

Changes in Labor Relations during the New Deal and War

Peter Temin*

MIT

Abstract

The Depression and the New Deal generated dramatic changes in American labor relations. I argue here that the changes started with the NIRA of 1933 and took a decade and a half to reach a new equilibrium. The process of change included multitudinous legislation, court decisions, and administrative actions; it continued through labor surplus in the Depression and labor scarcity in the Second World War. I organize this complex story by employing an economic model of Richard Freeman to produce a middle-level narrative that resolves conflicts between the simple—although conflicting—views of economists and the highly detailed views of historians.

JEL Codes: J58, N32

*I thank Thomas Kochan, Frank Levy and Michael Piore for valuable comments, Andrew Wu for research assistance under MIT's UROP, and the Russell Sage Foundation for financial support.

Changes in Labor Relations during the New Deal and War

The Great Depression precipitated a dramatic change in the status of labor in the US. Workers tried to control their fate through strikes and collective bargaining. Congress and President Roosevelt acted to legitimize unions and collective bargaining in the early New Deal, setting in motion a political process that took over a decade to resolve. The change in labor relations typically is dated in 1933 or 1935, but it actually took from 1933 to 1947 for the political process to settle on a stable framework for labor representation—represented here by the Taft-Hartley Act and the Treaty of Detroit.

This paper chronicles the political changes over this long period, showing how divisions within the labor movement and among relevant politicians affected them. I argue that the labor movement could not maintain the gains it had made through the New Deal. As economic conditions improved, labor's claims could not resist employer pressure to contain them, and divisions within the union movement impeded labor's efforts. Through several twists and turns, in several macroeconomic settings and in peace and war, the shape of postwar labor relations was determined.

I argue that the existing narratives in both the historical and economics literature are deficient, albeit for opposite reasons. The historical literature tends to be too tightly focused to provide an overall tale, while the economics literature reduces this long evolution into a virtually instantaneous change. Economists also disagree about the cause of this simple change. I draw on both literatures to provide a middle-level narrative which resolves this conflict, organized around the traditional triad of action, reaction and synthesis.

Introduction

European workers won the right to strike and bargain collectively in the late nineteenth century, while American workers fought pitched battles with the representatives of companies and even the government into the 1920s (Andrews, 2008). The American hostility to unions intensified after the First World War and the Russian Revolution. Employers used yellow dog contracts in which workers promised that they were not and would not become union members while employed. The *Hitchman* decision of the Supreme Court in 1917 allowed companies to seek injunctions against striking workers for violating these yellow dog contracts. Even the threat of such an injunction kept down strikes, since courts were receptive to arguments about violations of existing contracts (Seidman, 1932).

These almost insuperable barriers to union activity were opposed in two directions during the 1920s. The Railway Labor Act of 1926 grew out of the government operation of the railways during World War I. It recognized the existence of unions, but—like *Hitchman*—discouraged strikes by providing for mediation and then voluntary arbitration to resolve conflicts that collective bargaining could not resolve. There is a presumption that wages or working conditions were better than in those situations where the threat of an injunction was operative, but it is hard to know (Northrup, 1971). The Norris-LaGuardia Act of 1932 restrained the use of labor injunctions for the enforcement of yellow dog contracts. It had “fried on the legislative griddle in one form or another for nearly five years before enactment (Brissenden, 1933, 53).” This act, passed under Hoover but originated in the 1920s, also had limited effect because many labor

injunctions were obtained in state courts.

The result of economic growth in this institutional framework was a growth in income that was more apparent at the top of the income distribution than the bottom. Consumer durables like washing machines, refrigerators and radios began to transform the lives of working people, but income inequality also increased. Capitalism appeared to provide increasing comfort for all, and only a few radicals opposed this apparently successful strategy.

The Great Depression came as a large and unwelcome surprise after a decade of postwar progress. The Hoover Administration was voted out of office as the policies derived from the 1920s proved unpalatable to ordinary people. The Roosevelt Administration started out without a coherent alternative, but a clear sense that unregulated competition could not solve the problems of high unemployment and low wages. Congress and Roosevelt set out to construct an alternative from the ground up by initiating new policies, rather than from the top down by articulating a new ideology. Different philosophies lurked in the background, while the conflicts of the Roosevelt Administration were focused on specific innovations.

The National Industrial Recovery Act (NIRA) of June 1933 was the center of a legislative hurricane. Explicitly rejecting competition as the framework for economic decisions, the NIRA was designed to substitute administrative control for market direction. In product markets, this meant cartels; in labor markets, unions. Business leaders were initially supportive of the NIRA, but their enthusiasm diminished quickly as this huge attempt to reorganize American business practice was put into practice.

The conventional story among economists is that industry codes began to be

approved shortly after the NIRA was passed and raised wages until the NIRA was declared unconstitutional almost exactly two years after its passage. It was replaced in part by the National Labor Relations Act (NLRA), the Wagner Act, of 1935. This widespread view has been incorporated into many accounts. Weinstein (1980) and Romer (1999) both put NIRA dummies into their wage regressions to improve their fit and historical accuracy. Weinstein's dummy ran from June of 1933 to the end of 1935 with an added dummy for the last half year. Romer's dummy in her annual data was 0.5 in 1933 and 1935 and one in 1934. Cole and Ohanian (2004) attributed the wage gains in the 1930s to the NIRA and its natural extensions. Freeman (1998) however argued that labor's gains in the Depression were due to labor's efforts to alleviate its condition, not to public policy.

These stories contrast in turn with the historical literature on labor relations, which pays little attention to NIRA industry codes. It concentrates instead on problems of mediating and adjudicating representation disputes. The NIRA was unclear on the process by which this would be done, and the historical story traces the development of labor policy through the 1930s, emphasizing its twists and turns. A complete analysis of this momentous change in labor policy needs to synthesize the literatures from economics and history. The best way to understand the differences is to see the two disciplines as answering different questions. Economists focus on the short-run gains of labor in the increased wages and shortened hours of the industry codes. The codes however came and went. Historians focus on the long-run gains in the organization of labor, in particular, the right to engage in collective bargaining. In the views of many participants in this process in the 1930s, this organizational change was the only way to create a new

labor policy over a period longer than a few years. I present a new historical narrative in this paper to correct the oversimplifications of the economics story, resolve the conflict among economists, and provide a new synthesis.

Freeman (1998) formulated a simple model of union organization that can be used to structure this discussion. He postulated two forces, one promoting organizing and one opposing unions, both functions of union density. When the former exceeds the latter, unions grow. Organizing forces (ORG) rise with union density as more resources are available and then fall as there is less need or even room for union expansion. Forces opposing unions (OPP) are assumed to be a linear declining function of union density, as employers spend more effort trying to keep unions out altogether than restricting the growth of established unions. The two curves are drawn in Figure 1.

If ORG has more curvature than OPP and the two curves cross twice, the crossing at higher union density will be a stable equilibrium and the one at lower density will be unstable as shown in Figure 1. The two stable positions will be no unions or unions at high union density as indicated by the higher equilibrium. If the ORG curve rises or the OPP curve falls so that the lower intersection vanishes, then there is only one equilibrium, and it is globally stable. Starting from no or few unions, unionization grows rapidly to the equilibrium level. This model was designed to describe the growth of unions from 1933 to 1947.

