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POLITICS AND LABOR UNIONS

Edward J. Fillenwarth*

Reaction of a varying degree is engendered forthwith upon the mere mention of the word *politics* with the phrase *labor unions*.

Some groups, and they need not be specifically mentioned, rather firmly believe that any relationship between *politics* and *labor unions* is *per se* improper and illegal; other groups contend just the opposite; and, some take the lackadaisical position that the relationship, whatever it might be, is most ineffective.

However, and regardless of how trite it may be to say, *politics* and *labor unions* are apparently "here to stay." In view of this, it behooves one to look at this matter from a nonpartisan viewpoint, *if such is possible*; and perhaps it may be conducive to the proof of one's academic fairness to thereupon indicate there is a need for political activity on the part of labor unions.

As has been stated,

It is often debated whether unions should "go into politics"; really, they have no choice in the matter. They are automatically in politics because they exist under a legal and political system which has been generally critical of union activities. The *conspiracy suit* and the *injunction* judge have been a problem for unions from earliest times. A minimum of *political activity* is *essential* in order that unions may be able to *engage in collective bargaining* on even terms.¹

It is difficult for many to believe, that in the not too distant past, it was *per se* tortious, unlawful, and criminal, for workingmen to organize themselves into a trade union; when the workingman organized with his fellow workers, such was criminal conspiracy.

Even at this late date, there are some who would still assert that labor union activity, even the initial steps thereof, such as organizational activity on the part of a labor union is a nuisance and therefore should be illegal and enjoined. This appeared to be the sole contention in the rather recent case of *State of Indiana, on the relation of Wesley Taylor, etc., and Marion County Building Trades Council, Relators v. Circuit Court of Marion County, etc.*²

In that case the Supreme Court of Indiana conspicuously stated that "The case at hand involves organizational picketing by the relator trade council. Such activity indicates the existence of a labor dispute."³

However, as the Indiana Court conspicuously pointed out, "The plaintiff attempted to plead around the labor dispute, predicating his cause of action upon the alleged fact that the picketing created a nuisance according to the statute⁴ in so far as it constituted 'an obstruction to the free use of property.'"⁵

Thereupon, the court⁶ tersely traced the early conception in this country that labor union activity was definitely illegal, tortious, and criminal.

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1 REYNOLDS, LABOR ECONOMICS AND LABOR RELATIONS 80-81 (1959). (Emphasis added.)

2 240 Ind. 94, 162 N.E.2d 90-91 (1959).

3 *Id.* at 92.

4 IND. ANN. STAT. § 2-505 (Supp. 1960).

5 *Ibid*; State v. Circuit Ct. of Marion County, 240 Ind. 94, 162 N.E.2d 90, 91 (1959).

6 State v. Circuit Ct. of Marion County, *supra* note 5.

Those who are young and new in the labor movement, and those who have never taken the time nor the trouble to ascertain the tribulations and obstacles encountered by their fathers and grandfathers, would be more apt to understand and perhaps appreciate some of the present, if they would only read something of the history of the labor movement.

To avoid such a burden being placed upon anyone, the historical sketch of the early illegality of union activity, as written by the Supreme Court of Indiana, is as follows:

It is quite true that in the nascent stages of the labor movement all organized activity by labor was classed as "prima facie tort," either nuisance, conspiracy or interference with trade and business. *Vegeahn v. Gunter*, 1896, 167 Mass. 92, 44 N. E. 1077, 35 L.R.A. 722, 57 Am. St. Rep. 443; *Iverson v. Dilno*, 1911, 44 Mont. 270, 119 P. 719. Even prior to the "prima facie tort" doctrine, labor activity was deemed to be a criminal conspiracy at common law. *Journeyman Cordwainers' Case*, 1809, *Yates Sel. Cas.*, N.Y., 112. However, the classic dissent of Chief Justice Holmes in *Plant v. Woods*, 1900, 176 Mass. 492, 505, 57 N.E. 1011, 1016, 51 L.R.A. 339, 79 Am. St. Rep. 330, was a harbinger of the new era of labor regulation. The *Plant* case clung staunchly to the "prima facie tort" theory in holding that organized trade union activity was unlawful *per se*, but Justice Holmes did not acquiesce in this view. Rather he held it to be "lawful for a body of workmen to try by combination to get more than they are now getting, * * * and to that end to strengthen their union by the boycott and the strike." That there may be valid socio-economic justification for certain organized labor activity was the basic premise upon which Holmes relied to deny the stigma of conspiracy which had been theretofore attached to the whole union movement. So today when a union seeks to organize a shop, when there is picketing, strike, boycott, etc., these activities are no longer classed as tortious or criminal. Rather they are treated as incidents of a "labor dispute," and as such are regulated and adjudicated according to the labor laws and not the criminal law or the law of torts. The law of labor regulation has come into its own as an independent body of law.⁷

One can rest assured that not all members of the judiciary were as liberal and as judicially fair as Holmes; for, as noted above, "The conspiracy suit and the injunction judge have been a problem for unions from earliest times."⁸

This may not be the particular time nor the place in this epitasis to abruptly bring one to the immediate present; but it may justifiably appear to some, that we are fast approaching, if we have not already done so, a "full circle"⁹ in the matter of the legality of *union activity* and the *injunction judge*.

For example, there is the Railway Labor Act¹⁰ which adequately protects the railroads by permitting them to have clear access to the *injunction judge*; it is well decided that a railroad may obtain an injunction against any strike

⁷ *Ibid.*

⁸ REYNOLDS, *op. cit. supra* note 1.

⁹ *International Bhd. of Teamsters Local 695, A.F.L. v. Vogt, Inc.*, 354 U.S. 284-95 (1957).

¹⁰ 45 U.S.C. §§ 151-164 (1959).

by a union involving a so-called *minor dispute*,¹¹ and most labor disputes in the railway industry are in that category; it does not appear that as yet a union has the same right to injunctive relief;¹² this specific point was presented to the Supreme Court of the United States, but was rejected.¹³

The Taft-Hartley Act¹⁴ provides that an agency of the United States Government (National Labor Relations Board, hereinafter referred to as N.L.R.B.), in some instances, must automatically go into court and seek injunctive relief against unions and certain union activity.¹⁵ This is the *mandatory injunction* provision of the Taft-Hartley Act, and is applicable exclusively against unions.¹⁶

The Taft-Hartley Act also provides for discretionary injunctive relief;¹⁷ this right of the N.L.R.B. has been used rather infrequently, but when so used, it has been primarily exercised against unions. The Board has sought only six injunctions against employers since 1953. Among all injunctions that the Board has sought, only one (1%) per cent have been against employers; as a union representative would say, the proof is in the facts, and they are:¹⁸

Year	10(l) injunctions against unions	10(j) injunctions against unions	10(j) injunctions against employers
1953	44	0	1
1954	66	4	2
1955	59	1	0
1956	78	1	0
1957	98	1	1
1958	127	6	1
1959	129	4	1
Total	601	17	6

The *injunction judge* weapon of the Taft-Hartley Act,¹⁹ was thereafter substantially supplemented by an amendment (*Landrum-Griffin Act*),²⁰ thereby

11 *Bhd. of Locomotive Eng'rs v. Missouri-Kansas-Texas R.R. Co.*, 363 U.S. 528, 529-31 (1960).

12 *Id.* at 531, footnote 3. We did not decide in *Chicago River*, and we do not decide here, whether a federal court can, during the pendency of a dispute before the Board, enjoin a carrier from effectuating the changes which gave rise to and constitute the subject matter of the dispute, independently of any suit by the railroad for equitable relief. As we read the order of the District Court, this case does not involve independent relief for the union.

13 *Hilbert (Bhd. of Locomotive Eng'rs) Pennsylvania R.R. Co.*, *petition for cert.* filed Aug. 25, 1961, U.S. Sup. Ct., No. 353; *petition for cert. denied* November 6, 1961.

14 29 U.S.C. §§ 151-188 (1959).

