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LABOR RELATIONS IN THE BATTLE FOR DEMOCRACY

THERE is one great trouble with inventions. They make things too easy. They make us forget the hardships which went before and the necessity which drove some adventurous spirit to discovery. Thereby we lose much valuable education. For there is no school like the school of hardship and necessity. Few of its graduates will be found wandering around in the stratosphere of impractical dreams — at least they have their feet on the ground. Also we forget that most inventions require some attention and adjustment, and we forget (or never learn) how to adjust. When an automatic gadget gets out of order, there are none so helpless as those who know only how to push the button.

Today, democracy is on trial, and Trial By Battle at that. If it survives, it will be because we relearn some of the painful lessons of the past and readjust certain of our cherished theories to the hard realities of the World of today.

Perhaps the greatest invention of all in man's long struggle for some tolerable sort of freedom was the discovery of the device of Representative Government, resting on majority rule. The historians tells us that in the last stages of the Roman Republic the inhabitants of the "Eternal City"
wielded the resources of a worldwide empire, and that although gradual extension of Roman citizenship to outlying territories had been granted, this had little beneficial effect, because the device of Representative Government had not yet been discovered. They tell us also that the definite establishment of the principle of political representation in England dates from the year 1295, when King Edward I. issued his famous Writ of Summons to Parliament, entitled “Summons of Representatives of the Counties and Boroughs.” The Writ directed the election of two knights from each county, two citizens from each city, and two burgesses from each borough, admonishing the people that those elected should be “especially discreet and capable of laboring,” and informing them that the representatives elected would have “full and sufficient power for themselves and for the community” which each represented “for doing what shall then be ordained . . . so that the aforesaid business shall not remain unfinished in any way for defect of this power.” And so Representative Government commenced its long toilsome climb to our day of trouble and threatened disaster.

Now we are told that Representative Government is a failure and the day of the Democracies is done. This is a serious charge, backed up, as it is, by the threat of totalitarian force. The threat of force may be met with force, but the charge of “failure” of democracy as a way of life must be met with proof. For if the time ever comes that democracy fails to meet and satisfy the needs of human beings, then indeed its day will be done.

It is a commonplace to say that Representative Government is the essence of the American System, and it has been extensively used in the field of business and other human affairs as well. Today’s great Battle for Democracy is being fought on many fronts. But wherever the battle rages, the issue is always the same. Shall Representative Government survive? And deeper still, does it deserve to survive? My
purpose is to re-examine this great principle as it has been applied in the field of Labor Relations.

In the Gospel according to St. John, the Great Teacher tells His Disciples: "Ye shall know the truth and the truth shall make you free." Nothing is said about what happens to those who do not "know the truth," but a devastated world can furnish the answer. This is no time for trick phrases and comfortable falsehoods. So let us agree at the outset that we are going to face the facts whatever they are and call things by their right names.

The National Labor Relations Act has now passed its fifth birthday as a law of the United States, having gone into effect July 5th, 1935. Much history has been made since then, some of which we must consider. The Act purports to be based on the principle of majority rule. Section 7 of the Act provides that employees shall have the right to organize and "to bargain collectively through representatives of their own choosing." And Section 9 (b) of the Act confers upon the Labor Board the power and duty to "decide in each case" whether "the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof." The House Committee, in giving its blessing to the Act before passage, concluded its report with the pious assurance that "majority rule is at the basis of our democratic institutions." So it is. Our present task is to find out how it has worked in its new setting in the National Labor Relations Act.

Probably as good a way as any of finding out the truth about ourselves or our ideas is to listen to what our opponents say about us. That seems to be one of the basic reasons for the great constitutional guaranty of free speech. As Mr. Justice Holmes says (in speaking of freedom of speech or "free trade in ideas," as he puts it), "the best test of truth is in the power of the thought to get itself accepted in the competition of the market." Our great principle of "Repre-
sentative Government," transplanted into the Labor Act, has stirred up a deal of trouble. Freedom of speech on that subject has (to say the least) been vigorously exercised. In fact many verbal brickbats have been hurled in its direction. Strange to say, most of the barrage has not come from the employer's side of the fence, which makes it all the more interesting (and likewise more promising in our search for the truth), for when members of the same family fall out in public, we are quite likely to hear the truth. Let us look at a few of the unkind things which have been said about the National Labor Relations Board in its effort to "decide in each case" what shall be "the unit appropriate for the purposes of collective bargaining."

