2011

Class struggle rather than cooperation: class, gender, sexuality and the congressional investigation of the National Labor Relations Board, 1939-1941

Chris J. Green
Western Washington University

"Class Struggle rather than Cooperation":

Class, Gender, Sexuality

and the Congressional Investigation

of the National Labor Relations Board, 1939-1941

By

Chris J. Green

Accepted in Partial Completion
Of the Requirements for the Degree
Master of Arts

Moheb A. Ghali, Dean of the Graduate School

ADVISORY COMMITTEE

Chair, Dr. Kevin A. Leonard

Dr. Kathleen Kennedy

Dr. Cecilia Danysk

MASTER'S THESIS

In presenting this thesis in partial fulfillment of the requirements for a master's degree at Western Washington University, I grant to Western Washington University the non-exclusive royalty-free right to archive, reproduce, distribute, and display the thesis in any and all forms, including electronic format, via any digital library mechanisms maintained by WWU.

I represent and warrant this is my original work, and does not infringe or violate any rights of others. I warrant that I have obtained written permissions from the owner of any third party copyrighted material included in these files.

I acknowledge that I retain ownership rights to the copyright of this work, including but not limited to the right to use all or part of this work in future works, such as articles or books.

Library users are granted permission for individual, research and non-commercial reproduction of this work for educational purposes only. Any further digital posting of this document requires specific permission from the author.

Any copying or publication of this thesis for commercial purposes, or for financial gain, is not allowed without my written permission.

Chris J. Green
July 21, 2011

"Class Struggle rather than Cooperation": Class, Gender, Sexuality and the Congressional Investigation of the National Labor Relations Board, 1939-1941

A Thesis
Presented to
The Faculty of
Western Washington University

In Partial Fulfillment
Of the Requirements for the Degree
Master of Arts

by
Chris J. Green
July 2011

Abstract

In examining the attack on the National Labor Relations Board (NLRB) in the late 1930s, historians have devoted substantially more attention to the role played by the American Federation of Labor (AFL) than that played by congressional conservatives. Historians have noted that congressional conservatives portrayed NLRB officials as biased against business and in favor of unions, but they have overlooked the fundamental basis of the disagreement between these conservatives and the NLRB and its supporters. This thesis examines the attack on the NLRB by the congressional committee headed by Congressman Howard Smith of Virginia from December 1939 to December 1940. The fundamental dispute between the conservative majority on the Smith Committee on the one hand and NLRB officials and the pro-NLRB minority on the committee on the other hand centered on the role of class as a factor in NLRB policy. Smith Committee conservatives objected to NLRB officials' belief that the NLRB existed to help unions reduce the inequality in power inherent in relations between workers and employers. This thesis also discusses how beliefs about gender, and occasionally sexuality, colored Smith Committee conservatives' claims about the role of class in NLRB policy. Smith Committee conservatives attacked the passion of NLRB officials to help labor unions empower working-class Americans with language suggesting that such passion was motivated by an excess of un-masculine emotion.

Table of Contents

Introduction

After Franklin Roosevelt assumed the presidency in March 1933, Congress established mechanisms to protect the right of labor unions to organize and strike. Democratic Senator Robert Wagner of New York soon came to believe that these mechanisms provided inadequate protection for union organizing. Beginning in 1934, Wagner pushed proposals in Congress for strengthening the ability of the federal government to protect unions.[1]

Wagner's efforts bore fruit when Congress passed and Roosevelt signed legislation embodying Wagner's proposals, the National Labor Relations Act (NLRA), in the summer of 1935. The NLRA, or the Wagner Act as it was popularly known, created the National Labor Relations Board (NLRB). The act empowered the NLRB to protect the ability of workers to organize unions, especially by protecting workers against anti-union activities by employers. In February 1938, the conservative Democratic Senator Edward Burke of Nebraska indulged in some harsh criticisms of the NLRB in a national radio broadcast:

> Biased and incompetent [NLRB] officials have been sent out over the country for the apparent purpose of trying to prove that employers as a class are actuated solely by greed for profits and, unless curbed, will grind labor into the dust. I am satisfied that many millions of workers know from experience how utterly false is such an assumption. The Labor Act should be rewritten and the enforcement agency reconstituted upon a different premise. We should act on the belief that employers as a whole desire to treat their workers fairly and that employers in general are anxious to render a fair day's work for a fair day's pay.[2]

Senator Burke exhibited sentiments fairly typical of the attitude of President Roosevelt's conservative congressional critics toward the NLRB. They felt that in relations between employers and unionized employees, NLRB officials displayed a strong bias in favor of the

---

[1] Stanley Vittoz, *New Deal Labor Policy and the American Industrial Economy* (Chapel Hill: University of North Carolina Press, 1987), 143-149.

[2] Edward R. Burke, "Dangerous Counsel on Labor Relations: The Flaws Must Be Removed," *Vital Speeches of the Day,* May 1, 1938, 309.

unionized employees. They felt that NLRB officials operated on the principle that the NLRB existed to help under-privileged workers protect themselves from exploitation by employers. They believed that this principle caused NLRB officials to adopt an improperly anti-business attitude in the adjudication of disputes between business and labor.

The most substantial attack on the NLRB took place in congressional hearings from December 1939 to December 1940, presided over by the conservative Democratic Congressman Howard Smith of Virginia. This thesis will describe how the themes of class, gender and sexuality took a prominent position in the Smith Committee hearings. Class took center stage as NLRB officials (and the Committee minority) argued that the purpose of the NLRB was to address the inequality in power (in favor of employers) inherent in employer-employee relationships. The Committee minority and NLRB officials believed that this economic inequality could be ameliorated through NLRB assistance in the establishment of strong unions capable of extracting from management a greater share of the nation's wealth and other benefits. In contrast, the Smith Committee majority showed no interest in utilizing the NLRB to reduce economic inequality. Moreover, the Committee majority argued that this motivation to support unions in the interests of reducing economic inequality produced various negative consequences. One negative consequence had a gendered coloration when described by the Committee majority. The Committee majority described NLRB officials as having a distinctly un-masculine (and unprofessional) level of emotional partisanship on behalf of under-privileged workers. In contrast, the Committee majority demanded that NLRB officials display an unsentimental impartiality when adjudicating disputes between management and labor. In a related vein, the Committee majority used several examples of NLRB activities to suggest that NLRB officials, in their efforts to protect unions, adopted a tolerant attitude toward sexual deviancy and enabled

violence against women by union thugs. The Committee majority thus used gender and sexuality to express their concerns about the allegedly harmful pro-union activities of the NLRB. Class, gender, and sexuality became intertwined in the committee majority's attack on the NLRB. The committee majority identified other negative consequences of what they saw as the pro-union mindset of NLRB officials. These other negative consequences had more to do with class than gender, in the sense that they centered around the allegation that NLRB officials displayed favoritism toward one class (unionized workers) and a bias against another class (employers). The Committee majority argued that the NLRB's support of unions for the purpose of advancing economic equality in the United States demonstrated left wing radical sympathies on the part of these officials. In a related vein, the committee majority linked the NLRB's pro-union mindset to alleged efforts by NLRB officials to promote strife rather than cooperation between management and labor. The majority also argued that the pro-union mindset encouraged the NLRB to use its power in ways unfair or harmful to business. The Committee majority in effect argued that as the NLRB sought to use its power to assist one class of Americans (in this case unionized workers), detrimental effects befell other classes (particularly employers).