15 29 U.S.C. § 160(l) (1959).

16 *Ibid.*; Senate Report 105, 80th Cong., p. 27; CCH LAB. L. REP. ¶ 6530.05; National Labor Relations Board v. Denver Bldg. & Const. Trades Council, 341 U.S. 675, 677-82 (1951).

17 29 U.S.C. § 160(j) (1959).

18 *Report of the Subcommittee of the Committee on Education And Labor of the House of Representatives as to the National Labor Relations Board*, Roman C. Pucinski, Illinois, Chairman (*Hearings*, May & June, 1961, *Report*, Sept. 1961).

19 29 U.S.C. § 160(l) (1959).

20 29 U.S.C. § 160 (l) (Supp. II, 1961); 29 U.S.C.A. § 158 (b)(4)(A)(B)(C)(D)(7)(A)(B)(C)(e) (Supp. II, 1961).

mandating the N.L.R.B. to seek injunctive relief under additional provisions of the law; again such was only directed against unions and union representatives.²¹

Such legislation, among other things, declared as illegal that which had been declared to be legal, to-wit: a fundamental of union activity, i.e., organizational and recognitional picketing.²²

And, the "full circle"²³ as to the *conspiracy suit* and the *injunction judge* undoubtedly will have been reached, if the so-called "Get Hoffa Bill"²⁴ of Senator John McClellan, the illustrious guardian²⁵ of the rights of the workingman, should per chance be adopted in the next session of Congress (1962).

Long ago the workingman and his labor unions were required to get into politics to obtain some semblance of economic relief from the judicial stigma of tortfeasors, illegality, criminal conspiracy, and the injunction judge.

It may be a surprise to some neophytes to know that the workingman did not indulge in politics for the first time in 1929, which year brought with it our worst depression. As a matter of fact, even the workingman in the colonial days of America, found it necessary to seek and obtain economic relief by political activity.

Along about the year 1730, several shipyard workmen, together with other artisans and some shopkeepers, joined together in the formation of a political organization called the *Caucus*; this political activity, undoubtedly considered brazen and repugnant to some of our Tory forefathers, nevertheless was rather successful; this colonial workingman's political party managed to take over for a limited time the town offices in Boston. About 1740, currency troubles developed in Boston; this situation had the effect, among others, of lowering the income of the workingman in Boston, which in turn provided the stimulus for expanding the activities of the *Caucus*.²⁶

History records at this time (1740's) an unusual alliance; one that the modern politicians, and others, would indeed fear, i.e., an alliance between the workingman and the farmer. The *Caucus* united with a party of debtor farmers, and thereby gained control of the Massachusetts General Court; this

21 *Ibid.*

22 National Labor Relations Board v. Drivers, Chauffeurs, Helpers, Local Union No. 639, 362 U.S. 274 (1960); see also, note 2, *supra*.

23 International Bhd. of Teamsters Local 695, A.F.L. v. Vogt, Inc. 354 U.S. 284-95 (1957).

24 Senate Bill No. 2573, 87th Congress, 1st Session, introduced just prior to adjournment on September 19, 1961; "Instead of going to the Senate Labor Committee, which has jurisdiction over labor legislation, McClellan had his bill referred to the Senate Judiciary Committee. He is an important member of the Judiciary Committee, and will be able to push the bill through the Committee." See *Indiana Labor Tribune*, Vol. IX, Number 7, Oct. 13, 1961. In writing about S.B. 2573, General President Hoffa of the Teamsters Union, asserted that "McClellan's regard for Americans working in transportation is that they are no different than a load of dirt in commerce. ***. We know the difference between a commodity and a human being. It is tragic that so few of our lawmakers have never earned a day's pay with their hands, have never had to put a paycheck into a sweat soaked bill fold in the pocket of dirty overalls. It is tragic that McClellan doesn't know Americans as human beings ***. I hope from the bottom of my heart that organized labor realizes the latest McClellan onslaught for what it is — the final phase of the nation's anti-union element to destroy America's free labor movement as it has been destroyed in Russia." (*The International Teamster*, p. 3, October, 1961). (Emphasis added.)

25 Speaking metaphorically.

26 RAYBACK, A HISTORY OF AMERICAN LABOR 23-36 (1959).

combination of colonial workingmen and debtor farmers established a land bank and even issued paper money *backed* by real estate.²⁷

Boston was not alone in this respect; similar political activity developed in New York, Philadelphia, Baltimore, and various other towns along the Atlantic coast around the year 1750.²⁸ Although these political groups were ordinarily led by liberal-minded lawyers and merchants, nevertheless, they were for the most part composed of workingmen; such groups were designed to protect civil liberties and to further the demands of the colonial workingmen for political equality with the privileged classes of those days.

There is no question but that such political organizations of workingmen aided immeasurably in the all important formation of the many *Sons of Liberty* groups, which played such a conspicuous role in manifesting opposition to the *Stamp Act*, the *Townshend Acts*, and other measures of the British Government in the years just prior to 1770. The workingmen and the *Sons of Liberty* not only looked upon the *Stamp Act*, etc., as a threat to their liberty, but also to their economy. It is no idle conclusion to assert that the colonial workingman indeed assisted in countering the conciliatory and compromising attitude of many of the merchants and landed gentry toward the repressive political and economic measures of the Parliament in England; this attitude *a fortiori* helped pave the way for the American Revolution.²⁹

In the all important year of 1776, and of course, following the Revolution, various local labor organizations were formed to attempt to establish wage scales and working conditions; but for the most part, these labor organizations played insignificant roles in politics.

However, the workingman could not long stay out of politics. In 1827, the building trades mechanics went on strike for a *ten hour day*, in the process of which the *Philadelphia Mechanics' Union of Trade Associations* was formed. Then, as an outgrowth of the above, the next year, particularly May of 1828, the first labor party in America was formed; it was called the *Workingmen's Labor Party of Philadelphia*.³⁰

Economic action on the part of the mechanics apparently brought nothing but failure on the issue of the *ten hour day*, so they sought to accomplish such by means of political action. The *ten hour day* issue was placed in the political platform of the *Workingmen's Labor Party of Philadelphia*.

In New York the workers were somewhat more successful on the *ten hour day issue*, but in 1829, they formed a *Workingmen's Party* apparently to protect the same. The New York workers through their political parties protested and strongly condemned that which they alleged was greater consideration in legislation for the rich than for the poor.³¹

Shortly thereafter, and particularly between the years 1831 and 1834, the above mentioned unusual alliance between the farmers and workingmen, again

27 *Ibid.*

28 *Id.* at 8.

29 *Id.* at 32-36.

30 MILLIS AND MONTGOMERY, ORGANIZED LABOR 29 (1945); 1 COMMONS, HISTORY OF LABOR IN THE UNITED STATES 191 (1918).

31 1 COMMONS, HISTORY OF LABOR IN THE UNITED STATES 232 (1918).

took form in New England. It was formally called the *New England Association of Farmers, Mechanics and Other Workmen*,³² it was partly economic and of course political; it not only involved itself with the *ten hour day*, but subsequently took up the issue of public education for children in the factories.

All of these groups of workingmen seemed to have at least three things in common; they were political, economic, and *short lived*. The latter attribute should not leave the inference that such groups were a failure; just the contrary was true; for, one of the main reasons necessitating their decline was the fact that other well established political parties took up the causes that these workingmen's political parties so effectively advocated. It is said that to these early political parties of the workingmen, much credit should be given for the subsequent establishment of the public school system, the initiation of currency reforms, the abolition of imprisonment for debt, the passage of lien laws for mechanics, and the ultimate removal from unions of the stigma of *criminal conspiracy*.³³

In the middle of the nineteenth century, one of the primary aims of the workingman was to establish a *ten hour day*; this particular objective of labor was attempted to be accomplished by trade union demands and legislative activity;³⁴ the latter could be said to have resulted in the adoption of *ten hour* laws by the legislatures in New Hampshire, Pennsylvania, Ohio, Rhode Island, California and Georgia.