We call as our first witness Mr. William L. Green, President of the American Federation of Labor. Testifying last January before the House Committee investigating the Labor Board and its administration, Mr. Green said, referring to the Labor Board:

"It has committed all the crimes in the calendar in its interpretation of what constitutes the appropriate bargaining unit, and it has seized upon the discretion vested in it by the law to make or destroy unions."

Mr. Green was particularly bitter over the decision of the Board in the so-called Longshoremen's case, and he charged that:

"By merging the Longshoremen into one collective bargaining unit on the Pacific Coast, the effect was that the American Federation of Labor unions were wiped out as collective bargaining units,"

and that:

"The tradition and policy of almost a century of organizing and collective bargaining was simply nullified and wiped out"

by this decision of the Board.

Nor does the Labor Board, in its struggles with this "unit" problem seem to have pleased Mr. Green's rival, John L. Lewis, for in his Report as President of the C. I. O. at its San Francisco Convention, October 9, 1939, Mr. Lewis caustically observed that:
"When the Act is so administered as to thwart the development and maintenance of stable industrial relations, then it becomes necessary to consider and weigh carefully whether the benefits of the Act outweigh the dangers which its administration inflicts upon organized labor."

The issue is as simple as the bitterness of the struggle is intense. Mr. John P. Frey, President of the Metal Trades Department of the American Federation of Labor (also testifying before the House Investigating Committee) puts it clearly. Speaking of the Molders Union (one of the old craft unions), he said:

"The molders want, if they have any organization, to be members of the Molders Union. They have a right at least, it seems to me, as Americans to decide for themselves whether they want to be members of the Molders Union or some other organization; that is their right. Take that right away from them and you also take the first step to taking away the right of citizens in a community to determine whether they will be members of the Methodist, the Baptist, the Roman Catholic, the Jewish or any other religious denomination. You do the same thing. It is the same in principle."

The question, declares Mr. Frey:

"goes to the very root of whether there can be built up an administrative agency which, through the methods it operates and the decisions it hands down, has within itself the power of determining the structure of an American labor movement."

And charging that in his opinion the Labor Board has "violated" the right of labor to choose its own representatives, he concludes:

"I do not like to say publicly that I think they (the members of the Labor Board) have injured the cause of labor and collective bargaining and the trade union movement as much as any agency that was ever anti-union . . . but when the opportunity comes . . . it is my duty to those I represent to state not only my opinions but my convictions as to what has gone wrong and give the reasons why."

That something has "gone wrong" (and grievously wrong) with our supposedly infallible device of "Representative Government" as it has been put into operation in the field of labor relations, seems fairly obvious by now. Our purpose is to find out (if we can) what is "wrong," and "the reasons why." So let us look a little more closely into the
charges on which the Labor Board stands indicted by the labor leaders themselves. Also, in all fairness, we should hear how the defendant members of the Board plead to the indictment, and what they have to say in their own defense.

And first, as to the indictment itself — What are the real charges of the labor leaders against the Board? Mr. Green's "All the Crimes in the Calendar" will hardly do, for as lawyers we know that takes in quite a bit of territory. But the answer is easy. There is only one charge and only one "crime." Mr. Green charges that the Board "has seized upon the discretion vested in it by the law to make or destroy unions." Mr. Lewis complains that the "Act is so administered as to thwart the development and maintenance of stable industrial relations." It is one and the same thing.

In plain language, the charge of both labor leaders is that the Labor Board has interfered with their efforts to organize the workers. In some cases that interference has worked to the disadvantage of the American Federation of Labor and in others to that of the C. I. O., and the actions of the Labor Board are "crimes" or noble deeds, depending on "whose ox is gored." The charge is a serious one, and indeed the more so that it comes from both contending factions. It may be that the Board is guilty, as charged in all of these cases. If it be true that the Board has interfered with the efforts of labor to reach that shining goal of "self organization" held out to it by Section 7 of the Act, it is indeed "a grievous fault." The truth of the charge must now be examined.

Now since our inquiry is as to how our device of "Representative Government" has worked in labor relations, we are not primarily concerned with the narrow question of the legality of the Board's actions. A thing may be legal and still be bad from a practical, human standpoint, and if bad, the fact that it is legal makes it all the worse. Nevertheless, in justice to the Board, we must first look into the question of
legality. In considering this question, our first duty as lawyers is to ascertain just what was the duty of the Board with respect to determining the "unit" of representation. Section 9 (b) of the act contains all there is on this point.

It provides that:

"The Board shall decide in each case whether, in order to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof."

