

Rachel's Environment & Health News

#701 - Freedom of Association--Final Part

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[This concludes our brief history of labor in the U.S. What is the connection to the environmental movement? Labor is on the move once again and, as part of that impetus, is re-examining its history to plan for the future. Given the overwhelming evidence of continuing environmental deterioration, would it not be a good idea for the environmental movement to be asking itself, "What has gone wrong?" The answer to that question can only be found by examining history.--P.M.]

by Peter Kellman*

Labor Crushed

In the 1920s, big business crushed the labor movement. The corporate managers of that period wanted to put in place "The American Plan," the corporation's idea of a social vision for workers. The American Plan called for the open shop, company-run welfare institutions, company-run social institutions and company-controlled local governments. To make the American Plan work, the unions had to be destroyed. Industry after industry called for huge reductions in wages and the unions were forced to strike. Using "government by injunction," the strikes were crushed. Meanwhile the Attorney General was rounding up, detaining and extraditing foreign-born union activists. Sacco and Vanzetti were framed, tried and executed, and anyone who dared challenge the power of the corporate elites was tried and convicted in the newspapers and then by the courts. However, the harshest treatment was handed out to African Americans; for example in the four years, 1918-1921, 28 were publicly burned alive and in 1932, 24 were lynched. These are not numbers we are talking about here these are human beings.

Some historians refer to this period as the "Little Red Scare," but there was nothing little about it. Hundreds of union activist were deported, killed and jailed, and tens of thousands were blacklisted. By 1933 union membership was down to 5.2 % of the civilian labor force.

Labor Comes Back

In all previous depressions in the U.S., labor union membership had declined, but as the Great Depression deepened, labor started to come back as unorganized workers knocked on the union door in unprecedented numbers. Workers who had been suffering in silence for a decade were once again on the move.

Norris-LaGuardia and the National Labor Relations Act

As we have seen, between 1901 through 1928, federal courts issued 118 labor injunctions of which 70 were granted on the basis of employer affidavits without labor even having the opportunity to be heard.[1] By 1932 the country was tired of "government by injunction" and the Republican Congress passed the Norris-La Guardia Anti-Injunction Act which was signed by Republican President Hoover. This Anti-Injunction Act outlawed the "yellow dog" contract (a condition of employment under which a worker is automatically fired for joining a union) and stated in Section 1 that, "No court of the United States... shall have jurisdiction to issue restraining or temporary or permanent injunctions in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this Act." In Section 2 of Norris-LaGuardia, Congress described the existing relationship between labor and the owners of property in the United States: "Whereas under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment..."

Congress then went on to lay out the solution: "...wherefore, though he should be free to decline to associate with his fellows, it is

necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; therefore, the following definitions of and limitations upon the jurisdiction and authority of the courts of the United States are enacted."

In one legislative act the injunction was lifted off labor's back, the yellow dog contract was abolished and a worker could now enjoy, as the act stated, "full freedom of association... and that he shall be free from the interference, restraint, or coercion of employers of labor... in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection." Labor now had its Magna Charta. Freedom of association was the law. The American Federation of Labor's goals of ending the labor injunction and having a law recognizing the right of workers to freely associate was on the books. Labor could organize, labor could boycott, labor could strike and employers could no longer rely on the federal courts for injunctions and the police power of the state to interfere on the employer's behalf.[2]

Despite these legislative victories, not much changed. It was 1932, the country was in the Great Depression, labor was weak and the employers still held most of the cards. President Franklin Roosevelt brought the New Deal to the country the following year. This New Deal included the establishment of a Labor Board, but more importantly the Roosevelt administration supported union organizing as a way to help the country get out of the Depression. The purpose of Roosevelt's Labor Board (and shortly thereafter the National Labor Relations Board) was to cut down on strikes, which hurt production. However, unions WERE encouraged because the Roosevelt Administration believed that as more workers were organized, wages would go up. Workers would then have more money to spend on goods and therefore more goods would be produced and the country would "grow" its way out of the Depression -- the opposite of trickle down, trickle up. Many of Roosevelt's programs were found unconstitutional until he threatened to stack the Supreme Court.[3] The National Labor Relations Act of 1935 was found constitutional in *NLRB V. JONES & LAUGHLIN STEEL CORP* (1937). The court's opinion reflected the language of the Norris-LaGuardia Anti-Injunction Act:

"Employees have as clear a right to organize and select their representatives for lawful purposes as the respondent has to organize its business and select its own officers and agents. Discrimination and coercion to prevent the free exercise of the right of employees to self-organization and representation is a proper subject for condemnation by competent legislative authority. Long ago we stated the reason for labor organizations. We said that they were organized out of the necessities of the situation; that a single employee was helpless in dealing with an employer; that he was dependent ordinarily on his daily wage for the maintenance of himself and family; that, if the employer refused to pay him the wages that he thought fair, he was nevertheless unable to leave the employ and resist arbitrary and unfair treatment; that union was essential to give laborers opportunity to deal on an equality with their employer."