The fundamental philosophical differences in the debate between the NLRB and its supporters and the Smith Committee majority have received no attention in the scholarly literature. In fact, historians have devoted little attention overall to the attack on the NLRB in the late 1930s. In a book and journal article published in 1985, legal historian Christopher Tomlins provides one of the most extensive investigations into this attack on the NLRB.[3] However,

---

[3] Christopher Tomlins, "The New Deal, Collective Bargaining and the Triumph of Industrial Pluralism," *Industrial and Labor Relations Review* 39, no.1 (October 1985): 19-34, and Christopher Tomlins, *The State and the Unions: Labor Relations, Law, and the Organized Labor Movement in America, 1880-1960* (New York: Cambridge University Press, 1985).

Tomlins gives virtually no attention to the attack on the NLRB by congressional conservatives (such as the majority on the Smith Committee). Instead, he focuses on the attack by the American Federation of Labor (AFL) on the NLRB as well as the criticisms of NLRB policy by a member of the NLRB executive, William Leiserson. Tomlins stresses the fundamental philosophical differences between Leiserson, other NLRB officials, and the AFL over the proper way to implement the Wagner Act.[4] The differences revolved around the question over the NLRB's role in reducing the inequality in power inherent in relations between employers and workers. Leiserson's two colleagues on the NLRB executive, Edwin Smith and J. Warren Madden, believed that the NLRB existed to help workers to establish strong collective bargaining units capable of wresting a maximum level of benefits for workers from management.[5] Leiserson and the AFL, on the other hand, believed that--with the exception of cases where employers imposed company unions on workers-- the construction of collective bargaining units needed to be designed without NLRB interference, in negotiation between management and unions. Tomlins, in essence, describes a dispute over the proper role of the NLRB in addressing economic inequality in industrial relations (in terms of the inequality in bargaining power between management and labor). In other words, Tomlins brings up the issue of class as it took place during the debate over NLRB policy in the late 1930s. However, unlike Tomlins, this thesis will devote little space to Leiserson's and the AFL's attitude toward the NLRB. Instead, it will concentrate on the Smith Committee's critique of the NLRB. Tomlins does not explore any issues of gender or sexuality.

---

[4] Tomlins, "The New Deal," 29-34, and Tomlins, *The State and the Unions*, 157-224.
[5] Tomlins, "The New Deal," 32.

More extensive than Tomlins's work, and indeed the most extensive investigation available of the attack on the NLRB in the late 1930s, is labor historian James Gross's 1981 book *The Reshaping of the National Labor Relations Board.* Like Tomlins, Gross devotes extensive discussion to the AFL's attack on the NLRB.[6] His book is essentially a history of the transformation of the NLRB as a bureaucracy from the late 1930s to the passage of the Taft-Hartley Act in 1947. In Gross's interpretation, the Smith Committee majority's effort to portray the NLRB as biased against the AFL and in favor of the AFL's hated rival union federation, the Congress of Industrial Organizations (CIO), was one of the factors that transformed the NLRB into a less union-friendly and more business-friendly agency by 1947. Gross describes the Smith Committee majority as keen to exert pressure for the reform of the NLRB in a business-friendly direction. In discussing the charges by the Committee majority that NLRB personnel performed actions injurious to business and favorable to the CIO, he notes that these personnel sometimes gave evidence of a pro-CIO partiality.[7] However, he misses the fact, as this thesis will discuss, that the Smith Committee hearings exhibited a fundamental debate over the role of government protection of unions in the interests of reducing economic inequality. He does not discuss how gender or sexuality colored the debate during the committee hearings over this essentially class-based fundamental issue.

Since the work of Tomlins and Gross, the only scholar to focus on the attack on the NLRB in the late 1930s is Gilbert Gall with his 1989 journal article "CIO Leaders and the

---

[6] James Gross, *The Reshaping of the National Labor Relations Board* (Albany: State University of New York Press, 1981), 42-68, 73-78, 91-102.

[7] Gross, The *Reshaping of the National Labor Relations Board*, 164-186.

Democratic Alliance."[8] The attack on the NLRB by the Smith Committee majority is a prime focus of Gall's article. However, Gall's focus is mainly on the Committee majority's endorsement of the AFL's complaints against the NLRB. As mentioned above, this thesis will have relatively little to say about the AFL's attack on the NLRB. Gall does not explore how class, gender or sexuality figured in the debate over the NLRB in the Smith Committee hearings, as this thesis will. Rather, Gall's overall thesis is that the AFL's and Smith Committee majority's attacks on the NLRB were part of a conservative political climate hostile to militant unionism.[9] According to Gall, this hostile climate compelled the AFL's relatively militant rival, the CIO, to seek protection by deepening its alliance with the Roosevelt administration.

This thesis relies on Gall's work for several points of background material to the Smith Committee hearings but has also been influenced by recent historical works that do not discuss the NLRB or the Smith Committee. One such work is *Not without Honor: the History of American Anticommunism* by historian Richard Gid Powers, which was published in 1995. Powers points out what he feels to be the principled stand against the destructive effects of communist ideology upon the world on the part of such twentieth-century American political and intellectual figures as William F. Buckley Jr. and Ronald Reagan. He stresses his contention that this principled anticommunism was "the mainstream of American anticommunism."[10] He argues that in the popular historical imagination, twentieth-century American anticommunism is often unfairly described as consisting only of unprincipled or intellectually weak anticommunists. In Powers's account, the unfair popular stereotype of twentieth-century American anticommunists

---

[8] Gilbert J. Gall. "CIO Leaders and the Democratic Alliance: The Case of the Smith Committee and the NLRB." *Labor Studies Journal* 14 no.2 (Fall: 1989): 3-28.
[9] Gall, "CIO Leaders and the Democratic Alliance," 4-5, 25-26.
[10] Richard Gid Powers, *Not without Honor: The History of American Anti-Communism* (New York: The Free Press, 1995), 427.

is associated with political demagogues, such as Senator Joseph McCarthy, who smeared non-communist liberals as Communists and organizations, such as the John Birch Society, which propagated anticommunist conspiracy theories with no basis in hard evidence.[11] While Powers demands greater respect for twentieth-century American anticommunism, historian Ellen Schrecker, in her 1998 work *Many Are the Crimes: McCarthyism in America*, portrays anticommunism as historically a device by powerful forces to repress left-wing forces in American life.[12] In other words, Schrecker portrays American anticommunism as an ideology utilized historically by unprincipled actors in American life, a picture of American anticommunism of the sort lamented by Powers. This thesis will adopt an approach toward the NLRB and Smith Committee majority similar to that adopted by Powers in his book on anticommunism and not Schrecker in her work. While the attack on the NLRB by the Smith Committee majority possibly might have contained elements of demagoguery and been partly motivated by a desire to weaken liberal and left wing forces in American life, this thesis is only concerned with the debate over fundamental principles around themes like class and gender that occurred during the Committee hearings.

