condition of employment.

Coalition of Black Trade Unionists
An organization formed in the 1970s to better represent African American workers.

Coalition of Labor Union Women
A national organization formed in 1974 whose purpose is to unify union women.

combination in restraint of trade
An agreement between two or more businesses to overcome normal competition by fixing prices or diminishing competition.

Congress of Industrial Organizations (CIO)
An industrial labor union that eventually merged with the American Federation of Labor to create the AFL-CIO.

Eugene Debs
One of the founders of the Industrial Workers of the World (IWW, or Wobblies) and leader of the boycott by the American Railway Union against Pullman in 1894 who went to jail for refusing to follow a court injunction not to strike.

Duplex Printing Press Co. v. Deering
A 1921 court case that held that the Clayton Act did not provide statutory protection to secondary boycotts.

Equal Pay Act
A 1963 amendment to the Fair Labor Standards Act that granted equal pay regardless of gender.

Executive Order 10988
Signed by President John F. Kennedy in 1962, this order created the right of federal employees to organize and collectively bargain.

Federal Possession and Control Act
A federal law passed in 1916 that nationalized the railways during World War I.

Gompers v. Buck's Stove & Range Company
A 1909 court case that upheld the finding of criminal contempt against union leaders for failing to obey an injunction to stop printing the company's name in a union magazine for alleged unfair labor practices.

Great Pullman Strike
A strike by railway workers against the Pullman Palace Car Company in 1894.

Great Strike Wave of 1946
An era that saw thousands of labor strikes taking place.

industrial unionism
The formation of unions around a particular industry.

In re Debs
A court case that upheld the use of an injunction against a union in 1895 to stop a strike.

Labor Council for Latin American Advancement
An organization of Latino workers representing the needs of Latinos in labor.

Labor Management Relations Act of 1947
Better known as Taft-Hartley, a federal law passed in 1947 that amended the National Labor Relations Act and imposed restrictions on labor organizations.

Landrum-Griffin Act
Popular name for the Labor Management Reporting and Disclosure Act of 1959.

Loewe v. Lawlor

Also known as the Danbury Hatters case, a 1908 court case that found a union strike was a violation of the Sherman Antitrust Act.

National Industrial Recovery Act (NIRA)
A short-lived federal statute passed in 1933 that gave labor the right to collectively bargain and was held unconstitutional in *Schechter Poultry*.

National War Labor Board
A board created by President Franklin D. Roosevelt during World War II to take over the major industries in the country.

New Negro Alliance v. Sanitary Grocery Co.
A 1938 court decision that held that the Norris-LaGuardia Act applies to anyone interested in a labor dispute.

NLRB v. Jones & Laughlin Steel Corporation
A 1937 court decision that held that employees can legally organize.

Norris-LaGuardia Act
Federal legislation passed in 1932 that stated courts could no longer issue injunctions to prevent nonviolent strikes or prevent workers from becoming members of labor organizations and peaceably assembling. It also outlawed yellow dog contracts and allowed secondary boycotts as long as they were not violent.

George Pullman
Founder of the Pullman Palace Car Company and Pullman, Illinois.

Pullman Palace Car Company
The company founded in 1862 by George Pullman that built luxurious overnight rail cars.

Railway Labor Act of 1926
A federal law that provides remedies for the resolution of railroad–employee disputes arising out of the interpretation of collective bargaining agreements.

right-to-work laws
Laws passed by individual states that prohibit closed shops.

Schechter Poultry
A 1935 court case that held the National Industrial Recovery Act was unconstitutional.

secondary boycotts
Pressure put on neutral businesses by workers engaged in a primary boycott with their employer to try to force the employer to accede to demands.

Sherman Antitrust Act
An 1890 federal law aimed at curtailing monopolies, combinations, and trusts.

solidarity or political strikes
A strike for the purpose of protesting a political event happening in the country.

Transportation Act of 1920
A federal law that created the Railroad Labor Board to hear disputes between railroad owners and workers, a forerunner to today's arbitration process.

trusts or monopolies
When two or more businesses join together to try and curtail competition using activities such as price fixing.

union shop
A place of employment that requires union membership in order to work there.

United Farmworkers Union
An alliance of farmworkers organized to better the conditions of workers.

yellow dog contract
A contract that made it a condition of employment not to join a union.

Critical Thinking Questions

1. How did federal legislation support the establishment of unions and union rights? If such legislation had not been passed, do you think that labor organizations would have developed? Would they have succeeded in establishing themselves?
2. Which federal labor law do you think was the most significant in the 20th century and why?
3. Early 20th-century decisions supported shutting down unions with legal processes. Discuss each of these processes and how and why they would not be enforced today.

Case Feature

The following is an excerpt from a case heard in the Arizona courts concerning whether or not it is constitutional to make employees contribute money to a union at their place of work, sometimes referred to as "fair share" when those same employees also benefit from the union's collective bargaining agreement.

