LABOR-MANAGEMENT RELATIONS
UNDER THE TAFT-HARTLEY ACT

THE Taft-Hartley Act became
dlaw over the President's veto
on June 23. Exactly what rights
it confers and what obligations it im-
poses upon managements, labor or-
ganizations, and individual workers,
however, will not be definitely known
for some years. Even more uncertain
is the effect which the law will have
upon labor-management relations.

An illustration of the present un-
certainty surrounding the new law is
afforded by the public statements which
the two members of Congress whose
names this measure bears made con-
cerning the agreement concluded re-
cently between John L. Lewis's United
Mine Workers and the bituminous
coal operators of the country. Congress-
man Hartley denounced this agreement
as "a clear violation of the labor law"
and warned the operators that they faced
criminal prosecution and heavy penal-
ties if they observed the provisions of
the agreement. Senator Taft thereafter
gave it as his view that the coal agree-
ment was not "in any way a violation of
the law"; and going beyond this, he
cited the agreement as illustrating that
under the new law "employers and em-
ployees should be able to make any con-
tract they want to."

Similarly, the summaries which have
been prepared in large numbers by
lawyers, industrial relations counsellors,
journalists, business and labor or-
ganizations, and still others have dif-
fered immensely in their interpretation
of the act. So has the advice which has
been given labor and management as
to what they should do in relation to
the new legislation.

This uncertainty about the act does
not lessen the necessity of trying to un-
derstand it. Obviously, management,
labor, and the public all have a stake in
the matter, and enlightened action
cannot be postponed while events are
allowed to work themselves out. It is
therefore the purpose of this article to
contribute to an understanding of the
act by as clear and fair an analysis of
the facts as possible. To this end (1) a
survey will first be made of the factors
creating uncertainty; (2) this will be
followed by an examination of the pro-
visions of the act, particularly as they
reflect changes from the previous labor
law; and (3) finally, the author will at-
tempt, on the basis of his study of labor
problems and his experience as Pub-
lic Member of the National War Labor
Board, to assess the act's effect on labor-
management relations.

Factors Creating Uncertainty

Certainly much that has been said
and written about the Taft-Hartley Act
since its enactment has been colored by
what the clientele to whom it was ad-
dressed wanted to be told. Still more
it reflects the bias of the person making
the interpretation or giving the ad-
vice. Yet the truth is that at least on
many details no one can be certain what
the new law means until its provisions
have been interpreted by the adminis-
trators and reviewed by the courts.

How long a process this is likely to
be is suggested by the experience with
the National Labor Relations Act (often
called the Wagner Act). The National
Labor Relations Act became law in
July 1935 and took effect on passage.
The National Labor Relations Board was appointed very promptly and began functioning at once. Numerous orders were issued by it directing employers to correct unfair labor practices. But it was not until April 1937 that the constitutionality and general application of the act were determined.

Until these questions were settled by the Supreme Court, practically all the orders of the National Labor Relations Board had been disregarded and contested by the employers against whom they were directed. With but few exceptions the lawyers who expressed opinions about the act had pronounced it unconstitutional, including all the 66 eminent lawyers of the widely publicized committee appointed by the Liberty League to report on the constitutionality of the law. Nearly all the United States district courts and circuit courts of appeal which passed on the question had reached a similar conclusion. Then the United States Supreme Court, on which there was not yet even one appointee of President Roosevelt, found the act to be constitutional and gave it the widest possible application.

Even so, the Court’s decisions on this basic question still left unsettled many questions about the meaning of particular provisions of the National Labor Relations Act. Interpretations of the law by the Board in the early years were upset in later decisions of the Supreme Court. It is only recently that the meaning of the National Labor Relations Act on many disputed issues has become reasonably clear. Board policies and practices have undergone frequent changes, even down to the last year.

As a matter of fact, the period of uncertainty over the Taft-Hartley Act may well last longer than that over the National Labor Relations Act. It is true that, unlike the National Labor Relations Act, there would appear to be no real doubt about the constitutionality of the Taft-Hartley Act in its entirety. Specific provisions, however, are bound to be attacked as unconstitutional; and until the Supreme Court rules on these contentions, considerable doubt will exist as to their validity. The situation is further complicated by the varying effective dates of the act, the uncertainty as to meaning, the possibility of early changes in the act, and the differing attitudes toward it.

Varying Effective Dates. In contrast to the National Labor Relations Act, the Taft-Hartley Act was not written to take effect at once or all at one time. Although a large part of the new act was made effective immediately, many of the major provisions were not to become effective until 60 days after enactment, namely, August 22, 1947. Particularly complicated is the timetable relating to three types of provisions in existing agreements:

(1) The act provides that from date of enactment employers, unless acting pursuant to an existing contract, may not check off union dues, initiation fees, and assessments unless so authorized individually by their employees — yet compulsory check-off provisions in existing agreements remain in effect until the expiration of these contracts or July 1, 1948, whichever is earlier.

(2) With regard to employer contributions to union welfare and pension funds, three differing rules are applicable. The provisions of the Taft-Hartley Act do not apply at all to funds established under collective agreements before January 1, 1946 (except where the union fund provides for pooled vacation benefits, in which case the
complete exemption applies where the fund was established prior to January 1, 1947). They do not apply to plans established under union agreements between January 1, 1946, and June 23, 1947, until expiration of the existing agreements, but not later than July 1, 1948. They do apply to all new contracts entered into subsequent to June 23, 1947.

(3) With regard to union security provisions there also are three differing effective dates. The restrictions of the act do not apply to contracts in effect on June 23 until their expiration, whenever that may be. They also do not apply to contracts concluded between June 23 and August 22, 1947, until their expiration, but such contracts may not run for more than one year. Where no union security provisions were in effect on August 22, 1947, all restrictions of the act are fully applicable after that date.

These rather complicated provisions pertaining to the time when different sections come into operation lend some support to the charge that the law is discriminatory, and they will doubtless be cited in attacks upon the constitutionality of these parts of the act. Their most important consequence, however, is that they postpone for varying periods the time when the large number of employers who have operated their plants under union security agreements will be confronted with the necessity of readjusting their relations with their unions to conform to the new governmental requirements. In a majority of all plants operated under union agreements, this is likely to have the effect of postponing until 1948 a crisis in labor-management relations. In any event, the new act will affect employers differently during the first year (and in some cases for a longer period), depending upon their labor contract situation.

Uncertainty as to Meaning. More important as a factor producing uncertainty than the varying effective dates are the act's broad scope and great complexity, plus at least some ambiguity.