The industrial expansion of the United States in the second half of the nineteenth century, and the conditions to which the workingman was subjected during this period, made it reasonably clear that "labor had to meet the challenge of nationwide industry by itself organizing on a nationwide basis."³⁵

In 1866, representatives and delegates from various local unions, trades assemblies, and national unions met in Baltimore and organized the National Labor Union.³⁶ The principal interest of the National Labor Union was legislative activity to secure the *eight hour day*; another object, and it appeared to be an old and constant one, was currency reform. The National Labor Union had a life span of some six years and during its existence, it was constantly engaged in lobbying activities before Congress and the various state legislatures for the *eight hour day*. In 1868, Congress passed an *eight hour* law for government employees and also took action on the matter of currency, thereby answering to a considerable degree the demands of the National Labor Union. *Eight hour* legislation was also passed in various states.

During the many strikes of 1877, the workingman found himself confronted by hostile state and federal troops; thereafter, numerous political parties of workingmen appeared in most of the industrial centers of this nation. The

32 *Id.* at 302.

33 *Id.* at 331-32; DULLES, *LABOR IN AMERICA* 46-50 (1955); KARSON, *AMERICAN LABOR UNIONS AND POLITICS* 1900-18, 4 (1958).

34 1 COMMONS, *op. cit. supra* note 31, at 536.

35 DULLES, *LABOR IN AMERICA* 99 (1955).

36 2 COMMONS, *HISTORY OF LABOR* 96 (1918).

Greenback Labor Party was organized with a platform advocating, among other things, shorter hours, prohibition of convict labor, cessation of the importation of servile labor, national and state bureaus of labor statistics, and currency reforms.³⁷ The Greenback Labor Party vote was in excess of a million, and some fourteen candidates of said Party were elected to Congress. In New York City, independent political action on the part of labor almost succeeded in electing a mayor in 1886. During this surge of political activity on the part of labor, legislators friendly to labor were elected to many state legislatures, and in the end this resulted in the adoption of a considerable number of laws protective to labor on a state level.³⁸

In the meantime, particularly in 1881, representatives of local and national unions, and regional and local assemblies, formed the Federation of Organized Trades and Labor Unions of the United States and Canada; such Federation was the forerunner of the American Federation of Labor, which was formally organized in 1886. At the meeting of the labor representatives in 1886, a thirteen point legislative program was promulgated.³⁹

There is no question but that the American Federation of Labor, at its inception, adopted a policy of political action; however, it was significantly non-partisan political action; this was a fundamental belief of Samuel Gompers, the President of the A.F. of L.⁴⁰

The A.F. of L. policy with respect to politics was a traditional one; it was truly, and, should continue to be, the steadfast principle as to politics of the workingman and labor unions in America.

Such traditional principle as to political activity is briefly stated as follows:

The partisanship of Labor is a partisanship of principle. The American Federation of Labor is not partisan to a political party, it is partisan to a principle, the principle of equal rights and human freedom. We, therefore, repeat: Stand faithfully by our friends and elect them. Oppose our enemies and defeat them; whether they be candidates for President, for Congress, or for other offices, whether Executive, Legislative or Judicial.⁴¹

In 1893, the A.F. of L. adopted a political platform, calling for the *eight hour day*, government inspection of mines and shops, employer liability for

37 *Id.* at 244-45.

38 *Id.* at 453-54.

39 *Id.* at 324.

40 TAFT, *THE A.F. OF L. IN THE TIME OF GOMPERS* 289-92 (1957).

41 UNIONS, MANAGEMENT AND THE PUBLIC 215 (Bakke & Kerr eds 1948); Article II, Section 4 of the Constitution of the A.F. of L. expressly provided that one of its objectives was "to secure legislation in the interest of the working people"; Article II of the Constitution of the A.F. of L.-C.I.O. contains twelve "Objectives and Principles," two of which conspicuously provide that the A.F. of L.-C.I.O. is organized:

5. To secure legislation which will safeguard and promote the principle of free collective bargaining, the rights of workers, farmers and consumers, and the security and welfare of all the people and to oppose legislation inimical to these objectives.

* * *

12. While preserving the independence of the labor movement from political control, to encourage workers to register and vote, to exercise their full rights and responsibilities of citizenship, and to perform their rightful part in the political life of the local, state and national communities.

injuries to workmen, the abolition of the sweat shop, and compulsory education.⁴²

As a result of the political efforts of the A.F. of L., the Knights of Labor, the Populists, and various reform groups, a substantial body of state labor legislation was enacted between 1886 and 1900.⁴³ This legislation involved primarily laws with respect to labor arbitration, factory and mine safety, responsibility for industrial accidents, the *eight hour day*, and child labor.

Shortly after 1900, various employer groups started a nationwide campaign against organized labor; spearheading the attack was the National Association of Manufacturers. To such organization has been given credit for the defeat of the *eight hour* and *anti-injunction* bills as supported by labor in Congress in 1902.

In 1904, the same employer organization apparently attained noticeable success in defeating Congressmen who were considered favorable to labor.⁴⁴

Along about this same time, unions suffered reverses in the courts, through the issuance of injunctions and application of the anti-trust laws.⁴⁵

Undoubtedly as a necessary reaction, labor unions actively campaigned to defeat their *enemies* in the elections of 1906, 1908, 1910, and 1912;⁴⁶ such political efforts on the part of labor brought results in Congress, for in 1914, the Clayton Act was passed, giving some relief against labor injunctions, and the anti-trust laws.⁴⁷

There should be no doubt in the mind of anyone, that the workingman and his labor unions became active in politics following the *economic crash* in 1929.

In 1932, the long and continuous campaign of labor unions, against the indiscriminate use of the injunction, was successful by the passage of the Norris-LaGuardia Act; the support of labor of the *New Deal* in the elections of 1934, aided considerably in the passage by the Wagner Act, and other favorable legislation.⁴⁸ In 1935 and thereafter, labor continued to be active on the political scene and the necessary results were forthcoming in Congress and many state legislatures; but apparently, labor unions made little or no effort to participate in the 1946 Congressional elections; only 33 million voted, and labor suffered its worst political defeat since the *New Deal*.⁴⁹ The following year (1947), Congress adopted the Taft-Hartley Act; such Act to a great extent followed the suggestions of the National Association of Manufacturers.⁵⁰

Thereafter, political activities of labor unions took on a new form, so to speak; independent organizations were developed, which sought and obtained their primary funds by voluntary contributions from the members of their

42 2 COMMONS, *op. cit. supra* note 36, at 509-10.

43 RAYBACK, *op. cit. supra* note 26, at 181-84.

44 PERLMAN & TAFT, HISTORY OF LABOR 152.

45 TAFT, *op. cit. supra* note 40, at 266-71.

46 PERLMAN & TAFT, *op. cit. supra* note 44, at 153-58.

47 RAYBACK, *op. cit. supra* note 26, at 260.

48 *Id.* at 333.

49 *Id.* at 395.

50 *Id.* at 398.

various labor organizations, such contributions being separate and distinct from *dues*.

Immediately after the adoption of the Taft-Hartley Act, the A.F. of L. formed Labor's League for Political Education (LLPE); the C.I.O. organized its Political Action Committee (PAC); the A.F. of L.-C.I.O. organized its Committee on Political Education (COPE); and, the International Brotherhood of Teamsters organized its Committee for Democratic Republican Independent Voter Education (DRIVE).

Thus, one can readily note from all of the above, that the workingman has been active politically by reason of necessity, since the colonial days of America. However, as the above brief history reflects, labor took action in the political fields on a sporadic, rather than a constant, basis; unions sought particular and specific relief in different campaigns over the past years, and usually for a limited time only; especially was such true if organized labor was successful in obtaining favorable legislation or in having a particular political party absorb into its platform the measure or measures in which organized labor was interested.

In the twentieth century, and particularly after 1934, organized labor took on a definite stature in the form of millions of members, substantial funds in their treasuries, and a clear legal status under the Wagner Act.