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL–CIO, LOCAL 238 vs. CITY OF PHOENIX (213 Ariz. 358, 142 P.3d 234, 180 L.R.R.M. (BNA) 2325, 484 Ariz. Adv. Rep. 9) 2007

The American Federation of State, County, and Municipal Employees, AFL–CIO, Local 2384 is an employee labor organization recognized by the City as the exclusive bargaining representative for all City employees within a designated bargaining unit. As such, the Union is required by law to represent all Unit II employees without regard to union membership in negotiating, administering, and enforcing collective bargaining agreements. The Union's principal source of income is membership dues collected from Unit II employees who are Union members.

However, the City also provides financial assistance to the Union to aid the Union in acting as exclusive bargaining representative for all Unit II employees, including paying the full salary and benefits of three full-time Union officials and providing the Union with another 3,610 paid hours annually.

On November 30, 2001, during the compulsory "meet and confer" process, the Union and two other unions proposed a mandatory union contribution, or "fair share," provision (in which all workers, including non-union workers, would be required to contribute to the unions for services performed for the workers' benefit) in the unions' original labor proposals submitted to the City.

In pertinent part, the term "meet and confer" means the performance of the mutual obligation of the public employer through its chief administrative officer or his designee and the designees of the authorized representative to meet at reasonable times, including meetings in advance of the budget making process; and to confer in good faith with respect to wages, hours, and other terms and conditions of employment or any question arising thereunder, and the execution of a written memorandum of understanding embodying all agreements reached.

The term "fair share" is frequently used in labor-management circles to describe situations in which a labor organization, acting as an exclusive bargaining representative, seeks to recover from non-union employees in the bargaining unit a pro rata share of expenses incurred by the union for negotiation, administration,

and enforcement of collective bargaining agreements benefitting all members of the bargaining unit without regard to union membership.

Although conceding that traditional "agency shop" agreements were prohibited in Arizona, the unions argued that, unlike "right to work" provisions found in some other states' constitutions and statutes, nothing in Arizona's constitution or statutes specifically prohibited requiring the payment of a pro rata share of a union's expenses, or similar fees, as a term or condition of employment.

The Union argues that Arizona's constitution and "right to work" laws contain less restrictive language than that of some other "right to work" states because those states not only forbid compulsory union membership as a condition of employment, they also specifically bar mandatory payment of any fee or contribution to a union as a term or condition of employment. Arizona's constitution and statutes contain no such specific provision. Thus, the Union argues, such fees or contributions, ***if paid as a proportionate share of the actual expenditures incurred by the Union for services rendered for the benefit of the collective bargaining unit*** (and therefore presumably in an amount less than the equivalent of full Union dues), should be legal in Arizona.

The United States Constitution does not bar an employer from requiring that non-union employees, as a condition of employment, pay a "fair share" of a union's cost of negotiating and administering a collective bargaining agreement for those employees if the fees are related to the union's duties as bargaining representative.

Arizona law, however, specifically prohibits compulsory union membership as a condition of employment as do Arizona's "right to work" laws. The Arizona Attorney General has twice issued opinions concluding that an "agency shop" agreement between an employer and a labor organization, in which all non-union employees would be required to pay to the union an amount equal to regular union dues, would violate the Arizona constitution.

1. What do you think the court held in this case?
2. Do you agree with the union that because nothing in the Arizona Constitution prohibited requiring the payment, the union could demand it?
3. Do you think that unions should be allowed to require that workers pay union dues in support of collective bargaining in a unionized workplace?

After you have answered the discussion questions, click here to see the holding for this case.

ANS: As the decisions make clear, both an agency shop arrangement requiring nonunion employees to pay the equivalent of full union dues and a fair share arrangement requiring the payment of a pro rata share of union bargaining or representation costs impinge on workers' right to work. Consequently, the fact that the union's proposed fair share fee may be less than the amount of full union dues is a distinction without a difference; it is the compulsion and not the amount that is important. Article 25 of the Arizona Constitution and Arizona's right-to-work statutes prohibit the union's fair share proposal. As a result, the proposal is not a proper subject of collective bargaining between the city and the union.

Research Projects

1. Proceed to the website **http://www.nlrb.gov (http://www.nlrb.gov)** . Find the tab labeled "Cases and Decisions." Click on that tab and go to "Board Decisions." In the search box type in terms to find an NLRB decision related to a subject that interested you in this chapter. For example, you could type in the name "Cesar Chavez" and be directed to cases involving the labor icon. Once you have located an NLRB decision that interests you, read the decision and write a brief summary of what happened and what decision the board made. Did you agree with the decision? Why or why not?
2. Make a chart of all the significant labor legislation passed in the 20th century. Next to the name of each law, place a column with the year it was passed, and then another column with a brief description of what the law covered. If the law amended another law, make an additional column and explain why and how it amended the previous law.

3. Choose one individual who appears in this chapter and search for him or her online. Then write a brief biography of that person. After you become familiar with that person's background, conduct an imaginary interview with him or her about the era in which he or she lived, what interested him or her about labor problems of that era, and how and why he or she helped make the role of labor better. Conduct the interview as if you were talking to the person and asking questions to which he or she would respond with plausible answers based on your research.