The veteran labor reporter of the New York Times, Louis Stark, in an article on "The Labor Act" in the Survey Graphic for July, calls attention to the very extensive changes made in this measure in joint conference. Of 40 main provisions in the Senate bill, no less than 25 were materially changed in conference. The public is under the impression that the bill agreed upon in conference (which was the measure passed over the President's veto) followed the milder Senate bill rather than the more drastic House version. With the exception of the restrictions in the House bill on industry-wide and associational bargaining and a few other major provisions, however, the final act more closely resembles the House than the Senate version. As Representative Hartley put it, in presenting the conference report to the House, "there is more in this bill than may meet the eye."

The Taft-Hartley Act is a much longer measure than was the National Labor Relations Act. Although it retains many of the provisions of the old law, there are few sections in which the language has not been changed. Doubtless the enlarged National Labor Relations Board and the courts will follow interpretations under the old law when they can properly do so, but they necessarily must make modifications to carry out what appears to be the intent of the changes.

Much of the new law, moreover, is not simply in the nature of an amend-
ment of the old National Labor Relations Act. Many of its provisions are brand new and not a few of them represent radical departures from prior law. In the atmosphere of bitter controversy which surrounds this act, most of the important rulings of the Board and of the inferior federal courts in the early years of the law are likely to be carried clear up to the Supreme Court before they are accepted. So it is probable that it will be a long time before the scope and effect of the controversial provisions are definitely known. The diverse constructions given many of these provisions in discussions of the act by "experts" abundantly illustrate how undetermined is the meaning of the new law at the present writing.

Possible Changes. In addition there is the possibility that the new law may be changed even before all its provisions become fully effective. The final "title" of the Taft-Hartley Act provides for a Joint Congressional Committee on Labor-Management Relations. This committee has already been appointed, with Senator Ball as its Chairman and an initial appropriation of $150,000. It is to "conduct a thorough study and investigation of the entire field of labor-management relations" and is to make its first report not later than March 15, 1948, and its final report by January 2, 1949. Among the specific aspects of labor-management relations which it is charged with investigating are "the administration and operation of the existing federal laws relating to labor relations," and it is directed to include in its reports to Congress "such recommendations as to necessary legislation . . . as it may deem advisable."

What can be expected? Senator Ives, who as a member of the Committee on Education and Labor and a member of the conference committee had a good deal to do with the formulation of the Taft-Hartley Act and who is also a member of the new joint study committee, in defending the bill in the Senate placed great stress upon the creation of this committee. He said of the act after its passage that it "is not an end product" and that the joint study committee can be relied upon to make recommendations to Congress in its next session "when flaws show up, as inevitably they will."

Senators Aiken and Hatch, two other senators who voted to override the President's veto, within a few days thereafter introduced a bill to repeal the prohibition of political expenditures by labor unions. Senator Taft, when asked about this bill, is reported in the press to have said that this provision of the Taft-Hartley Act did, perhaps, go too far. In contrast, House members of the joint study committee have made statements which suggest that what they have in mind are further restrictions upon labor unions.

Although the question of what amendments, if any, Congress will adopt is thus very problematical, in view of the organization of the study committee and the expressed attitude of some of the supporters of the Taft-Hartley Act the possibility of major changes as early as the next session cannot be ruled out.

Differing Attitudes toward Law. The final, but not the least important, element of uncertainty arises from the different attitudes that may be adopted toward the new law, both on the part of individual unions and on the part of individual managements.

From the Congressional reports and debates it would appear that nearly
everyone assumed that passage of a law was all that was required to put an end to those practices of unions upon which Congress frowns. The thought seemed to be that while unions might complain bitterly, they would have no alternative but to comply with the law. The possibility seems not to have been contemplated that unions might prefer to forego the advantages they derive from the services of the National Labor Relations Board rather than to subject themselves to the regulations imposed by the new law. Nor was any thought given to the possibility that unions and employers might “contract out” of the law or any part thereof.

In the bituminous coal agreement, however, John L. Lewis seems to have found a way of nullifying the provisions of the Taft-Hartley Act pertaining to suits against unions for violations of contracts, by making agreements applicable only when workers are “willing and able” to work. The recommendation made by the American Federation of Labor to its affiliates that they enter into no more contracts which include “no-strike” clauses would seem to accomplish the same purpose. Even more ominous are reports that some unions intend to enter into no more contracts with employers. The International Typographical Union for some time has pursued the policy of unilaterally adopting rules governing working conditions, which employers must observe if they want union printers to work for them. Other unions are reported to be considering adoption of the same policy.

A considerable number of unions have announced that hereafter they will not go to the National Labor Relations Board for anything but will rely upon economic strength to maintain their position. Among these are the three largest unions in the CIO — the Automobile Workers, the Steel Workers, and the Electrical, Radio, and Machine Workers. The same position is being taken by the AFL building trades unions. Whether this sort of an attitude on the part of labor unions will continue remains to be seen. It is not unlikely that different unions will pursue varying policies in this respect. Some will try to comply with the law while others will look for devices to get away from the restrictions imposed upon them by the law.

Differing possibilities are open also to managements. Some managements look upon the law as affording them a better opportunity for victory in fights with unions. Others are mainly concerned with how they can preserve the satisfactory relations they have developed with their unions. Between these extremes lie a large number of variations in policy which managements may pursue.

The advice to be given individual employers or unions with regard to the Taft-Hartley Act clearly should take into account the position of the “other fellow” and what he is doing. If, for instance, an employer is confronted with a union which is “boycotting” the law, different advice is called for from that given when the union has met all requirements. Similarly, the attitude the union should adopt will vary depending upon whether management works with the union or seeks to destroy it. Very certainly, also, the actual effects of the new legislation will vary with the attitudes of the unions and managements.

Provisions of the Law

Many lengthy analyses of the Taft-Hartley Act have been published since its enactment. Because these are read-
ily available and also because many of
the provisions of the new act require
construction by the National Labor Re-
lations Board and the courts before
anyone can be certain of their full scope
and effect, only the major changes from
the prior law will be presented here.

The Taft-Hartley Act consists of five
“titles,” preceded by a “Declaration
of Policy.” The “Declaration of Pol-
icy” is noteworthy only in that it is one
of two such statements in the new law,
the other occurring in the immediately
following Section 1 of the “Amendment
of the National Labor Relations Act”
(Title I). The policy declaration in
the preamble was the House version,
while the following statement of policy
was taken from the Senate bill. The
two statements differ considerably, the
first emphasizing the need for prescrib-
ing “fair and equitable rules of con-
duct to be observed by labor and man-
agement,” and the second stressing the
desirability of collective bargaining.
But both speak of “the paramount pub-
lic interest.” Neither of them adds
anything directly to the law, and it is
doubtful whether they will figure to
any extent in the construction given
the substantive provisions of the act.