The historical question is which curve moved to induce this dramatic change. Freeman argued that union energy stimulated by the massive unemployment during the Great Depression raised the ORG curve and made the absence of unions untenable, although he acknowledged that his identification “tests” were very rough and informal.

The rapidly-expanding union movement also was not the unitary force assumed in his model, reducing the effectiveness of its actions and lowering the effective ORG curve. I argue that the growth of unions was due both to the fall of the OPP curve and a rise of the ORG curve. It is worth noting that the OPP curve fell and opposition to union growth decreased because government policies promoted unions, not because employers had a change of heart, as demonstrated by the end of this story.

Action

The organizational part of the NIRA was concentrated in its famous Section 7(a), which read as follows:

Every code of fair competition, agreement, and license approval, prescribed, or issued under this title shall contain the following conditions: (1) that employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purposes of collective bargaining or other mutual aid or protection; (2) that no employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing; and (3) that employees shall comply with the maximum hours of labor, minimum rates of pay, and other conditions of employment, approved or prescribed by the President.

Condition (1) was taken from the preamble of the Norris-LaGuardia Act, and it reappeared in the National Labor Relations Act (Wagner Act) of 1935. It therefore was the law from 1932 on, with the exception of June 1935, after the NIRA was declared unconstitutional and before the Wagner Act was signed by the President. Being the law did not make it general practice, however. The problem was the enforcement of the law or—as it was spoken of at the time—the administration of the NIRA in the National Recovery Administration (NRA).

Hugh Johnson, head of the NRA, said that he thought the labor part of the NIRA would be “self-policing” (Morris, 2005, p. 25). But despite the hoopla and publicity, American labor policy could not turn on a dime. Many people, particularly Senator Wagner, were involved in a process that was only started by the NIRA. We now see the New Deal as a regime change (Temin and Wigmore, 1990; Eggertsson, 2008). Roosevelt however tried to maintain support from all parties while he rolled out his new programs. Businessmen initially supported the NIRA for its suppression of competition, but they did not like Section 7(a). Organized labor, represented by the American Federation of Labor (AFL), had insisted on the inclusion of this provision, and they were convinced that the President wanted workers to join unions. Roosevelt and his appointees tried to smooth over these differences, but it was a rocky road.

For example, Johnson announced as he was taking charge of the NRA that, “Basic codes containing provisions respecting maximum hours of labor, minimum rates of pay, and other conditions of employment which are themselves satisfactory, will be subject to approval, although such conditions may not have been arrived at by collective bargaining (Gross, 1974, p. 12).” In other words, Johnson threw out Section 7(a) in his haste to create industry codes. The automobile industry obtained approval of its code even though it added an “individual merit clause” to Section 7(a). This clause allowed the management to select or advance employees on individual merit irrespective of their membership in any union organization. This of course was opposed by the unions in industries where they were strong, making the implementation of the NIRA very uneven. As Johnson said,

Management has just carved out of that Section, the interpretations that suit their point of view and published it all over the plants, ... and ... the labor people have

carved out of the President's speeches or simple statements I have made . . . whatever they like until the whole thing is in confusion (Schlesinger, 1959, p. 146).

Strikes increased dramatically in the summer of 1933 as shown in the data on strikes and lock outs in Figure 2. The ORG curve clearly had risen, while the OPP curve was moving ambiguously. Roosevelt created the National Labor Board (NLB) in early August 1933 to try to resolve the different interpretations of the NIRA that quickly had opened up. Senator Robert Wagner of New York was its chairman, joined by three management and three union members, all serving without pay. The board was formed without an executive order, and its function and operations were unclear. Wagner nevertheless hoped that it would substitute agreements obtained through mediation for the developing idea of a war between workers and employers. He aimed to lower the OPP curve.

The NLB opened each case by sending a mediator to a dispute. If the mediator was not successful in the field, the parties were called to Washington where the NLB tried to mediate. The NLB had a staff of only nine people at the start, few of whom had much experience in labor negotiations. The typical settlement, known as the "Reading Formula," provided for the end of a strike and the reinstatement of the striking workers, a secret ballot for a representative of the workers, an employer commitment to negotiate with an elected representative, and arbitration of any outstanding issues. Only if a settlement like this could not be mediated did the NLB feel it was appropriate to decide an issue. During its first three months, the NLB mediated 58 cases and resorted to decisions in only eight (Gross, 1974, p. 21).

Despite these impressive results, the NLB was already in trouble. Attendance at

the Board's meetings dropped off sharply as industry codes were adopted and employer representatives left Washington. Since Board members were volunteers who served without pay, there was no way to improve their attendance records. The Board was increased from seven to eleven members, and twelve regional boards were established in October 1933. These administrative boosts however could not resolve contradictions implicit in the NLB's structure. The Board combined both mediation and judicial functions; it tried to settle strikes by mediation and in conformity with Section 7(a) if mediation failed. The Board lacked clear policy guidelines.

Two cases at the end of 1933 illustrate these problems. Budd Manufacturing Company and Weirton Steel Company both refused to follow Section 7(a) procedures as directed by the NLB. Budd and Weirton both promoted company unions in opposition to the AFL; they refused to allow the elections mandated by the NLB. The Board referred these companies to the NRA Compliance Board in the expectation that the Blue Eagle would be withdrawn from the companies and all government contracts would be cancelled. The NRA Compliance Board however took no action. Company unions grew as companies tried to avoid the effects of Section 7(a) by conforming with part—but not all—of it; three-fifths of the 500,000 workers in company unions in April 1935 were in unions started under the NRA (US Department of Labor, 1937, p. 54).

Mini-reaction and reaffirmation

The NLB came close to collapsing at the start of 1934, even though executive orders in December and February clarified the NLB's role and increased its autonomy from the NRA. Faced with the failure of mediation to implement Section 7(a), the Board

was being driven more toward a judicial function. The board lacked a judicial tradition and enforcement powers as shown by the Budd and Weirton cases. The executive orders supported this procedural shift without modifying the structure of the NLB to conduct litigation. The emboldened NLB began to order more elections for employee representation, and companies continued to resist them. The conflict came to a head in March when Roosevelt intervened in a struggle between the AFL and the automobile manufacturers. He supported Johnson and the NRA over Wagner and the NLB, choosing to avoid a strike by denying the Board's authority to order an election for union representation.

Senator Wagner had introduced a labor disputes bill into the Senate to clarify the functions of the NLB and give it more power. He softened the bill after Roosevelt's intervention in the automobile confrontation, but could not get even the more limited bill passed. Instead, Roosevelt proposed a public resolution that authorized the president to create a board with the power to conduct secret ballot representation elections, which was quickly passed by Congress. The public resolution gave the new board new powers, but did not endorse Section 7(a). The NLB was replaced by the National Labor Relations Board (NLRB), which inherited the NLB's staff and property as well as its problems. The new NLRB had more definition and staff than the old NLB, but it had no more enforcement power than its predecessor.