With such stature, labor unions began to move on both a collective bargaining and political basis; at least during the years 1930 to 1944, the major political parties in this country recognized labor as a potent force in politics. By reason of such, Congress took action for the first time in 1943, to curb to some extent the political activities of organized labor.⁵¹

Originally, Congress merely provided that "It shall also be unlawful for any *corporation* whatever to make a money *contribution* in connection with any election at which Presidential and Vice-Presidential electors or a Representative in Congress is to be voted for or any election by any State legislature of a United States Senator."⁵²

In a further effort to regulate and control the spending of money by corporations in national elections, Congress took action in 1910, requiring the identity of contributors. In the very next session, Congress decided that all candidates for the House and Senate should make detailed reports with respect to nominating and election campaigns. In 1918, Congress made it unlawful to offer or solicit anything of value to influence voting; and, finally in 1925, came the Federal Corrupt Practices Act.⁵³

51 *United States v. UAW*, 352 U.S. 567, 578 (1957): "Thus, in 1943, when Congress passed the Smith-Connally Act to secure defense production against work stoppages, contained therein was a provision extending to labor organizations for the duration of the war, § 313 of the Corrupt Practices Act. 57 Stat. 163, 167."

52 *Id.* at 569; 34 Stat. 864 (1907). (Emphasis added.)

53 Justice Frankfurter tersely sets forth the reason for and chronological development of the Federal Corrupt Practices Act of 1925 in the case of *United States v. UAW* 352 U.S. 567, 575-77 (1957), as follows:

As the historical background of this statute indicates, its aim was not merely to prevent the subversion of the integrity of the electoral process. Its underlying philosophy was to sustain the active, alert responsibility

In 1940, Congress extended the so-called Hatch Act, which among other things, makes it unlawful for any *person*, defined to include any organization or association, to make any contribution in excess of \$5000 during any year to any person's campaign for nomination or election to Federal Office.⁵⁴

of the individual citizen in a democracy for the wise conduct of government.

This Act of 1907 was merely the first concrete manifestation of a continuing congressional concern for elections "free from the power of money." (See statement of Samuel Gompers, *supra*). The 1909 Congress witnessed unsuccessful attempts to amend the Act to proscribe the contribution of anything of value and to extend its application to the election of state legislatures. The Congress of 1910 translated popular demand for further curbs upon the political power of wealth into a publicity law that required committees operating to influence the results of congressional elections in two or more States to report all contributions and disbursements and to identify contributors and recipients of substantial sums. That law also required persons who spent more than \$50 annually for the purpose of influencing congressional elections in more than one State to report those expenditures if they were not made through a political committee. 36 Stat. 822. At the next session that Act was extended to require all candidates for the Senate and the House of Representatives to make detailed reports with respect to both nominating and election campaigns. The amendment also placed maximum limits on the amounts that congressional candidates could spend in seeking nomination and election, and forbade them from promising employment for the purpose of obtaining support. 37 Stat. 25. And in 1918 Congress made it unlawful either to offer or to solicit anything of value to influence voting. 40 Stat. 1013.

This Court's decision in *Newberry v. United States*, 256 U.S. 232, 65 L. Ed. 913, 41 S.Ct. 469, invalidating federal regulation of Senate primary elections, led to the Federal Corrupt Practices Act of 1925, 43 Stat. 1070, a comprehensive revision of existing legislation. The debates preceding that Act's passage reveal an attitude important to an understanding of the course of this legislation. ***

One of the means chosen by Congress to deal with this evil was § 313 of the 1925 Act, which strengthened the 1907 statute (1) by changing the phrase "money contribution" to "contribution" (§ 302 (d) defined "contribution" broadly); (2) by extending the prohibition on corporate contributions to the election to Congress of Delegates and Resident Commissioners; and (3) by penalizing the recipient of any forbidden contribution as well as the contributor.

54 Again Justice Frankfurter wrote in 352 U.S. 567, 577-78:

When, in 1940, Congress moved to extend the Hatch Act, 53 Stat. 1147, which was designed to free the political process of the abuses deemed to accompany the operation of a vast civil administration, its reforming zeal also led Congress to place further restrictions upon the political potentialities of wealth. Section 20 of the law amending the Hatch Act made it unlawful for any "political committee," as defined in the Act of 1925, to receive contributions of more than \$3,000,000 or to make expenditures of more than that amount in any calendar year. And § 13 made it unlawful "for any person, directly or indirectly, to make contributions in an aggregate amount in excess of \$5,000, during any calendar year, or in connection with any campaign for nomination or election, to or on behalf of any candidate for an elective Federal office" or any committee supporting such a candidate. The term "person" was defined to include any committee, association, organization or other group of persons. 54 Stat. 767. In offering § 13 from the Senate floor Senator Bankhead said:

"We all know that money is the chief source of corruption. We all know that large contributions to political campaigns not only put the political party under obligation to the large contributors, who demand pay in the way of legislation, but we also know that large sums of money are used for the purpose of conducting expensive campaigns through the newspapers and over the radio; in the publication of all sorts of literature, true and untrue; and for the purpose of paying the expenses of campaigners sent out into the country to spread propoganda, both true and untrue. 86 Cong. Rec. 2720."

Then, in 1943,⁵⁵ Congress took its first action to control political contributions of labor organizations at least on a partial basis.⁵⁶

From 1944 to 1947, Congress continued to recognize the new political potency and stature of organized labor by its extensive investigation thereof.⁵⁷

As a result of such investigation, and perhaps aided by political motives,⁵⁸ Congress resorted to the use of diction, by pointing out that it originally intended the word *contributions*, necessarily to include *expenditures* for or on behalf of a candidate or party.⁵⁹

Congress thereupon pointedly proceeded to report through its committees

55 See note 51, *supra*.

56 *Ibid*; 18 U.S.C. § 610 History and Revision Notes (1959).

57 *United States v. UAW*, 352 U.S. 567, 579 (1957):

Despite § 313's wartime application to labor organizations Congress was advised of enormous financial outlays said to have been made by some unions in connection with the national elections of 1944. The Senate's Special Committee on Campaign Expenditures investigated, *inter alia*, the role of the Political Action Committee of the Congress of Industrial Organizations. The Committee found "no clear-cut violation of the Corrupt Practices Act on the part of the Political Action Committee" on the ground that it had made direct *contributions* only to candidates and political committees involved in state and local elections and federal primaries, to which the Act did not apply, and had limited its participation in federal elections to political "*expenditures*," as distinguished from "*contributions*," to candidates or committees. S. Rep. No. 101, 79th Cong., 1st Sess. 23. The Committee also investigated, on complaint of Senator Taft, the Ohio C.I.O. Council's distribution to the public at large of 200,000 copies of a pamphlet opposing the re-election of Senator Taft and supporting his rival. In response to the C.I.O.'s assertion that this was not a proscribed "*contribution*" but merely an "*expenditure* of its own funds to state its position to the world, exercising its right of free speech . . .," the Committee requested the Department of Justice to bring a test case on these facts. *Id.* at 59. It also recommended extension of § 313 to cover primary campaigns and nominating conventions. *Id.* at 81. A minority of the Committee, Senators Ball and Ferguson, advocated further amendment of § 313 to proscribe "*expenditures*" as well as "*contributions*" in order to avoid the possibility of emasculation of the statutory policy through a narrow judicial construction of "*contributions*." *Id.* at 83. The 1945 Report of the House Special Committee to Investigate Campaign Expenditures expressed concern over the vast amounts that some labor organizations were devoting to politics:

"The scale of operations of some of these organizations is impressive ***." (Emphasis added.)