Furthermore, the Norris-LaGuardia Anti-Injunction Act passed constitutional muster in February of 1938. This meant that workers were free to organize and strike; boycotts were legal, and permanent replacements were not. It meant that the yellow dog contract and the dreaded labor injunction were history. Despite these significant labor victories, it didn't mean that large employers were going to automatically recognize unions. Having the government out of the way was one thing, having the government on your side was another. So workers were forced on their own to shut down entire cities with general strikes and take over factories in order to gain employer recognition.

As the depression continued to deepen, workers continued to organize and their power increased to the point that President Roosevelt was beholden to labor for his re-election to the presidency in 1936. Labor had become so strong that when workers took over the General Motors Corporation factory in Flint, Michigan, late in 1936, neither the governor of the state nor President Roosevelt sent troops to remove the strikers from the property of the corporation. The strikers won and 18 sit-downs followed at other General Motors facilities, culminating in union recognition. But in May of 1938 the Court took a big step backward in *NLRB V. MACKAY RADIO*, ruling that permanent replacement of strikers was legal; thus the right to strike became not much more than the right to quit.[4] The Court went on in *NLRB V. VIRGINIA ELECTRIC & POWER* (1941) to grant free speech rights to employers in union certification elections.

Then in 1947 Congress passed the Taft-Hartley "Slave Labor" Act which:

** created the Taft-Hartley injunction whereby the President can set in motion injunctions against "national emergency strikes" that "imperil the national health or safety," thus nullifying the gains made under Norris-LaGuardia in 1932;

** allowed state legislatures to ban the union shop; ** outlawed the closed shop;

** made sympathy strikes and secondary boycotts illegal for all practical purposes; ** barred from participating in NLRB elections unions that didn't ban Communists from their membership;

** took control of pension, and health and welfare funds away from unions; ** allowed EMPLOYERS the right to actively and vocally oppose having labor unions in their enterprises;

** forced foremen out of the unions; ** created the decertification election;

Throughout the 1930s, workers had continued to organize and for a brief period of our history the government was on labor's side. Union membership grew from 5.2% of the private non-professional work force in 1933 to 15.9% in 1939 and peaked at 26.9% in 1953. Today it hovers around 10%. Along with the decline in union economic and political power has come a decline in the standard of living for the majority of workers, whose real wages have been declining since 1973.

Part 4

How the Labor Movement can expand the Constitution

But the news hasn't been all bad. Because the abolition, suffrage and labor movements in the 1830s took seriously the words "We the People" from the Preamble of the Constitution, it has come to pass that slavery is no more; and not just white males with property, but all citizens can vote, regardless of race, gender, or property. The victories of these movements were made part of the Constitution with the passage of the 13th, 14th, 15th and 19th Amendments.

A number of the legislative goals set and fought for by the labor movement beginning in the 1830s, like the laws protecting children in the workplace, health and safety protection for workers and free public education, have been found constitutional. However, the right to free association -- the right to organize -- has not yet made it into the Constitution. But labor has at times had the POWER to exercise freedom of association. So the question now is: Given all our history - WHAT DO WE WANT THE NEXT NATIONAL LABOR RELATIONS ACT TO LOOK LIKE?

For starters a new National Labor Relations Act (NLRA) must be

rooted in the First Amendment, the 13th Amendment, the Norris-LaGuardia Act and Section 7 of the NLRA, not in the Constitution's Commerce Clause as the present Act now is.[5] In other words, the law protecting workers' right to organize cannot be a subset of the basic law protecting employers. Workers do not participate in a corporation's decision to join the Chamber of Commerce. The corporation should not participate in the process whereby workers form a union.

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[1] Leon Fink, *IN SEARCH OF THE AMERICAN WORKING CLASS: ESSAYS IN AMERICAN LABOR HISTORY AND POLITICAL CULTURE* (Urbana, Ill.: University of Illinois Press, 1994), pg. 251.

[2] Norris-LaGuardia did not prevent state courts from issuing injunctions in labor disputes but by 1941, 24 states had passed their own anti-injunction laws; see Harry Millis and Royal Montgomery, *ORGANIZED LABOR* (N.Y.: McGraw Hill, 1945), ph. 647.

[3] Roosevelt's threat to stack the court (which took the form of legislation, which failed) is merely emblematic of the kind of political pressure being felt by the Court, pressure which came from many directions.

[4] *NATIONAL LABOR RELATIONS BOARD V. MACKAY RADIO*, 304 U.S. 333 (1938). Employer free speech case: *NATIONAL LABOR RELATIONS BOARD V. VIRGINIA ELECTRIC & POWER CO.*, 314 U.S. 469 (1941).

[5] In principle, Section 7 gives employees 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."

Descriptor terms: labor; constitutional law; human rights; freedom of association; boycotts; strikes; injunctions; contracts clause; corporations; intangible property; national labor relations act; norris-laGuardia;