It must be confessed that the "duty" here prescribed leaves a very wide discretion to the Board. It is clear enough that the Board must "decide in each case," but by what rule or guide shall its decision be made? The law furnishes no help, except to say that "the unit" shall be the one "appropriate for the purposes of collective bargaining." And what is "appropriate"? Well — of course that can only be what the members of the Board think "appropriate." So in the last analysis, the "duty" we have been looking for appears to be merely the duty on the part of the Board to decide whatever it thinks "appropriate" — a duty which should be comparatively easy to discharge without incurring legal pains and penalties. How easy it is, was made apparent by the opinion of the Supreme Court of the United States last January in the famous Longshoremen's case, which declared that the decision of the Board wiping out Mr. Green's American Federation of Labor unions and "merging the Longshoremen into one collective bargaining unit on the Pacific Coast" was not reviewable by the courts.

This decision seems to leave the Board pretty much in the clear so far as any charge of illegality is concerned. For how can it be guilty if whatever it does is right? But this species of exoneration will hardly satisfy. It smacks of the old moth-eaten dogma that "The King can do no wrong." So let us now turn to the practical side of the question. Has the Board legally, or otherwise, interfered with the efforts
of labor at "self organization"? Or, in the words of Mr. Green, has the Board "seized upon the discretion vested in it by the law to make or destroy unions?" Here the testimony of the members of the Board becomes highly important. We shall take their testimony also from the record of the proceedings of the House Committee investigating the Labor Board.

And first, let us call Mr. Joseph W. Madden, former Chairman of the Labor Board and whose term has just expired. Mr. Madden says that until the coming of Dr. William M. Leiserson as a member of the Board (June 1, 1939), the Board used a certain "formula" called the "Globe Doctrine" in controversies between the craft and industrial unions. This so-called "Globe Doctrine" took its name from the case of the Globe Machine & Stamping Co. (1937), where it appears to have been first applied. According to Mr. Madden, the "Globe Doctrine" permitted the craftsmen in a craft union to vote on the question whether or not they should have their own separate "unit" of representation, although this permission was hedged about by certain conditions, such as, that the craft must be "historically the representative" and that there be no existing contract which, in the opinion of the Board, should not be disregarded. At another point in his testimony, Mr. Madden says:

"A Globe election is a local option device under which the smaller claimed unit is given an opportunity to vote itself into or out of the industrial unit, depending upon whether a majority within the smaller unit desires to remain out or to go into the larger unit."

Mr. Madden points out that Labor Board Member Edwin S. Smith dissented in a number of the cases where the "Globe Doctrine" was applied. This dissent, continues the Chairman,

"produced as violent criticism and reaction to those decisions in favor of the craft units as if the decision had been against the craft units. On the other side, of course, the reaction of the C. I. O., the industrial union faction, was almost equally violent against the decisions them-
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selves. And so that formula, which is the one that I have always ad-
ered to, did not satisfy the contestants.”

Board Member Edwin S. Smith (the dissenter from the
“Globe Doctrine”) is frankly in favor of the large industrial
union, and apparently the larger the better. He declares:

“I hold the most democratic stand to be that the interests of the
majority, simply because they are the majority, are most deserving of
protection.”

And he continues:

“The so-called Globe doctrine proceeds on the basis that the minority
shall be consulted to determine whether their best interests lie in sepa-
rate representation or in inclusion within the broader unit. The Globe
doctrine, however, affords no such opportunity to the majority of work-
ers to indicate whether they think their interests will be best served by
permitting separate craft representation.”

In proof that his ideas on this subject antedated the forma-
tion of the Committee for Industrial Organization, Mr.
Smith quotes from one of his speeches made in 1935, as
follows:

“The old tradition of an aristocracy of labor entitled to special
economic rewards, below which the great mass of unorganized common
labor rested largely neglected by their more fortunate fellows, was
socially unhealthy, like any idea which encourages class division.”

And now we come to the third member of the Board, Dr.
William L. Leiserson. Mr. Madden says that Dr. Leiserson’s
advent on the Board brought about a modification of the
“Globe Doctrine” as it had previously been applied by the
Board. “Dr. Leiserson’s view,” says Mr. Madden, “is that
if the parties have any self organization and their own
voluntary arrangement made usually before the contesting
factions arrived on the scene at all,” then the result of such
former actions “is a permanent status and that the small
group could not be released from that status unless the
whole group, the larger group, should voluntarily release
them.” Whether Dr. Leiserson would wholly agree with Mr.
Madden’s analysis seems somewhat doubtful, as the record
shows violent disagreements between all three of the mem-
bers of the Board, so much so that in some cases Dr. Leiserson refused to participate in the decisions at all. In these cases, says Mr. Madden:

"Mr. Smith and I were in disagreement as to what the decision should be, and the consequence was that the case couldn't be decided at all, or if it could be decided it would have to be a dismissal because of the disagreement. It simply meant a perfectly outrageous situation."