“Amendment of National Labor Re-
lations Act.” Despite use of the mild
word “Amendment” in its heading,
Title I of the Taft-Hartley Act is really
a comprehensive revision of the Na-
tional Labor Relations Act. Although
the general framework remains the
same, important changes are made not
only in details but in fundamentals.

Central in the new law, as in the old,
is Section 7 of Title I which sets forth
the right of employees to form labor
unions and to bargain collectively with
employers “through representatives of
their own choosing.” Added to the
old statement of the rights of employees
is “the right to refrain from any and
all such activities.” The two methods
of protecting and implementing these
rights set forth in the original act re-
main basically unaltered: (1) Interfer-
ence with the rights accorded employees
is declared to be an unfair labor prac-
tice, and a special procedure is pro-
vided for the correction of such prac-
tices; (2) a procedure is established
under which authoritative determina-
tions are made of the right of unions
to act as collective bargaining repre-
sentatives of employees in defined bar-
gaining units.

Both these procedures will continue
to be administered by the National La-
bor Relations Board, which, as hereto-
fore, must continue to look to the
courts for enforcement of its orders.
Commission of an unfair labor practice
is not a criminal offense, and neither is
the failure to observe an order of the
National Labor Relations Board. It is
only after the NLRB has gone to a
Circuit Court of Appeals for enforce-
ment of one of its orders and the court
has issued an injunction directing com-
pliance therewith that any penalties are
enforceable. These are the penalties
for contempt of court which may be
imposed for violation of any injunction
issued by a federal court and not penal-
ties for the commission of an unfair
labor practice.

The changes made, which have been
stressed in discussions of the new law,
are the inclusion of a list of unfair
labor practices of unions, in general
paralleling the list of unfair labor prac-
tices of employers, the restriction of
union security provisions in union
agreements, the requirement of union
registration and annual financial re-
ports, the denial of collective bargain-
ing rights to unions with Communist
of the act of foremen and other supervisory employees, and the reorganization of the National Labor Relations Board.

These are important new provisions, but it is possible that the most significant of all changes made in the "Amendment of National Labor Relations Act" is the little-noticed omission of the three words "shall be exclusive" from the section relating to the powers of the NLRB in the prevention of unfair labor practices. The effect of these three words in the old law was to make it impossible for persons injured by unfair labor practices to get injunctive orders or collect damages through the courts without utilizing the procedure for correction of these practices provided in the act. The effect of their omission in the new law may well be to afford all persons injured through unfair labor practices the alternative of proceeding for redress before the National Labor Relations Board or seeking an injunction or damages in the courts.

Why the omission of the three words "shall be exclusive"? The explanation may lie in the following facts: Later provisions of the new law spell out that employers may sue unions in the courts for certain types of unfair labor practices without resort to the Board. But what is sauce for the goose will generally be held to be sauce also for the gander. To afford employers such a right to by-pass the Board while denying a similar right to unions and their members would seem to be discriminatory. As no such discriminatory intent is set forth in the law, the interpretation that all persons injured by unfair labor practices can now resort to the courts, instead of filing charges with the National Labor Relations Board, seems fairly likely to be adopted.

In this situation may lie part of the explanation why the unions are being advised by their lawyers to "boycott" the Board and why employers may thus find that they are now in a worse position with respect to unfair labor practices than they were before the passage of the new act.

Exclusion of Foremen. Of the more obvious major changes made in the amendment, the first occurs within the "Definitions" section. It is through an addition to the definition of the term "employee" that foremen and other types of "supervisor" are denied the protection of the act. Hereafter a union cannot be designated as the collective bargaining representative for any supervisors, and it is made an unfair labor practice for a union to force an employer to recognize or bargain with it for any employees for whom it is not the certified bargaining representative. Later in the act, however, it is provided that "nothing herein shall prohibit any individual employed as a supervisor from becoming or remaining a member of a labor organization." The net effect is this: Management may discriminate against foremen belonging to labor organizations and refuse to bargain collectively about the conditions of their employment; but foremen's unions are not outlawed, and employers may, if they want to, still bargain collectively over the conditions of employment of foremen.

What will be the actual effect on foremen's unions? The effectiveness of the procedures available under the act as a protection against strikes which constitute unfair labor practices is most doubtful. It is my guess (and in discussing the probable effects of the new
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Law, nothing more than guesses are possible at this time) that the provisions of the act relating to foremen will not alter the prevailing situation in industries in which foremen have long belonged to unions. The act’s provisions will increase the difficulties of independent foremen’s unions, however, and lead them to seek affiliations with strong unions of production workers. Many of these unions have not admitted foremen in the past, and little advantage will accrue to them by changing their policy. On the other hand, if the production workers’ unions have decided to “boycott” the new law anyway and particularly if they become involved in all-out fights with management, they may now want to take in the foremen.

In any event, employers are well advised to treat the foreman in all respects as a part of management. Unless employers are alert to prevent legitimate grievances of foremen from arising and unless they develop a sound procedure for redressing such grievances, they may have further and possibly even increased trouble with foremen’s joining unions.

Changes in the National Labor Relations Board. The next widely noticed major change relates to the organization and functioning of the National Labor Relations Board. That the Board is increased from three to five Members is not the major change. The greatest significance lies in the provisions relating to the office of General Counsel of the Board and a radical modification in the duties of the Board Members.

The General Counsel is an appointee of the President, subject to confirmation by the Senate. He is given direction of all attorneys (other than trial examiners and the personal legal assistants of the Members) and of all employees in the regional offices, who will continue to be appointed by the Board but will not be under the Board’s control. In him is vested final authority to determine whether complaints shall be issued when unfair labor practices are brought to the attention of the Board. When complaints are issued, he has complete direction of the presentation of the prosecution’s case to the Board and its trial examiners.

The powers of the General Counsel have been described as those of a “labor czar.” But the General Counsel cannot initiate proceedings and has no greater authority to issue complaints than was heretofore vested in the Board Members and by them largely delegated to the regional directors. Something of the real situation which may develop is suggested by the fact that Senator Ball, Chairman of the new Joint Committee on Labor-Management Relations, in his questioning of Mr. Denham in the confirmation hearing, made it very clear that he expects the General Counsel to consult the committee on matters of policy involving the intent of Congress. This suggests that if in fact there is a “labor czar,” the term

1 Before the adjournment of Congress, the President appointed as the new members: ex-Senator Abe Murdock of Utah and J. Copeland Gray of New York, a former industry member of the New York Regional War Labor Board and later of the National Wage Stabilization Board. At the same time he named Robert N. Denham, heretofore a trial examiner of the National Labor Relations Board, as the General Counsel of the Board. These appointments were recommended for confirmation, after hearings, by the Senate Committee on Education and Labor, but they were not acted upon before adjournment. Although all appointees are now functioning, the Senate must confirm them if they are to continue in office.
might be more appropriately applied to Senator Ball and his committee than to Mr. Denham—although the powers vested in the Joint Committee also are not unusual.