58 See note 25, *supra*.

59 *United States v. UAW*, 352 U.S. 567, 581 (1957):

Like the Senate Committee, it advocated extension of § 313 to primaries and nominating conventions, *id.* at 9, and noted the existence of a controversy over the scope of "*contribution*." *Id.* at 11. The following year the House Committee made a further study of the activities of organizations attempting to influence the outcome of federal elections. It found that the Brotherhood of Railway Trainmen and other groups employed professional political organizers, sponsored partisan radio programs and distributed campaign literature. HR Rep No 2739, 79th Cong., 2d Sess. 36, 37. It concluded that:

The intent and purpose of the provision of the act prohibiting any corporation or labor organization making any *contribution* in connection with any election would be wholly defeated if it were assumed that the term 'making any *contribution*' related only to the donating of money directly to a candidate, and excluded the vast *expenditures* of money in the activities herein shown to be engaged in extensively. Of what avail would a law be to prohibit the *contributing* direct to a candidate and yet permit the *expenditure* of large sums in his behalf? (Emphasis added.)

investigating the subject matter, that if the word *contributions* did not include *expenditures*, then the law should be amended accordingly.⁶⁰

In 1947, Senator Ellender introduced a *bill* to "plug the existing loophole" in the Federal Corrupt Practices Act.⁶¹ At almost the same time, Representative Hartley introduced in the House a *bill*, containing a Section 304, which was much like the Ellender *bill*, in that it embodied the changes recommended in the reports of the House and Senate Committees on *campaign expenditures*.⁶² Section 304 "sought to amend § 313 of the Corrupt Practices Act to proscribe any '*expenditures*' as well as '*any contribution*,' to make *permanent* § 313's application to labor organizations and to extend its coverage to federal primaries and nominating conventions."⁶³

In explaining Section 304 of the Hartley bill, Senator Taft contended that "all we are doing here is plugging up the hole which developed, following the recommendation by our own Elections Committee, in the Ellender bill. 93 Cong. Rec. 6439."⁶⁴

The labor bills of the House and Senate went to a Conference Committee and subsequently Section 304 of the Hartley bill became Section 304 of the Taft-Hartley Act,⁶⁵ even in spite of the veto of President Truman. It was

60 *Id.* at 582.

The committee is firmly convinced, after a thorough study of the provisions of the act, the legislative history of the same, and the debates on the said provisions when it was pending before the House, that the act was intended to prohibit such expenditures. *Id.* at 40.

Accordingly, to prevent further evasion of the statutory policy, the Committee attached to its recommendation that the prohibition of *contributions* by labor organizations *be made permanent*, the additional proposal that the statute "be clarified so as to specifically provide that *expenditures* of money for salaries to organizers, purchase of radio time, and other *expenditures* by the prohibited organizations in connection with elections, constitute violations of the provisions of said section, whether or not said *expenditures* are with or without the knowledge or consent of the candidates." (Emphasis added.)

61 *Ibid.*

62 *Ibid.*

63 *Id.* at 582-83. (Emphasis added.)

64 *Id.* at 583.

65 *Ibid.*; § 304 of the Labor-Management Relations Act of 1947, 61 Stat. 136, c. 120, enacted June 23, 1947, provided:

It is unlawful for any national bank, or any corporation organized by authority of any law of Congress to make a contribution or *expenditure* in connection with any election to any political office, or in connection with any *primary election* or *political convention* or *caucus held to select candidates for any political office*, or for any corporation whatever, or any labor organization to make a contribution or *expenditure* in connection with any election at which Presidential and Vice Presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to Congress are to be voted for, or in connection with any *primary election* or *political convention* or *caucus held to select candidates for any of the foregoing offices*, or for any candidate, political committee, or other person to accept or receive any contribution prohibited by this section. Every corporation or labor organization which makes any contribution or *expenditure* in violation of this Section shall be fined not more than \$5,000; and every officer or director of any corporation, or officer of any labor organization, who consents to any contribution or *expenditure* by the corporation or labor organization, as the case may be, in violation of this section shall be fined not more than \$1,000 or imprisoned for not more than one year, or both. For the purposes of this section, "labor organiza-

incorporated in the U.S. Criminal Code, making it enforceable in a criminal prosecution by the Attorney General of the United States.⁶⁶

Almost immediately, Section 304 of the Taft-Hartley Act was tested.⁶⁷ The Congress of Industrial Organizations (CIO) and Philip Murray, its President, were indicted for the publication in the CIO News of an editorial favoring one Congressional candidate over another.⁶⁸ The District Judge sustained the motion to dismiss the indictment,⁶⁹ on the ground that said Section 304 was an unconstitutional abridgment of freedom of speech, freedom of the press, and freedom of assembly as contained in the First Amendment to the Constitution; among other things, the district court stated:

It is plain that Congress by this statutory provision denounced as unlawful acts which would otherwise be entirely innocent in nature, and in the exercise of which a labor organization is concededly protected under the Bill of Rights. * * * It is insisted by the government that Congress could abridge the freedoms guaranteed by the First Amendment * * * because of its constitutional control over * * * elections * * * to prevent corruption therein, and to secure clean elections. * * * but the untrammelled right of free expression of views as to candidates for office, through newspapers, or other means of conveying the written or spoken word, and of

tion" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work. (Amendments to Corrupt Practices Act are italicized.)

66 18 U.S.C. § 610 (1959); CCH LAB. L. REP. ¶ 4980 (1961).

67 United States v. CIO, 77 F. Supp. 355 (D.D.C. March 15, 1948).

68 *Ibid*; the facts as set forth by the United States District Court for the District of Columbia are on page 356:

On July 15, 1947, a special election was held to elect a representative in Congress in the Third Congressional District of the State of Maryland. Immediately prior to this election, in express disobedience of the provisions of Section 304 of the Labor Management Relations Act relative to expenditures by labor organizations in connection with federal elections, and for the purpose of testing their constitutionality, Murray wrote an editorial favoring one of the candidates and opposing the other, and caused it to be published in the CIO News, and circulated in the Third Congressional District of Maryland. Apparently to remove all doubt that CIO was by this act making expenditures in connection with an election, one thousand extra copies of the newspaper containing Murray's editorial were printed and circulated by CIO. The expenditures for publishing and circulating the newspaper were made in the District of Columbia, and the one thousand extra copies were mailed from there to be circulated in Maryland.

This indictment followed. It charges CIO with making expenditures in connection with a federal election by publishing and circulating the Murray editorial, and Murray as president of CIO with consenting to such expenditures. Defendants have moved to dismiss the indictment on the broad ground that the applicable part of Section 304 of the Act is unconstitutional because it violates the guaranties of the Bill of Rights, particularly those of the First Amendment.

The government concedes that rights guaranteed by the First Amendment are abridged by the prohibition against expenditures by labor organizations in connection with elections; but it says that Congress has power under Article 1, Section 4 of the Constitution to abridge First Amendment rights if it considers such a course necessary in maintaining the purity and freedom of elections.

69 *Id.* at 359.

the public in general to have free access thereto, far from being a conceivable means of corrupting or interfering with free elections, is in fact one of the most valuable means of promoting purity and freedom in the electoral process.

An appeal was taken by the government from the district court, direct to the Supreme Court of the United States;⁷⁰ said Court considered it apparently important to set forth the facts direct from the indictment,⁷¹ and with respect to the one thousand extra copies stated:⁷²

We conclude that the indictment charges nothing more as to the extras than that extra copies of the "News" were published for distribution and were distributed in regular course to members or purchasers and that no allegation has been made of expenditures for "free" distribution of the paper to those not regularly entitled to receive it.

The opinion of the Supreme Court, as delivered by Justice Reed, concluded:⁷³

We are unwilling to say that Congress by its prohibition against corporations or labor organizations making an "expenditure in connection with any election" of candidates for federal office intended to outlaw such a publication. We do not think § 313 reaches such a use of corporate or labor organization funds. We express no opinion as to the scope of this section where different circumstances exist and none upon the constitutionality of the section.

Our conclusion leads us to affirm the order of dismissal upon the ground herein announced.