According to Dr. Leiserson, the situation was "outrageous" all right but for different reasons. Here are some of his comments on cases pending when he became a member of the Board in 1939:

Memorandum, Dr. Leiserson to Chairman Madden, July 24, 1939, in the Todd-Johnson Dry Docks case:

"I do not want to participate in this case at all. It is too old, and there are the usual irregularities in procedure characteristic of the Secretary's office."

Memorandum, Dr. Leiserson to Chairman Madden, August 11, 1939, in the Clyde Mallory Lines case:

"I have gone through the whole record in this case, and I think it was completely mishandled. . . . My own opinion is that the contract" (referring to existing contract between the Company and the American Federation of Labor) "is no bar to an election, but if it is valid, the election should be held on the basis of the unit fixed in the contract. If the C. I. O. represents additional employees, they can later add these employees to the unit, if they win the election. But if they do not have a majority of the employees covered by the agreement, I think it is a good deal like gerrymandering to add people to the unit so they can win the election. . . . The draft opinion finds that both the contractual unit and the unit petitioned for are inappropriate. . . . I confess that I do not know what to do with a messy case like this a year and a half after it originated."

Memorandum, Dr. Leiserson to Chairman Madden, September 18, 1939, in Parlstone Stationers case:

"I cannot participate in this case, if at this late date we issue a mere proposed finding. . . .

"The case has been badly bungled, and I think it is ridiculous to issue proposed findings and hold more hearings after we have held the case for more than two and one-half years."
"I think it is a mistake to make a definite finding that the plant unit is appropriate when we know the printing craft unions want separate units later. It seems to me arbitrary to find one unit appropriate today and set this aside for another at a later day."

Memorandum, Dr. Leiserson to Chairman Madden, July 24, 1939, in Chicago Malleable Casting Company case:

"In going over the files in this case I find irregularity in handling by the Secretary, and I therefore do not need to have any connection whatever with the case. Since the oral arguments were completed in April, I do not mean to participate in the decision.

"On the facts, my opinion is that in 1934, the engineers and firemen were established as an appropriate unit for collective bargaining with the employer. In 1937, they gave written notice that they desired to maintain this unit. The case therefore had no authority to include them in the larger unit without their consent."

Later Memorandum, Dr. Leiserson to Chairman Madden, August 7, 1939, in Chicago Malleable Casting Company case:

"In order to break the deadlock, I will participate in this case, provided the facts in the record are followed and not the doctrinal dogmatics of the Globe doctrine."

One cannot escape an uneasy feeling that the "doctrinal dogmatics of the Globe Doctrine," as administered by the Labor Board, are (like Professor Einstein's Theory of Relativity) a little difficult for the common man to understand. Remembering, however, what happened in the Longshoremen's case, it appears that the Globe Doctrine (as it has been explained) has been rather effectivelly "liquidated." Certainly the process whereby the separate American Federation of Labor unions in the Longshoremen's case were "wiped out" by the C. I. O. unit comprising the whole Pacific Coast bears no resemblance whatever to Chairman Madden's "local option device" under which the smaller craft unit "may vote itself into or out of" the larger industrial unit.

Time forbids recital of further harrowing details of dissensions within the Labor Board itself over this difficult "unit" problem. Enough has been shown to prove conclusively that our device of "Representative Government" in labor
relations has fallen far short of even the most reasonable expectations. And the evidence is by no means all in. So far we have only made a start in considering the troubles which have developed. We have listened to the complaints of the labor leaders and the members of the Board. But what about the workers themselves, who are pushed about like pawns from one “unit” to another and who are compelled, if they want their jobs, to join the “unit” selected for them by the Board? What about the employers who, for the most part, have been trying to keep business running so that there would be jobs to bargain about? And what about the great mass of people who are neither employees nor employers, strictly speaking, such as, farmers, professional workers, small tradesmen, shop-keepers and the like? Well, all that is another story or, rather, several of them, all too long to go into here. Suffice it to say that all these people are vitally interested in whether there be peace or war in labor relations. All of them know there has been war and not peace.

