

Stacked Deck

The rules of the game won't let the unions win

BY LANCE COMPA

In the battle between American workers and their bosses, the negotiating tables have been turned. Employers are now enthusiasts of Federal labor law, while unions find themselves running from the Government rather than to it.

Since 1935, when the National Labor Relations Act was passed, employers have complained that the law gives unions special privileges: exclusive representation rights, exemption from antitrust statutes, reinstatement rights for strikers, the ability to use dues for political causes, and more. Business leaders have also charged that the agency responsible for enforcing the law, the National Labor Relations Board (NLRB), is partial to union interests.

The Board functioned as "a legal aid society and organizing arm for unions," one management spokesman said in 1980. But three years later, the man who made that remark, Donald L. Dotson, an attorney for Wheeling-Pittsburgh Steel and Westinghouse Electric, was named chairman of the NLRB by President Reagan. Two other Reagan appointees have joined Dotson on the five-member panel: Robert P. Hunter, formerly an aide to conservative Senator Orrin Hatch, and Patricia Diaz Dennis, another management attorney.

The Board has had Republican or Democratic majorities in the past, but shifts in power changed only the tilt, not the direction, of labor law enforcement. Though unions grumbled about many NLRB decisions, organized labor generally conceded that the Board tried to steer a middle course. The Reagan appointees, however, have put the agency on a right-wing bearing.

In a series of recent rulings that overturned established policy, the Board:

¶ Determined that an employee fired for objecting to safety hazards had no legal recourse because he acted on his own, whereas the law requires "concerted activity" to invoke its protections. Under past

policy, such individual protests were sheltered when the welfare of other workers was in question.

¶ Decided that an employer can agree to a union contract, then ask for mid-contract wage cuts, and, if the union demurs, transfer work to another location.

¶ Expanded the power of employers to deny reinstatement to strikers charged with picket-line misconduct. Past policy allowed reinstatement where verbal threats but no violence took place, and the Board also took into account the gravity of unfair labor practices that provoked a strike. The Reagan majority eliminated these considerations, making it easier to fire the most active, militant pickets.

¶ Held that an employer has no obligation to bargain over the transfer of jobs out of an organized plant. The NLRB said that management decisions "at the core of entrepreneurial control" need not be negotiated.

¶ Ruled that an employer may interrogate active union supporters—a practice that must be avoided with passive union supporters or undecided workers.

¶ Said employers would not be compelled to bargain even if they committed massive unfair labor practices—firing organizers, threatening to close the plant, cutting pay of union backers—to prevent the union from signing up a majority of workers. In the past, the NLRB could issue a bargaining order when a union drive was derailed by such employer misconduct.

Not surprisingly, the Board's anti-union activism is drawing fire. "The underlying consensus Congress recognized as necessary for collective bargaining to succeed appears to be crumbling," says Representative William L. Clay, the Missouri Democrat who heads the House subcommittee on labor-management relations.

Federal labor law "has become an albatross on the labor movement," United Mine Workers President Richard L. Trumka told a recent hearing of the subcommittee.

"We might be better off with the law and the Board scrapped," declared United Electrical Workers President James M.

Kane, "and take our chances with the law of the jungle—it cannot get any worse." Kane and William H. Wynn, president of the United Food and Commercial Workers, said their unions are again resorting to recognition strikes to secure bargaining rights, instead of relying on the delay-ridden NLRB election procedure.

"Let us go hand to hand," AFL-CIO President Lane Kirkland said last August, adding that labor law is a "dead letter."

Many blame the current crisis on President Reagan and his appointees to the NLRB, but labor's difficulties were already acute when Reagan took office. Decertification elections to oust incumbent unions rose from about 200 per year in the 1950s and 1960s to almost 900 per year by the end of the 1970s.

