

Restrictions on Freedom of Association **The Taft-Hartley Act**

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Afin que la Semaine sociale de Paris, qui va s'ouvrir, se montre digne de la longue série de ses devancières, Nous accordons avec une paternelle affection, comme *datum optimum et donum perfectum, descendens a Patre luminum* — don le meilleur et cadeau parfait venant du Père des lumières

(Jac. 1, 17) — et comme gage de ce don, à tous ceux qui prennent part à la session et particulièrement à ceux qui la dirigent, la Bénédiction apostolique qui Nous a été demandée.

Du Vatican, le 18 juillet 1947.

PIUS PP. XII.

RESTRICTIONS ON FREEDOM OF ASSOCIATION

THE TAFT-HARTLEY ACT

Gérard TREMBLAY

The Taft-Hartley Act, amending the U. S. National Labor Relations Act 1935, came into force on August 22, 1947, exactly sixty days after its approval by the Senate, which following the example of the House of Representatives had outweighed President Truman's veto with a vote by the two-thirds of its members.

Before the bill was adopted, the American Federation of Labor staged a formidable nationwide campaign against it. The opponents of the bill spared nothing to obtain their end; the radio networks, the press, public meetings and parades were used in an effort to quash the bill. Indeed, the AFL spent one and a half million dollars on its campaign. And neither did the CIO fail to vigorously oppose a law which was to prove restrictive on the privileges of labour unions.

What attitude will the great central labour organizations take now that the Taft-Hartley Bill has become the law of the land? It is rather safe to presume that they will continue to oppose the Act by all means available. First of all they could boycott the Act by abstaining from having their collective-bargaining agents certified by the National Labor Relations Board and try to bargain collectively strictly on their own. However, in such a case, employers could legally refuse to bargain with them. Then, a second means would be to include in their collective agreements certain clauses which would free the labour unions of certain obligations. Third, several unions contemplate submitting to employers mere statements of their claims instead of signing agreements with them. As yet, all the angles of the problem still remain to be considered. Besides, since jurisdictional disputes may be settled only by tribunals such as the N.L.R.B., the unions will have no choice but to lay such cases before competent tribunals.

Now what are the principal restrictions imposed on freedom of association by the Taft-Hartley Act?

1° The union shop is brought under regulation. 2° Unions may take legal proceedings against employees, but the latter may likewise prosecute unions for breach of contract. 3° The unions will not be entitled to the protection of the National Labor Relations Act if they do not previously submit certain reports to the Secretary of Labor. 4° Unions directed by communists or affiliated to a federation which tolerates communist direction may not avail themselves of the Act. 5° Nationally important strikes are subject to certain restrictions. A closer study of this Act will prove highly interesting.

1° *Control of union shop.* Section 7 of the Act sanctions labour's right of association but clearly states that «... employees shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3).» Now this section forbids an employer not only to prevent an employee from belonging to a union but also to discriminate between union members and non-union men «... *Provided* That nothing in this Act, or in any other statute of the United States shall preclude an employer from making an agreement with a labor organization... to require, as a condition of employment membership therein on or after the 30th day following the beginning of such employment of the effective day of such agreement, whichever is the later, if such labor organization is the representative of the employees... in the appropriate collective-bargaining unit covered by such agreement when made; and if following the most recent election held... the Board shall have certified that, at least, a majority of the employees eligible to vote in such election have voted to authorize such labor organization to make such an agreement; *Provided* further, that no employer shall justify any discrimination against an employee for nonmembership in a labor organization if he has reasonable grounds for believing

that such membership was not available to the employee on the same terms and conditions generally applicable to other members of if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership. »

It is therefore quite clear that the closed shop is practically outlawed. The union shop is allowed if it is requested by the majority of the workers. It affects a worker only after thirty days work at the plant. The union must be certified; moreover it is not permitted to have a recalcitrant member dismissed if he pays his dues, nor may it impose on such a person any abnormal conditions of admission.

2° *Civil responsibility of unions.* Title III, section 301 of the Act, deals with legal proceedings instituted by or against labour organizations. Even when a union is not incorporated under a statutory act it is considered as a juridical entity capable of going to law. This constitutes a radical reform imposed upon American trade-unionism which had always refused incorporation because it feared that injunction proceeding might be taken against unions.

Section 301 reads as follows : « a) Suits for violation of contracts concluded as the result of collective bargaining between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act may be brought in any district court of the U. S. having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties. »

« b) Any labor organization which represents employees in an industry affecting commerce as defined in this Act may sue or be sued in its common name in the courts of the U. S.: *Provided*, that any money judgment against such labor organization shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets. »

3° *Reports to Secretary of Labour.* If a union wants to become official collective-bargaining agent, if it wishes to establish the union shop in a plant or industry, or even if it wants the Board to receive its claims against an employer concerning forbidden practices, such a union as well as the national or international union to which it is affiliated, must, first of all, file its constitution and bylaws with the Secretary of Labor and submit to the latter a detailed report stating :

a) the name of the union and the address of its head office;

b) the names, titles and compensations and allowances of its three principal officers and of any of its other officers or agents having received \$5,000 or more during the preceding year and the exact amount received by each officer during such year;

c) the manner in which the officers and agents were elected, appointed or otherwise selected;

d) the initiation fee or fees and other dues or fees which members must pay;

e) the regulations concerning the qualification as members or any restriction to such qualification; the qualifications concerning the election of officers and shop representatives; the convocation and convening of special and regular meetings; special dues, subscriptions and the imposing of fines; the authorization to negotiate demands or claims; the ratification of agreements; the authorization to call strikes; the disbursement of union funds; the auditing of financial transactions; the participation in insurance or benefit plans; the expulsion of members and the motives evoked therefore.