It is specifically provided in the new law that the Board shall not have any employees who review the testimony taken before trial examiners or their recommendations and the objections thereto, or who prepare drafts of Board opinions, save that each Member may have one legal assistant to help him with his work. The Board also is prohibited from having any employees who make an "economic analysis" of any problem with which it is faced.

The intent of these provisions is clearly to make a separation between the enforcement and judicial functions of the Board. This is designed to overcome oft-repeated objections to the Board based upon the procedures followed prior to the Taft-Hartley Act. These were copied from the procedures of the Federal Trade Commission and have been followed fairly generally in the performance of quasi-judicial functions by administrative agencies. Abuses in these procedures, supposedly, were corrected in the Administrative Procedures Act of the last Congress. The Taft-Hartley Act, however, introduces the unorthodox device of separating the control over the prosecuting function from that over the judicial function while keeping both within the same department.

The President's appointment of a General Counsel from the staff of the Board would seem to afford the best chance that this untried method can be made to operate satisfactorily. Whether the Board can function without a review division or any economic analyses would seem to depend upon how many cases the Board will have to decide.

Restrictions upon the Closed Shop and Other Forms of Union Security.

Next, in the order in which they appear in the act (still part of Title I, amending the National Labor Relations Act) are Section 7, setting forth the basic rights of employees, and Section 8, enumerating unfair labor practices of employers and unions. The list of unfair labor practices of employers is the same as in the old law. The one change is that the closed-shop proviso in Section 8 (3) has been very greatly narrowed. With related provisions, this represents the most far-reaching change made by the entire Taft-Hartley Act.

Contrary to a widely held view, the National Labor Relations Act did not legalize the closed shop and related forms of union security. Before that act was passed in 1935, court decisions generally had held closed-shop agreements to be valid, without reference to whether they were desired by a majority of the employees affected or not and without reference to whether they were entered into with a majority or a minority union. Indeed, the National Labor Relations Act did not directly deal with the closed shop at all. The only reference to the closed shop was in Section 8 (3), declaring it to be an unfair labor practice for an employer to discriminate against workers for union activities or union membership unless such discrimination occurred pursuant to the provisions of a closed-shop agreement with a union representing a majority of the employees in the bargaining unit. The closed shop of course implies a certain amount of discrimination against workers because the management undertakes to employ no workers who are not members in good standing of the single union with whom the agreement is made.

This proviso of the original National
Labor Relations Act not only did not legalize the closed shop but can be said to have restricted its legality. For it sanctioned discrimination only when the agreement was made with a union which was the collective bargaining representative of the employees, while at common law such an agreement could legally be entered into even though the union did not represent a majority of the employees.

In the Taft-Hartley Act this proviso is further restricted. Discrimination against workers to encourage or discourage membership in a labor organization is an unfair labor practice for an employer except when it occurs under an agreement which requires employees to join the certified union on or after the thirtieth day following their employment — the so-called union shop, as distinguished from the more extreme closed shop, which prevents workers from being hired unless they are already members of the union.

Even such a union-shop agreement does not excuse discrimination unless a majority of all employees in the bargaining unit (not merely a majority of those voting) voted for such a provision in an election conducted by the National Labor Relations Board. Further, employers may discharge workers under such an agreement when they cease to be union members only if their loss of union membership was due to nonpayment of union dues or initiation fees. Finally, a union-shop agreement does not excuse discrimination if the employer “has reasonable ground for believing” that union membership was not available to the worker involved “on the same terms and conditions generally applicable to other members.”

Paralleling these restrictions upon employers, it is declared an unfair labor practice for unions to induce an employer to discriminate against any worker to encourage or discourage union membership save under the conditions which have been set forth. It is also an unfair labor practice for a union which has a union-shop agreement to charge membership fees “in an amount which the Board finds excessive or discriminatory under all the circumstances.” Elections among employees to determine whether they wish a union-shop agreement are to be conducted only on petition of at least 30% of the employees and only if the union in question has complied with the requirements of the act relating to union registrations and reports. Finally, there is included in the act a provision which, in effect, says that where states have passed laws more drastically restricting union security, these state laws shall apply not only to local industries but to those engaged in interstate commerce as well. By latest count, there are no less than 20 states with such laws.

These provisions taken together drastically limit the effectiveness of union-security provisions in labor-management agreements. Closed-shop contracts are not directly prohibited, but such agreements cannot be pleaded as a justification for discrimination; neither can union-shop contracts, except under the conditions which have been set forth. These make it possible for unions, at the most, to get “dues maintenance” rather than the closed shop or union shop as previously. Other forms of union-security contracts — union maintenance of membership and the preferential shop — are not mentioned in the act and were little discussed in the Congressional consideration of the measure. Such contracts probably justify discrimination by employers under the same conditions as union-shop agreements, but it is also
arguable that they have no standing whatsoever.

How far-reaching these restrictions are upon union security is indicated by the fact that in 1946, out of a total of 14,800,000 workers reported by the United States Bureau of Labor Statistics to be employed under conditions determined by written collective bargaining agreements, 10,000,000 worked under contracts providing some form of union security — 4,800,000 of them under closed-shop contracts. As has been noted, the restrictions upon union-security provisions take effect at varying dates depending upon contract expirations. Within a year, however, they will be fully effective in most cases and would seem to require, by that time, radical changes in labor-management relations in very many plants.

It is to be noted, on the other hand, that no form of union security is specifically outlawed. On this basis it may not be unlawful to enter into even a closed-shop contract so long as no one is discharged or otherwise discriminated against under its provisions. In any event, further discrimination is only an unfair labor practice for unions to "restrain or coerce" employees in the exercise of their basic right of self-determination with respect to union organization and collective bargaining. The corresponding unfair labor practice of employers also includes: "to interfere" with employees in the exercise of their right of self-organization. Omission of "to interfere" in the case of unions appears to have been designed to enable unions actively to seek to increase their memberships.

It is also an unfair labor practice for a union which is the bargaining representative of the employees in a given unit to refuse to bargain with the employer, just as it is for the employer to refuse to bargain with the union. The meaning of these requirements for collective bargaining is set forth in some detail. For instance, conferences must be conducted in good faith with the purpose of arriving at a written agreement covering terms and conditions of employment, but it is specifically spelled out that there is no compulsion on either side actually to agree to the proposals of the other or to make any concessions. Where an agreement has been in effect, it may be modified or terminated only on 60 days' written notice. If thereafter no agreement is promptly arrived at, it is the duty of both parties to notify the Federal Mediation and Conciliation Service and the appropriate state mediation agency of the existence of the dispute. Pending negotiations, the contract remains in effect for 60 days after notice of a desire
for change has been given. Workers striking during this period lose their status as employees but regain it when rehired.