Apart from a study of works by Schrecker and Powers, this thesis has also been shaped by works on other historical topics not involving the NLRB or the Smith Committee. Two such works are *The Lavender Scare* by historian David K. Johnson and *Manhood and American Political Culture in the Cold War* by historian K. A. Cuordileone. Johnson's book discusses how conservative politicians used gender to color their critique of the policies, particularly the foreign policies, of liberal Democrats in the administration of Harry Truman at the dawn of the Cold

---

[11] Powers, *Not Without Honor*, 235-236, 257-258, 294-296.

[12] Ellen Schrecker, *Many Are the Crimes: McCarthyism in America* (Princeton: Princeton University Press, 1998).

War. Conservative political forces portrayed liberal policy makers within the Roosevelt and Truman administrations as effeminate upper-class weaklings who tolerated or indulged in homosexuality.[13] These conservative politicians linked the supposedly un-masculine characteristics of the liberal policy-makers with the alleged attitude of appeasement and weakness that the liberal Democratic presidents projected before the Soviet Union.[14] Cuordileone's book has a similar theme as Johnson's but covers much broader ground. Cuordileone discusses the fear about homosexuality that was prominent in American political and popular culture in the late 1940s and 1950s.[15] She discusses the effort by leading liberal politicians and intellectuals to define a distinctly liberal masculinity in the light of powerful conservative forces to portray liberals as effete aristocratic appeasers of the Soviet Union.[16] Both Johnson's and Cuordileone's books have influenced this thesis in the sense that both have discussed the way in which gender colored debates over national policy making during the early Cold War years. This thesis discusses the way in which gender colored the debates between the main protagonists in the Smith Committee hearings.

Gender sometimes colored the conservative attack on the Roosevelt administration's allegedly excessively indulgent attitude toward CIO unions, in the period before the Smith Committee's launch, as shall be discussed in the following chapter.

---

[13] David K. Johnson, *The Lavender Scare: The Cold War Persecution of Gays and Lesbians in the Federal Government* (Chicago: University of Chicago Press, 2004), 28-39, 65-99.
[14] Johnson, *The Lavender Scare*, 15-39.
[15] K. A. Cuordileone, *Manhood and American Political Culture in the Cold War* (New York: Routledge, 2005), 49-65.
[16] Cuordileone, *Manhood and American Political Culture in the Cold War,* 1-36, 167-226.

Chapter 1: Congressional Conservatives, Unions and Roosevelt

In response to the Great Depression, after Franklin Roosevelt was inaugurated as president in March 1933, Congress passed and Roosevelt signed into law a series of reforms popularly referred to as the New Deal. Roosevelt proclaimed before the Democratic National Convention in 1936 that the New Deal aimed to put an end to the "economic tyranny" that a small number of "economic royalists" exercised over the United States. The president declared that with the vast control these economic royalists exercised over the nation's economy, a situation of significant economic inequality existed in the United States. Roosevelt asserted that the political democracy of the United States had become increasingly worthless as a means for ordinary Americans to have a voice in the operation of the country because the economic royalists had come to so thoroughly control American society. He maintained that it was the mission of his administration to eliminate the power of these royalists.[1]

Those most oppressed by the economic royalists, from Roosevelt's perspective, were seemingly the poorest Americans, the one third of the nation's residents who Roosevelt claimed in his inaugural speech in January 1937 were "ill-housed, ill-clad, ill-nourished." In that speech Roosevelt declared that his administration would continue to avoid providing favors to the rich and instead concentrate on using the power of the federal government to ensure the economic security of the most vulnerable Americans. He declared that "the test of our progress is not whether we add more to the abundance of those who have much; it is whether we provide enough for those who have too little."[2] Speaking in Chicago during his 1936 re-election

---

[1]Franklin D. Roosevelt, *The Public Papers and Addresses of Franklin Delano Roosevelt*, vol. 5: *The People Approve, 1936* (New York: Random House, 1938), 233-234.
[2] Franklin Roosevelt, "A Changed Moral Climate in America," *Vital Speeches of the Day*, February 1, 1937, 227.

campaign, he quoted Thomas Jefferson: "widespread poverty and concentrated wealth cannot long endure side by side in a democracy."[3]

Roosevelt heavily infused the above quoted rhetoric with the theme of class, in the sense that he claimed that his administration sought to lessen inequality between economic classes in the United States. However, whatever Roosevelt's rhetoric, in the 1930s, under the New Deal, economic inequality remained virtually unchanged and the "economic royalists" more or less maintained their power. According to the historian William Leuchtenberg, the share of the national wealth held by the richest one percent of Americans may have even increased slightly after a major tax increase on rich Americans in 1935.[4]

This chapter will show that while Roosevelt acted in ways that reinforced the power of traditional economic elites, congressional conservatives feared that labor unions acquired too much power under his administration. Congressional conservatives—Republican and Democrat—frequently expressed these fears after Roosevelt's second term began in 1937. They argued that, under Roosevelt, unions, specifically CIO unions, acquired excessive power over other classes of Americans, especially employers. This chapter will show that this fear of the excessive power of the CIO in American society—and the CIO's potential power to disrupt existing class relations in the U.S.—provided the context in which congressional conservatives launched the Smith Committee to investigate the NLRB. Congressional conservatives regarded the Roosevelt administration--especially the NLRB--as a primary guilty party in assisting in the build-up of the CIO's power. This chapter will also show how congressional conservatives

---

[3] Roosevelt, *The Public Papers and Addresses of Franklin Delano Roosevelt*, vol 5, 486.
[4] William E. Leuchtenberg, *Franklin D. Roosevelt and the New Deal* (New York: Harper Perennial, 1963), 154.

utilized gender in their attack on the Roosevelt administration's allegedly indulgent attitude toward the CIO. Gender appeared in these attacks as congressional conservatives charged the Roosevelt administration with providing a weak (that is un-masculine) response to the alleged threat of the CIO. The chapter will also discuss the motivations of the men who directly played a role in the creation of the Smith Committee, including the motivation relating to the fear that the NLRB helped the CIO threaten the stability of the class structure in the US. This chapter will discuss the events which directly led to the creation of the Smith Committee.