Four of the Justices, Rutledge, Black, Douglas and Murphy, concurred in the result as announced by Justice Reed, but believed that Section 304 abridged the freedoms of the First Amendment, and was unconstitutional.⁷⁴

⁷⁰ United States v. CIO and Philip Murray, Officer Thereof, 335 U.S. 106 (June 21, 1948).

⁷¹ *Id.* at 110-11 n.11:

(3) That at all the times hereinafter mentioned, the said defendant CIO owned, composed, edited, and published a weekly periodical known as "The CIO News", and the said defendant CIO paid all of the costs and made all of the expenditures necessary and incidental to the publication and distribution of said periodical, "The CIO News," from the funds of the said defendant CIO, including the salaries of the editors and contributors and other writers of texts set forth in said periodical including also the cost of printing of the said periodical and the cost of the distribution of the said periodical, and all such payments and expenditures, including those representing the cost and distribution of the issue of said "The CIO News" under date of July 14, 1947, and designated as Volume 10, No. 28, were made by said defendant CIO at Washington, in the District of Columbia, and within the jurisdiction of this Court.

(6)(b) That the defendant CIO also caused one thousand copies of the issue of the publication, "The CIO News," dated July 14, 1947, and designated as the issue known as Volume 10, No. 28, to be specially moved and transported from Washington, District of Columbia, into the Third Congressional District of the State of Maryland, by mailing the said one thousand extra copies to the Regional CIO Director at Baltimore, Maryland, and caused the funds of the said defendant CIO to be expended in printing, packaging and transportation of said extra copies of the periodical, "The CIO News," in connection with the aforesaid special election.

⁷² *Id.* at 111-12.

⁷³ *Id.* at 123-24.

⁷⁴ *Id.* at 129.

In the course of their concurring opinion, Justice Rutledge made the following interesting comments:

To say that labor unions as such have nothing of value to contribute to that process (electoral) and no vital or legitimate interest in it is to ignore the obvious facts of political and economic life and of their increasing interrelationship in modern society. Cf. *DeMille v. American Federation of Radio Artists*, 31 Cal. 2d 139, 187 P.2d 769, 175 ALR 382. That ostrich-like conception, if enforced by law, would deny those values both to unions and thus to that extent to their members, as also to the voting public in general.⁷⁵

* * *

Unions can act and speak today only by spending money, as indeed is true of nearly every organization and even of individuals if their action is to be effective.⁷⁶

* * *

If the statute outlaws all union expenditures for expression of political views, it is a bludgeon ill-designed for curbing the evils said to justify its enactment, without also curbing the rights. If the section does less, the exact thing forbidden is too loosely defined and the consequent cloud cast over the things not proscribed but within the Amendment's bearing is far too great. In this aspect and in view of the criminal sanctions imposed, the section serves as a prior restraint upon the freedoms of expression and of assembly the Amendment was designed to secure. Only a master, if any, could walk the perilous wire strung by the section's criterion.⁷⁷

In 1951, Congress amended the above section, and such has remained unchanged since that time.⁷⁸

On July 28, 1948, a District Court for the District of Connecticut,⁷⁹ denied a motion to dismiss an indictment charging that a local union and its president had violated the Corrupt Practices Act as amended by Section 304 of the Labor-Management Relations Act of 1947. On February 8, 1949, the U.S. Court of Appeals for the Second Circuit,⁸⁰ in an opinion written by the learned Justice, Augustus N. Hand, held that the judgment of the district court

⁷⁵ *Id.* at 144.

⁷⁶ *Id.* at 146.

⁷⁷ *Id.* at 153.

⁷⁸ 65 Stat. 718, c. 655, § 20(c) (1951), 18 U.S.C. § 610 (Supp. II, 1961):

Every corporation or labor organization which makes any contribution or expenditure in violation of this section shall be fined not more than \$5,000; and every officer or director of any corporation, or officer of any labor organization, who consents to any contribution or expenditure by the corporation or labor organization, as the case may be, and any person who accepts or receives any contribution, in violation of this section, shall be fined not more than \$1,000 or imprisoned not more than one year, or both; and if the violation was willful, shall be fined not more than \$10,000 or imprisoned not more than two years, or both.

⁷⁹ *United States v. Painters Local Union No. 481*, 79 F. Supp. 516 (D. Conn. 1948); the indictment charged:

[E]xpend[ing] union funds to pay the cost of an advertisement in the Hartford Times of Hartford, Connecticut, and of a radio broadcast over station WKNB of New Britain, Connecticut, advocating the defeat of certain persons in connection with conventions to be held to select candidates for Presidential and Vice-Presidential electors, and for a coming Congressional election.

⁸⁰ *United States v. Painters Local Union No. 481*, 172 F. 2d 854 (2d Cir. 1949).

should be reversed with directions to dismiss the indictment.⁸¹ The government apparently declined to take this particular case to the Supreme Court.

On December 28, 1951, the United States District Court for the Western District of Missouri,⁸² dismissed an indictment charging a local union, as well as its president and secretary, with a violation of 18 U.S.C.A. § 610; the President of the Union was also a candidate for election to Congress; there were twelve counts in the indictment charging both *contributions* and *expenditures* in violation of the Act; the defendants offered no testimony and the district court had to determine the issues upon the evidence produced by the government. As pointed out by the court, the testimony revealed inconsistency as to the *contributions* and as to the purpose of the *expenditures*; in several instances, the court also pointed out the amount of money involved was small and that while the maxim of *de minimis non curat lex* does not apply in criminal cases, it was hard to conceive that Congress had in mind, when it enacted 18 U.S.C.A. § 610, uncertain and insignificant amounts of money in the form of *contributions* and *expenditures*. This district court further asserted that Congress has the right to control *expenditures* and *contributions* of labor organizations, just as it does in the instances of political parties and corporations, but that "Labor organizations have a right to engage in political activities just the same as any other group,"⁸³ and the court conspicuously indicated that labor organizations had the right to engage in political activity, such as the registration of voters, taking voters to the polls, using union automobiles to carry on the latter activity, and perhaps permitting union officers to make political speeches, in support of or in opposition to any candidate for federal office, while such officers are on the payroll, or drawing expenses from a union.⁸⁴

On February 3, 1956, the United States District Court for the Eastern District of Michigan sustained a motion to dismiss an indictment charging a violation of 18 U.S.C.A. § 610, in which it was alleged that the union paid a specific amount from its general treasury to defray the cost of certain television broadcasts sponsored by the union; the indictment further charged that the money came from the union's dues, was not obtained by voluntary political contribution or subscription from members of the union, that the money for the broadcasts did not come from advertising or sales conducted by the union

81 *Id.* at 856; interesting comments of the court on the facts are:

In the case at bar we have a prosecution of a relatively small union because of trifling expenditures for a newspaper advertisement and a broadcast criticizing candidates for federal elective officers owing to the alleged hostility of the candidates to the interests of unionized labor.*** It is hard to imagine that a greater number of people would be affected by the advertisement and broadcasting in the present case than by publication in the union periodical dealt with in the CIO litigation. In a practical sense the situations are very similar, for in the case at bar this small union owned no newspaper and a publication in the daily press or by radio was a natural way of communicating its views to its members as by a newspaper of its own.*** In the case at bar, the expenditures were authorized by a vote of the union members at a meeting duly held. In view of the foregoing, the expenditures cannot be regarded as prohibited by the statute.

82 *United States v. Construction & Gen. Laborers Local Union No. 264*, 101 F. Supp. 869 (W. D. Mo. 1951).

83 *Id.* at 875.