The NLB had ordered the Houde Engineering Company, a manufacturer of auto parts, to hold a secret election, but the Houde Company had refused. The NLRB issued a decision on the Houde case in August 1934 in which the Board restated and amplified Section 7(a). The Board stated that employees had the right to bargain collectively with

their employers and the employers had a complementary obligation to bargain with them. Worker representations were to be selected by majorities in secret ballots, and representation was exclusive. This decision led to the complete paralysis of the NLRB as companies intensified their resistance. Throughout 1934, the NLRB issued orders, but employers declined to participate in any proceedings—effectively nullifying the Board’s action. The NLRB reported to the president that it had obtained compliance in only 46 of 158 directives. In the words of the NLRB chairman, Section 7(a) was no more than a pious wish (Gross, 1974, pp. 129-30).

Workers were not impressed by all this administrative infighting. The OPP curve had fallen, but not very far. Unions began organizing more aggressively and calling strikes more often in 1934 and 1935, as seen in Figure 2. Tension rose within the AFL on how aggressive to be. John L. Lewis emerged as a charismatic leader as his United Mine Workers organized workers irrespective of their skills. Lewis championed the idea of the industrial union including all workers in a particular plant or industry over the traditional AFL model of craft unions. The disagreement between tactics grew into personal conflicts as Lewis flamboyantly argued his position and the leadership of the AFL resisted it (Dubofsky and Van Tine, 1977).

The lowered OPP curve enabled unions to organize, but the legislative change only created an opportunity for the unions; it did not build them. Worker distress and anger in the Depression led unions to act vigorously in the space opened up for them by the legislation, that is, to raise the ORG curve. They however were not obligated to use this opportunity well or to agree among themselves about the best way to proceed.

Wagner introduced a new bill, his National Labor Relations Act (NLRA), in

February 1935 to provide the NLRB with the authority to enforce its orders. The NLRB would not be subject to the NRA or to the Labor Department (which also wanted to control it). Members of the Board would no longer be partisan representatives, and the three-member Board would have full control of the regional system. Section 7(a) of the NIRA was written into the new act, emphasizing that non-compliance with Board orders was an unfair labor practice. A section stating that employers had a duty to bargain was added in committee.

As the Wagner Act was progressing through Congress, the case against its nemesis, the NRA was being considered by the Supreme Court in what appears to be an odd case. The Schechter Poultry Corporation was a family-owned kosher butchery in Brooklyn, NY. The Schechter brothers were accused of selling sick chickens by the NRA. The question before the Supreme Court was whether the poultry business was in interstate commerce and thus subject to the federal NIRA. Despite the trivial nature of the business, large firms in the steel and automobile industry thought that it provided an opportunity to remove unwanted federal regulation of their business. They asked their prominent law firm, Cravath, de Gersdorff, Swaine, and Wood, to represent Schechter, and these lawyers made a far broader case than the kosher butchers could have done on their own (Swaine, 1946-48, v. 2, pp. 555-58; Freidel, 1964).

The Supreme Court ruled in June 1935 that the National Industrial Recovery Act was unconstitutional; the federal government had injected itself too far into the business of the sovereign states. The Court did not simply rule that sick chickens were not articles of interstate commerce. It struck down the whole edifice of industrial control that Roosevelt had constructed in the depths of the Depression. The NIRA had lasted only

two years from its passage in 1933 to its demise in 1935. It had only temporary direct effects on wages and hours through the industry codes of the NRA (Weinstein, 1980; Romer, 1999). It had more lasting indirect effects on labor conditions through the conflicts that gave rise to the NLRB.

Wagner had convinced Roosevelt to stay neutral as Congress considered the NLRA. After the Supreme Court decision in the Schechter case, Roosevelt decided that half a loaf was better than none and supported the Wagner Act. He hoped that the Supreme Court would allow laws controlling various sectors of the economy even if it could not stomach federal control of the whole economy. Congress passed the NLRA in June and the president signed it in July 1935, creating what a later chairman of the NLRB called a “revolutionary labor policy (Millis and Brown, 1950, p. 30).” The OPP curve seemed to have fallen definitively.

Reaction

The reconstituted NLRB did not get off to a good start. Although it had new powers, it had very little political support. The President had given it a tepid send-off, and the business community loathed it. In the wake of the Supreme Court’s decision on the NIRA, few people thought the Wagner Act could escape a similar fate. It was difficult to staff the new board and hard for it to get traction. The new leadership realized that the board’s constitutionality depended on the link between labor relations and interstate commerce. They established a Division of Economic Research that reported on the economic conditions of the NLRB’s actions. By the time the Supreme Court considered the constitutionality of the Wagner Act, the board had an extensive record of

the interstate nature of the commerce it was regulating.

The prospects for the Wagner Act did not look good. The Supreme Court had shown its hostility to the New Deal in many decisions, of which the decision on the NIRA is only the best known. It moved into its new building in 1936, described in the *New Yorker* as having “fine big windows to throw the New Deal out of (Gross, 1974, p. 196).” Roosevelt, responding to this opposition and encouraged by his reelection in 1936, proposed his court packing plan in early 1937, shortly before oral argument on several NLRB cases. The plan would have allowed the president to name up to six additional justices if sitting justices over 70 did not retire at full pay.

In this context, the Supreme Court appeared to be looking for a way to change its mind. The economic record provided by the NLRB’s Division of Economic Research gave it adequate basis on which to do so. While the court had made a fine distinction between manufacturing and commerce in 1935, it acknowledged in 1937 that actions in manufacturing plants easily could affect interstate commerce. As shown by the steel strike of 1919-20, conflict within this manufacturing industry could have far-reaching effects on interstate commerce. The Supreme Court ruled in April 1937 that the Wagner Act and the NLRB were constitutional. It had taken four eventful years, but Section 7(a) of the old NIRA now unmistakably was the law of the land. The OPP curve finally had fallen decisively, eliminating the lower equilibrium of no unions and making an equilibrium of substantial unionization the only stable position for the labor market.

The law however was only a general statement of principle; it lacked many important specifics. The most important of these concerned the first condition of Section 7(a), the right to organize and bargain collectively. Workers were given the right to

choose their own representatives, but how and in what units? The method was decided easily; the NLRB mandated elections as the means of selecting union representatives. The question of units of representation then was fought over the coverage of elections. Should an election be held for workers in each craft or occupation, or should there be one election for the representatives of all employees of a plant?

The AFL split over this issue. The federation's history was of trade unions, and its leadership in the 1930s held to that tradition. Some of its members, led vociferously by Lewis, argued that the needs of labor in a depression mandated a change in policy. Unions need to be industrial unions, not craft unions. This disagreement was debated furiously at the 1935 AFL convention, reaching its climax when Lewis struck another delegate on the floor of the convention. Lewis and his allies formed the Committee for Industrial Unions (CIO) within the AFL, which had its own distinct point of view at variance with the AFL leadership.

