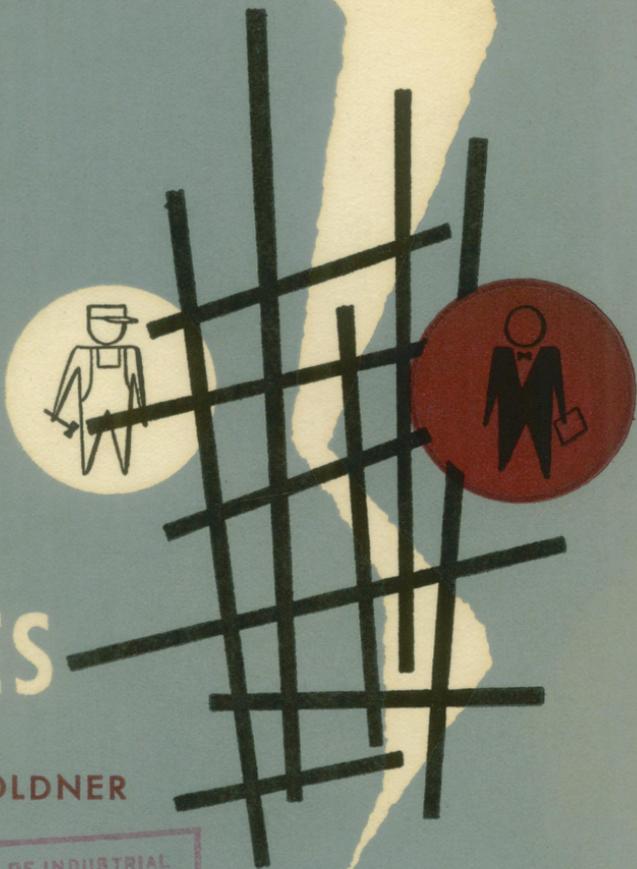


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STRIKES

by WILLIAM GOLDNER

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STRIKES

By

WILLIAM GOLDNER

Edited by Irving Bernstein



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Foreword

THE INSTITUTE OF INDUSTRIAL RELATIONS of the University of California was created by the California Legislature for the purpose, among others, of conducting research in industrial relations. Useful research requires not scholarship alone but the effective distribution of results. Hence the Institute seeks through this series of popular pamphlets to disseminate its research beyond the professional academic group. This pamphlet and others in the series are designed for the use of labor organizations, management, government officials, schools and universities, and the general public. Those pamphlets already published (a list appears on the preceding page) have achieved a wide distribution among these groups.

Strikes are the by-product of unsuccessful collective bargaining. As Mr. Goldner points out, the general public is much less aware of the overwhelming majority of successful negotiations where strikes do not occur. On the other hand, stoppages cannot be dismissed as infrequent or without impact in our economy. It is important that the factors that surround the strike situation be placed in a proper perspective. This pamphlet is directed toward that objective.

Joseph Garbarino, Van D. Kennedy, and Arthur M.

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Ross of the faculty of the University of California at Berkeley have contributed helpful advice involving subject matter, emphasis, and perspective. The constructive suggestions of George A. Pettitt, Assistant to the President of the University, George O. Bahrs, General Counsel, San Francisco Employers Council, and John Henning, Director of Research, California State Federation of Labor, are gratefully acknowledged. Mrs. Anne P. Cook assisted with editing the manuscript. The viewpoint expressed is that of the author.

CLARK KERR, *Director*
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I. Introduction

STRIKES WORRY PEOPLE. In bad times they contribute to the hardships that prevail. When we enjoy prosperity strikes interrupt production and add to the tension between competitors for the consumer's dollar. In time of war they affect the delicate balance of production planning and may impair military operations. When peace arrives work stoppages influence the economic readjustment of the nation.

People are uneasy about the economic consequences of strong unions using the strike weapon to enforce labor policies. They are concerned that the use of union power does not curtail production, prevent industrial expansion, and restrict purchasing power. Most of all, the public has a basic dislike for conflict in any form.

Strikes have dramatic aspects. Picket lines, high-level negotiations, mass meetings, the final capitulation or compromise—these are events that capture the imagination. Strikes are important news and frequently win a place on the front page. Severe interruptions cause Congress to take notice, too, with resulting legislation. In fact, the general public hears more about strikes than any other phase of industrial relations.

The factors which stimulate a strike are many and

complex. The action itself is only the point at which a fracture in labor relations occurs. Thus, it is important to recognize the place of the strike in a more complete framework.

1. STRIKES AND PUBLIC OPINION

Public opinion is an important factor with which employer, union, and worker are concerned. The conduct of a strike includes influencing substantial segments of opinion regarding the issues. Picketing and publicity bring them to the public eye. Actions and policies which displease the public leave the offending party, union or employer, in a weakened position in bargaining.

The opinion polls have since their beginnings been interested in the public's viewpoint on strikes. Consequently, we now have available enough polls to generalize. The polling results presented here include selected data from 1937 to 1950 on questions asked of a nationwide cross-section by the American Institute of Public Opinion (AIPO), commonly called The Gallup Poll, and The Fortune Survey (FOR).

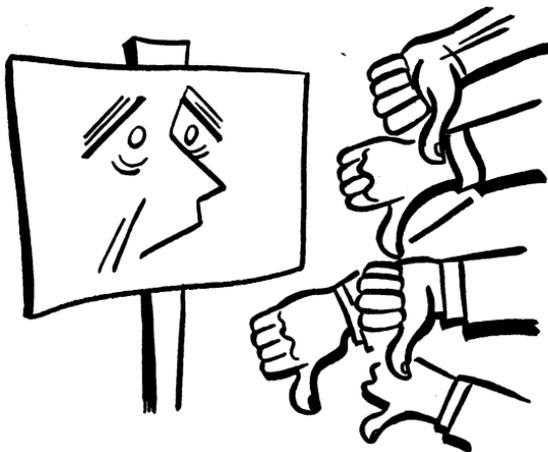
They show that an undefined right to strike is recognized by the public when special factors are absent. This can be seen from the chronological listing on page 3. The public appears to accept the right to strike by an almost two to one majority after those with no opinion are excluded. From 21 to 33 percent of the persons polled

<i>Question</i>	<i>Should not forbid strikes</i>	<i>Forbid strikes</i>	<i>Don't know</i>
Do you think the government should or should not forbid labor in industries not closely related to defense the right to strike about:			
working conditions?	56	30	14
wages?	54	33	14
hours?	53	33	14
(FOR—June 1941)			
Do you think Congress should pass a law forbidding strikes in all industries during peacetime? (AIPO—July 1945).....	63	21	16
Suppose you were a member of Congress—would you vote against a bill to prohibit all strikes for any reason whatsoever? (FOR—March 1947)	54	35	11
Should Congress pass a law forbidding strikes in all industries, or should workers have a right to go on strike? (AIPO—August 1947)	62	28	10

would forbid strikes. Persons who assert that strikes should not be forbidden amount to 53 to 63 percent of the cross-sections. Another 10 to 16 percent have no opinion.