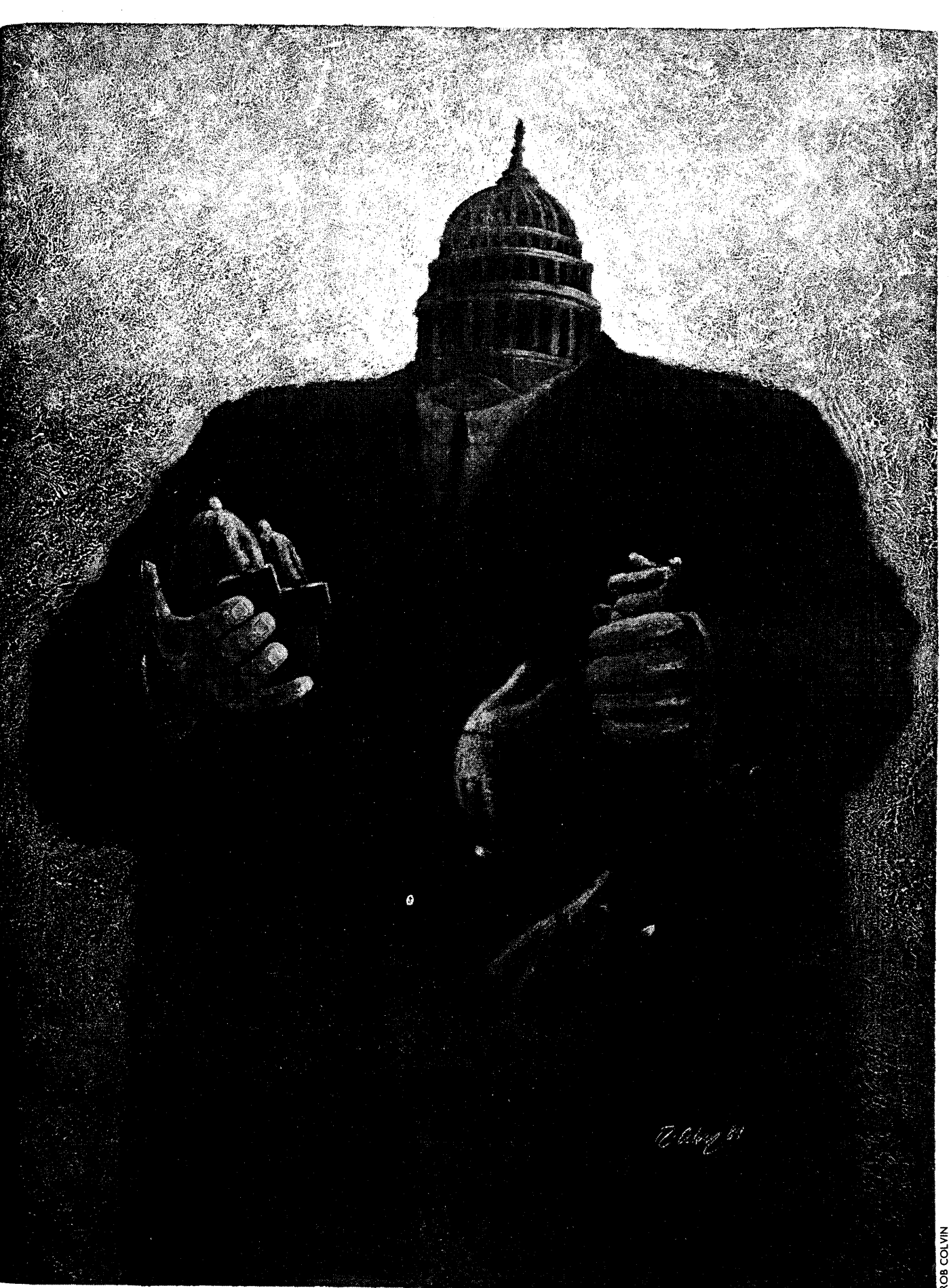
By then, the trickle of plant closings and product-line transfers had become a torrent, and a new breed of union-busting consultants was helping to thwart organizing drives. In the 1950s, unions represented a solid one-third of the work force; by 1980, they spoke for a shaky one-fifth.

At the center of labor's problems is not the Reagan NLRB, but the Taft-Hartley Act of 1947. Even a pro-labor Board would be hamstrung by that law's antilabor biases.

"Repeal Taft-Hartley," once a powerful rallying cry in the labor movement, today sounds as compelling as "Who Lost China?" And yet Taft-Hartley established the legal structure that has squeezed organized labor into its present tight spot. *Business Week*, hardly a friend of the unions, foresaw the process in a 1948 editorial: The Taft-Hartley Act, the magazine said, "went too far. . . . Given a few million unemployed in America, given an Administration in Washington which was not pro-union—and the Taft-Hartley Act conceivably could wreck the labor movement."

The Taft-Hartley amendments came a dozen years after the Wagner Act, the monumental breakthrough for the American labor movement. Until Senator Robert Wagner of New York won approval of

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To force reform of labor law, unions must wage a new round of strikes and organizing drives

his National Labor Relations Act, workers had no legal protection for collective action. Employers could refuse to bargain, refuse to sign an agreement *after* bargaining, and carry out reprisals against organizers. The only recourse for workers was the strike—to obtain recognition, to compel bargaining, to reinstate fired leaders, and to win a written agreement.

Wagner changed that. His act's pivotal Section 7 rang out new freedoms: "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection." The NLRB was charged with "encouraging the practice and procedure of collective bargaining." Employers could no longer retaliate against workers trying to organize; the NLRB would conduct secret-ballot elections to determine majority sentiment. If a majority of employees chose union representation, the employer had to bargain in good faith toward a contract.

Millions of workers flocked to the new unions in the Congress of Industrial Organizations, as well as to the older American Federation of Labor unions. Organized labor's ranks more than tripled between 1935 and 1945, from fewer than four million to almost fourteen million members.