In particular, the AFL leadership and the CIO split on the question whether elections should be held at the craft or plant level. The AFL leadership argued for the former; the CIO, for the latter. The AFL argued that skilled workers provided essential functions of any industrial plant; a strike by craft workers could shut down a plant. The CIO argued by contrast that labor power was dependent on mass action; the only way to interrupt production was for all the workers to go on strike. There were no data on which to settle this issue of strike efficacy, and the two labor organizations—as they speedily were becoming—followed their respective ideology as they fought for their workers.

This split in the labor movement created a dilemma for the NLRB. If the board supported large bargaining agents, it favored the CIO. If it provided for individual

bargaining agents by craft or skill, it favored the AFL. Whether from conviction or administrative simplicity, the NLRB leaned strongly toward broad elections in which all workers in a plant could express their opinion. A recent survey of this period argues that the law should have been interpreted to allow minority representation, consistent with the AFL position (Morris, 2005). National or international unions however won 75 percent of the almost 1,000 elections held by the NLRB in 1937. Over 95 percent of the eligible workers participated in these elections, and the unions received over 80 percent of their votes. CIO unions won over 80 percent of the elections which they entered, while the AFL won less than 60 percent of elections where they were on the ballot. When both types of unions were on the ballot, CIO unions won three quarters of the time. The AFL was not happy with these results and the NLRB's interpretation of the new labor law (Gross, 1981, p. 43).

The CIO by contrast was extending its reach into the center of American industry, organizing the steel and auto industries. The economy was expanding rapidly in late 1936, and workers were unhappy that their lot was not improving as fast. In a famous sit-down strike, workers took over a General Motors plant for 44 days. The United Auto Workers were preparing to conduct a conventional strike at the end of 1936 when their actions were precipitated first by a local strike call and then by company plans to move the machinery (dies in this case) out of the struck plant. To shut down production, the union decided to occupy the plant until the company recognized them as a company-wide bargaining agent.

This was a daring move. Occupying the plant prevented the company from using the machinery and hiring replacement workers. It also galvanized union supporters and

the public. On the other hand, it looked very much like trespassing on company property. The Supreme Court eventually said it was not trespassing, but no one knew that during the strike. The strike was widely publicized, both as workers explained what they were doing and GM used injunctions to try and dislodge them; both sides jockeyed for advantage. When the union occupied a second plant, General Motors decided to grant the UAW exclusive bargaining rights for six months. This successful, albeit unusual, strike gave the UAW and the CIO a great boost; it was a dramatic turning point in American labor relations (Fine, 1969; Barnard, 2004).

The data in Figure 2 show the number of workers involved in these serious strikes, but they cannot convey the public uproar they created. Lewis signed the contract between General Motors and the United Automobile Workers in early 1937, and this landmark contract was followed quickly by a similar contract making the Steel Workers Organizing Committee the exclusive bargaining agent with U.S. Steel. Industrial unions in other industries also were recognized as sole bargaining agents for the workers.

The leadership of the AFL was offended rather than supportive of these gains. Instead of seeing union progress, they saw a divergence of effort from the true path of unionism. The views and the personalities were irreconcilable. Conflicts at the annual AFL conventions became ever stronger, and the CIO became independent in 1938, renamed the Congress of Industrial Organization.

The NLRB's job became harder in 1938 as the Ford Motor Company employed the Cravath law firm—the same firm that represented the Schechter brothers in the NIRA case—to fight the NLRB (Swaine, 1946-48, v. 2, pp. 687-88). Relying on a Supreme Court decision about the process used by the Agriculture Department, Cravath argued

that the NLRB was not being adequately judicial in its findings. The NLRB, the lawyers claimed, needed to have findings of facts and conclusions of law before issuing a final decision. The lawyers wanted to take extensive depositions of the NLRB to see if it had been unduly influenced by extraneous, that is, political, considerations. The NLRB of course fought this action, but it decided to make its procedures more formal in the meantime; it rescinded its earlier orders against Ford and other companies to reopen them under new procedures (Gross, 1981, pp. 32-34).

Although the NLRB later won its case in the Supreme Court, its actions under attack made it seem culpable. Controversy erupted in the press and before the NLRB; the economy was contracting and perhaps unions were to blame. The NLRB retreated into more formal proceedings. The NLRB was losing credibility in the court of public opinion and losing political support as a result. The Cravath lawyers were not able to win their case in the Supreme Court five years after the Schechter case, but they nevertheless succeeded in cowing the NLRB into being less aggressive and reducing its political clout. Roosevelt, ever sensitive to the political winds, evaded supporting the Wagner Act in the summer of 1938 and called for international evidence on the best way to regulate labor conditions.

The simmering tension between the AFL and the NLRB erupted into a boil at the same time. The AFL wanted to have separate craft unions while the CIO fought for a single election in a case against Allis Chalmers. The general counsel of the AFL expressed his view at the 1937 AFL convention:

We shall await the decision of the Allis Chalmers Company case. On it will depend whether the law will be interpreted as it was intended to be interpreted, or whether it is to be circumvented and turned into an instrument of propaganda for the C. I. O. If it is the latter, then unless the law is speedily amended there is but

one thing left to do, and that is to remove the tyrannical hand of bureaucracy from the shoulders of organized labor (AFL, 1937, pp. 252-53).

The issue became even clearer when the NLRB certified one CIO union as the exclusive bargaining unit for five Pacific coast ports in the summer of 1938. Denying an AFL contention that the NLRB lacked the authority to consider units larger than a single employer or port, the NLRB asserted that,

the failure of the longshoremen to achieve any satisfactory collective bargaining agreement when the bargaining is on a local scale is to be contrasted with the highly successful collective bargaining achievements when the longshoremen bargained as a coast unit ... The imperative need of the longshoremen for the coast unit and the dangers of smaller units arise because the companies of the Pacific Coast which use their labor are organized on a Coast basis (Shipowners' Association, 1938, pp. 1022-24).

The AFL, which had seen workers defect from its unions to the CIO in advance of the decision, saw its worst fears justified. The NLRB had turned its face away from the AFL, the original supporter of Section 7(a) and the bargaining rights of workers. The AFL saw itself as a moderate influence, between the extreme poles of the CIO and NLRB on one hand and employers on the other. The AFL then faced a choice of which side to support in the ensuing contest. It had to balance its own need for survival with the ongoing desire to define the future of labor relations in ways that helped workers live a decent life.

The AFL turned against the NLRB in force at its annual convention in the fall of 1938. The executive committee of the AFL condemned the "unholy alliance" between the NLRB and the CIO. The convention unanimously passed a resolution containing a nine-point blueprint for amending the Wagner Act. The first, crucial point anticipated changing the unit rule to force the NLRB "to grant a craft or class the right to select its bargaining representative by majority vote (AFL, 1938, pp. 344-45)." The NLRB, in

other words, was to abandon its support of industrial unions and the CIO and instead support the growth of craft unions and the AFL.

Lewis, condemned loudly at the convention, charged a month before it that the general counsel of the AFL, Joseph Padway, had met secretly with management attorneys to discuss these amendments. He produced correspondence to document the cooperation between Padway and management attorneys, like this excerpt from a letter from one of the attorneys to Padway: “Thanks for your Aug. 17 telegram from Milwaukee, explaining that because of President Green’s desire that you be in Atlantic City on Aug. 20 it will be impossible for you to confer with me in New York as planned, before you meet with the Executive Council in Atlantic City on Aug. 22 (US Congress, 1939, p. 4758).” The proposed amendments had been formulated in concert with management representatives, and only travel arrangements prevented the attorneys from having a final look at them before they were presented at the AFL convention.