While congressional conservatives attacked the Roosevelt administration's attitude toward the CIO, Roosevelt went out of his way to please these conservatives. During his first term (1933-37), Roosevelt demonstrated a willingness to countenance the maintenance of highly stratified economic and social structures in southern states. A major reason for this acquiescence was to maintain the support of the New Deal on the part of congressional southern Democrats, who were a major force in the overwhelming Democratic majorities in Congress in the 1930s.[5] Facing little competition from the Republicans, virtually every member of Congress from southern states was a Democrat, and southern Democrats were members on and chaired many key congressional committees.[6] These powerful southern Democrats structured New Deal reforms so that they did not fundamentally threaten the traditional socioeconomic order of the South. That order was based on a low-wage, predominantly agricultural economy undergirded by a white supremacist legal system and culture.[7] Major legislation relating to the New Deal welfare state could not pass Congress unless the bulk of congressional southern Democrats felt

---

[5] Kari Frederickson, *The Dixiecrat Revolt and the End of the Solid South, 1932-1968* (Chapel Hill: University of North Carolina Press, 2001), 16, 20.
[6] Frederickson,16; Ira Katznelson, *When Affirmative Action Was White: An Untold History of Racial Inequality in Twentieth Century America* (New York: W. W. Norton & Co., 2005), 19-22.
[7] Sean Farhang and Ira Katznelson, "The Southern Imposition: Congress and Labor in the New Deal and Fair Deal," *Studies in American Political Development* 19, no. 1 (April 2005): 7, 15.

assured that such legislation would benefit southern blacks as little as possible. In the predominantly agricultural southern economy, many southern blacks worked in the agricultural and domestic labor fields, receiving the lowest wages and experiencing the worst poverty and deprivation in the country.[8] Thus, for the Social Security Act of 1935—which set up a national old-age and unemployment insurance system and federal government subsidies for impoverished single parents—agricultural and domestic labor were excluded from its coverage.[9] The same principle applied to the Wagner Act of 1935, which established federal government protections for union organizing, and the Fair Labor Standards Act (FLSA) of 1938, which established a maximum 40-hour work week and minimum wage for many American workers.[10] Nationwide, possibly as many as 40 percent of white workers and 65 percent of black workers were excluded from the benefits of these three programs because of the exclusion of agricultural and domestic labor.[11] Similarly structured was the Works Progress Administration (WPA), created in 1935 as the largest program created under the New Deal welfare state to provide jobs on public works projects to unemployed Americans. Local and state officials received control over the establishment of wage rates for WPA projects, which meant that in the South, wages for WPA workers generally did not depart from the low wage norm of the region. The monetary benefits distributed by the WPA were substantially less in southern states than elsewhere in the United States. Local and state officials in the South set WPA wages so that white WPA workers would be paid more than their black counterparts and receive more opportunities than blacks for WPA

---

[8] Katznelson, *When Affirmative Action was White*, 29-35.
[9] Katznelson, *When Affirmative Action was White*, 43-45,
[10] Katznelson, *When Affirmative Action was White*, 58-61.
[11] Katznelson, *When Affirmative Action was White*, 43.

employment.[12]The distribution of the benefits of other New Deal programs, for example Social Security, was also controlled by local and state officials. This allowed officials in southern states to ensure that New Deal programs affected little the subaltern status of southern blacks. In contrast, in some northern states, social security payments to elderly blacks were slightly higher than for whites, reflecting greater black poverty.[13] Payments to wealthy farmers under the New Deal to reduce production of crops (in the interests of keeping farm prices high) also had the notable effect of reinforcing economic inequality in the South. Wealthy farmers pocketed the government subsidies while evicting tenant farmers and sharecroppers from land no longer in production because of the subsidies, further contributing to the growth of a rural displaced black and white population. When Jerome Frank, General Counsel of the Agricultural Adjustment Administration (AAA), the New Deal program that administered the subsidies, issued a ruling against abuse of the subsidy program by southern farm growers, Secretary of Agriculture Henry Wallace fired Frank and several of his associates. Wallace fired Frank because he needed the support of southern farm growers and landowners for New Deal agricultural programs. He also needed the cooperation of southern Democrats who represented those farm growers and landowners, such as Senate Majority Leader Joe Robinson of Arkansas. [14]

After Roosevelt's second term in office began in January 1937, the cooperation between congressional southern Democrats and the Roosevelt administration began to significantly weaken. One of the reasons for this weakening appeared to be the administration's friendly disposition toward the CIO. The CIO was a federation of unions that broke away from the

---

[12] Katznelson, *When Affirmative Action was White*, 38-39.
[13] Katznelson, *When Affirmative Action was White*, 45-47.
[14] Patricia Sullivan, *Days of Hope: Race and Democracy in the New Deal Era* (Chapel Hill: University of North Carolina Press, 1996), 57-58.

American Federation of Labor (AFL) in 1935, seeking to organize the semi-skilled and unskilled workforce that the AFL had mostly neglected to organize. [15] The CIO and the Roosevelt administration formed an alliance, with the CIO heavily utilizing its resources in support of Roosevelt and other relatively union friendly Democratic politicians, beginning with the 1936 presidential election.[16]

As the political scientists Sean Farhang and Ira Katznelson note, the CIO, along with the AFL, achieved some organizing successes among white and black non-agricultural and non-domestic labor after the passage of the Wagner Act in 1935.[17] Because of the paucity of union organizing in the region prior to the Act, southern Democrats did not expect this increase in unionization in their region.[18] According to Farhang and Katznelson, the organization of non-agricultural and non-domestic black and white workers, sometimes in interracial CIO unions, appeared to threaten the traditional socioeconomic order of the south from the perspective of congressional southern Democrats.[19]

Congressional southern Democrats joined with congressional Republicans in early 1937 to attack the Roosevelt administration's attitude toward the sit-down strikes launched by CIO unions. From early spring 1937 to June 1, 1937, an estimated 485,000 American workers took part in sit-down strikes.[20] Congressional conservatives—Democrats and Republicans--charged the Roosevelt administration with weakness in confronting the sit-downs. Roosevelt did not believe the sit-downs were legal, but he advocated negotiation instead of physical force to evict

---

[15] Robert H. Zieger, *The CIO, 1935-1955* (Chapel Hill: University of North Carolina Press, 1995), 6-41.
[16] Zeiger, *The CIO*, 39-40.
[17] Farhang and Katznelson,"The Southern Imposition," 22.
[18] Farhang and Katznelson,"The Southern Imposition," 21.
[19] Farhang and Katznelson, "The Southern Imposition," 30.
[20] James Wolfinger, "The Strange Career of Frank Murphy: Conservatives, State-Level Politics and the End of the New Deal," *Historian* 65, no. 2 (Fall 2002): 385.

the sit-down strikers.[21] Overall, congressional conservatives thought the president presented weak leadership in confronting the sit-down strikes. On the Senate floor in April 1937, congressional conservatives used gendered language to describe the President's reaction to the sit-downs. The president was a "victim" of the CIO, Republican Senator Arthur Vandenberg of Michigan asserted. Vandenberg suggested that leaders of CIO locals falsely told their members that Roosevelt endorsed the seizure of private property that was the primary feature of sit-down strikes. Roosevelt, of course, did not endorse the seizure of private property, Vandenberg noted. But by his refusal to make a "firm" (masculine in other words) statement against sit-down strikes, the president contributed to the growth of the sit-down strikes.[22] Roosevelt, in Vandenberg's eyes, showed weakness in the face of threats to the traditional class structure of the U.S. presented by the sit-down strikes.