There are also a considerable number of unfair labor practices of unions for which there is no parallel in unfair labor practices of employers. These are mainly lines of conduct which are prohibited in later sections of the act by criminal penalties or which afford employers the right to sue unions for damages. Of these the most important are strikes and boycotts to compel an employer to cease using, selling, or transporting "unfair" products or to cease doing business with any other person; strikes to compel an employer other than the one by whom the strikers were employed to recognize a union when another union is the certified bargaining agent; strikes in jurisdictional disputes; and efforts to compel employers to make payments, "in the nature of an exaction, for services which are not performed or to be performed." Actionable only as unfair labor practices (that is, carrying no criminal penalties or rights to sue for damages) are strikes to force an employer to recognize a union which has not been certified as the collective bargaining representative of the employees.

How effective the procedures for dealing with unfair labor practices will prove as restraints upon the proscribed conduct of unions is debatable. Although unfair labor practices of unions are something new in federal law, they do have a precedent in the laws of six states—in four of them since 1939—and the state experience may afford some clue to what can be expected. In none of these six states except Wisconsin, at least up to the summer of 1946, had there been even one proceeding against a labor union for unfair labor practices. In Wisconsin, moreover, although there have been quite a few such proceedings, the number against unions has been far less than the number against employers—and that under a law passed with the specific purpose of curbing union abuses.

That the framers of the Taft-Hartley Act themselves may have entertained doubts about the effectiveness of unfair labor practices proceedings against unions is suggested, not only by the fact that later in the act many of the proscribed practices are made subject to damage suits by private parties, but also by a change made in the section of the original National Labor Relations Act relating to the prevention of unfair labor practices. The new provision allows regional attorneys, upon being satisfied after a preliminary investigation that unions have committed an unfair labor practice through a forbidden strike (other than a jurisdictional strike), to get a temporary restraining order against such a strike, pending proceedings on the unfair labor practices charge before the Board.

Further Restrictions upon Unions. By no means are all the restrictions upon unions in the Taft-Hartley Act to be found in the list of unfair labor practices. Many occur in later titles of the act, and several of the most important are in Section 9 of the "Amendment of National Labor Relations Act" relating to "Representatives and Elections." The latter provisions bar from right of

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The statements made regarding state labor relations acts are based upon an exhaustive study made by Charles J. Killingsworth, now of Michigan State College, under the author's supervision, which will soon be published by the University of Chicago Press.
certification as bargaining representatives or from a place on the ballot in any election conducted by the Board, and also from the privilege of securing investigation of any complaints which they may make about unfair labor practices of employers, the unions which have not filed with the Secretary of Labor their constitution and by-laws, as well as required reports. (This also applies when the international unions with which the locals in question are affiliated have failed to file reports.)

The first of the required reports is a disclosure of all financial transactions, assets, and liabilities of the union, the compensation paid to each principal officer and also to all other officers and employees who received more than $5,000 in the preceding year, and complete information about the union's relations with its members, the election of officers and stewards, the procedure for authorizing bargaining demands and strikes, and many other matters. The second requirement is that unions must file annually an affidavit from each officer that he is not a Communist. A further requirement in Section 9 is that the union must furnish to all its members a copy of its annual financial report to the Secretary of Labor. There are no criminal penalties, however, for the unions which do not observe these requirements, although they are denied all rights before the National Labor Relations Board. This applies also to their members.

Far less important are the “Restrictions on Payments to Employee Representatives,” which occur in Title III. In some analyses of the new law, these provisions are described as putting an end to feather bedding and being likely to check seriously the further growth of union health and welfare funds. Such a result seems to me improbable. This section, indeed, is one of the few in the entire act which imposes criminal penalties for violations. But it is only payments for services that are not performed which are prohibited, and these constitute only a small part of the problem of feather bedding—which, to say the least, is very difficult to deal with by law.

With regard to employer contributions to union health and welfare funds, the only requirement necessitating substantial material changes is that employers must have equal representation on the governing boards of the funds and that there must be provision for decision by some neutral person in the event of a deadlock. As previously noted, funds in existence prior to January 1, 1946, do not have to meet this requirement, and other existing funds do not have to do so until July 1, 1948. That there is likely to be little difficulty in complying with this requirement has been indicated by the new coal agreement, which puts an employer on the governing board of the health and welfare fund but makes John L. Lewis its chairman.

A final restriction, widely discussed and already defied by unions, is the prohibition against either contributions or expenditures by unions for political purposes in connection with Congressional and Presidential elections and primaries. The same prohibition applies to corporations but not to unincorporated businesses and employer organizations. Under the Hatch Act, political contributions by unions have been unlawful, but not direct expenditures. As interpreted by Senator Taft during the debate in the Senate, the new law goes so far as to prohibit union journals supported by the dues of members from publishing the roll-call voting records of Congressmen or
endorsing candidates. Naturally the unions have raised the cry that this is discriminatory and unconstitutional and have received a good deal of public support for this position.

Procedural and Other Changes. Many other changes occur in Title I, of which only a few can be noted. In Section 9 it is provided that proceedings for elections to determine bargaining representatives may be initiated, as heretofore, by unions, individual workers, or employers, but the right of employers to petition for elections is considerably broadened. Where previously the employer could petition for an election only when he was confronted with demands for bargaining rights by two competing unions, he now has a right to seek an election among his employees whenever a union makes a demand upon him for recognition. New elections apparently can be requested every year. Because the Board is also charged with the duty of conducting elections to determine whether employees desire a union shop, and new elections on this issue also may be asked for annually, the number of elections which the Board may have to conduct is potentially very great. But if unions generally adopt the attitude of "boycotting" the Board — which means that they do not intend to comply with the reporting and related requirements — the Board hereafter actually may have but few representation cases.

Other important changes in this section pertain to the bargaining units which the Board may establish. Heretofore, the Board had practically unlimited authority to define bargaining units as it deemed appropriate. Under the new law, any group of craftsmen desiring separate representation must be accorded such separate representation unless the members vote differently in an election confined to that unit. This craft-union provision conceivably may prove very troublesome to employers who have dealt with industrial unions for all of their employees. A similar provision in the New York Labor Relations Act, however, has resulted in but few crafts' being set off as separate bargaining units.