The proposed amendments were considered, with a host of other similar bills, by the Senate Labor Committee in the spring of 1939. At the same time, Roosevelt appointed a conservative member, William Leiserson, to the NLRB, putting the board under pressure both externally and internally. Pressure increased in the summer as the House set up a special committee chaired by Representative Howard Smith to investigate the NLRB and to recommend changes in the Wagner Act and the personnel of the board.

The problems of the NLRB were complicated by the presumed presence of Communists at the board. The head of the Division of Economic Research tried to warn the chairman of the board that he was surrounded by “communists and pro-communists.” He mentioned names, but was told he was dreaming. The House investigation raised this

issue although it did not find any evidence on which to hang its suspicions. Postwar investigations showed that there had been communists on the staff of the NLRB at this time. One of them said that the Communist Party supported the Wagner Act and that its members were indistinguishable from other staff members working on behalf of the NLRB. However, he admitted that their secrecy potentially was dangerous:

It seems to me there is a disadvantage to the Communists and this is the trap of communism in their own illegality, because as they are a conspiracy and secret, then every member is involved in a kind of trap, potentially a blackmail trap. ... As soon as he has engaged in one or more violations of the law, he is a hostage to this conspiracy to which he perhaps altruistically lent himself in the first instance (US Congress, 1955, p. 3009).

The committee generated a lot of bad publicity for the NLRB, exploiting the ambivalence of Roosevelt's recent conservative member, Leiserson, who wanted to reform the NLRB without abolishing it—a subtlety that was lost in to the investigation hysteria. Smith submitted a bill to the House in early 1940 as a product of the investigation, containing many of the amendments proposed at the 1938 AFL convention. It passed the House in the summer and died in committee in the Senate. It would resurface after the war in the Taft-Harley Act.

The investigation and proposed legislation led to dramatic changes at the NLRB. The conflicts made it impossible to reappoint the chairman, who was replaced by Harry Millis. He joined Leiserson to reduce the confrontations between the NLRB and industrial firms. The Division of Economic Research, which had played such a large part in the Supreme Court validation of the NLRA, was abolished and its chief fired. These and other changes at the NLRB were characterized by Millis as an orderly retreat (Gross, 1981, p. 232).

The resulting redirection of the NLRB was easily apparent in its decisions. The

board set aside precedents established earlier. For example, workers hired to replace strikers had been ruled ineligible to vote in subsequent representation elections; this policy was abandoned, and these new workers were allowed to vote. The board revisited the earlier Ford case and reduced the size of the bargaining units. The board also charged the CIO with unfair labor practices and held employers blameless for violations of the Wagner Act taken under compulsion by a union. The AFL enthusiastically endorsed these new policies, claiming that they eliminated the board's "brazen favoritism toward the CIO (Gross, 1981, p. 240)." The OPP curve rose in the late 1930s, and it was the strength of the union movement—represented in the model by a high ORG curve—that preserved the stability of the unionized equilibrium.

Synthesis

The start of the war changed the economic environment even though the United States was not officially part of the war until the end of 1941. Employers and workers went swiftly from a long state of labor surplus to a new condition of labor scarcity. Companies turning to war production found themselves between urgent needs for their products and the claims of the nascent CIO. Neither side was prepared to negotiate this rapid change in the demand for labor, and strikes in defense industries resulted. The most famous lasted over three months at Allis Chalmers in the early months of 1941. Roosevelt established the National Defense Mediation Board in the midst of the Allis Chalmers strike to avoid more interruptions to production. At the same time the Ford Motor Company changed its policy to work with the United Automobile Workers (CIO) instead of against them. The new mediation board however foundered on the desire of

unions to preserve their membership in a context without strikes and associated union gains (Seidman, 1953).

The attack on Pearl Harbor led to no-strike pledges by the CIO and AFL. Roosevelt replaced the mediation board with the National War Labor Board (NWLB) in the beginning of 1942, building on a model from the previous war, and it joined the NLRB for the duration of the war. Although never explicit, it appears that the NWLB dealt with the level of wages while the NLRB continued to deal with collective bargaining. The division of function echoes the division of interest between economists and historians who examined the New Deal; the War Board dealt with wages of interest to economists, while the Labor Relations Board dealt with union representation of interest to historians. The War Board was on the front line of the government's attempt to avoid inflation and made many of the momentous decisions of the war.

The War Labor Board was the custodian of the no-strike pledge, and it dealt with any questions that could lead to a work stoppage. Workers heeded the board partly to promote the war and partly to avoid restrictive legislation. The War Labor Board was a "voluntary arbitration tribunal (Taylor, 1948, p. 138)." The major issue of wages was their determination without strikes, and the major organizational issue of this wartime arrangement was the maintenance of union membership during a time of industrial peace. This meant in practice that the NWLB dealt with the issue of "union security" during the war, while the NLRB concentrated on representation cases. By the end of the war, the NLRB was handling three times as many representation cases as complaints, reversing the ratio from 1936 and 1937 (Millis and Brown, 1950, p. 77).

Union security during the war was assured by the introduction of maintenance of

membership clauses into labor agreements, in which union members were obligated to remain in the union while the war lasted. It was not as good as a union shop, where workers had to join unions after they were hired, since new workers were not forced to join the union, but the CIO went along with this compromise. The AFL, composed of craft unions that mostly had won the closed shop, in which only union members could be hired, was unaffected by the new rule. Union membership grew during the war from 30 per cent of those eligible in 1941 to 48 per cent by 1945 despite the imposition of labor peace (Seidman, 1953, p. 107). The OPP curve fell in the war as the WLB sought to preserve labor peace during the high demand for labor during the war.

The two boards cooperated, but the NWLB's maintenance of membership clauses conflicted with the NLRB's policy of allowing workers to choose representatives by election. The NLRB accommodated the wartime need for labor stability by certifying unions for a year or longer. It allowed unions to question the continued representation, however, and persuaded the War Board to allow a NLRB proceeding when needed. In general, the War Board was bound by the Wagner Act and helped enforce NLRB decisions (Witney, 1949).

The War Labor Board adopted a policy of preserving real wages, that is, of raising wages enough to compensate workers for price rises, in its "Little Steel" cases in July 1942. The board also mandated equal pay for men and women and raised wages for workers it thought underpaid. It therefore began the process labeled the Great Compression of wages by Goldin and Margo (1992). The board was stripped of most of its power in April 1943 by a "hold-the-line" executive order that restricted its awards to the Little Steel formula. Conflicts continued over the cost-of-living index, the

companies' desire to attract more skilled workers, and the introduction of disguised wage increases for less skilled workers in the form of employee benefits. Strikes, notably by coal miners under John L. Lewis, led to public dismay with unions and government take-over of the mines and other producers under stress.