Conservative Democratic Senator Josiah Bailey of North Carolina sounded a similar gendered theme as Vandenberg's. Speaking on the Senate floor, Bailey expressed regret at Roosevelt's response to a public demand made by CIO president John L. Lewis in the midst of the initial sit-down strikes launched in Flint, Michigan, in January 1937. Lewis declared that since the CIO had provided Roosevelt with so much financial and other assistance for the president's 1936 reelection, he expected the president to take the side of the CIO in the sit-down strikes.[23] Roosevelt responded with a brief and vague statement chiding Lewis for attempting to make headline grabbing public statements.[24] Bailey complained that Roosevelt's response was grossly inadequate. Instead, Bailey argued, Roosevelt should have firmly told Lewis that while

---

[21] Sidney Fine, *Sit-Down: The General Motors Strike of 1936-1937* (Ann Arbor: University of Michigan Press, 1969), 233.
[22] *Regulation of Bituminous Coal Industry*, 75th Cong., 1st sess., *Congressional Record* 82 (April 2, 1937): 3072.
[23] Fine, *Sit-Down*, 256.
[24] Fine, *Sit-Down*, 256.

he appreciated the CIO's election assistance, he, Roosevelt, was "the servant of all Americans," not just the CIO, and that no one individual had the right to order the president to do anything. "I wish he had said that," Bailey declared, "and if he had done so there would have been an end to such a situation in America [the sit-down strikes]. But he did not say it." The implication of Bailey's remarks was that Roosevelt was weak (un-masculine in other words) and unable to effectively stand up to the bullying of John L. Lewis. Bailey implied that John L. Lewis (and the CIO) was an alien force outside the definition of what properly constituted "America." He implied that Roosevelt displayed excessive weakness as this alien force tried to tyrannize America with sit-down strikes. The senator declared that John L. Lewis started the sit-down strikes but "America will end" the sit-down strikes—"do not worry about that."[25]

To congressional conservatives, it seemed that, under Roosevelt's watch, the CIO was in the process of imposing a regime of tyranny and lawlessness on the United States. Republican Congressman Fred Hartley of New Jersey declared in a May 1937 radio address that under the New Deal, "the pendulum is rapidly swinging" from a situation in which American workers suffered exploitation at the hands of business to a situation in which organized labor exploited the rest of society.[26] Democratic Congressman Martin Dies of Texas made similar remarks on the floor of the house in April 1937. First warmly associating with efforts under the New Deal to protect American society from exploitation by big business, he then proceeded to warn against the sit-down strikes. The sit-down strikes were a form of "lawlessness" imposed on American society that were just as "reprehensible and indefensible" as abuses by industrial and financial

---

[25] *Regulation of Bituminous Coal Industry*, 75th Cong., 1st sess., *Congressional Record* 82 (April 2, 1937): 3072.

[26] Fred A. Hartley Jr., "Can Industrial Peace Be Attained?" *Vital Speeches of the Day*, June 15, 1937, 544.

corporations.[27] Dies warned that similar "lawless" actions by union members contributed to the breakdown of law and order in Germany and Italy to the point where the dictatorships of Hitler and Mussolini arose to impose stability.[28] In August 1938 Dies became chairman of the House Committee to Investigate Un-American Activities (HUAC), which focused heavily on the subversive threat to American society allegedly presented by the CIO and sit-down strikes.[29]

The number of sit-down strikes fell dramatically after the spring of 1937. The NLRB took no part in the sit-down strike controversy before the April 12, 1937, decision of the Supreme Court declared the Wagner Act to be constitutional. Before that Supreme Court decision, businesses secured injunctions from lower courts that significantly limited the NLRB's jurisdiction.[30] But the NLRB took credit for a reduction in the sit-down strikes after the Court's decision, arguing that now that workers had a forum in the NLRB to express their grievances about anti-union employers, they no longer saw the need to engage in sit-down strikes.[31]

However, the NLRB received criticism based on its treatment of a CIO sit-down strike in Tupelo, Mississippi, and continued to suffer attacks for its treatment of sit-down strikes (as shall be discussed in Chapter 3). In July 1937, the influential Democratic chairman of the Senate Finance Committee, Pat Harrison of Mississippi, called attention to the NLRB's conduct in the Tupelo case. Harrison appeared to believe that the CIO presented a threat to the traditional

---

[27] Martin Dies, "Should Congress Outlaw Sit-Down Strikes? Pro," *Congressional Digest*, May 1937, 147.
[28] Dies, "Should Congress Outlaw Sit-Down Strikes?" 148.
[29] Wolfinger, "The Stranger Career of Frank Murphy," 391-398.
[30] James Gross, *The Making of the National Labor Relations Board* (Albany: State University of New York Press, 1974), 210-211.
[31] Senate Committee on Education and Labor, *National Labor Relations Act and Proposed Amendments: Hearings before the Committee on Education and Labor, United States Senate*, part 3 (Washington, DC: U.S. Government Printing Office, 1939), 76th Cong., 1st sess., April 26, 1939, 482.

relationship between economic classes in his region's economy.[32] Harrison had been an important ally in the fight to pass New Deal legislation during Roosevelt's first term.[33] However, after Roosevelt's second term began in 1937, Harrison publicly criticized efforts by the Roosevelt administration to expand the New Deal welfare state or increase taxes and regulations on business.[34] Harrison charged NLRB officials with encouraging a sit-down strike by CIO activists at a textile factory in Tupelo, though most of the factory workers did not want to join the CIO. Harrison asserted that workers at this factory were "perfectly happy and contented" before the CIO and NLRB entered the picture and created mayhem. Harrison claimed that he contacted NLRB officials and "pleaded with them" to seriously endeavor to bring a peaceful and just resolution of the conflict, but he "did not get very far." Harrison indicated in the speech that he had great discomfort with the CIO and greatly preferred the AFL.[35] In his discussion of the events at Tupelo, Harrison painted a picture that featured the NLRB helping the CIO violate the right of a business to conduct its operations and also the right of workers not to join the CIO.