Whether the Labor Board is guilty or innocent of the charge of using its power to “make or destroy unions” is a matter of comparatively minor consequence. The outstanding fact is that the Board unquestionably has such power, and its efforts to wield it have resulted in intolerable strife and confusion. This brings us to the far more important question, whether there may not be something wrong with the way our device of “Representative Government” has been applied and adjusted under the Labor Act. Certainly when a motor car hitches and jerks along instead of running smoothly, and develops weird and terrifying clatters and clashing of gears, it is time to lift the hood and take a look at the works.

Now in undertaking to diagnose the trouble, time permits only some general conclusions. And first, as to the principal seat of the trouble and its seriousness. Millions of words of testimony have been taken by the House Committee investigating the Labor Board covering a wide field of complaints
and criticisms. Our present concern is restricted to the troubles arising out of the "unit" problem. Several months ago the Investigating Committee made its Preliminary Report, two reports in fact, the Majority Report recommending certain amendments to the Act, and the Minority Report taking the position that no amendments are necessary or desirable. Both reports stressed the importance of the "unit" problem, the Minority Report going so far as to say that it had "created more controversy between the members of the Board then any other provision of the Act."

So our first conclusion is that the seat of much of the Board's trouble is in its power to "decide in each case" the "unit appropriate" for collective bargaining, and we must conclude further that the trouble is serious. This is not strange, for the identity and character of the "unit" of representation has always been of the utmost importance. After all, the announced purpose of Representative Government is to represent. And if the "unit" can be arbitrarily shifted and fixed so as to overwhelm and coerce substantial groups of the people, then those groups are not represented. The old "Rotten Boroughs" of England are familiar to all, where units of representation in Parliament consisted of tumbled down shacks and forgotten names of places that had been, until drastic reform laws gave representation to real people. Beyond any question, the fixing of a just and equitable "unit" of representation is the fundamental basis of free government, and it has been the very mainspring of the American system of government, both in the Nation and in the States. It is not strange, therefore, that the identity and character of the "unit" of representation is equally as important in Labor Relations as in other human affairs.

Board Member Edwin S. Smith's passion for large unions (and apparently the larger the better), if carried to its logical conclusion, would put all the workers into "One Big Union." And the next step is the "General Strike." England tried that out some years back and, after teetering on the
edge of the abyss for a time, found out that it did not work. The “unit” was too big. Just how big and of what character the “unit” should be is admittedly a very difficult problem. But it is a problem which must be solved if we are going to make the thing work. For underlying the whole scheme of Representative Government is the willingness of the minority to accept majority rule. And that willingness rests upon confidence that the “unit” of representation is fair and equitable. If that confidence be destroyed, all willingness to abide by the result goes with it and there is an end of any semblance of peace and the beginning of war.

How shall the “unit” be determined? Well — the National Labor Relations Act gives us one way — the Labor Board shall “decide in each case.” That way doesn’t seem to have worked very well in the light of what has happened during the past five years. What’s wrong with it? The answer could be expanded into a lengthy dissertation on the dangers ever present in Government by men instead of Government by law. For practical purposes the whole argument can be summarized in Mr. Green’s complaint that the Labor Board “has seized upon the discretion vested in it by law to make or destroy unions.”

There we have it, the age-old cry of the oppressed against government by “discretion” — personal government by whim of those who happen to be in power.

Now, in justice to the Labor Board, it must be said that in the light of present rulings of the Supreme Court of the United States, the Board has not “seized upon” any “discretion.” The law gives it to the Board. So if there is any fault in the method, the fault must be in the law. The trouble seems to be with the failure of the Board to exercise the “discretion” given it, in a manner satisfactory to those vitally concerned. And again, in justice to the Board, it may be that the failure is due not to the Board’s lack of ability but to the nature of the task imposed upon it. We are a people accustomed to having decisions made according to estab-
lished rules, and an umpire in any of our sports, vested with discretion to change the rules as he calls the plays, could hardly expect to receive the commendation of the customers. Impossible tasks invariably result in disaster. And the long history of man's rebellion against government by "discretion" of the Rulers should point the lesson.

Our second conclusion is that much of the trouble over the "unit" problem would be avoided by declaring in the law the principles to be applied in determining the question instead of leaving the matter to the uncontrolled discretion of the Board. This ought not to be too difficult of performance. Our statute books, state and national, are full of instances where units of representation are prescribed according to definite rules laid down.

It appears that Chairman Madden and the Board recognized early in their administration of the Act the necessity for some fixed rule for determining the "unit." This is evidenced by the adoption and use of the "Globe Doctrine" — which Mr. Madden calls a "local option device." But he complains that the Globe Doctrine

"put forth in perfect good faith as an attempt by rule of thumb which would apply quite mechanically and quite impartially to solve a difficult problem . . . hasn't satisfied anybody."