84 *Id.* at 875-76.

in any way, and that the broadcasts urged and endorsed election of certain persons to be candidates for Representatives and Senator to the Congress of the United States, and also included expressions of political advocacy intended by the union to influence voters and to affect the election.⁸⁵ As to such facts, said court decided "that under the authorities 'expenditures' charged in this indictment are not expenditures prohibited by the Act."⁸⁶

The above case, went by way of direct appeal by the government to the Supreme Court of the United States, and on April 23, 1956, probable jurisdiction was noted.⁸⁷ Thereafter on March 11, 1957, the Supreme Court declined to pass upon the constitutionality of 18 U.S.C.A. § 610, but reversed the district court and held that the indictment charged an offense under said statute.⁸⁸

In this *UAW* case, as it is now commonly designated, the Supreme Court, through Justice Frankfurter, extensively reviewed the legislative history of the statutory provision (18 U.S.C.A. § 610) not only as it applied to labor unions, but also as to the reason for such a law being made applicable to corporations as far back as 1907. After so doing, Justice Frankfurter held:

To deny that such activity, either on the part of a corporation, or a labor organization, constituted an "expenditure in connection with any (federal) election" is to deny the long series of congressional efforts calculated to avoid the deleterious influences on federal elections resulting from the use of money by those who exercise control over large aggregations of capital. More particularly, this Court would have to ignore the history of the statute from the time it was first made applicable to labor organizations. As indicated by the reports of the Congressional Committees that investigated campaign expenditures, it was to embrace precisely the kind of indirect contribution alleged in the indictment that Congress amended § 313 to proscribe "expenditures."⁸⁹

Justice Frankfurter stressed his so-called distinction between this *UAW* case, and the decision of the Supreme Court treating the publication of a newspaper by the C.I.O., in which its President, Philip Murray, urged all of the members of the CIO to vote for a certain candidate in a Congressional election.⁹⁰

As can readily be noted, Justice Frankfurter still believes that not all "expenditures" by unions for political activity are illegal.⁹¹ And, to further

85 United States v. *UAW*, 138 F. Supp. 53 (E.D. Mich. 1956).

86 *Id.* at 59.

87 351 U.S. 904 (1956).

88 United States v. *UAW*, 352 U.S. 567 (1957). See note 51, *supra*.

89 *Id.* at 585.

90 *Id.* at 588-89:

United States v. CIO, 335 U.S. 106, 92 L. Ed. 1849, 68 S.Ct. 1349, presented a different situation. The decision in that case rested on the Court's reading of an indictment that charged defendants with having distributed only to union members or purchasers an issue, Vol. 10, No. 28, of the "The CIO News," a weekly newspaper owned and published by the C.I.O. That issue contained a statement by the C.I.O. President urging all members of the C.I.O. to vote for a certain candidate. Thus, unlike the union-sponsored political broadcast alleged in this case, the communication for which the defendants were indicted in C.I.O. was neither directed nor delivered to the public at large. The organization merely distributed its house organ to its own people. The evil at which Congress has struck in § 313 is the use of corporation or union funds to influence the public at large to vote for a particular candidate or a particular party.

91 *Ibid.*

indicate this position on his part, he conspicuously asked several questions at the conclusion of his opinion;⁹² these questions aroused particular comment in the dissenting opinion as written by Justice Douglas,⁹³ and undoubtedly one or more of such questions served as the basis for favorable decisions to unions in subsequent district court decisions.⁹⁴

Such queries necessarily leave the student of the law, and more so the practical business agent of any union, in a dubious state of mind, as to just what a union can do in the field of political activity under 18 U.S.C.A. § 610.

In this respect, perhaps the words of Justice Rutledge in the C.I.O. case,⁹⁵ are most apropos:

Vagueness and uncertainty so vast and all-pervasive seeking to restrict or delimit First Amendment freedoms are wholly at war with the long-established constitutional principles surrounding their delimitation. They measure up neither to the requirement of narrow drafting to meet the precise evil sought to be curbed nor to the one that conduct proscribed must be defined with sufficient specificity not to blanket large areas of unforbidden conduct with doubt and uncertainty of coverage. * * * *Only a master, if any, could walk the perilous wire strung by the section's criterion.* (Emphasis added.)

The inquiries propounded,⁹⁶ but adroitly left unanswered by Justice Frankfurter, should indeed cause litigation of the *trial and error* type, but perhaps *there is no ill wind that does not blow someone some good*, and the result could be that under a particular set of facts, the Supreme Court may be constrained to rule on the constitutionality of 18 U.S.C.A. § 610.

The inquiry as made by Justice Frankfurter⁹⁷ as to the propriety of making political expenditures from the general treasury of a union, brought forth some legal and practical remarks on the part of Justice Douglas in the dissenting opinion:⁹⁸

Finally, the Court asks whether the broadcast was "paid for out of the general dues of the union membership or may the funds be fairly said to have been obtained on a voluntary basis." Behind this question is the idea that there may be a minority of union members who are of a different political school than their leaders and who object to the use of their union dues to espouse one political view. This is a question that concerns the internal manage-

92 *Id.* at 592.

93 *Id.* at 593-96.

94 *United States v. Warehouse & Distribution Workers Union, Local 688, International Bhd. of Teamsters*, 41 CCH LAB. L. CAS. ¶16,601 (1960); *United States v. Anchorage Central Labor Council, Anchorage, Alaska (AFL-CIO)*, 193 F. Supp. 504 (D. Alaska 1961).

95 *United States v. CIO and Philip Murray, Officer Thereof*, 335 U.S. 106, 153 (1948).

96 *United States v. UAW*, 352 U.S. 567, 592 (1957):

For example, was the broadcast paid for out of the general dues of union membership or may the funds be fairly said to have been obtained on a voluntary basis? Did the broadcast reach the public at large or only those affiliated with appellee? Did it constitute active electioneering or simply state the record of particular candidates on economic issues? Did the union sponsor the broadcast with the intent to affect the results of the election?

97 *Ibid.*

98 *Id.* at 593-96.

ment of union affairs. To date, unions have operated under a rule of the majority. *Perhaps minority rights need protection. But this way of doing it is, indeed, burning down the house to roast the pig.* * * * (Emphasis added.)

On October 26, 1960, the United States District Court for the Eastern District of Missouri,⁹⁹ sustained a motion for acquittal for all defendants at the close of the government's case; approximately two thirds of the individual members of Local 688 signed cards authorizing the allocation of a certain amount of the general dues of each member to be used for political contributions and expenditures.¹⁰⁰ In the course of its opinion, the district court indicated that if 18 U.S.C.A. § 610 proscribed that a union member could not determine as to how a portion of his dues could be spent, then grave doubt would be cast upon the constitutionality of such a proscription; the court went on to state:

I hold that contributions or expenditures in connection with the election of Federal candidates by a labor organization consented to by officers of such an organization are not prohibited by Section 610, Title 18, United States Code, where such contributions are made from funds voluntarily designated for such purpose by all or a part of the individual members of such labor organization, so long as there is a *bona fide* accounting of such funds, and so long as the amounts of such contributions or expenditures do not exceed the voluntary funds so designated.

On April 22, 1961, the United States District Court for the District of Alaska¹⁰¹ sustained a motion for acquittal at the conclusion of the government's case; the defendant, Anchorage Central Labor Council, had been indicted for violation of 18 U.S.C.A. § 610, and said case had been tried before a jury.

The defendant in the Anchorage case was an association of some twenty-six local labor unions and was governed by delegates elected or appointed by the member unions; it assessed no dues against the individual union members, but collected a *per capita tax* from the affiliated unions, the amount of which was largely determined by the unions themselves; it also collected from the unions contributions to a "TV Fund." A regular TV broadcast had been conducted each week since the fall of 1955. The indictment, charged that the *defendant labor organization* had been making an *expenditure*, during October and November of 1958 from the general fund of said organization in connection with the general election held in the State of Alaska on November 25, 1958, in which two United States Senators and one United States Representative were to be elected; and, that the broadcasts included expressions of political advocacy and were intended to influence the general electorate, including electors who were not members of any labor union or of the defendant organization, and to affect the results of said election.

⁹⁹ United States v. Local 688, International Bhd. of Teamsters, 41 GCH LAB. CAS. ¶ 16,601. See also, note 94 *supra*.

¹⁰⁰ This fact is not in the decision of the court, but independent investigation disclosed that individual authorization cards from each member called for the regular allocation of 25¢ from the general dues of each member.