In the midst of a backlash against the Roosevelt administration's labor policies, Roosevelt's Democratic Party suffered a significant setback in the congressional elections of November 1938. The Republican Party, after repeated electoral battering at the hands of the Democrats since 1930, staged a comeback. The party increased its numbers from 15 to 23 in the 96-seat Senate and from 88 to 169 in the 435-seat House. In combination with conservative Democrats, the Republicans now had an opportunity to combine with conservative Democrats to

---

[32]In the late 1930s Harrison became "alarmed by the threat of unions," his biographer, historian Martha Swain, writes. Martha H. Swain, *Pat Harrison: The New Deal Years* (Jackson: University of Mississippi Press, 1978), 163.

[33] Swain, *Pat Harrison*, 33-146.

[34] Swain, *Pat Harrison*, 147-194.

[35] Pat Harrison, "The Wages and Hours Bill: Its Effect on the South and the Country," *Vital Speeches of the Day*, August 15, 1937, 646.

stifle any further expansion of New Deal reforms. [36] Successful Republican politicians in 1938 fashioned their election appeals to voters by stressing the association of liberal Democrats with the sit-down strikes.[37]

As the seventy-sixth Congress convened in January 1939, congressional conservatives pushed ahead with efforts to create legislation to reform the Wagner Act (and the NLRB which administered the act) in a more business-friendly direction.[38] Conservative Democratic Senator Edward Burke of Nebraska led the reform effort in the Senate. In the House, conservative southern Democrats Howard Smith of Virginia, Edward Cox of Georgia and Graham Barden of North Carolina joined Republicans Clare Hoffman of Michigan and Fred Harley of New Jersey in leading the reform effort. [39]

Roosevelt's congressional allies tried to stave off congressional hearings by conservatives into the NLRB by holding hearings of their own during the Spring of 1939.The Senate Labor and Education Committee, chaired by the pro-New Deal Elbert Thomas of Utah, and the House Committee on Labor, chaired by the pro-New Deal Mary Norton of New Jersey, both held hearings on amendments to the Wagner Act and the operations of the NLRB.[40] Congressional conservatives soon came to view the House and Senate committee investigations as inadequate for the task of unearthing the deficiencies of the NLRB. Congressman Cox, the conservative Georgia Democrat, hostile to the CIO's efforts to organize the textile industry in his state, desired a congressional investigation capable of shining a negative spotlight on the NLRB's allegedly solicitous attitude toward the CIO. Cox, fearing the potentially negative impact of the

---

[36] Clyde P. Weed, *The Nemesis of Reform: The Republican Party during the New Deal* (New York: Colombia University Press, 1994), 200-201.
[37] Weed, *The Nemesis of Reform*, 197-198.
[38] Gross, *The Reshaping of the National Labor Relations Board*, 50-55.
[39] Gross, *The Reshaping of the National Labor Relations Board*, 79.
[40] Gross, *The Reshaping of the National Labor Relations Board,* 91-93, 101-102

CIO on the interests of textile mill owners in his district, convinced Congressman Howard Smith of the necessity for a congressional investigation into the NLRB controlled by reliably conservative and reliably anti-CIO congressmen.[41] Smith and Cox used their positions on the powerful House Rules Committee to secure a vote of the full House on a resolution to create a committee chaired by Congressman Smith to investigate the NLRB and propose reforms to the Wagner Act. On July 20, 1939, the House voted favorably on this resolution by a two-to-one majority. Smith was able to secure a conservative majority on his committee with the appointment of himself and the Republicans Charles Halleck of Indiana and Harry Routzohn of Ohio. The liberal Democratic congressmen Abe Murdock of Utah and Arthur Healy of Massachusetts made up the Committee's pro-NLRB minority. Edmund Toland, a Boston-based corporate lawyer who had taken part in litigation against New Deal business regulatory measures, served as the committee's chief counsel.

The chair of the new committee, Howard Smith, was a wealthy bank and dairy farm owner who had strong objections to government support for collective bargaining rights for unions. He believed that organized labor achieved gains at the expense of the rest of society and that unions, by going on strike, caused turmoil and destruction in American life.[42] Smith was one of the conservative congressional Democrats Roosevelt had unsuccessfully tried to remove from office by running liberal candidates against them in Democratic Party primaries during the 1938 mid-term elections.[43] Smith opposed the passage of the Wagner Act in 1935 but in 1939 adopted

---

[41] Gall, "CIO Leaders and the Democratic Alliance, 13.
[42] Bruce Dierenfield, *Keeper of the Rules: Congressman Howard W. Smith of Virginia* (Charlottesville: University of Virginia Press: 1987), 84-87.
[43] Dierenfield, *Keeper of the Rules*, 69-73.

the public position that the Act had the potential to be a productive tool for the American economy—if Congress properly reformed it.[44]

Smith's two conservative Republican cohorts on the Committee were Charles Halleck and Harry Routzohn. Routzohn, a former lawyer for the AFL, displayed a vehement animus toward the NLRB and seemed in accord with Smith's desires to reform the act.[45] Halleck was not exactly a strong enthusiast for unions, but, while he criticized the NLRB for a pro-CIO bias, he was more moderate in his disposition toward the NLRB than Smith or Routzohn. Unlike Smith's rural Virginia district, Halleck's Indiana district contained many union voters and thus it was not politically viable for Halleck to be seen as excessively anti-union. The prominent nationally syndicated columnist Drew Pearson reported that, while the committee majority prepared its intermediate report in March 1940, Halleck strongly objected to the proposals of Smith and Routzohn to amend the Wagner Act. Halleck allegedly denounced the proposals as excessively anti-union. To satisfy Halleck, Smith eventually agreed to eliminate a proposed amendment that would require unions to seek mediation of grievances with management before going on strike.[46] NLRB chairman J. Warren Madden later claimed that Halleck approached him after one of the committee hearings and told him that he had a favorable impression of Madden's testimony and that he might adopt a more favorable stance toward the NLRB. Madden hoped that Halleck would join the Committee minority members, congressmen Murdock and Healy, in opposition to Smith and Routzohn, but this did not happen.[47]

---

[44] Dierenfield, *Keeper of the Rules*, 88.
[45] Gross, *The Reshaping of the National Labor Relations Board*, 152.
[46] Gross, *The Reshaping of the National Labor Relations Board,* 195; Dierenfeld, *Keeper of the Rules*, 90.
[47] Gross, *The Reshaping of the National Labor Relations Board*, 195.

With the support of Halleck and Routzohn, Smith set out to reform the Wagner Act and the NLRB in a more business friendly direction. The next chapter will discuss how the Smith Committee hearings revealed fundamentally different views over the appropriate federal government role towards labor unions between the NLRB and its supporters on the one hand and the Smith Committee majority on the other. This debate was over whether the federal government held the responsibility of actively supporting unions in order to lessen economic inequality.