The union must also submit to the Secretary of Labor a statement of its receipts and sources of revenue, its assets and liabilities at the end of the year, its disbursements, and the reason for each disbursement made. Finally, the union must furnish to all of its members copies of its financial report. Such obligation to submit and furnish reports must be faithfully fulfilled every year.

4° *Banishment of communists.* Section 9 (h) deprives of the advantages of the National Labor Relations Act any local whose officers have not filed with the Board an affidavit attesting that they are not members of the communist party. The officers of the national or international organization to which the local is affiliated must likewise file with the Board a similar affidavit as to their not being members of the communist party. All officers, both central and local, must also declare, in their affidavit, that they do not belong nor give any support whatever to an organization which is in favour of overthrowing the Government of the United States by violence or any other unlawful or unconstitutional means.

5° *Limitation of the right to strike.* Generally speaking the Act does not abolish the right to strike. Indeed, section 13 specifies that « nothing in the present Act, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right. »

However, it is clearly stipulated in Title II, section 206, that « Whenever in the opinion of the President of the U. S., a threatened or actual strike or lock-out affecting an entire industry or a substantial part thereof engaged in trade, commerce, transportation, transmission, or communication among the several States or with foreign nations, or engaged in the production of goods for commerce, will, if permitted to occur or to continue, imperil the national health or safety, he may appoint a board of inquiry to inquire into the issues involved in the dispute and to make a written report to him within such time as he shall prescribe. » Upon receipt of the report, the President may direct the Attorney General to have a federal district court injunction brief issued against the supporters of the strike or lock-out. If the brief is granted, the parties must endeavour to settle the dispute with the co-operation of the Federal Conciliation Service; sixty days after the injunction brief has been issued the President will reconvoke the board of inquiry which will hand in a report on its findings as to the facts and respective positions of the parties after conciliation and mediation. The report handed in shall be made public. Within the following fifteen days, the National Labor Relations Board will have the employees of each employer take a secret vote in order to allow them to accept or refuse the final settlement offer made by each of their respective employers. Within five days after the voting the Labor Relations Board will submit the results of the ballot to the Attorney General. Subsequently, the Attorney General will have the injunction withdrawn. Then the President will report to Congress on the whole question and make the recommendations deemed advisable.

As mentioned above, the only restriction on the right to strike must be motivated by national urgency. Besides, section 201 specifies that the American policy consists of the conciliation of all labour disputes by means of conferences and collective bargaining; such a policy puts at the disposal of the parties a conciliation service intended to help them prevent clashes of rights and interests and to invite them to insert in their labour contracts provisions respecting notices of termination, notices of amendment and the settlement of grievances. Conciliation, mediation and voluntary arbitration are recommended. However, the Taft-Hartley Act makes no mention of, nor allusion to, compulsory arbitration with enforceable awards as carried out in this Province under the Public Services Employees Disputes Act.

We have thus summed up the main restrictions imposed in American trade-unionism by the

Taft-Hartley Act. Nothing in the latter falls short of the principles it should embody. However, is this legislation timely in the U. S.? We shall not try to answer this question right now. We must first witness the application of the Act.

In an Associated Press dispatch from Washington, published as a Labour Day message from the Department of Social Action of the National Catholic Welfare Conference reflecting the Department's opinion of this new legislation, the N.C.W.C. expresses the hope that Labour will voluntarily correct the specific abuses that the Act first intended to eliminate and urges Capital and Labour to meet together in a sincere effort to rectify the consequences of the enforcement of the unsatisfactory provisions of the Act.

COMMENT NÉGOCIER ?

« En ces jours de conseils et de conférences, chaque homme d'affaires important devrait apprendre l'art de la négociation. En ce moment, des dizaines de problèmes pourraient être résolus s'il existait seulement un homme capable de négocier.

De quelle utilité sont les conférences qui ne peuvent aboutir à des décisions ?

La première chose à faire à une conférence est d'en extraire l'hostilité, d'écartier la suspicion et la tension. On ne peut négocier avec les poings.

Un négociateur capable est un homme amical et raisonnable, qui a le sens de l'humour. Le meilleur moyen, pour commencer une conférence, est d'émettre une plaisanterie.

Il est toujours sage, aussi, de commencer en établissant un accord sur une petite question. Ne dite jamais « non » à propos de tout. Commencez par un « oui ». Ne soyez pas obstiné sur les questions vitales.

Accordez une attention spéciale à l'homme qu'il est le plus difficile de convaincre. Un homme entêté peut faire échouer une conférence.

« Ceux qui désirent réussir comme négociateurs doivent avoir certaines qualités de coeur et d'esprit. C'est la personnalité qui gagne. Il faut de la ténacité sans combativité. »

Professions