Maybe the failure to satisfy anybody has come about mainly because the "rule of thumb," which was adopted, had no sanction of law and could be and was (according to the charges made) abandoned from time to time.

It is not our present purpose to consider the merits or demerits of the Globe Doctrine, or any other legal formula which might be devised for use in determining the "unit" of representation. If the Globe Doctrine, or any other formula, is good, then uniform enforcement of it should bring reasonably satisfactory results. If it is bad, enforcement of it will speedily demonstrate the fact, and it can be amended. Someone has said that any rule is better than none, and certainly the urgent need for some definite rule prescribed
by law, on which all interested parties can rely, seems apparent. That such a rule would solve all difficulties would be, of course, too much to expect, but if the experience of the past means anything, such a rule would go far to remove the distrust and animosities created by the absence of any rule and the efforts of the Board to "decide in each case" according to its "discretion."

A very interesting contribution to this troublesome "unit" problem was made by Professor Lloyd K. Garrison, Dean of the Law School of the University of Wisconsin, in his testimony before the House Investigating Committee. He expressed the view that not even Congress itself is "capable of writing a formula" for deciding the issue. "I don't think," he says, "you can write a formula which will be workable and which will be acceptable and which will avoid strife."

Professor Garrison does not approve, however, of the present provision of the Act giving the Labor Board power to "decide in each case," and suggests an amendment providing "that where there exists a substantial dispute as to the appropriate unit or units between two or more labor organizations" then "no decision as to units shall be made except in accordance with agreement between the respective organizations." Professor Garrison doesn't think that the results of his proposed amendment would be "as serious as one might at first blush suppose." Upon being asked to comment on Dean Garrison's suggestion, Chairman Madden said he thought it "sounder" than other solutions which had been proposed, but he had some qualms about it and thought its "implications" were "very, very serious." "Dean Garrison's solution," says Mr. Madden, "would be the solution of Pontius Pilate, namely, 'I wash my hands of the whole problem.'" According to Holy Writ. after the Roman Governor had washed his hands of his problem, the Crucifixion followed.

The passage of the centuries does not seem to have improved public estimate of Pilate's solution. And it may well
be doubted whether the American people would tolerate it today. Its application to the "unit" problem in labor relations would inevitably result in strife, confusion and great damage to our industrial economy. And these are not patient Times.

According to Mr. Madden, Dean Garrison's thesis is that:

"There are, after all, limitations to what can be done by legal processes and . . . in a particular situation the social forces involved may be such that government must keep its hands off and let those social forces work themselves out."

Now most of us can agree that the maximum opportunity for free enterprise (as against governmental control) is as important and desirable in labor relations as in other business affairs. But, that Government will "keep its hand off" of labor relations any more than "off" of other business activities seems highly improbable. It seems more likely that in the days which lie before us, Labor, like Business, will have to submit to reasonable regulation and control in the public interest. What that regulation and control shall be in connection with this "unit" problem is a matter of deepest concern not only to labor but to the people as a whole.

This brings us to our next general conclusion, which is that any formula prescribed by law for determining the "unit" of representation in labor relations should be so devised as to permit growth and change as human needs develop. It has been said that the outstanding characteristic of a democratic form of government is the freedom it gives to men to change their minds. No such freedom exists under dictatorship, and if we are to have democracy in labor relations, certainly this freedom should be preserved.

Majority Rule, the basic principle of democracy, is a device to escape perpetual warfare. The temporary majority may be wrong, and the minority may be right. But if any action is to be taken other than continuing the argument to the point of warfare, someone must make the decision. So far, we in America have prospered on the theory that the
majority should make the decision. But always we have clung to the system which permits today's temporary minority to become tomorrow's majority. Always we knew that the action of the majority taken today could be reversed tomorrow if it proved unsatisfactory. Without this saving grace, Majority Rule would be just another form of dictatorship and oppression.

Even Board Member Edwin S. Smith seems to recognize the value of freedom of action in the past, for he says:

"In general, where there has been a past bargaining history on the part of the craft groups involved, I have agreed to the application of the Globe Doctrine. Where, however, there has been no such past history on the part of the craft groups I have held in favor of the larger industrial unit."

In other words, "history" in labor organizations (meaning results obtained by free action of the workers in times past) is a valuable thing. But there mustn't be any more history made. According to his view, the Labor Board will take care of that and make future "history" for the workers. It does not sound like the American way.