However, the inclusion of almost any special condition has a marked effect on opinion. This is understandable for questions that involve, for example, defense or war urgency. But on others which entail factors of less urgent importance the public's opinion is also affected.

Thus, when asked whether they favored restrictions during defense emergency and wartime conditions, there were about three who would forbid to one who would allow the right to strike. Similarly, the public by small but definite majorities would ban general strikes, strikes



against government-run enterprises, strikes for the closed shop, and jurisdictional strikes.

Oddly enough, opinion reacts much differently to actual strike situations than it does to those in the abstract. An obvious reason is that little is heard about relationships which do not result in strikes. The question on page 5 reveals that when there has been a major stoppage, a large portion of the public knows about it, but if none has occurred, people are generally unable to answer.

Public opinion seems to shift with changing circum-

stances. The coal miners, for example, have been at opposite ends on the public's list of favorites. In June 1943, in the middle of the war effort, 58 percent of those polled favored the coal miners enough to justify their getting a wage increase, as contrasted with 30 percent who were opposed. However, this feeling of sympathy completely

As far as you know, has there been a strike at General Motors Corporation since the war ended? Has there been a strike in the coal mines; on the railroads; at the Dupont Company? (FOR—November 1946)

<i>Company or industry</i>	<i>Yes</i>	<i>No</i>	<i>Don't know</i>
General Motors	69.3%	5.6%	25.1%
Coal mines	85.3	2.7	12.0
Railroads	84.0	5.1	10.9
Dupont Company	15.5	16.5	68.0

disappeared under the threat of a strike in 1945. A survey at that time found 74 percent urging the government to use force or take over the mines.

By the end of 1946, public sympathy for the coal miners had again reversed. Among those who were aware of the existence of the coal strike after World War II, 58 percent favored the strikers, 23 percent favored the operators, and 19 percent had no preference.

Similarly, public opinion favored the strikers in the telephone dispute of 1947. Poll results showed 24 percent for the company, 48 percent for the workers, with 28 percent expressing no opinion.

Expressions of opinion are important to unions and employers alike. Selection and emphasis of the issue in a strike can help determine which side the public will support. Public favor may be an important element which helps one side or the other to achieve its strike objective. The pressure of public opinion on the participants in a strike action is not an abstract thing; many persons express sympathy or disapproval to the union rank and file on the picket line or to employers by word of mouth, letter, telephone, and other means. This flood of opinion affects the attitudes of the participants and is conveyed to the active negotiators in the form of pressure to settle the strike or to hold out. Thus, the wooing of public opinion by the parties is not only a matter of getting the facts and issues straight; the public's response to strike publicity may affect the actual settlement.

2. WHAT IS A STRIKE?

A strike is a concerted and temporary stoppage of work which usually occurs at the breakdown of the collective bargaining process and represents the decision of unions and employers to settle the disagreement by a test of strength. The key to the definition is the word "concerted." A questionnaire sent to a European country which does not have the liberties that we do asked, "Do you enjoy the right to strike?" The answer came back, "Yes, but not concertedly." A prime requisite in a strike is action by a group.

The second part of the definition that is noteworthy is that a strike involves suspension of work without quitting the job. In fact, the employee maintains rights in the job while out, which are recognized by courts as well as labor tribunals.

This definition emphasizes the fact that a strike is a test of strength between two parties. Either the union or the employer may precipitate the test. But regardless of which side may be responsible for the breakdown of bargaining, it is the union which usually takes the overt action of calling workers off their jobs. This follows from the very different positions unions and employers occupy in industry.

The employer makes all the basic operating decisions. When he is dissatisfied with the progress of bargaining and wishes to make a test of strength, he has two alternatives. He can close down the plant. This is a lockout, but it is seldom used by employers. It is simpler for the employer to stand on a position that the union cannot or will not accept. This brings about a test of determination and strength just as surely as a lockout. The union, lacking other powerful means of bringing economic pressure to bear on the employer, must decide whether to give in or to strike.

If the union decides to initiate the test, it must do it in the form of strike action. The withdrawing of labor under these circumstances is the most powerful force that can usually be brought to bear by worker groups in labor-management conflict.

When we recognize that the union almost invariably must be the aggressor in striking, maintaining the distinction between strikes and lockouts becomes virtually purposeless. However, by this very fact, levying the blame for a strike involves more than pointing at the party making the first move.



3. WHAT CAUSES STRIKES?

Wages, hours, working conditions, and union recognition are usually the issues in strikes. However, they are also the issues in successful negotiations which result in peaceful settlements and which occur more frequently than strikes. Stoppages must be caused by other difficulties which disrupt the existing employer-union relationships. For example, the collective bargaining ma-

chinery may be imperfect or ineffective. The negotiating parties may be inept at bargaining. The leadership on either side of the bargaining table may be inadequate. The parties may have irreconcilable philosophies and principles regarding labor-management relations. Good faith may be lacking. The causes of strikes usually can be traced to these factors.

4. PURPOSES OF STRIKES

There are a variety of purposes for which strikes are called. The following classification distinguishes the important ones:

- 1) *Strikes over basic industrial relations issues.* The large majority fall into this category.
 - a) *Organizing, recognition, and union security strikes* are for the establishment of basic relations between union and management, or for their solidification. The wave of sitdowns in 1937 was of this type.
 - b) *Strikes for economic gains* are for improvements in wages, hours, and conditions of work. The 1949 stoppages for private pension plans in the steel and auto industries were in this class.
- 2) *Strikes to compel the employer's support against other groups or to achieve gains beyond his control.* (Remember these when the Labor Management Relations Act of 1947 is discussed in Section IV.)
 - a) *Jurisdictional strikes* are disputes between two unions in disagreement over jobs which are closely related to the crafts or occupations represented by both unions.