The Revenue Act of 1942 taxed significant wartime earnings, but the government did not include workers' pensions and health insurance as profits, providing employers with an incentive to avoid the tax by supplementing labor benefits. The NWLB also decided that employer contributions to retirement plans should not be included as wages to regain flexibility under the Little Steel formula (Ilse, 1951, p. 91). Benefits are not as desirable as wage increases, but they allowed worker compensation to increase (Taylor, 1948, pp. 188-95). Industry reluctantly supported these benefits, mostly as an attempt to discourage union membership, and the wartime institutions produced a dramatic fall in the wage dispersion from 1940 to 1950 as the NWLB and other institutions homogenized wages (Goldin and Margo, 1992). The legacies of the NWLB included both the procedures forced on businesses to promote unions, including checking off union dues, and the formative experience of many people involved with the NWLB who went on to become labor-relations experts after the war (Harris, 1982, Chap. 2).

The tensions suppressed during the war burst into the open as the war ended. Strikes at General Motors, US Steel and the coal mines placed labor policy at the center of the President Truman's agenda. He proposed to extend his power to seize firms in national emergencies, running into opposition from Congress and the courts. Congress instead wanted to roll back some of labor's gains and passed a variety of bills, some of which were vetoed by the president.

Congressman Hartley sponsored a 1947 House bill that was based on Smith's 1940 bill and the record of the investigation that he chaired. The Representatives involved with the bill were in constant contact with Smith, often clandestinely. Senator Taft's bill also was based on the Smith bill and investigation, but mandated fewer changes in the NLRB (Gross, 1981, p. 253). The resulting Taft-Hartley bill was passed easily by Congress, despite opposition from both the AFL and CIO. It was vetoed by President Truman and passed over his veto in June, 1947. The new law defined unfair labor practices for unions (as opposed to the Wagner Act which defined them only for employers). It prohibited closed shops and several kinds of indirect work stoppages. It regulated union shops, and states were allowed to pass "right to work" laws that outlawed union shops. The federal government could obtain strike-breaking injunctions if strikes were determined to imperil national health or safety.

The tone of the Taft-Hartley Act can be seen from its Section 8(c):

The expression of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit.

This exclusion went beyond the requirements of the Supreme Court in various cases, and it increased the difficulty of finding an unfair labor practice by the NLRB. It typifies the many impediments to the NLRB procedures spread throughout the Act. In the view of an academic observer, "[It was a] legalistic obstruction to the protection of freedom of organization and will reduce the effectiveness of the Board (Cox, 1947-48, p. 20)." In the view of a conservative chairman of the NLRB, "too much of the Act shows that it was the product of men who did not know how things work in industry or in the administration of the NLRA, and of some who wished to weaken the position of all labor

organizations in the economic and political scene (Millis and Brown , 1950, p. 665).”

The Taft-Hartley Act was the legal framework for labor relations for the next thirty years. It drew national policy back from the positions taken in the 1930s, but it did not decertify unions. It raised the OPP curve, but not enough to reestablish the no-union equilibrium.

In this context, in late 1948, Walter Reuther and his advocates assumed control over the United Auto Workers (UAW). The relationship between the UAW and the “Big Three” automakers (Ford, GM, and Chrysler), previously plagued by turmoil, entered a new phase of negotiation. Reuther hoped to overhaul industrial relations in favor of labor interests, but the postwar setting created significant obstacles for his social vision. Workers faced price inflation while wages remained inert, and the government’s division between Truman and Congress indicated the situation would not improve. Reuther also had recently survived several assassination attempts, which dramatically indicated labor’s internal fissures.

Charles Wilson, the CEO of GM, was aware that inflationary pressures generated by cold-war military spending promised to be a permanent feature of the economic scene. GM had recently begun a \$3.5 billion expansion program that depended on production stability. Stress created by inflation could instigate the unions to interrupt production with a devastating strike, and Wilson thought a long-term wage concession would be a profitable exchange for guaranteed production stability (Lichtenstein, 1995).

GM’s two-year proposal to the UAW included an increase in wages and two concepts intended to raise wages over time. The first, a cost-of-living adjustment (COLA) adjusted wages with changes in the Consumer Price Index, protecting workers

from the effects of inflation. Second, a two-percent annual improvement factor (AIF) increased wages every year in an attempt to allow workers to benefit from productivity gains. The UAW, in exchange, allowed management control over production and investment decisions, surrendering job assignment seniority and the right to protest reassignments. Reuther and his advisors initially opposed the plan, believing the AIF formula to be too low and the deal to be a profiteer's bribe signaling the end of overall reform. Workers needed assistance, however, and Reuther agreed to the plan and wage formulas, "only because most of those in control of government and industry show no signs of acting in the public interest. They are enforcing a system of private planning for private profit at public expense ([UAW Press Release], Lichtenstein, 1995, p. 279)." The contract was signed in May, 1948.

The two automatic wage adjustments were historic firsts. The COLA used new tools of economics to eliminate conflict, employing new national statistics on the price level to substitute for wage bargaining over the cost of living. The AIF went even farther to consider the increase in productivity. The measurement of productivity was in its infancy in the late 1940s—Solow would not publish his famous papers for another seven years—and the government had only begun to publish productivity trends. GM did not want to release private information to the unions and argued that the proper concept for wage change was aggregate productivity. The company was clear that it did not want to tie wages to the company's or even the industry's productivity change; it wanted to tie them to productivity change in the whole economy (Block and Burns, 1986).

Labor saw wage increases and gains from productivity for the next two years. GM enjoyed smooth, increasing production and established a net income record for a US

corporation in 1949 (Amberg, 1994). When the time period for the contract ended, the UAW and GM readily agreed to a similar plan that included several changes. A pension plan was added, initially through Ford in 1949, which had an older workforce and progressive managers (Lichtenstein, 1987). The resulting plan was presented to GM as a precedent to create industrial conformity in a process known as pattern bargaining. Ford agreed to the GM plan quickly, and the last of the “Big Three,” Chrysler, agreed after an expensive strike. Agreements to the pension plan ultimately spread to other industries, including rubber, Bethlehem Steel, and then U.S. Steel (Amberg, 1994). In addition to the pension plan, GM increased the COLA/AIF formulas and paid for half of a new health insurance program. The final, five-year UAW-GM agreement was named the “Treaty of Detroit” by *Fortune* magazine: “GM may have paid a billion for peace but it got a bargain. General Motors has regained control over one of the crucial management functions... long range scheduling of production, model changes, and tool and plant investment.” Wage adjustments and productivity gains became recognized as necessary and just, union membership increased, and industry reaped the profits from the Treaty of Detroit’s stability (Lichtenstein, 1995).

The pattern of industrial relations set by the Treaty of Detroit pervaded the labor market during the post-war growth and contributed to the continuing stability of income distribution. Only in the late 1970s, in the context of another macroeconomic upheaval, did this equilibrium break down. The demise of this framework in the 1980s allowed the OPP curve to rise while the ORG curve fell due to worker discouragement. Thirty years of good feeling and a stable income distribution came to an end (Levy and Temin, 2007).