Another provision is that plant guards may not under any circumstances be included in the same unit with the production workers and, if organized separately, may not have affiliations with any international union of which the production workers are members. Since most unions now have plant guards in their membership, it will become necessary for them to give up these members if they wish to claim any rights for themselves or their members under the amended National Labor Relations Act.

Many changes also are made in Section 10, dealing with the "Prevention of Unfair Labor Practices." While none of these merit being termed major changes, collectively they may have considerable importance. Charges of unfair labor practices may be taken up by the Board only if filed within six months, and a copy must be served upon the person against whom the charges are made. Hearings before examiners must be conducted "so far as practicable" in accordance with the rules of evidence applying to federal district courts. Decisions of the Board are to be based upon "the preponderance of the testimony."

In corrective orders, back pay is not to be awarded to employees "suspended or discharged for cause." When an employee loses his job by reason of an unfair labor practice of a union, the award of back pay may run against the union.
On court review, findings of fact by the Board are to be deemed conclusive, not "if supported by evidence," but only "if supported by substantial evidence on the record as a whole."

With respect to enforcement, however, the Board’s powers are broadened, through permitting it to get temporary restraining orders from the federal district courts against the continuance of unfair labor practices as soon as it has issued a complaint in the case and prior to any hearing.

A new duty is imposed upon the Board in connection with jurisdictional disputes. Whenever a union is charged in unfair labor practices proceedings with having attempted to force an employer to assign disputed work to members of a particular union, the Board is to decide the dispute, unless the parties do so within ten days. But it is only in connection with unfair labor practices charges that the Board has any authority to decide jurisdictional disputes.

Note also should be taken, perhaps, of the fact that the amended act includes a declaration that the expression of views, arguments, and opinions shall not constitute evidence of an unfair labor practice "if such expression contains no threat of reprisal or force or promise of benefit." Whether this broadens the employer’s freedom of speech remains to be determined, since recent decisions of the old Board fully recognized this right.

Suits for Damages against Unions. In actual operation, the most important restrictions upon unions in the Taft-Hartley Act may well turn out to be not those in Title I, amending the National Labor Relations Act, but those appearing in later titles of the act.

Among these are provisions relating to suits by and against labor unions. Labor unions, whether incorporated or not, may sue or be sued in the federal courts. Money judgments rendered in such suits, however, are to apply only against union funds, not also against those of their members.

Unions are declared to be responsible for the acts of their agents. Who is to be deemed an agent is not set forth. In deciding this issue, however, it is expressly provided that "the question whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling." Precisely where this leaves the unions with reference to unauthorized strikes, only the courts can determine. It may be that what was intended was to apply to labor unions a different rule from the general law of agency, but as to whether this is what has been done the author would not hazard a guess.

Suits for damages against unions are authorized for many different purposes. Most publicized is the right to bring suit in the federal courts for violations of union agreements. Suits for damages for breach of contract could heretofore be brought in the federal courts only if there was diversity of citizenship between the parties and the amount involved was more than $5,000 — although suits which did not meet these conditions could be maintained in the state courts in more than three-fourths of the states, and there have been quite a few successful suits against unions for breach of contract. The effect of the provision in the new law is of course to allow unions to be sued in the federal courts in all such cases. This will afford a method of suing unions in the few states in which such suits have not been allowed in the state courts and elsewhere will afford
the plaintiffs a choice between the federal and state courts.

This change has been hailed as one of the most important advantages which employers will get out of the new law, particularly in coping with "wildcat" strikes. Whether this will prove true is most uncertain. The reason recoveries from unions for violations of contracts have not been numerous in the past is not that the unions could not be sued. The real reason is that there is seldom anything in union agreements which the unions can violate except the no-strike clause, and the responsibility of unions for wildcat strikes can seldom be established. As noted, it may be that the modification in the law of agency as it applies to labor unions which is included in the new act will operate to make unions responsible for wildcat strikes—which are almost the only kind of strikes in violation of contracts that there can be. This is evidently what the unions fear in their insistence upon the elimination of no-strike clauses from union agreements. Even so, it will not be the right to sue in the federal courts but changes in the law of agency which may prove advantageous to some employers. And even these potential advantages will be completely lost if the unions succeed in getting no-strike clauses out of union contracts or if they enter into no agreements at all.

Furthermore, the right to bring suits for breaches of union agreements in the federal courts regardless of diversity of citizenship and the amounts involved may actually boomerang against employers. This possibility arises because it is the employers who commit most violations of union agreements; this is so for the reason that, aside from the no-strike clauses, such agreements are merely statements of the conditions which the employers will observe in employing labor. No doubt, the courts will hold that where agreements provide complete machinery for the adjustment of grievances arising out of alleged violations of provisions of the agreements, the aggrieved workers are required to utilize this machinery and may not sue the employers. In the absence of such complete provisions for the adjustment of grievances, however, employers may now be plagued by a multiplicity of suits for damages arising from alleged violations of the provisions of union agreements.

Something of what may develop is indicated by the fact that in Wisconsin, under its Employment Peace Act of 1939, which makes violations of union agreements an unfair labor practice for both unions and employers, practically all cases which have come up have involved charges of violation by employers. So it would seem that the Taft-Hartley Act makes it very necessary for employers to have provisions in their union agreements for the arbitration of grievances alleging violations of contract provisions as the final step in the grievance procedure. It may even be worth the price, if it must be paid to get a union contract, to agree that neither side will resort to the courts for the enforcement of contract provisions.

Provisions for Special Types of Strikes and Boycotts. Damage suits by employers and other persons suffering injury are also authorized in the Taft-Hartley Act against certain strikes and boycotts. These are the strikes and boycotts which constitute unfair labor practices of unions, previously noted, except strikes to gain recognition for an uncertified union and strikes in con-
nection with jurisdictional disputes. Such damage suits likewise may be brought in the federal courts regardless of diversity of citizenship or the amount involved. Strikes and boycotts of the types mentioned are not very common but are very aggravating to employers and very damaging to unions so far as public opinion about them is concerned. If the new act proves an effective curb upon such strikes and boycotts, it will be a distinct gain. Although the "if" is large, no one has ever suggested a potentially more effective method.

A special provision is the prohibition of strikes of employees of the Federal Government. The penalty is immediate discharge, forfeiture of civil service status, and denial of re-employment for three years. This is not a drastic change since even in the past federal employees, in order to be eligible to draw any pay, have been required to sign a statement that they do not belong to a union which sanctions their going on strike, and some employees have been discharged for striking. But the statutory penalties are new.