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- b) *Rival union strikes* are efforts by unions to take over competing unions' bargaining territory.
 - c) *Sympathetic strikes* are stoppages by workers who have no direct interests in the issue of a strike, but who seek to support the primary group.
- 3) *Strikes to influence government policy.*
- a) *Political strikes* are intended to influence broad legislative and executive policy. For instance, in 1916 the threat of a railroad strike spurred passage of the Adamson Act, which gave the railway workers the eight-hour day. After World War II, the CIO Maritime Union struck to protest the delay in returning servicemen from overseas.

Of the several types of strikes which are mentioned here, the most frequent are strikes over basic industrial relations issues. Almost all strikes fall into this category. Jurisdictional and sympathetic strikes usually amount to less than five percent of the total. Political strikes occur very rarely.

II. Trends and Fluctuations

STATISTICIANS, along with other groups, are vexed by strikes. The problems for these experts stem from the difficulties in systematically arranging and counting strike data. Essentially, these are problems of definition. For example: How many workers must be involved before we have "concerted" action? How long must the action last?

The U. S. Bureau of Labor Statistics collects data on all known strikes involving six or more workers and lasting a full day or shift. Slowdowns, protest strikes of a few hours duration, and similar short-lived actions are not counted.

I. METHODS OF MEASUREMENT

The basic measures used are the number of work stoppages, of workers involved, and of man-days idle. No one yardstick is universally useful; each must be related to a specific purpose.

Work stoppages are counted in the month within which the stoppage began, and only once. Thus, strikes which stretch over into succeeding months are not duplicated. Those involving several establishments are counted as one if they start in a common cause. Thus, an industry-wide or a general strike is considered as one.

The *number of workers involved* includes all employees made idle in the struck establishment even though they may not be active participants or supporters. On the other hand, indirect idleness caused by the strike in other plants not on strike is not counted. Thus, the miners who go out in a coal dispute are reported, while steelworkers laid off for lack of coal are omitted.

The *number of man-days idle* is determined by figuring the calendar days idle minus holidays and other days that the employees would not have worked had there been no stoppage. Allowance is made in those cases where the number of employees on strike changes as the strike progresses.

We can now turn to Table 1 which shows the trend of these three measures.

2. THE TREND OF STRIKES

From Table 1 it is apparent that the long-term trend of strikes is subject to important fluctuations. The period of high activity during and immediately following World War I was followed by a sharp decline during the 'twenties. A significant rise began in 1933 which reflected, at first, increasing unrest by labor, and, later, the achievement of recognition and the right to organize and bargain. This upward movement reached its peak in 1937 and then turned downward, until the impetus of the 1939-41 defense period and World War II established new and higher levels in the number of strikes. Despite

Table 1—WORK STOPPAGES IN THE UNITED STATES, 1916 to 1950

<i>Year</i>	<i>Work stoppages</i>	<i>Workers involved (thousands)</i>	<i>Man-days idle (thousands)</i>
1916	3,789	1,600	1
1917	4,450	1,230	1
1918	3,353	1,240	1
1919	3,630	4,160	1
1920	3,411	1,460	1
1921	2,385	1,100	1
1922	1,112	1,610	1
1923	1,553	757	1
1924	1,249	655	1
1925	1,301	428	1
1926	1,035	330	1
1927	707	330	26,200
1928	604	314	12,600
1929	921	289	5,350
1930	637	183	3,320
1931	810	342	6,890
1932	841	324	10,500
1933	1,695	1,170	16,900
1934	1,856	1,470	19,600
1935	2,014	1,120	15,500
1936	2,172	789	13,900
1937	4,740	1,860	28,400
1938	2,772	688	9,150
1939	2,613	1,170	17,800
1940	2,508	577	6,700
1941	4,288	2,360	23,000
1942	2,968	840	4,180
1943	3,752	1,980	13,500
1944	4,956	2,120	8,720
1945	4,750	3,470	38,000
1946	4,985	4,600	116,000
1947	3,693	2,170	34,600
1948	3,419	1,960	34,100
1949	3,606	3,030	50,500
1950	4,843	2,410	38,800

Source: Bureau of Labor Statistics.

¹ Not available.

the large volume of strikes, the number of man-days idle was fairly low reflecting the short duration of the stoppages. With the end of the war, the number of strikes and man-days idle rose to all-time heights. This was followed by a sharp decline in 1947 to a new lower level.

It is important to note that the movements of the three series vary considerably. The most stable is the number of strikes. The most variable is man-days idle, which has marked high and low points in adjacent years. Workers involved is a more sensitive series than the number of work stoppages, but is not as volatile as the trend of man-days idle.

Chart 1 (pp. 22-23) shows the long-term variations in the number of work stoppages. The thin line is charted from the monthly total of strikes. The bold line is a twelve-month moving average to correct somewhat for regular seasonal fluctuations.

3. SEASONAL VARIATION

The regularity of the annual pattern of strikes suggests that a recurring set of forces is at work each year. This pattern of strikes is primarily related to the seasons and weather. The winter months have low strike activity. The trend of strikes rises during the spring to a peak around midyear. Usually, strike levels recede slightly through the summer and autumn and then drop sharply in November and December.



The expansion of unions in the South may change the nation's seasonal strike pattern. The absence of severe winters allows strikes to be called in any month.

Contract expiration dates which determine the timing of contract renewals also have a seasonal pattern. Where such renegotiations fail and strikes occur, the seasonal pattern will be affected. There are several other factors that are relevant, too, such as the industry involved and the seasonal production schedule of that industry, the type of strike, and the strategic timing of strikes in certain industries. Thus, the annual pattern of strike incidence is the result of many factors.

The existence of a recurring pattern indicates that, in comparing strike levels, caution must be used. For instance, the winter months invariably have lower levels than the spring. Therefore, it is important that the periods being contrasted include the high as well as the

low months. Comparisons between years should be confined to identical calendar months. Close study of Chart 1 will demonstrate the importance of this point.

4. CAUSES OF FLUCTUATIONS

The causes of longer-term fluctuations in the trend of strikes are not as easy to isolate as the reasons for seasonal variation. Several economists have explored the relationship between strikes and other economic factors. One early study showed a slight correlation between real wages and strikes; when real wages went up, work stoppages went down and vice versa. Another study linked strikes with the general business cycle: when business was good, strikes were more frequent; when business was poor, there were fewer.

