BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM

Office Correspondence

Date June 11, 1947

To Chairman Eccles

Subject: Taft-Hartley Labor Bill

From Woodlief Thomas

Attached is a descriptive analysis of the labor bill prepared by Mr. Williams. This memorandum summarizes the principal features of the long and complicated bill and also gives a brief appraisal of some of the possible results of the bill. In this appraisal Mr. Williams gives both the principal advantages and disadvantages of this piece of legislation.

W.T.

Attachment.

BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM

Office Correspondence

Date June 9, 1947

To Mr. Thomas

Subject: Taft-Hartley Labor Bill

From Kenneth B. Williams

Summary

Briefly, The Bill calls for the following changes in labor-management relations:

Primarily Affecting Unions

1. Abolishes the closed shop but permits a union shop if voted for by a majority of the workers. An election for a union shop cannot be repeated in less than one year but must be held after that if a substantial number of workers petition for a new election.

2. Weakens the union shop by preventing the union from asking the employer to discharge a worker for any reason except nonpayment of dues. Union cannot attempt to persuade employer to discriminate against a worker who has been denied union membership if the employer has reason to think membership was denied or not offered on the same terms as those applied generally to union members.

3. Outlaws all secondary boycotts and jurisdictional strikes.

4. Requires unions to bargain collectively with employers and to give employer 60 days notice of proposed change in or termination of contract and to give Mediation Service 30 days notice. Strike is illegal during this 60 day period.

5. Outlaws featherbedding practices.

6. Makes excessive union fees illegal and subject to control of NLRB.

7. Requires unions to submit specified financial and other information to Secretary of Labor and union members before union shop or representation election or filing of complaint of unfair labor practice against the employer.

8. Requires union to submit affidavits that none of its officers are communists before NLRB is permitted to conduct a representation or union shop election or process an unfair labor practice charge.

9. Subjects unions to suits in Federal Courts and fines against union assets for violation of collective bargaining contracts and for damages in case of secondary boycotts and jurisdictional disputes.

10. Requires 80 day waiting period and secret vote on employer's last offer before a strike can be called that threatens national safety or health.

11. Requires professional workers and craft unions to vote as to whether they wish to bargain as separate units or in larger units. Guards are not permitted to join unions to which other employees belong.

12. Deprives supervisors of protection of the Wagner Act in bargaining. Supervisors can join unions but employers need not bargain with them.

13. Prohibits unions from coercing workers in their right to engage in collective activities or to refrain from engaging in such activities, except as a condition of employment in a union shop.

14. Permits individual workers to present and adjust grievances with employers without intervention of union representative but union representative must be informed of such adjustments.

15. Prohibits unions from making political contributions or expenditures.

16. Welfare funds to which employer contributes are restricted to specified purposes and must be jointly administered by employers and workers. This is not retroactive to funds established before January 1946.

17. Present restrictions against company and independent unions are relaxed by requiring NLRB to include them in representation run-off elections and union shop elections.

18. Forbids strikes of government employees. (This does not specifically include Federal Reserve Banks.)

19. Excludes from coverage of the Wagner Act wholly-owned Government corporations, nonprofit hospitals, and Federal Reserve Banks.

20. Check-off of union dues is permitted only if each individual union member voluntarily authorizes it.

21. Provides for a 6 month statute of limitations in filing charges of unfair labor practices.

Primarily Affecting Employers

1. Permits employer to petition for an election in representation cases even if only one union claims bargaining rights. (At present, employer can petition only if two or more unions claim bargaining rights.)

2. Employer is permitted freedom of expression as long as such expression contains no threat of reprisal or promise of benefit.

3. The NLRB is required to give priority to and must seek injunctive relief if it has reasonable cause to think that an unfair labor practice in the form of a jurisdictional strike or secondary boycott has been committed.

Primarily Organizational

1. Increases membership of NLRB from 3 to 5. Creates the position of General Counsel appointed by President with consent of Senate. The General Counsel has primary authority in prosecution matters and directs the work of most of the employees. The Board, however, hires and fires.

2. Abolishes the pool of lawyers now used to assist the Board on cases but permits each Board member to hire as many legal assistants as he needs.