Chapter 2: The Committee Majority Attacks the NLRB

Much of the impetus for the launching of the Smith Committee investigation into the NLRB (or "the Board") took place in 1938. According to James Gross, a crucial assist in launching the Smith Committee hearings was provided by the AFL. Prior to the summer of 1938, the AFL successfully blocked efforts by congressional conservatives to reform the Wagner Act (and the NLRB which administered the Act) in a more conservative direction.[1] However, the AFL had been accumulating grievances against the Board, all centering on the allegation that the NLRB worked to weaken the AFL in order to empower the AFL's hated rival federation, the CIO. The AFL vehemently criticized orders of the NLRB for the disestablishment of AFL locals which had allegedly been subjected to some influence by the employer of the workers they represented.[2] For the AFL, the last straw came in the summer of 1938, when the Board executive ordered four collective bargaining units in Washington State of the AFL's International Longshoremen's Association to join the CIO. The Board's reasoning in this case was that West Coast longshoremen deserved a collective bargaining unit of maximum strength and unity. Thus, the Board ordered that all West Coast longshoremen join the union that represented all such longshoremen except those at the four Washington State ports. This union was the CIO's International Longshoremen's and Warehousemen's Union (ILWU). The AFL saw this episode as an unconscionable violation of its rights—after all, a federal government agency had arbitrarily assigned its members to a rival organization.[3]

In retaliation for the alleged injustices inflicted upon it by the NLRB, the AFL began to move into an alliance with business elements and congressional conservatives seeking to reform

---

[1] Gross, *The Reshaping of the National Labor Relations Board*, 48-55.
[2] Gross, *The Reshaping of the National Labor Relations Board,* 44, 59-60.
[3] Gross, *The Reshaping of the National Labor Relations Board*, 56-60.

the Wagner Act. This alliance increased its activities in the summer of 1938, with several corporate attorneys meeting with AFL general counsel Joseph Padway to draft a legislative proposal embodying these reforms.[4] The proposals drafted by Padway and the corporate lawyers ended up in a legislative proposal to reform the Wagner Act introduced by Democratic Senator David Walsh of Massachusetts in January 1939.[5] The AFL also retaliated by using its political clout in congress to block the nomination for a new term in office of one of the three members of the NLRB executive, Donald Wakefield Smith. Roosevelt had desired to reappoint Smith for another term but by early 1939, seeing that the AFL had mobilized significant congressional opposition to the renomination, gave up the effort. [6]

Meanwhile, contributing to the build-up of a favorable climate for the launching of the Smith Committee hearings was the business world's strong support for an attack on the NLRB. For example, in May 1938, the U.S. Chamber of Commerce issued a resolution demanding a congressional investigation of the board. At the chamber's national convention, the attendees gave a standing ovation to a speech attacking the Board by Senator Edward Burke.[7]

While business supported an effort to reform the Wagner Act, Roosevelt and some of his political associates also showed a willingness to partially legitimize this conservative campaign against the NLRB. Reports circulated in the national media that Roosevelt thought that the Wagner Act had been administered in ways that seriously harmed American business. Roosevelt reportedly believed that the militancy of unions in the strike filled year of 1937 had partially contributed to the serious recession that hit the American economy late that year. After the

---

[4] Gross, *The Reshaping of the National Labor Relations Board*, 66-68, 73-76.
[5] Gross, *The Reshaping of the National Labor Relations Board*, 76.
[6] Gross, *The Reshaping of the National Labor Relations Board*, 61-62.
[7] Gross, *The Reshaping of the National Labor Relations Board*, 34.

November 1938 mid-term elections, Roosevelt sent a delegation of industrial relations experts to Great Britain to study restrictive legislation imposed on British unions after the 1926 general strike in that country. Media reports noted that Roosevelt did not include any NLRB officials as part of this delegation to study British labor law. In a press conference, Roosevelt denied that the delegation was part of any plan to accede to conservative demands regarding the Wagner Act. However, he would not give the NLRB a vote of confidence, only saying that that there was still much to be learned about improvements in the efficacy of U.S. government oversight of industrial relations.[8]

In March 1939, Roosevelt appointed Dr. William Leiserson of the federal government's Railway Mediation Board to take the vacant seat left by Donald Wakefield Smith. According to a later account by Leiserson's private secretary, Leiserson viewed his principal assignment from Roosevelt as the effecting of a purge of Board officials who had a strong bias in favor of the CIO and sympathized with communism.[9] In Leiserson's eyes, Nathan Witt, the Board's executive secretary, was the most prominent and powerful of these pro-CIO, pro-communist officials. Journalistic observers and NLRB employees believed Witt to be the most powerful official at the NLRB (as opposed to NLRB chairman J. Warren Madden).[10] Leiserson sought to build up a case that Witt's influence was the source of administrative incompetence and pro-CIO bias afflicting the board. Leiserson's campaign against Witt was strongly opposed by the two other members of the NLRB executive, Edwin Smith and Board chairman J. Warren Madden.[11] Leiserson was the

---

[8] Gross, *The Reshaping of the National Labor Relations Board*, 39-40.
[9] Gross, *The Reshaping of the National Labor Relations Board*, 91.
[10] Gross, *The Reshaping of the National Labor Relations Board*, 109-112
[11] Gross, *The Reshaping of the National Labor Relations Board*, 107-130.

first witness called by the Smith Committee in December 1939.[12] Committee general counsel Edmund Toland presented memoranda written by Leiserson describing Witt's alleged incompetence, for example that which related to the duty of the secretary and his staff to recommend whether a case should heard by the NLRB executive.[13] Leiserson charged that many of the reports in which Witt and some of his subordinates made recommendations showed an inadequate grasp of the facts of the cases in question.[14] Leiserson declared that Witt's office, in its role as supervisor of NLRB regional offices, did a poor job ensuring that those offices conducted their work efficiently.[15] In terms of pro-CIO bias, Leiserson charged that Witt took part in a conspiracy on the part of pro-CIO employees at the board's Los Angeles office to secure the firing of the pro-AFL director of that office, Towne Nylander.[16] Leiserson's charges about Witt's involvement in intrigues against Nylander and his administrative incompetence were featured prominently in the intermediate report of the committee majority.[17]

Meanwhile, the Wagner Act's namesake, New York Senator Robert Wagner, though he staunchly defended the NLRB in public, privately indicated a partial acquiescence with the conservative attack. Wagner, through an intermediary, as a concession to conservative demands, urged the resignation of Edwin Smith, one of the primary targets of the Smith Committee majority. Smith declined the request. [18]Another Roosevelt associate, Secretary of Labor Frances

---

[12] House Special Committee to Investigate the National Labor Relations Board, *National Labor Relations Act: Hearings before the Special Committee to Investigate National Labor Relations Board*, vol. 1 (Washington, DC: U.S. Government Printing Office, 1940), 76th Cong., 2nd sess., December 11-12, 1939, 2-141.
[13] Special Committee, *Hearings*, vol. 1, 24-68.
[14] Special Committee, *Hearings*, vol. 1, 32-33, 36-37.
[15] Special Committee, *Hearings*, vol. 1, 44-47.
[16] Special Committee, *Hearings*, vol. 1, 69-130.
[17] House Special Committee to Investigate the National Labor Relations Board, *Report on the Investigation of the National Labor Relations Board: Intermediate Report of the Special Committee of the House of Representatives* (Washington DC: US. Government Printing Office, 1940), 76th Cong., 1st sess., 22-25.
[18] Gross, *The Reshaping of the National Labor Relations Board*, 212-213.