¹⁰¹ United States v. Anchorage Cent. Labor Council, 193 F. Supp. 504 (D. Alaska 1961). See also, note 94 *supra*.

In the course of its opinion, the District Court referred to the queries of Justice Frankfurter,¹⁰² and stated:

The most important of these elements for consideration here is whether or not the broadcast complained of was paid for out of the general union dues of the union membership or whether the funds may "be fairly said to have been obtained on a voluntary basis."¹⁰³

and thereupon held that the *expenditures* for the political broadcasts were paid from *voluntary contributions* to the Council, and therefore did not come within the proscription of 18 U.S.C.A. § 610.

On June 19, 1961, the Supreme Court decided the case of *International Ass'n of Machinists v. Street*.¹⁰⁴ It was anticipated in advance of the decision, that many important tenets would be forthcoming; however, in view of a stipulation of facts as to various items,¹⁰⁵ as well as the conspicuous consensus

102 United States v. UAW, 352 U.S. 567, 592 (1957).

103 United States v. Anchorage Cent. Labor Council, 193 F. Supp. 504, 506 (D. Alaska 1961).

104 367 U.S. 740 (1961).

105 See Record and Briefs:

49. Free space in 'Labor' (owned by 15 Railroad Labor Organizations) has been, is and will be used to induce contributions to the funds of Railway Labor's Political League, and the Committee on Political Education (COPE).

Substantial portions of each issue are devoted by 'Labor' to legislative subjects and, during election periods, to political subjects, dealing with the election of candidates to public office.

50. Also in the newspaper 'Labor,' including the columns therein, the reporting is of a nonobjective type and is designed to influence the readers thereof toward the particular political philosophy espoused by that publication, but to which plaintiffs, intervening plaintiffs, and the class they represent are opposed.

* * *

51. The legislative members of one major political party are mentioned favorably in the columns of the newspaper 'Labor' far more often than are the legislative members of the other major political party, and the legislative members of one major political party and its legislative and administrative policy and program are generally extolled while the other major political party's legislative and administrative policy and program are generally condemned in that publication.

52. Without cost to a particular candidate, the newspaper 'Labor' publishes and distributes without charge numerous copies of special editions designed to extoll the virtues of that particular candidate, and the great majority of such special editions have been prepared and used for the benefit of the members of one major political party. (R. 189-190; p. 30 of Brief for Appellees)

The political activities mentioned in this Stipulation of Facts do not involve and are unnecessary to the negotiation, maintenance and administration of agreements concerning rates of pay, rules and working conditions, or wages, hours, terms and other conditions of employment, or the handling of disputes relating to the above. (R. 191; p. 42 of Brief of Appellees). The money which has been, is being, and will be paid by plaintiffs, intervening plaintiffs and the class they represent as dues, fees, and assessments has been, is being and will be used in substantial part to support candidates for offices of President, Vice President, U.S. Senators and Congressmen and their campaigns as described elsewhere in this Stipulation of Facts, and for direct contributions to candidates for various State and local offices, as described elsewhere in this Stipulation of Facts. (R. 188; p. 42 of Brief for Appellees).

The funds expended by the labor union defendants for political activities as set forth in this Stipulation of Facts are substantial, and the propor-

that none of the *expenditures* involved therein were made in violation of 18 U.S.C.A. § 610, or any state corrupt practices legislation,¹⁰⁶ the issues in the said case were narrow indeed.

The appellees asserted in the Georgia State Court that substantial portions of the money, which they were required to pay to the railway unions, were used to finance campaigns of candidates for federal and state offices, whom appellees opposed, and to promote political and economic doctrines, etc., with which appellees disagreed; that appellees were compelled to pay such money to the railway unions, pursuant to a *union-shop agreement* negotiated under the provisions of Section 2, Eleventh of the Railway Labor Act.¹⁰⁷

After a consideration of the facts as *briefly* noted herein, and following an extensive examination of the legislative history of the Railway Labor Act, the Supreme Court, among other things, stated:

The conclusion to which this history clearly points is that § 2, Eleventh contemplated compulsory unionism to force employees to share the costs of negotiating and administering collective agreements, and the costs of the adjustment and settlement of disputes. One looks in vain for any suggestion that Congress also meant in § 2, Eleventh to provide the unions with a means for forcing employees, over their objection, to support political causes which they oppose.¹⁰⁸

* * *

Our *construction* therefore involves no curtailment of the *traditional political activities* of the railroad unions. It means only that those unions must not support those activities, against the *expressed* wishes of a dissenting employee, with his exacted money.¹⁰⁹

The *Machinists* case is quite a lengthy one (some 49 pages), and from it can definitely be drawn the conclusion that railroad unions have long and consistently engaged in political activities. The *admonition* of the Supreme Court therein is that said decision does not involve any curtailment of the traditional political activities of such unions.¹¹⁰

The Landrum-Griffin Act¹¹¹ did not amend Section 304 of the Labor-Management Relations Act of 1947, nor did it amend 18 U.S.C.A. § 610; however, Section 501(a)¹¹² does specifically state that the officers, agents, shop stewards, and other representatives of a labor union occupy *positions of trust* in relation to a union and its members as a group. As to such, there was considerable debate in Congress as to what subsection (a) actually meant.

Some could perhaps subsequently contend that Section 501(a) would automatically preclude political *contributions* and *expenditures*; however, Sena-

tionate amounts of the periodic dues, fees, and assessments which are being paid, or which will be required to be paid, by the plaintiffs and intervening plaintiffs and the class they represent are also substantial, and the amounts of such dues which are and will be used ultimately for political purposes are also substantial. (R. 187-188; p. 42 of Brief of Appellees).

106 International Ass'n of Machinists v. Street, 367 U.S. 740, 773, footnote 21 (1961).

107 64 Stat. 1238 (1951), 45 U.S.C. § 152, Eleventh (1959).

108 International Ass'n of Machinists v. Street, 367 U.S. 740, 763-64 (1961).

109 *Id.* at 1162. (Emphasis added.)

110 *Ibid.*

111 29 U.S.C. §§ 401-531 (Supp. II, 1961).

112 *Id.* at § 501 (a).

tor McClellan stated that it was never his idea to try to "curb the authority of the members of a union to do whatever the members want to do."¹¹³

And, in discussing the same Section 501(a), the then Senator Kennedy stated:

[S]ection 501(a) recognizes that the special problems and functions of a labor organization be taken into consideration in determining whether union officers and other representatives are acting responsibly in connection with their statutory duties. The problems with which labor organizations are accustomed to deal are not limited to bread-and-butter unionism or to organization and collective bargaining alone, but encompass a broad spectrum of social objectives as the union may determine.¹¹⁴

In other words, it appears reasonable to contend that Section 501(a) of the Landrum-Griffin Act should have no effect whatsoever upon political *contributions* and *expenditures*, so long as such are approved by the members and officers of a labor union, and not otherwise contrary to law.

Several states, such as Indiana,¹¹⁵ have adopted statutory provisions similar to 18 U.S.C.A. § 610; as a matter of fact, it could easily be contended that some of the state statutory provisions are even more inclusive from a proscription standpoint of one's rights under the First Amendment to the Constitution of the United States than 18 U.S.C.A. § 610; consequently, such could be declared to be unconstitutional in light of the reasoning so ably set forth by various Justices of the Supreme Court of the United States.

CONCLUSION

Repetition may be a literary offense, within or without the proscription of 18 U.S.C.A. § 610, but with respect to the matter of political *contributions* and *expenditures* by labor unions, it would appear most appropriate to conclude this prolix dissertation by again quoting the erudite observation¹¹⁶ of Justice Douglas: "Perhaps minority rights need protection. But this way of doing it is, indeed, burning down the house to roast the pig."

113 105 CONG. REC. 6526 (1959).

114 *Id.* at 17900.

115 IND. ANN. STAT. §§ 29-5712 (Supp. 1949).

116 *United States v. UAW*, 352 U.S. 567, 593-96 (1957).