Conclusion

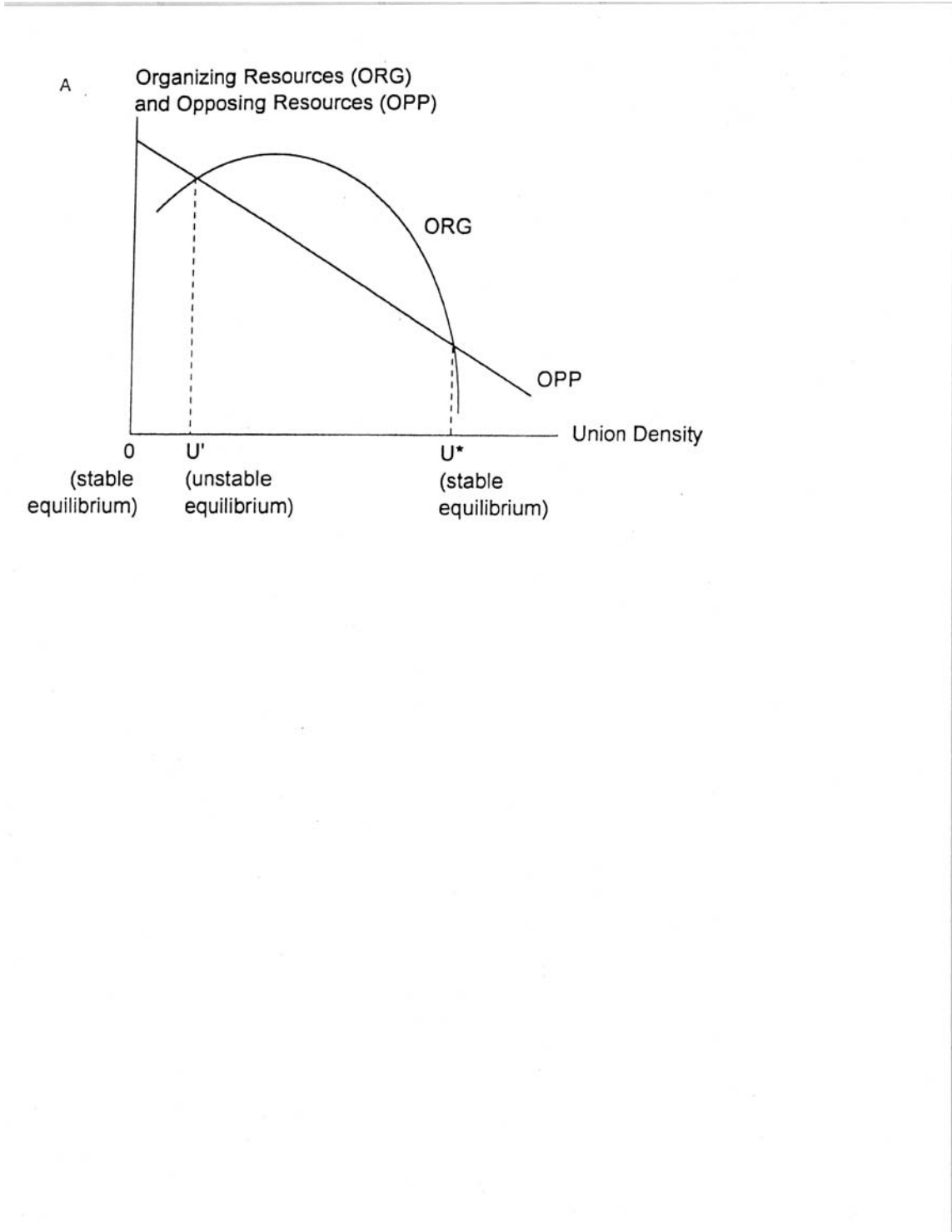
The New Deal introduced a new labor policy, but it took more than a dozen years for the various forces impinging on labor relations to work out a durable policy. The unemployment of the Great Depression vastly increased the urgency among workers of having a seat at the table when wages and employment were discussed. Roosevelt's and Congress's policies reduced the opposition to union formation and certification. In terms of Freeman's model, the ORG function rose while the OPP function fell, eliminating the lower equilibrium of a few unions. The economy moved over the 1930s and 1940s to the remaining equilibrium of high unionization. Economists are wrong to attribute the higher wages and larger unions to a shift of one curve or the other; it was shifts of both curves that induced this transition.

The extent of the initial fall in the OPP curve however could not be sustained. Opposition to unions remained strong, and the strikes and NLRB proceedings of the 1930s showed the lengths to which both sides were willing to go. The conflicts were submerged during the larger conflict with the Nazis in the World War, but they surfaced again at the end of the war. Unions, having achieved much of their gains in the 1930s, were not able to maintain the administrative procedures that had aided them in their expansion. The problem was partly of union leaders, who could not agree on themselves how to proceed. The conflict between the AFL and the CIO hurt the overall labor cause, and AFL political policies damaged the prospects of the NLRB.

It is common to see these developments as a sequence of separate stories: the New Deal, war, and post-war reaction. I have argued here that there was a single process in which American society tried in several ways—and under conditions both of excess labor

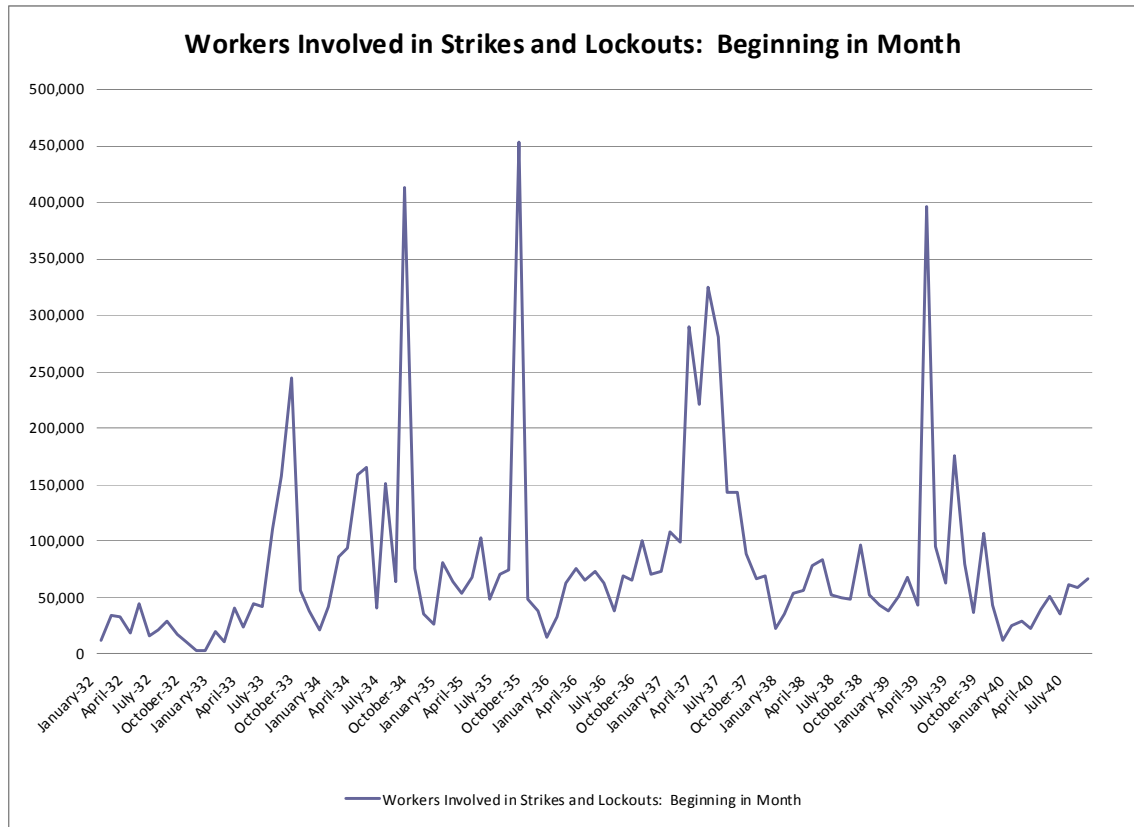
supply and excess labor demand—to find a framework that would endure. The NLRA, the Wagner Act, went too far as passed in 1935. As the Depression eased, opposition to the act and its administration grew until the Taft-Hartley Act drew back government support for unions after the war. It set the framework for labor relations in a highly unionized equilibrium for a generation.