Just how this matter of preserving to the workers their maximum freedom of action to determine for themselves within the limits of law what forms their organizations shall take will require close study. But it should be a possible task. Our State laws permit the formation of new municipal corporations and annexations to existing municipal corporations under laws prescribing numerous conditions which must be met, such as the physical area to be incorporated or annexed, the number of voters which must be resident therein and the like. But all such laws give to the people themselves freedom of initiative and action to determine whether they desire to apply for such incorporation or annexation. Election and Primary laws provide in great detail for the expression of the will of the people through election "units" of representation down to the precinct. In theory at least all of such laws are designed not only to permit the
free expression of the will of the people but also, and equally important, to permit freedom of action under the law so that political parties and organizations may be formed and re-formed as desired by the people.

So, if we are to have true Representative Government in Labor relations, it would seem to be a minimum requirement that the law be so framed as to permit the workers freedom to express their wishes in units of representation fairly and equitably fixed by law, and preserving their right to change their minds in choosing how they shall be represented. Whether the Globe Doctrine, or some other formula, is the answer must be a question for the specialists to determine. Our concern is as to the results so far obtained and the general aspect of the struggle.

How does the Battle for Democracy stand in labor relations? That is our inquiry. Well — notwithstanding all of the turmoil and confusion and the bitterness of the struggle, we think no one should despair. Labor's charter of freedom has been announced and established. And in all probability the time has now passed when any serious attempt will ever be made to challenge labor’s right to organize and bargain collectively through representatives of its own choosing — that is, so long as free government continues. This should be a great encouragement to all who believe in freedom and Representative Government. That there should have been difficulties and struggles over the methods devised to achieve this great end was to be expected. But overcoming difficulties is the American tradition, and experience should develop the way to make the principle of Representative Government work in its new setting.

And how does labor’s right to govern itself and to bargain collectively fit into the scheme of our Representative Government as a whole? That is a question still more important. For, as we all know, the Battle for Democracy is “Total War,” of which we have heard so much. Labor relations are
only a part of our whole body politic. Can the right of labor to organize and bargain collectively be fitted into our American System so as to contribute to the best good of all? Our answer must be that it can and will be fitted in.

When we remember that the purpose and objective of the struggle to achieve labor's right was to equalize bargaining power, not to establish a new sort of inequality, we shall have the key to the problem of adjusting this right into our system of government “Of the people, by the people and for the people.” In order to assure this right to labor, other individual rights had to give way in part; and in order that labor’s rights may not overstep the bounds of other human rights, labor’s rights will have to be adjusted so that a harmonious economic whole may be produced. As our beloved Oliver Wendell Holmes puts it, “In order to enter into most of the relations of life, people have to give up some of their constitutional rights.” That is the way Free Peoples have found it possible to organize Representative Governments under which all can live in harmony.

“Nothing is injurious to the part,” says the great Roman Emperor Marcus Aurelius, “if it is for the advantage of the whole.” Surely it is to the advantage of all of our people that labor should have and enjoy its right to organize and bargain collectively; that is the unquestioned right of the workers, as it is the right of other groups of our people, to organize and act collectively for their best good. Surely also it is to the advantage of labor itself that its right be so adjusted into the American System that its exercise shall not be injurious to the whole. That this can and will be done must be our faith if we believe our freedom will endure.

Much apprehension is expressed today over the supposed dangers of “pressure groups” or “blocs.” Some take the view that those “groups” and “blocs” should be destroyed. They seem to be a natural development both here in America and elsewhere, and things which grow and develop naturally usually possess great vitality. It may not be so easy to de-
destroy that which has the stubborn strength to grow in spite of all opposition. Since destruction of these "groups" and "blocs" may be difficult, or indeed impossible, a more promising remedy would seem to be the using of them to make a still stronger whole. Using natural forces has in the past met with more success than combating them.

The discovery of the arch was such a use of natural forces. No matter how ponderous or crushing the individual stones might be, some man found out that if the arch were properly constructed, this very weight and strength of the component parts each pressing against the other bound the whole structure together into an unshakable whole. A strong body politic is not made up of weak members but of strong members properly coordinated. And so with labor's freedom to organize and bargain collectively. Let labor be strong and free. We need it so to keep America strong and free. And, fitted into the arch of the American System, labor by its very strength will contribute to the strength of the whole.