The idea that economic factors affect the incidence of strikes was reinforced during the 1920's when a causal relationship did appear to exist. But the situation changed after that decade.

At the present time, despite the accumulation of much more data, the causes of strike fluctuations are still not clearly identifiable. Further statistical studies of the relationship between strikes and real wages, profits, the general business cycle, and unemployment, have shown no significant connection. High strike rates do seem to coincide with high levels of business activity; the peaks of the strike series tend to conform with the peaks of the

economic cycle. However, the middle and low points of the cycle do not parallel corresponding portions of the strike series.

Interestingly enough, there appears to be a more clear-cut relationship between strikes and political forces. For instance, stoppages almost always rise in the year following a presidential election. This consistent pattern is discernible in the moving average line in Chart 1 and can be traced through the whole range of time with not more than one or two exceptions.

In addition to recurring factors, the occurrence of wars, the passage of important labor legislation, and changes of the political party in power appear to influence the movements of strikes. In periods of political or economic readjustment some changes in strike volume occur.

It seems clear that there is no single underlying cause of strike fluctuations. The interplay of economic and political forces is always occurring and some factors are more important at one time than at another.

III. The Ideas behind Strikes

MANY PEOPLE fear that trade unions are trying to change the character of the American economy and government. They are worried about the power that unions can bring to bear through the strike weapon.

This point of view fails to recognize the essentially "business" character of the trade union movement in the United States. The "business union" confines its goals to maintaining itself as a going concern and obtaining economic gains for its members. In general, it subscribes to no social or economic ideology other than Samuel Gompers' "more, more, more." Hence, it is doubtful that revolutionary purpose can now be attributed to the use of the strike power. A brief review of American labor history will serve to show how the labor movement has come to adopt business unionism as its basic philosophy.

I. POLICY OF KNIGHTS OF LABOR

While trade unions were organized in the United States as early as 1790 and flourished in some areas during the early years of the nineteenth century, the first national federation to win a large following was formed in 1869 by the Knights of Labor. This organiza-

tion emphasized education, coöperation, political action, and arbitration. As a result, the rank-and-file workers and individual locals became the driving force in strike action. The national leaders, in fact, were inept at bargaining when they were drawn into struggles with employers. For example, Master Workman Terence V. Powderly settled a strike against the Wabash System, after a great union victory, for the promise that the workers would not be subject to antiunion discrimination. Neither recognition nor collective bargaining was requested.

Ultimately the Knights of Labor lost their membership and their influence. Their demise was due, at least in part, to Powderly's failure to recognize the need for a sound organizational structure and aggressive leadership. Without effective use of the strike weapon, the Knights could not long survive.

2. SYNDICALISM AND THE IWW

By contrast, revolutionary unions such as the Syndicalists had no reluctance to use the strike. They valued it as a means of arousing the workers and sharpening their awareness of class conflict. They prescribed the general strike as the method for overthrowing the capitalist order.

In the United States, these doctrines of revolutionary syndicalism were applied by the Industrial Workers of the World (IWW) during the period from 1905 to 1920.

The IWW was "one big Industrial Union" working toward "one big strike." It had no use for the conventional objectives of business unionism—recognition, collective bargaining, labor contracts, and sound local organization. The primary interest of the IWW was to capitalize on spontaneous strikes as a medium for revolutionary propaganda, supplying leadership where such strikes occurred.

The IWW aroused the greatest enthusiasm among unorganized workers since most of the early strikes led by the IWW were victorious. In the wake of these successes, however, there was no establishment of permanent organizations. The advances which had been won were whittled away because of the lack of responsible local leadership. Thus, the IWW held only a temporary lease on the discontent of unorganized workers.

3. COMMUNIST UNIONISM

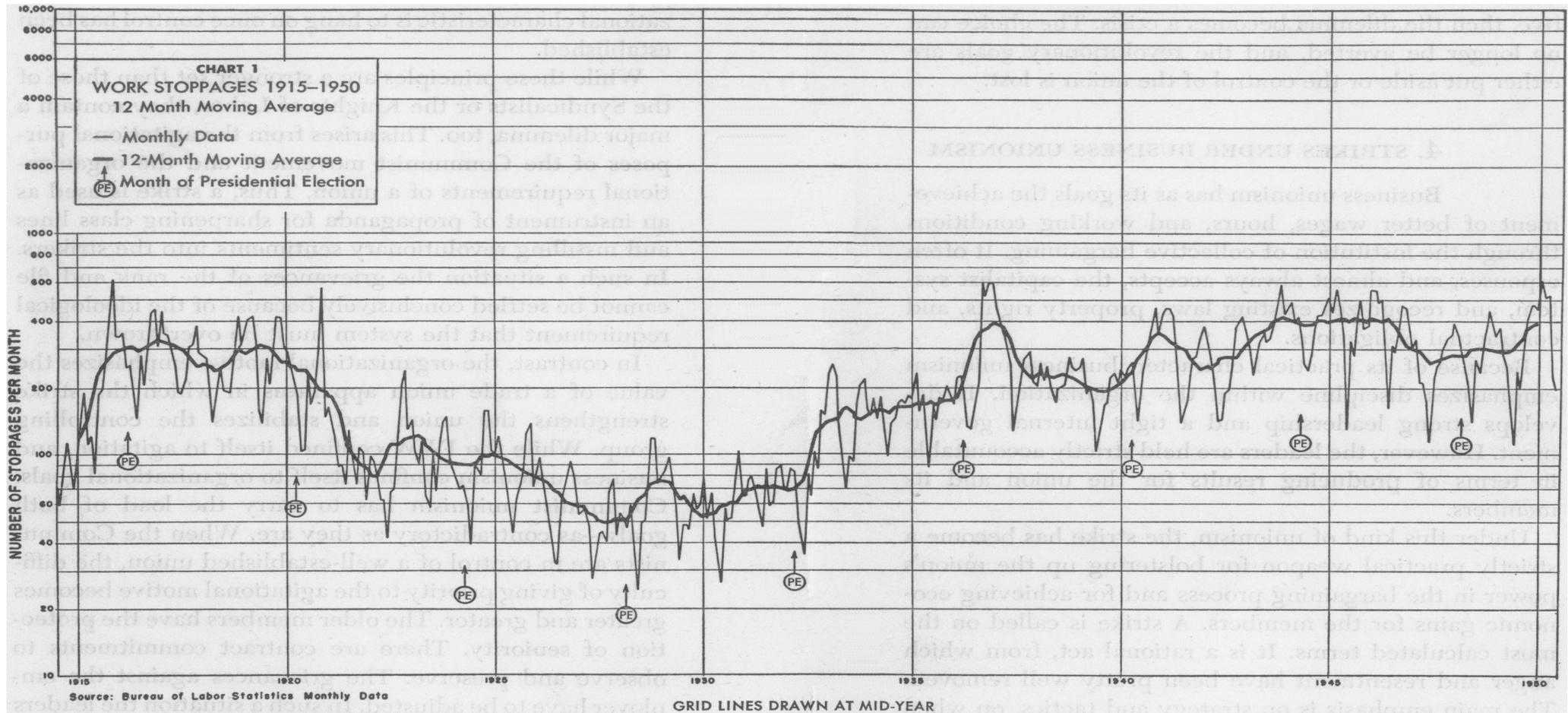
The Communists believe, just as the Syndicalists did, that unions are schools of socialism and that strikes are a means of preparing for the violent overthrow of capitalism. In addition, the Communists hold that economic and political activity are inseparably connected and that trade unions and the Communist Party should have the same objective. Thus, they favor tight union organization and hardly ever leave the workers to their own devices after winning a strike. In fact, their organi-