Figure 1: Freeman's model



Source, Freeman (1998), p.276.

Figure 2: Workers involved in Strikes and Lockouts



Source: *Monthly Labor Review*, vols. 38-52 (1932-40).

References

- Amberg, Stephen. 1994. *The Union Inspiration in American Politics*. Philadelphia: Temple University Press.
- American Federation of Labor, *Proceedings of the AFL's 57th Convention* (1937).
- American Federation of Labor, *Proceedings of the AFL's 58th Convention* (1938).
- Andrews, James G., *Killing for Coal: America's Deadliest Labor War* (Cambridge: Harvard University Press, 2008).
- Barnard, John, *American Vanguard: The United Auto Workers During the Reuther Years, 1935-1970* (Detroit: Wayne State University Press, 2004).
- Block, Fred, and Gene A. Burns, "The Uses and Misuses of Social Indicators," *American Sociological Review*, 51: 767-80 (December 1986).
- Brissenden, P. F., "The Campaign against the Labor Injunction," *American Economic Review*, 23: 42-54 (March 1933).
- Cole, Harold L., and Lee E. Ohanian, "New Deal Policies and the Persistence of the Great Depression: A General Equilibrium Analysis," *Journal of Political Economy*, 112: 779-816 (2004).
- Cox, Archibald, "Some Aspects of the Labor Management Relations Act, 1947," *Harvard Law Review*, 61: 1-49 (1947-48).
- Dubovsky, Melvyn, *Labor in America: A History* (Wheeling IL: Harlan Davidson, 2004).
- Dubovsky, Melvyn, and Warren Van Tine, *John L. Lewis: A Biography* (New York: New York Times Book Co., 1977)
- Eggertsson, Gauti B., "Great Expectations and the End of the Depression," *American Economic Review*, 98: 1476-1516 (September 2008).

- Fine, Sidney, *Sit-Down: The General Motors Strike of 1936-1937* (Ann Arbor: University of Michigan Press, 1969).
- Freeman, Richard B., “Spurts in Union Growth: Defining Moments and Social Processes,” in Michael D. Bordo, Claudia Goldin, and Eugene N. White, *The Defining Moment* (Chicago: University of Chicago Press, 1998), pp. 265-95.
- Freidel, Frank, “The Sick Chicken Case,” in John A. Garrity (ed.), *Quarrels That Have Shaped the Constitution* (New York: Harper and Row, 1964), pp. 191-209.
- Goldin, Claudia and Robert A. Margo, “The Great Compression: The Wage Structure of the United States at Mid-Century,” *Quarterly Journal of Economics*, 107: 1034 (February 1992).
- Gross, James A., *The Making of the National Labor Relations Board* (Albany: State University of New York Press, 1974).
- Gross, James A., *The Reshaping of the National Labor Relations Board* (Albany: State University of New York Press, 1981).
- Harris, Howell John, *The Right to Manage: Industrial Relations Policies of American Business in the 1940s* (Madison: University of Wisconsin Press, 1982).
- Ilse, Louse W., *The History of Group Retirement Plans in the United States* (New York: Columbia University Ph.D. dissertation, 1951).
- Levy, Frank, and Peter Temin, “Inequality and Institutions in Twentieth-Century America,” NBER WP 13106 (2007).
- Lichtenstein, Nelson. 1987. “Reutherism on the Shop Floor: Union Strategy and Shop-Floor Conflict in the USA 1946-1970,” in Steven Tolliday, Steven and Jonathan Zeitlin (eds). *The Automobile Industry and Its Workers: Between Fordism and*

- Flexibility*. New York: St. Martin's Press.
- Lichtenstein, Nelson. 1995. *Walter Reuther: The Most Dangerous Man in Detroit*.
Urbana and Chicago: University of Illinois Press.
- Millis, Harry A., and Emily Clark Brown, *From the Wagner Act to Taft-Hartley: A Study of National Labor Policy and Labor Relations* (Chicago: University of Chicago Press, 1950).
- Morris, Charles J., *The Blue Eagle at Work* (Ithaca: Cornell University Press, 2005).
- Romer, Christina, "Why Did Prices Rise in the 1930s?" *Journal of Economic History*, 59: 167-199 (March 1999).
- Schlesinger, Arthur M., Jr., *The Coming of the New Deal* (Boston: Houghton Mifflin, 1959).
- Seidman, Joel I., "The Yellow Dog Contract," *Quarterly Journal of Economics*, 46: 348-61 (February 1932).
- Seidman, Joel I., *American Labor from Defense to Reconversion* (Chicago, University of Chicago Press, 1953).
- Shipowners' Association of the Pacific Coast *et al.*, 7 NLRB 1002 at 1022, 1024 (1938).
- Swaine, Robert T., *The Cravath Firm and Its Predecessors, 1819-[1948]* (New York: Private printing at Ad Press, 1946-48).
- Taylor, George W., *Government Regulation of Industrial Relations* (New York: Prentice-Hall, 1948).
- Temin, Peter, and Barrie A. Wigmore, "The End of One Big Deflation," *Explorations in Economic History*, 17 (October 1990), 483-502.
- US Congress, House Committee on Un-American Activities, *Investigation of Communist*

Infiltration of Government, 84th Congress, First Session (Washington, GPO, 1955).

US Congress, Senate Committee on Education and Labor, *Hearings on Bills to Amend the Wagner Act*, Part 24, 76th Congress, First Session (Washington, GPO, 1939).

US Department of Labor, Division of Industrial Relations, Bulletin No. 634, "Characteristics of Company Unions, 1935," June 1937.

Weinstein, Michael M., *Recovery and Redistribution under the NRA* (Amsterdam: North-Holland, 1980).

Witney, Fred, *Wartime Experiences of the National Labor Relations Board, 1941-1945* (Urbana, University of Illinois Press, 1949).