3. Prohibits the Board from appointing any economic analysts.

4. Makes the Conciliation Service, now in the Labor Department, into an independent agency. Establishes a National Labor-Management panel to act as advisors to this new Federal Mediation and Conciliation Service.

5. Requires that, in so far as practicable, United States District Court rules be used in proceedings before the National Labor Relations Board.

6. Calls for extensive use of injunctions and hence burdening of Federal Courts in enforcing the new provisions of the Act.

7. In national emergency strikes the Bill calls for Presidential appointment of a fact-finding panel, for the Attorney General to obtain an injunction, for a secret vote of employees, and a report by the President to Congress on the strike. The whole process may take up to 80 days but after that a strike may legally take place.

8. Establishes a joint Congressional committee to conduct a thorough study of the entire field of labor-management relations and to report to Congress by March 15, 1948 and to make a final report not later than January 2, 1949.

Appraisal

In general, the Bill appears to succeed in eliminating some of the union abuses which have developed in the past decade or so under the Wagner Act, and in giving the Government increased power to handle major strikes which threaten the health and safety of the country. In outlawing the closed shop, secondary boycotts, and jurisdictional strikes, the Bill should reduce the opportunities for racketeering and misuse of union power and eliminate some of the more flagrant irritants to the public and to employers, especially small employers.

Jurisdictional strikes, for example, have little justification and may seriously damage employers who are not at fault and who can do nothing to correct the situation. The case is not so clear against the closed shop which, if not abused, frequently leads to increased union responsibility and to greater stability of labor relations, both of which are to the interest of the employer. Similarly, secondary boycotts have been effectively used to eliminate sweat-shop conditions and wage cutting practices on the part of a few fringe employers which are contrary to the interests and wishes of the other employers. In delaying major strikes against the national welfare for 80 days, the Government is given an opportunity to mold public opinion and to obtain a settlement.

The Bill does not include many things which were in the House Bill, such as permitting private employers to obtain injunctions against unions and abolishing industry-wide bargaining, both of which would have changed fundamentally union-management relationships. Nor does the Bill contain any provision for drafting strikers into the army or for compulsory arbitration. Employers, as well as unions, are strongly opposed to compulsory arbitration because of the prospect that it would lead to compulsory profit and price controls.

It is difficult to evaluate accurately the full effects of the Bill. The Bill is long, covering some seventy pages, and contains a great many statements of a highly technical nature, the precise wording of which has far greater legal significance than appears on the surface. Until the exact meanings of the provisions have been ruled upon by the National Labor Relations Board and the courts, it will be almost impossible to know how far-reaching the legislation is. There are obviously many legal booby traps in it, most of which appear to be intended to catch the unions but some of them seem likely to catch the employer.

A great deal will depend upon the interpretations of the National Labor Relations Board and the Supreme Court. If interpreted harshly, the Bill could be quite repressive and punitive in its effects upon unions. On the other hand, if interpreted liberally, the effects upon legitimate union activities may not be too damaging.

In general, I should expect the Bill to be particularly hampering to new or weak unions and to limit the organizing of workers not now in unions, particularly in the South where labor is still largely unorganized. By the same token, the Bill is most likely to be useful in giving additional weapons to those employers who want to break unions or to avoid organization. It is doubtful if the Bill will do much to strengthen the position of the great mass of employers, and particularly the big ones, who do not want to break unions. To the established strong unions, who can afford adequate legal talent and can plan their bargaining campaigns a substantial period in advance, it is unlikely that the Bill will be seriously damaging, except possibly in the case of some of the craft unions with long-established closed shops.

As a whole, the Bill would appear to affect A F of L unions more seriously than CIO unions. The latter rarely have closed shop contracts or have much need for them, they do not make much use of secondary boycotts, and jurisdictional strikes are less important to them. Similarly, the ban against featherbedding is more likely to affect A F of L unions such as musicians and building crafts than the CIO industrial unions.

On the other hand, the mandatory requirement that craft and professional workers be permitted to bargain as units will be helpful to the A F of L and will hurt the CIO. The ban on political contributions also will more seriously restrict the CIO than the A F of L which until recently, as a matter of policy, has attempted to stay out of politics on an organizational basis. The threat of this Bill's passage, however, has already had a considerable effect in changing the A F of L's attitude toward political action, and the passage of the Bill will be likely to increase greatly the A F of L's interest in political activities.