zational characteristic is to hang on once control has been established.

While these principles are a stronger set than those of the Syndicalists or the Knights of Labor, they contain a major dilemma, too. This arises from the agitational purposes of the Communist movement and the organizational requirements of a union. Thus, a strike is used as an instrument of propaganda for sharpening class lines and instilling revolutionary sentiments into the strikers. In such a situation the grievances of the rank and file cannot be settled conclusively because of the ideological requirement that the system must be overthrown.

In contrast, the organizational motive emphasizes the value of a trade union apparatus in which the strike strengthens the union and stabilizes the controlling group. While the IWW confined itself to agitation, and business unionism confines itself to organizational goals, Communist unionism has to carry the load of both goals—as contradictory as they are. When the Communists are in control of a well-established union, the difficulty of giving priority to the agitational motive becomes greater and greater. The older members have the protection of seniority. There are contract commitments to observe and preserve. The grievances against the employer have to be adjusted. In such a situation the leaders must behave like good business unionists.

But when the Party policies stress the agitational mo-



tive, then the dilemma becomes a crisis. The choice can no longer be averted, and the revolutionary goals are either put aside or the control of the union is lost.

4. STRIKES UNDER BUSINESS UNIONISM

Business unionism has as its goals the achievement of better wages, hours, and working conditions through the institution of collective bargaining. It often espouses, and almost always accepts, the capitalist system, and recognizes existing laws, property rights, and contractual obligations.

Because of its practical character, business unionism emphasizes discipline within the organization. It develops strong leadership and a tight internal government. However, the leaders are held strictly accountable in terms of producing results for the union and its members.

Under this kind of unionism, the strike has become a strictly practical weapon for bolstering up the union's power in the bargaining process and for achieving economic gains for the members. A strike is called on the most calculated terms. It is a rational act, from which anger and resentment have been pretty well removed. The main emphasis is on strategy and tactics, on when and how to use the strike effectively, how to conduct propaganda, handle public relations, deal with strike-breakers, and other such considerations.

The business union strike, in contrast to the syndicalist or communist action, is conducted so as to minimize unnecessary damage to the industry, inconvenience to the community, and loss of public opinion. Thus, milk is de-



livered to schools and hospitals even while a strike is in progress. One union at a toy company, during the course of a strike in April 1948, agreed to produce 100 sample toy locomotives which were needed for sales promotional purposes.

The most significant influence of business unionism has been to draw the revolutionary sting out of strikes. Strikes are made as quiet, dignified, and respectable as possible.

The strike is now conducted to achieve limited objectives instead of revolution and class conflict.

As a result, business union leaders can make peace as well as declare war, and the choice between agitational and organizational motives is avoided. The safety and health of the union are given top priority and long-run economic change is left to take care of itself.

Thus, fears that the trade union movement's present strength will be used for revolutionary purposes are essentially groundless. The most effective weapon of strong unions—the strike—is employed today primarily for practical goals. So long as union leaders continue to conform to business union ideas, and so long as these ideas reflect the aspirations of the union membership, the violent transformation of our economy by labor's strength is highly improbable.

IV. Strikes and Government Regulation

STRIKES WORRY THE GOVERNMENT. Through the years the problems raised by stoppages have caused action to be taken by states, the Congress, and the courts. Through these agencies, a body of laws and regulations has been built up about strikes that is complex and important. In this chapter, the discussion will be primarily directed at important federal legislation involving strikes.

There is a long history of laws relating to strikes which goes back through the development of the common law. However, in more recent years, the framework of common law has been superseded by a body of statutes and administrative rules. There are a large number of state laws that are relevant, too, but they cannot be handled within the scope of this pamphlet.

I. THE SHERMAN AND CLAYTON ACTS

In 1890, the Sherman Act was passed. While its original purpose was to curtail the power of trusts, some courts interpreted its provisions to include trade unions as well as other combinations. The Act was used as au-

thority for issuing injunctions—court orders to unions to refrain from striking.

The labor movement tried to have these interpretations of the Sherman Act changed by appropriate legislation. This apparently had been accomplished in the Clayton Act of 1914, which was presumed to take unions out from under the Sherman Act's jurisdiction. The Clayton Act's provisions were designed to limit and control the granting of temporary restraining orders by the federal courts, to clarify and improve court practice in issuing injunctions, to limit penalties imposed for contempt, and to provide the right of jury trial in cases of criminal contempt.

In actual practice, the hopes of the labor movement proved to be ill-founded. The courts continued to act in subsequent cases under the Clayton Act much as they had under the Sherman Act. Because of this continuing line of decisions adverse to labor's interests, trade unions resumed their pressure for legislative remedies. In 1932, they succeeded in obtaining a law which specifically outlined the conditions under which injunctions could be issued.