But employers, backed by the courts, mounted an assault on the Wagner Act after World War II. Red-baiting attacks on CIO unions prepared public opinion for a management offensive. And militant CIO strikes in 1946—spurred by a high rate of inflation and disclosures of war-time profiteering—provided ammunition for accusations that unions had become "Big Labor," rivaling the power of "Big Business."

The 1947 Taft-Hartley Act put a "right to refrain" from union activity on a par with the right to organize and bargain. In its key section, 8(c), the Taft-Hartley Act codified antilabor court decisions allowing employers to launch workplace campaigns against unionization.

Taft-Hartley also gave the President authority to obtain strikebreaking injunctions; established a new class of union unfair labor practices; permitted states where employers maintained a tight grip on government to enact "right-to-work" laws; outlawed solidarity job actions; allowed strikebreakers to vote in NLRB-run elections; let workers bypass union representation to take up grievances individually,

and required loyalty oaths from elected union officials—a provision later revoked, but not before it was used to sow divisions in the labor movement.

Labor's desire to repeal Taft-Hartley was stifled by the Cold War and by steady economic expansion that lulled the movement into a false sense of security. But in the 1970s, the economy stopped expanding, and the labor-management entente came to an end. By 1977, the unions felt an urgent need for a revised labor law. Their reform bill was a modest effort to correct some of the worst aspects of Taft-Hartley.

The unions, cognizant that Democrats controlled both Congress and the White House, saw a golden opportunity. "Nothing is more important to the labor movement at this point in its history—nothing!" declared George Meany, then president of the AFL-CIO.

The corporations agreed, and employer lobbyists pulled out all the stops to oppose the bill. Though it passed the House of Representatives, the Labor Reform measure died in a Senate filibuster in 1978. Stung by this defeat, the AFL-CIO pleaded with employers to hold up their end of the postwar deal: In an "open letter to the wise and intelligent leaders of the American business community," Meany begged, "Do you want to destroy American trade unionism? Do you secretly seek a death sentence for the collective bargaining system you so often hail in public forums?"

In fact, business leaders have stepped up their assault on unions since the late 1970s. And the Reagan NLRB, seen in context, is merely carrying out the anti-labor program that has *always* been implicit in the Taft-Hartley Act.

The unions, pursuing the strategy that failed in 1978, hope the election of Walter Mondale and a Democratic Senate will lead to enactment of a new labor reform bill in 1985. But a Mondale victory is not likely to change either the antilabor attitude of employers or the long-term economic and social trends that are undermining the labor movement. To remove the legal obstacles to organizing, trade unionists will have to recall significant lessons of the Wagner Act period.

Important as it was, the Wagner Act did not in itself liberate workers to begin organizing in the 1930s. Though the Act was approved in 1935, it did not take effect—and the newly created NLRB did not function—until the Supreme Court upheld the constitutionality of the measure in 1937.

By that time, workers had already carried out a nationwide textile strike in 1933, general strikes in San Francisco and Minneapolis in 1934, sit-down strikes in Akron and Toledo in 1935, the formation of the CIO in 1936, and the 1936-1937 Flint sit-down action that organized General Motors.

The Wagner Act and the Supreme Court's decision to uphold it actually ratified freedoms that millions of Americans had already claimed in the shops, on the picket lines, and in the streets. Progressive members of Congress voted for the bill out of conviction, but others, like Franklin Roosevelt and the Supreme Court majority, were moved by a fear of uncontrolled industrial strife. The strikes and sit-ins meant that employers could not go to sleep certain that their workers would show up in the morning. The purpose of the Wagner Act was to restore stability to a shaken system of labor relations.

Still, the Wagner Act cannot be dismissed as a sop to workers. It emboldened employees with the feeling that the Federal Government was on their side. It enabled the CIO to engage in large-scale organizing. Tough enforcement by the NLRB helped workers overcome the resistance of such holdout employers as the Ford Motor Company and Westinghouse Electric. In short, pro-labor laws encouraged organizing, bargaining, and political action, but it took aggressive organizing, bargaining, and political action to win pro-labor laws.

In today's political and economic climate, unions cannot sit still and wait for the pendulum to swing back. To force reform of labor law—and it will have to be forced even if Mondale wins the Presidency—labor must wage a new round of recognition strikes, solidarity actions, city-wide general strikes, and community organizing. Labor must couple these actions with such innovative techniques as corporate campaigns, union control of pension funds, and public relations offensives.

Whenever unions have seemed to be down, American workers have fought back with a burst of militant organizing—from the Knights of Labor in the late Nineteenth Century to the Wobblies in the early Twentieth Century and the CIO in the 1930s. The labor movement moves forward in spurts, not at a steady pace.

The breakdown of labor law and the current spate of unrelenting employer attacks could generate a new outpouring of class-conscious unionism. That, in turn, would constitute the best lobby for labor law reform. ■