Major advantages of the Bill are:

1. It gives the Government some additional power to handle national emergency strikes.
2. The ban on closed shops, secondary boycotts, and featherbedding may be helpful in reducing the uneconomic labor practices in the construction field which have contributed to the backwardness of the construction industry.
3. It will probably eliminate many of the practices, such as jurisdictional strikes, which have been particularly irritating to the public and to employers in small towns.
4. It may help those groups within unions who are opposed to communistic doctrines to obtain an advantage over the communist groups.

Major disadvantages of the Bill are:

1. That it unsettles, much more than would seem necessary to obtain the results expected from the Bill, established legal and administrative principles which have been fought out in the courts during the past decade.
2. It is likely to lead to increased labor unrest, at least for a while, until each side has determined its new rights.
3. It does not do very much to strengthen the responsible democratic elements in the labor movement and may provide some opportunities for minority factions and unscrupulous leaders to take advantage of the loop holes in the Bill.
4. It places very great responsibility upon the NLRB for conducting elections, taking votes, obtaining injunctions, determining jurisdictional issues, determining standards for union fees, evaluating unfair labor practices, determining what featherbedding is, and so forth. It involves the Government much further in the labor relations field than most people would think desirable in the long run and further than seems necessary to achieve the ends in view.
5. It probably weakens the NLRB's administrative efficiency since it seems to establish within the Board two sources of final power. The Board itself seems to be responsible for hiring and firing employees, but most of the authority over the employees rests in the hands of a General Counsel who is to be Presidentially appointed with the consent of the Senate. This kind of organizational set-up could lead to serious friction. The Board is also required to abolish the pool of lawyers who acted as assistants to the whole Board but is permitted to hire legal assistants for each Board member. This procedure is intended to make the Board act in a more judicial manner, but it is difficult to see how it can avoid creating duplication of effort and opportunities for internal conflict.
6. In removing the Conciliation Service from the Department of Labor and setting it up an an independent agency, it would appear that no useful purpose is served. In any case, it will result in increased duplication.

In eliminating some abuses, the Bill contains some things that merit considerably more study than Congress has given them and on which legislation might well be delayed until the findings of the Commission established by this Bill are available. Carrying legislation into things of questionable merit seems to come from an unconscious attempt, conditioned by the big wave of postwar strikes, to write into legislation too many details of labor-management relations which in practice might well be left to bargaining. Also, some of the dubious characteristics of the Bill arise from the fact that much more emphasis is placed upon legalisms involving the rigidities of court determinations than most poeple who have had experience in settling industrial disputes think is helpful. Nearly everyone who has had experience in arbitration or mediation is impressed with the need for leaving a good deal of room for flexibility in these matters.

Underlying much of the Bill appears to be an assumption that union leaders do not represent the wishes of their members. This is undoubtedly true in many cases, but in most strikes of national importance in which the public in concerned, union leaders are usually quite astute in estimating the wishes of the members. For example, under the Smith-Connolly Act, secret strike votes were taken by the NLRB in all strikes affecting the war program, on the theory that the rank and file would not strike if they had a free choice. However, the experience with this provision was that the rank and file always voted almost unanimously to strike.

On the whole, the Bill does not seem to be nearly as punitive or dangerous to unions' position as the unions claim. It is restrictive and it may be damaging in some cases, but I hardly think it will be crippling in its effect on the functioning of established unions. On the other hand, I doubt if the Bill will strengthen employers' positions as much as they hope it will, or that it will have very much effect, one way or the other, on the volume or seriousness of strikes. Even in the case of strikes against the safety and health of the nation, the Bill does little to stop them; it merely delays them for a period of eighty days.

Whether or not the Bill is passed, the prospect is that the period of great labor unrest and industrial conflict is about over. After this war, as after World War I, sharply rising prices resulted in a record-breaking number of disputes. With the cost of living leveling off and tending to decline, and with the labor market becoming more normal, it is likely that labor-management relations will be relatively stable in the period ahead. A coal strike, of course, may be an exception to this generalization.