One thing has become very clear in the Battle for Democracy, now raging overseas, and that is, that labor is an indispensable part of any successful waging of the battle. Representatives of labor hold key positions in the British War Cabinet of today, and their presence in the Cabinet furnishes the strongest assurance that Britain will survive. Production and the ability to produce are the basis of all strength of peoples in their struggles to be free. How can any nation hope to defend its freedom unless the workers who produce are represented in the Government and take a responsible part in forming and carrying out its policies? Responsibility brings sober thought and judgment, and the history of our country justifies the belief that leaders of labor, as leaders of other partisan groups, when charged with responsibility and the duty of making decisions for the common good, will place country above partisanship and make the right decisions.
Today the world is watching with anxious eyes the outcome of the great Battle for Democracy. Beyond our borders the battle is being fought with armed forces. News commentators tell us from hour to hour the tragic story of its ebb and flow. The issue still hangs in the balance. Here in America the battle, though not fought by force of arms, is none the less real, and the results no less critical. For to survive, democracy must be made to work. And to make democracy work is our present part in the battle.

How does the Battle for Democracy go here in America? That is the fateful question in the minds of all free peoples and in the minds of those who once were free. For if America can stand, there may still be hope. As in the time of the prophet Isaiah, the cry is, "Watchmen, what of the night?" And millions may still hope the answer will be, "The morning cometh."

Can the Battle for Democracy be won? That depends upon democracy itself. Does it deserve to survive? That is the basic issue to be determined. Of one thing we may be sure, democracy cannot be saved by any defensive rear-guard action. It cannot survive as a fragile flower which must be protected against every wind of adversity. Democracy can win only if it has strength and vitality to attack and conquer its enemies with the irresistible gospel that it is the better way of life.

What is wrong with democracy — that it stands today fighting for — its life? The Dictators tell us that the democracies are done — rotten with easy living, hopelessly entangled in the meshes of parliamentary futility, and weighted down with bureaucratic bungling. And, strange as it sounds, they tell us that democracy cannot compete with the totalitarian states in capturing and holding the imagination of its youth, who they say are hopeless in the face of a dead level of mediocrity, promising neither adventure nor accomplishment for the future. These are serious charges and require serious consideration.
What is this freedom we are told we must defend? Certainly not freedom from toil and burdens, for toil is man's best hope of happiness, and no man is really free unless he has burdens to bear. Certainly not freedom from discipline and duty, for they are the very foundation of any ordered and endurable existence. Certainly not freedom from hardships and dangers, for out of such have come man's greatest achievements. No — the freedom which the people of the democracies will find worth fighting for is something far different. Isn't this it — in the last analysis — freedom to work at worthwhile tasks; freedom to submit to discipline and duty as the best good of all demands, and freedom to endure hardships and dangers in a great cause — above all, freedom to build, and to explore, and to adventure beyond the old frontiers. This is the freedom which has made America great. It is the freedom our youth will defend.

The "pursuit of happiness" is one of the "unalienable rights" of man announced by the immortal Declaration of Independence, not "happiness" — mark you, but the "pursuit" of that great human aim. The words are aptly chosen, for freedom to pursue his aspirations is the thing which has always fired the imagination of man and inspired his ardent efforts. Beyond all question, government must, in times of disaster, provide security for its people where none exists. But this is not enough. "When there is no vision the people perish." Vastly more important then providing security for the people is to preserve the "vision" and to provide the opportunity for the people to hew out their own security. What was the driving force behind the pioneers who subdued the American wilderness and formed our government? Nothing else but the freedom which every man felt to be his to explore and adventure and build. And if democracy cannot give to our youth today this same opportunity, so that they too may feel the Divine fire of creation, solemn admonitions that they reverence the work of the Founding Fathers will fall on deaf ears. After all, man can be happy
under almost any hardships and adverse circumstances, if he can feel that he has something worthwhile to do and the chance to do it.

Some years ago I attended one of your great football games here at Notre Dame. I have forgotten the game, with whom it was played and who won, but one thing I have never forgotten. Arriving early in the day, I met your Father Nieuwland, now gone to his reward. It was in his laboratory or his work shop, as he would have called it. He was not young, and his battered hat and worn and threadbare clothing spoke of small regard for appearances. Proudly he took us into his inner sanctum and produced a small bottle in which was a fragment of the magic new substance he had invented — synthetic rubber. He told us of its marvelous qualities (all of which have now been demonstrated by commercial production and use) and something of his long and arduous labors in making the discovery. The quenchless spirit of youth and high adventure looked out of his eyes. He was happy because he was free — free of the "dead hand" of regulation and compulsion — free to attempt and do great things.

This is the freedom which we of the democracies must somehow recapture or re-create if we are to hold the enthusiasm and loyalty of our youth. It is the freedom we must have if the Battle for Democracy is to be won.

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