2. THE NORRIS-LA GUARDIA ACT

The purpose of the Norris-La Guardia Anti-injunction Act was to remedy those defects which, from labor's standpoint, had remained in the Clayton Act. Actually, its provisions went somewhat further in that it

wrote sections specifically into the law which (1) interpreted the term "labor dispute" more broadly, eliminating the distinction between direct and sympathetic strikes, (2) protected the rights of picketing and peaceable assembly, (3) controlled effectively the issuance of restraining orders and injunctions, (4) outlawed "yellow dog" contracts, and (5) made important changes in other legal procedures.

Thus, the long political and legislative campaign came to a temporary stopping place. The Norris-La Guardia Act was a labor victory against what might be termed arbitrary court action. After this achievement, the developments of the next decade were to shift to the administrative agencies of government. Along with the growing social and economic problems of the Great Depression and early New Deal era came a rash of new government agencies. Problems were so pressing and the power to act was so all-inclusive that a new quasi-legal authority developed. Appeal from decisions of these administrative tribunals was frequently difficult to obtain. When a court did accept a case for review, it only made sure that the law was correctly interpreted; the facts could not be re-evaluated. The growing power of administrative tribunals was particularly notable in the field of industrial relations. The labor boards, and the legislation creating them, are described below.

3. SECTION 7(a)

The National Industrial Recovery Act of 1933 provided in Section 7(a) that (1) employees shall have the right to organize and bargain collectively; (2) no employee shall be required to join a company union or refrain from joining a labor organization of his own choosing; (3) employers shall comply with maximum hours, minimum rates of pay, and other prescribed conditions of employment of the NRA codes.

The effect of these policies, and other factors, was to stimulate the rapid growth of trade unions. The inevitable result was a wave of strikes based on the employers' fear of, or hostility to, unions and the unions' immature, awkward, and impolitic use of their newly found power. These stoppages were of sufficient volume to threaten the NRA program and, consequently, several methods were established to interpret Section 7(a) in a manner that would alleviate the strike problem.

To meet this issue, the National Labor Board was created in August 1933. This board was tripartite with public, labor, and employer representation. Although it established important labor policy and settled several thousand disputes, including many organizational strikes, the board's inability to enforce its decisions led to its dissolution after less than a year of existence.

In the meantime, the Congress had authorized the

President to establish a substitute board, which was created in June 1934. This first National Labor Relations Board consisted of three impartial, full-time members. In addition, it had a salaried staff and field personnel in twenty-four district offices. It was given jurisdiction over labor disputes arising under Section 7(a). In the course of its activities, the board built up a comprehensive set of rules covering collective bargaining. The acceptance of these rules by labor and management had a substantial influence on holding down the number of disputes.

On the basis of this developing set of rules of conduct, the National Labor Relations Act (Wagner Act) was written and ultimately passed in 1935. The greatest stimulus to its passage was the Supreme Court's decision that the NIRA was unconstitutional, and the consequent void where Section 7(a) formerly applied.

4. THE WAGNER ACT

The NLRA, or Wagner Act, preserved within the framework of a specific labor statute those fundamental rights that were drafted into the NRA codes. It rephrased in stronger and more specific language the rights to organize, to bargain collectively, and to remain unhampered in fundamental trade union activity.

With regard to strikes, the preamble to the law stated that "the denial by employers of the right of employees to organize and the refusal by employers to accept the

procedure of collective bargaining led to strikes and other forms of industrial strife and unrest." Therefore, the detailed provisions relating to collective bargaining, recognition, and unfair labor practices were implicitly concerned with strike alleviation. By providing for elections to designate the bargaining agent, the NLRA significantly reduced the number of recognition and representation strikes.

However, Section 13 of the Act stated: "Nothing in this Act shall be construed so as to interfere with or impede or diminish in any way the right to strike." As a result, the board, a quasi-judicial body enforcing the rules established by law rather than a mediating agency, rarely acted directly on issues involving strike settlement.

5. WORLD WAR II STRIKE ADMINISTRATION

The pressures which stemmed from the increased economic tempo in 1940-41 began to be reflected in a higher number of strikes. Because stoppages in defense industries were of critical importance to the government program, the necessity of taking action was apparent. In March 1941, the National Defense Mediation Board was established with certain powers of investigation and mediation in dealing with defense industries. Its basic policy was to evaluate each case that came before it "on the merits." This board made some

headway in dealing with pattern-determining issues among defense industries. However, the resignation of the CIO members in November 1941, after a board decision against the United Mine Workers, marked the end of its existence.

After the United States entered World War II in December 1941, the President called an industry-labor conference which pledged a no-strike, no-lockout policy and agreed to the establishment of a new agency to handle industrial relations disputes. In January 1942, a tripartite National War Labor Board was created with power to settle any dispute that might arise. Policy continued to be determined on a case-by-case basis. In October 1942, the price control program called for a wage counterpart, and wage stabilizing functions were added to those already held by the board. On the basis of its newly granted authority, the board established several criteria for wage adjustment. It also refused to act on cases while a strike was in progress.

The importance of these policies in taking the heat out of industrial conflict cannot be overlooked. For several years the trend and impact of strikes, while in no way disappearing, stayed at a low level. However, the accumulation of grievances over the delay in handling cases, the unions' challenge of the cost-of-living measure, and the conflicting authority of the NWLB, the NLRB, and the Conciliation Service began to place strains on the whole apparatus. In 1944-45, the number of strikes in-

creased, although the impact in terms of duration was far below peacetime experience.

The return to the prewar situation was accomplished by successively relaxing controls until, by the end of 1946, all restrictions on wage adjustments were abandoned. It was during this transition period that strike levels reached very serious proportions. All measures of strike activity—number of stoppages, workers involved, and man-days idle—reached precedent-shattering peaks. Reconversion of industry and continued high production were threatened. Out of this situation came the stimulus for the Labor Management Relations Act of 1947 (LMRA), commonly known as the Taft-Hartley Act.

6. THE TAFT-HARTLEY ACT

The Labor Management Relations Act of 1947 amends and supersedes the Wagner Act of 1935. It has established important new rules for the regulation of strikes.

As mentioned above, the Wagner Act specifically provided that nothing in the Act could affect the right to strike. In contrast, the new law has created several deterrents to strikes in general and, in addition, has established a significant category of unlawful-purpose strikes. The impediments to strike action are: (1) a mandatory sixty-day period extending from the date notice is given of termination or modification of contract; (2) authoriza-

tion for the government to use the injunction for a period of up to eighty days in national emergency disputes; (3) prohibition of strikes to achieve several specified unlawful purposes.