Of more importance are the provisions dealing with strikes producing national emergencies. The fairly large number of major strikes which seriously threatened the national economy or large sectors thereof in the past few years (most of them prior to June 1946) beyond all question were an important factor in bringing about the enactment of the Taft-Hartley Act. The imminent threat of another nation-wide coal strike while the measure was in the final stages of consideration may well have influenced quite a few of the doubtful Senators whose votes were necessary to override the President's veto. So it was inevitable that special provisions for dealing with such strikes should have been included.

Whether these provisions will prove effective in preventing or bringing about a prompt settlement of strikes producing national emergencies no one can now say. In the coal dispute widespread stoppages occurred prior to the miners' vacation period, allegedly in protest against the Taft-Hartley Act. The government kept hands off, and before the end of the vacation period an agreement was concluded between the United Mine Workers and the operators. Although left-wing elements within the unions tried to promote a nation-wide protest strike after Congress passed the act, the responsible leaders of all unions strongly opposed such a strike, and it never materialized. But there are few people who believe that we now have a sure-fire preventive against strikes that produce national emergencies.

What we do have is a group of sections in the Taft-Hartley Act which authorize the President to appoint a board of inquiry when in his opinion a strike or threatened strike which involves "an entire industry or a substantial part thereof" imperils "the national health or safety." The board of inquiry is to investigate the causes of the dispute and report the facts to the President, but without making any recommendations for settlement. Following this report, the President may direct the Attorney General to go into the federal courts for an injunction against the strike. After such an injunction is issued, the board of inquiry is to be reconvened and at the end of a 60-day period, if the dispute is not settled in the interim, is to make another report to the President on the position of the parties and the employer's last offer of settlement. Within the next 15 days, the National Labor
Relations Board is then to conduct a secret election among the employees to decide whether they wish to accept the employer's offer or go on strike. It is to certify the results to the Attorney General within 5 days thereafter, and the Attorney General is then to move dismissal of the injunction. The President, on his part, is to report the facts to Congress, "with such recommendations as he may see fit to make for consideration and appropriate action." Congress, presumably, is then expected to act, but what it can do to meet the situation is left for determination when the situation arises.

Federal Mediation and Conciliation Service. A final major provision of the Taft-Hartley Act is the establishment of an independent Federal Mediation and Conciliation Service, under the direction of the Federal Mediation and Conciliation Director. This Conciliation Service succeeds the United States Conciliation Service of the Department of Labor and will take over its employees. Conciliators, as heretofore, are to be appointed without regard to the civil service laws. A National Labor-Management Panel is created to advise the Director, consisting of six management and six labor members.

The functions of the new Service as they are set forth in the law are practically the same as those which have been performed by the old Conciliation Service, namely those of mediation, with suggestions to the parties of other voluntary methods of settlement if the parties are still at loggerheads after efforts at direct mediation. The new Conciliation Service, however, is to confine its efforts to major disputes and is to deal with "grievance disputes only as a last resort and in exceptional cases." It is also "directed to avoid attempting to mediate disputes which would have only a minor effect on interstate commerce if State or other conciliation services are available to the parties."

Taking the Conciliation Service out of the Department of Labor and setting it up as an independent agency was unanimously opposed by the Labor-Management Advisory Committee to the Conciliation Service, which was organized without statutory direction two years ago. It was likewise opposed by all labor witnesses and most industry witnesses who discussed the matter in the Congressional hearings. Moreover, it was directly at variance with the plank in the Republican National Platform which criticized the Administration for dismembering the Labor Department and scattering its legitimate functions among many agencies. Nevertheless, in making this shift, Congress doubtless had in mind trying to overcome the prejudice which many employers still have against the Department of Labor because they believe it to be a protagonist for organized labor. In doing so, however, Congress further offended labor.

Whether the shift will work to public advantage will depend upon the functioning of the Conciliation Service hereafter. Marked progress toward an improved service for conciliation and toward gaining the confidence of employers was made in the last few years. Further improvement certainly is possible. The direction to the Conciliation Service to confine its efforts to major disputes is sound, provided better

* The President has appointed Cyrus Ching of the United States Rubber Company, former Industry Member of the National War Labor Board, as the first Director.
state conciliation services are developed than now exist in many states. A distinct gain will also result from the new law if management and labor observe its provision that both parties must notify the Conciliation Service when negotiations reach a stalemate.

**Effect upon Labor Relations**

There remains the task of appraising the act in over-all terms and of assessing its effect upon labor-management relations. To this end we shall want to consider the effect upon unions, the resulting position of management, and the new role of government.

**Position of Unions.** The Taft-Hartley Act, while the measure was before Congress, was always referred to in the *New York Times*, an ardent supporter of the new law, and in many other newspapers as the “union-control bill.” An examination of its provisions, particularly in the light of comparison with the prior law, leaves little doubt that this designation fairly accurately describes the true import of the law.

The new law leaves unions in a situation where the alternatives open to them are truly a choice between Scylla and Charybdis. Whether they attempt to comply with the requirements of the new law (so that they can get the advantages of certification as collective bargaining agents, dues maintenance, and the protection which the right to initiate unfair labor practices proceedings gives their members) or whether they “boycott” the National Labor Relations Board, their choice cannot be a happy one. Whatever they do, they are exposed to attacks on many grounds, both before the National Labor Relations Board and in the courts.

Because the reporting requirements apply not only to the international unions but to all their locals and involve an immense amount of detail, few unions could possibly have been expected to satisfy these requirements by August 22, 1947, the effective date. So there is certain to be an interregnum when unions cannot file unfair labor practices charges or get on the ballot in collective bargaining elections. This is different, however, from intentional “boycotting” of the Board, and unions will do well to remember that a policy of “boycotting” the Board not only will not relieve the unions from the most severe restrictions of the new law but is likely further to prejudice public opinion against them and invite additional restrictions at the next session of Congress.

Even more likely to injure the cause of labor are the policy of refusing to enter hereafter into any agreements with employers and the policy of signing no more contracts with “no-strike” clauses. It is probable that a strong union can get along without a union agreement much better than can an employer confronted by such a union, although this is not true of most unions, whose entire functioning has been built around collective bargaining and written agreements. And the “no-strike” clauses, while mainly of advantage to employers, also have value to unions in maintaining discipline within their ranks and in gaining the confidence of employers. Most serious, however, is the probable effect of such policies upon public opinion. Union members may believe that it is but fair that employers should be willing to rely on the remedies available to them under the contract as a protection against violations by agents of the employee. But to the public the unions’ position will seem not only an evasion of the law but the sanctioning of wildcat strikes.
Worst of all for the unions would be another wave of serious strikes. Probably the most important single factor accounting for the strong popular feeling against unions was the postwar strike wave, which fortunately has been receding for more than a year. "It takes two to make a quarrel," and labor was of course not solely responsible for the many serious postwar strikes. But these strikes embittered large elements in the public and led them to demand restrictions upon unions and strikes. In the present mood of the public, every major strike carries with it a threat of further restrictions on unions.