The unlawful purposes defined by the LMRA are:

- 1) forcing an employer
 - a) to stop handling products of another producer (hot cargo),
 - b) to stop doing business with another person (boycott), or
 - c) to join a labor organization;
- 2) forcing another employer (not the employer of the strikers) to recognize an uncertified union (sympathetic or organizational strikes);
- 3) forcing an employer to bargain with one union when another union has been certified;
- 4) forcing an employer to transfer work from members of one union or craft to members of another union or craft (jurisdictional strikes); and
- 5) causing an employer to pay for services not performed (feather-bedding or make-work rules).

The Act also states that “nothing in this Act except as specifically provided for herein shall be construed to interfere with or impede or diminish in any way the right to strike or to affect the limitations or qualifications on that right.” Thus, strikes against unfair labor practices of employers and for economic benefits are unhampered after the “cooling off” period. In fact, the U. S. Supreme Court has recently ruled that state laws more restrictive of strikes than the LMRA are invalid.

V. Union and Employer Conduct

I. IT TAKES TWO TO MAKE A DISPUTE

IT IS IMPORTANT to place the strike in the general framework of industrial relations. There are many methods of bringing power to bear. A strike is only one kind of action that is caused by disagreements between labor and management. But a walkout is a serious matter involving the livelihoods of workers and employers and frequently affecting nonparticipants.

When a breakdown in collective bargaining occurs, there are two parties who share responsibility. Furthermore, there may be an important distinction between the party taking the first overt step and the party responsible for the whole disagreement.

For many years, stoppage statistics were segregated into strikes, presumably union-initiated, and lockouts, supposedly started by employers. The difficulty of naming the party who caused the shutdown was the reason for abandoning this finger-pointing method of classification in favor of the all-inclusive term "stoppage" which recognizes the implicit two-sidedness of strike causes.

2. THE STRIKE SEQUENCE

Each strike has special characteristics which make it different from all others. It may reflect the influence of aggressive union leadership. On the other hand, the union membership may have pushed the issue to a



breaking point. The employer may have been intransigent, or long-existing inequities may have stimulated strike action. At the same time, strikes have certain common elements once the break between employer and union has taken place.

a. *Preparation.* The first phase is the organization of both employees and employers for strike action. Union leaders marshal their members and attempt to enlist non-

union workers. Management mobilizes other employers and tries to thwart the workers' organization.

b. *The Walkout.* The beginning of concerted action constitutes the second phase. The workers walk out or refuse to report at the struck establishment, and the union organizes picket lines. The employer may move to obtain the legal, statutory, and enforcement sanctions that are available to him.

c. *Publicity.* The third phase is a period of publicity and propaganda. The union tries to maintain group morale by handing out leaflets to union members and by communicating the strike issues to the public through the radio, newspaper advertisements, and other media. Management coordinates sentiment against the strike by organizing employer publicity channels, and sometimes by forming public groups to protect the community's interests.

d. *Strategy.* Phase four involves the strategic and tactical application of such power as each side can muster. The employer may try to secure substitute workers or to continue operation with those employees who oppose the union policy. The union counters with picketing, marshaling of support from other unions, and efforts to prevent the operation of the plant. The focus of publicity may be shifted to highlight a weak spot that has developed in the opposition's strategy. Perhaps the employer succeeds in reopening the plant, thereby lowering the morale of the strikers. The union tries to strengthen the picket line and neutralize the employer's moves.

e. *Settlement.* In the background during the strike has been the interrupted bargaining. The final step in the strike sequence involves the resumption of bargaining, the reestablishment of peaceful relations, and the demobilization of forces by the union and employer. Sometimes the last phase involves the destruction of the opposition but this rarely occurs in the present state of labor-management relations.

3. TRADE UNION GOVERNMENT

There is a prevailing tendency toward centralization in trade union government. The central offices and, in some cases, area councils are gaining power and responsibility from the locals. In a strike situation, the control exerted by these higher echelons is an important element in the union's plans.

In many cases, the striking union has to secure approval from the area council of which it is a member. Without such sanction the coöperation of other local unions may not be obtained. Indeed, strikes may actually be unrecognized to the extent that members of other unions will cross the picket line.

Even more important is approval from the national office of the union. Many union constitutions now require such approval before strikes can start at the local level. In many cases, this requirement is also written into agreements with employers as an affirmation of responsibility and good faith by the national officers.

Control over a strike situation is reinforced by provisions for union discipline. Union constitutions and bargaining agreements frequently specify disciplinary action to be taken against members participating in unauthorized stoppages. The penalties may include expulsion from the union, discharge, and monetary fines.

National union leaders give two reasons to justify their control over local strike action. First, uniform union policy requires that some central evaluation of strike goals be made. Second, strike funds must be conserved for important conflicts and not frittered away on what may be minor issues. That is, responsible leaders do not wish to begin strikes they are reasonably certain to lose.

Control is also exerted over union members on strike, after approval has been given. Strike funds are an important means of encouraging active participation in picketing, mass meetings, and the like. Conversely, funds may be withheld if the union rules of strike conduct are violated. The general tendency of the national officials to be more responsible, more practical, and better trained in bargaining than local leaders, frequently contributes to local requests that the national officers take over in a strike situation.

The problems of organization, leadership, and centralized control in the strike situation have employer counterparts, too. Increasingly, employers conform to area-wide patterns, are members of employer associations or industry groups which establish and follow a common

policy, or are large multiplant companies. In all these cases, they face the problems of instituting and adhering to a uniform policy, maintaining discipline, and coordinating objectives.



4. COLLECTIVE BARGAINING PROVISIONS

Where the interpretation of the collective bargaining agreement is in question, strikes have been replaced almost completely by grievance machinery, no-strike and no-lockout pledges, and arbitration. Stoppages occur mostly over issues which arise at contract renewals, and it is in these negotiations that the strike threat is used most openly.

The agreement itself acts as a strong deterrent to stoppages. It defines the terms on which labor and management have agreed to forego conflict. In addition,

procedures are invariably set forth to forestall or postpone open warfare. Disputes can arise over the administration of an agreement, but they can also be resolved. Settlement of such disputes is frequently the most important activity which the union undertakes.

The machinery for settlement is the grievance procedure. This procedure is a peaceful alternative to strikes. It gives the employees a chance to express themselves. This results in improved morale and efficiency in the firm and strengthens the relations between labor and management.

The General Motors-UAW agreement provides an interesting example of the role which the bargaining agreement plays in preventing strikes. In this agreement, strikes or lockouts are outlawed for many issues. For instance, no stoppage is permitted over the pension plan or insurance program. Similarly, cases on which the Impartial Umpire has ruled cannot be the subject of a stoppage. On questions outside the Umpire's jurisdiction, negotiations must be carried on for five days, UAW authorization must be obtained, and written notice given to the Corporation five days before the strike is called. Thus, the agreement in effect defines illegal strikes and, by implication, gives a status of legality to all others.

Other frequently occurring contract provisions require a strike vote of the membership, advance notice to the employer, and international union approval. Such clauses have been given added significance through the opera-

tion of the Labor Management Relations Act. The Act provides that either party may sue the other for damages suffered by a strike or lockout in violation of the contract. The exact definition of the allowable strike circumstances therefore becomes imperative.

5. STRIKES AND THE UNION MEMBERSHIP

The union membership plays an active role in each strike situation. In most cases, the membership must originate, or at least validate, the action. This is usually in the form of a strike vote preceding the actual stoppage.

It is interesting to note that legislation has sometimes been drafted to compel the strike vote, presumably on the theory that union leaders call the men off the job without real support from the membership. The War Labor Disputes Act of 1943 had a provision requiring a secret ballot vote after a thirty-day "cooling off" period. From 1943 to 1945, in elections held under this law, strikes were voted in 1,850 out of 2,168 bargaining units, although after the votes were taken strikes were rarely called. The strike vote became a rallying force to solidify the union and increase its bargaining power.



Within the union, too, the strike vote serves much the same purpose. A strong affirmative vote is an expression of solidarity among the membership and also represents a vote of confidence in the union leaders. Unions generally have little difficulty in obtaining rank-and-file approval of strike action.

In the last analysis, union members place a great deal of dependence upon their officials. The rank and file look for leadership in a strike situation and usually stand solidly back of their officers once action is started.

6. THE COST OF STRIKES

That there are monetary gains and losses involved in strikes cannot be denied. During the bargaining process management considers whether it can *afford* to "take" a strike, and labor, whether a strike is *worth* "pulling." But these references to monetary values are estimates which are grossly inaccurate more often than not.

Actually, when work time is lost because of a strike, it does not follow that it is never made up. The workers may offset the lost time afterwards in overtime or may recoup financial losses through higher earnings. If the industry has large stocks on hand, the strike may represent no more than an involuntary shifting of layoffs or vacations.

In terms of the economy as a whole, a strike may trans-

fer the work to other employees in the same industry or in another industry. The gains there may offset or even outweigh the lost work of the striking group. In fact, national income may actually be increased if the plants or industries getting the work are more efficient.

Then, too, there are noneconomic values involved. Frequently, the psychological, political, and institutional factors in strikes are more important than purely monetary considerations. In many cases, unions or employers take a "calculated risk," in the expectation that in the long-run gains will at least balance and perhaps exceed losses.

A frequent type of cost estimate is, "Union members suffered a loss of earnings through the strike that cannot be made up in less than eight years of work at the wage increases they won." This statement overlooks some of the monetary offsets and ignores the noneconomic factors which may have been very important in the strike situation.

The evaluation of strike costs becomes virtually meaningless when we consider the lengths to which labor and management will go to safeguard noneconomic issues. Management places high value on "managerial prerogatives"; unions insist on "basic union conditions." The maintenance or achievement of these is beyond the realm of dollar and cents value.

There is another kind of cost estimate that can be validly made, however. Just as time lost due to strikes is

partially made up, so is time lost due to illness and accidents. It is by this type of comparison that the relative impact of strikes can be measured.

In 1948, the last year for which comparable data are available, there were 34,100,000 man-days idle due to strikes. In the same year, 41,000,000 man-days were lost directly due to disabling work accidents. The U. S. Bureau of Labor Statistics estimates that these injuries will ultimately be responsible for 219,000,000 man-days of economic loss. In a recent study made by a management representative, it was found that of the total labor force time in 1948, 3.96 percent was not worked because of vacations, bad weather, and personal affairs; 1.53 percent was not worked due to illness; and .19 of 1 percent was lost due to industrial disputes.

A portion of the cost of strikes is borne by the general public indirectly. Individual citizens are sometimes inconvenienced by strikes, and in a few cases, disruption of people's daily routine and patterns of living take place. Although the costs of such inconveniences are impossible to estimate, they should not be considered nonexistent.

7. STRIKES AND UNION POWER

How much have we to fear from the unions' power to strike? The prospect of important segments of our economy shutting down is indeed an alarming one. However, as has already been pointed out, big strikes

reflect a mutual inability to settle a disagreement by collective bargaining. Both sides share the responsibility for striking, although the shares are not necessarily equal.

In addition, the power which unions use in strikes is exerted only for the objectives of wages, hours, working conditions, and union security. That is, the strike is used by unions in a deliberate manner to achieve only the limited goals of business unionism. Unions have not used their strength to transform our economic system into another kind. It is only fair to recognize that there are other sources of power in our economy which exert comparable pressures.

Impediments to striking in the form of legal and bargained restraints provide a substantial cushion of protection for the public. Legal restrictions on national emergency strikes and provisions in collective agreements bulwark the public's line of defense. The grievance procedure guarantees against striking except over defined issues, and clauses encouraging control by national officers are contributions made by labor and management through collective bargaining.

Management, too, has organized to match potential power with potential resistance. Industry-wide and area-wide bargaining has been increasing to meet the spread of unionization. The influence of large multiplant companies negotiating nation-wide agreements pervades the whole area of industrial relations in the form of setting the pattern.

Moreover, we hardly know the power of unions except in periods of prosperity. When the economy readjusts downward, trade unions are thrown on the defensive. Even the slight downturn in 1949 gave rise to at least psychological shifts in the balance of power between



labor and management. Several analysts have concluded that, in 1949, labor had to accept private pension plans as an alternative to wage increases because they lacked the power to bargain higher rates.

In the final analysis, the strike represents a breakdown of collective bargaining. Thus, stoppages reflect intransigence on either or both sides of the bargaining table. Labor and management contribute to the events and decisions leading to a strike, both participate in the strike action, and ultimately both must negotiate the treaty of peace.

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