It is unlikely that the Taft-Hartley Act, or even the more restrictive legislation which may follow, will destroy the unions or seriously weaken existing strong organizations. Strong unions do not need the protection of the National Labor Relations Board to prevent discrimination against union members. Even numerous injunctions and damage suits will probably prove little more than annoying; and unions can play that sort of game as well as managements. For new and weak unions, on the other hand, the situation is very different. When confronted by managements which may want to get rid of them, such unions may find the going from now on much rougher than it has been. Nevertheless there are too many millions of dyed-in-the-wool unionists in this country to make all-out war upon the unions at all promising for management.

Where Management Stands. Passage of the Taft-Hartley Act produced very little celebration within the ranks of management. Instead, management leaders urged caution and the avoidance of everything which might be construed as an attempt to take advantage of labor. Typical was the statement of Earl Bunting, President of the National Association of Manufacturers:

During the debate on the new law, industrial management was accused frequently by labor leaders of seeking to "bust" unions. This, repeatedly and emphatically, was denied. Management's sincerity must now be attested, by its approach to unions under the law.

In line with this injunction, not a few managements which have had good labor relations assured the unions that the new law would produce no change in these relations so far as they, the managements, were concerned.

What has been most disturbing to managements sincerely desirous of maintaining or developing better relations with their unions has been the bitterness the new law has aroused among the leaders of union labor and the staunch union members. It has opened old sores of extreme distrust of "business" which had been pretty well healed. It also has confronted managements with the prospect of having to find a solution before long for difficult problems of labor-management relations arising out of the new law. Looming large among these are the union insistence upon eliminating "no-strike" clauses in contracts and the problem of what to do when union-security provisions expire. In this connection it is worthy of note that most of those management witnesses who in their testimony in the Congressional hearings strongly condemned the closed shop never had such a provision in their contracts.

The new law may well have different, if not almost opposite, effects on managements which want to keep out unions or get rid of them and managements which have gotten along well
with unions. As was but natural, Congress heard principally from the managements which have had trouble with unions. It is the author's belief that the new law is geared to industrial conflict rather than to harmonious labor-management relations — as, perhaps, also was the original law. Thus, on the one hand, those managements who are inclined to fight unions may have been put in a better position to do so than they were prior to the Taft-Hartley Act. On the other hand, the law creates new problems for those managements who want to get along with unions and, at least for the present, makes it more difficult to maintain good relations.

The Government's Role. That the new law represents a very considerable extension of governmental authority and intervention in labor-management relations is very clear. While the act provides that states may restrict union-security provisions more drastically than does the federal law and that the Federal Mediation and Conciliation Service shall leave to the states minor disputes affecting interstate commerce, the net effect of the new law will be to increase greatly the number of federal employees and the number of cases coming before federal administrative agencies and the federal courts.

This extension of governmental intervention takes the form principally of restrictions on unions and their activities, but it also additionally limits managements' freedom of action. The union-security provisions will serve as an illustration, although these are by no means the only parts of the law which place new obligations upon employers and subject them to additional governmental controls. Viewed in this light, outlawing the carrying out of union-security contracts (except dues maintenance, subject to prior approval by majority vote of all employees), by making it an unfair labor practice, is fully as much of a restriction upon the freedom of action of employers as of unions. Many an employer has found in union-security provisions a method of ending turmoil over unionism among his employees and thereby has been able to get better production. Now he is prevented by law from doing what he has previously always been able to do. Furthermore, it is at least possible that what actually happens will repeat the experience under the Wisconsin law — that when employees are discharged in accordance with the terms of union-security contracts between union and employer which are illegal under the law, it is only the employers, not the unions, that are sued for recovery of damages.

The new law, however, does not represent so great an extension of governmental authority in labor-management relations as is conceivable. The author would not describe any of the provisions of the Taft-Hartley Act as "extreme," aside from the far-reaching restrictions upon union security and possibly the modification of the law of agency as applied to labor unions, although he doubts the wisdom of many more provisions.

The greatest danger lies in the trend represented by this law. Government intervention seldom stops where it begins. During this year, the legislatures of every state which already had a restrictive state labor relations law added additional restrictions. If the types of union conduct frowned on by the Taft-Hartley Act are in fact to be prevented, the Federal Government too must go much further than it has in this act in restricting unions and in preventing strikes.
In a democratic government, swings of the political pendulum and changes in the climate of public opinion are inevitable. Before long, restrictions upon unions are certain to be made applicable also to employers and employers' associations. The logic of the present situation, also, may have unexpected and indeed unintended results. For if there are further restrictions upon the unions' right to strike, the Federal Government must determine the issues in controversy between labor and management (as this law contemplates it shall do in jurisdictional strikes). This is compulsory arbitration, which essentially means governmental determination of all labor-management problems. And wherever tried, compulsory arbitration has resulted in something like compulsory unionism.

Conclusion: The Present Problem

The Taft-Hartley Act is a political enactment, and the solution of labor-management problems does not lie in politics. Whether this new law is sound or unsound, the problem of developing sound labor-management relations remains basically unchanged. The problem is one of human relations, of finding ways and means by which labor and management can live, work, and prosper together. This calls for an attitude of tolerance and understanding, an earnest desire to get along with the other fellow, and a willingness to explore all possibilities for adjustment. Such an attitude of mutual trust and confidence cannot be brought about by law; it can be developed only by the parties themselves.

The immediate effect of the new law (as was to be expected in the first stage of legislation of such broad scope) has been to complicate the problem of maintaining harmonious and cooperative labor-management relations in the many plants in which such satisfactory relations have prevailed. If both parties so desire, however, the difficulties presented by the new law should not prove insoluble.

The Taft-Hartley Act is now law and, while it remains in effect, must be enforced and observed. In a democracy, legislation which proves unfair or unworkable can always be repealed or modified. So it is quite proper for labor to work for the repeal of this act and to test in the courts all sections which are possibly unconstitutional or obscure. But labor cannot escape its obligation to do its best to live with the law while it is on the statute books. Beyond that, it has a great stake in maintaining good relations with the many employers with whom its relations have been good in the past, and it must always take into account the effects of its actions on public opinion.

Management has at least as great a stake in maintaining and further developing good relations with unions. Being in a sense "in the driver's seat," it probably will have more to say about where we are going from here than anyone else.

The alternatives seem clear. Either we will develop self-government in industry through the processes of collective bargaining, or we will move further in the direction of increased governmental control of labor-management relations. Which road lies ahead may well depend upon how labor and management adjust their relations in the critical next year or two when the new law becomes fully operative.