Perkins, privately indicated hostility toward Witt and Edwin Smith. She believed that Witt influenced Smith to adopt an excessively radical leftist viewpoint.[19] Witt was widely believed to be a secret communist, and despite his public denials, circumstantial evidence exists to confirm that belief.[20]

Roosevelt appeared to view Leiserson's appointment as part of a defensive plan to dilute the power of the conservative attack on the NLRB. According to a media report, when a group of businessmen visited the White House in early June 1939 to lobby for reforms for the Wagner Act, Roosevelt told them that Leiserson was taking care of the board's problems. Thus, according to the President, there was no need for Congress to investigate the NLRB.[21] However, as noted in the last chapter, Edward Cox and Howard Smith achieved success in the launching of a congressional committee dominated by conservatives to investigate the NLRB.

The Smith Committee began hearings in December 1939 and concluded one year later. Committee investigators combed through thousands of documents at the board's Washington, DC office and at the board's twenty two regional offices across the country.[22] The Committee majority issued an intermediate report in March 1940 on the alleged misdeeds of the board and

---

[19] Gross, *The Reshaping of the National Labor Relations Board*, 113.

[20] Gross, *The Reshaping of the National Labor Relations Board*, 141-143. During 1950 testimony before the House Un-American Activities Committee, Witt repeatedly invoked his Fifth Amendment privileges when asked whether he had ever been a Communist. While not necessarily giving explicit evidence of Communist association, Witt expressed himself as a left-winger with some bellicosity in this testimony. In his opening statement he accused the United States of "atom bomb diplomacy and aggression" in foreign affairs and denounced racism against African Americans and the Taft-Hartley Act. He stated that the red-baiting HUAC engaged in was the "ideological poison gas directed toward compelling the American people to accept fascism and war." See House Committee on Un-American Activities, *Hearings Regarding Communism in the United States Government: Hearings before the Committee on Un-American Activities* (Washington, DC: U.S. Government Printing Office, 1950), 81st Cong., 2nd sess., part 2, 2924-2925, 2928-2930.

[21] Gross, *The Reshaping of the National Labor Relations Board*, 103.

[22] Gross, *The Reshaping of the National Labor Relations Board*, 184.

proposed amendments to the Wagner Act.[23] The two minority members, Healy and Murdock, issued their own document that attempted to rebut the charges in the intermediate report.[24] In early 1941, the Committee majority issued a final report, to which Healy and Murdock chose not to issue a rebuttal.[25]

This chapter will discuss the ways in which the debate between the NLRB (and its supporters on the committee minority) and the Smith Committee majority revolved around the appropriateness of federal government intervention to help unionized workers achieve greater economic equality with business. On one side, NLRB officials (and their supporters on the Smith Committee minority) believed that the NLRB existed to help unions secure a greater economic equality in the U.S. on behalf of American workers. But, on the other hand, the Smith Committee majority demonstrated no enthusiasm for a policy of active government intervention to support union efforts to reduce economic inequality. The committee majority also believed that this union-friendly (that is CIO-friendly) mindset of the NLRB produced a great many negative consequences. They argued that in seeking to help CIO unions, NLRB employers encouraged violence by striking workers, used their power to bring potential injury to employers, and improperly interpreted the Wagner Act so as to force business to help workers allegedly victimized by anti-union employers. They also believed that the support of unions by NLRB officials for the purpose of advancing economic equality indicated an affinity for left-wing radicalism on the part of such officials.

---

[23] Dierenfield, *Keeper of the Rules*, 91-92.
[24] Gross, *The Reshaping of the National Labor Relations Board*, 204.
[25] Gross, *The Reshaping of the National Labor Relations Board*, 224.

The charge that NLRB officials were left-wing radicals was an important part of the Committee majority's critique of the NLRB, but so were its charges that NLRB officials sanctioned violence by striking workers. The majority highlighted a case in which the NLRB allegedly forced employers to reinstate workers who had been fired for committing acts of violence and property damage during strikes, whether during sit-down or conventional strikes.[26] In the 1939 case of *NLRB vs. Fansteel Metallurgical Co.,* which went against the board by a 5-2 decision, the U.S. Supreme Court made precisely this accusation regarding a board ruling during a sit-down strike. The court's decision was quickly seized upon by the Smith Committee.[27] The board, charged committee chairman Howard Smith, wished to "legalize, as part of the American way of life, the infamous, anarchistic sit-down strikes."[28] The debate over this NLRB policy illustrated the fundamental disagreement between the Smith Committee majority and the Smith Committee minority over the appropriateness of federal government intervention to support unions so as to reduce economic inequality. In their rebuttal to the Smith Committee intermediate report, committee minority members Healey and Murdock denied that the Board forced companies to rehire strikers guilty of serious violence. However, in response to the proposal by the committee majority to amend the Wagner Act so as to ban the NLRB from forcing companies to rehire workers guilty of strike-related violence, Murdock and Healy argued that economic inequality was of major importance. They suggested that the committee majority's proposal would unfairly prevent the rehiring of any worker who might have momentarily lost his or her temper on the picket line and committed an act of minor violence. Under the committee

---

[26] Special Committee, *Intermediate Report*, 87.
[27] Gross, *Reshaping of the National Labor Relations Act*, 83-84.
[28] Howard W. Smith, "NLRA: Abuses in Administrative Procedure," *Virginia Law Review* (1941): 630-631.

majority's proposal, the Committee minority pointed out, no employer could receive a penalty for provoking or engaging in violence, but an employee could be fired for an act of minor violence. The committee minority argued that this measure could only increase economic inequality between management and labor (or upset "the balance between the contending parties" in the minority's words).[29] The proposed measure of the committee majority dealing with strike violence contributed to economic inequality because it treated management far less harshly than striking workers for engaging in equivalent offenses. The committee majority showed no concern over alleviating potential inequality in treatment between violent striking workers and businesses engaged in anti-union violence.

In this controversy over the NLRB's treatment of sit-down strikes, the committee majority saw the NLRB as supporting criminal acts by striking workers. However, the committee minority saw the same issue through the prism of economic equality, suggesting that it was unfair that the Committee majority targeted violence by striking workers but not violence by employers.

Another segment of the Smith Committee's attack on the NLRB related to supposed instances where board officials allegedly used their power as government officials to try to harm business on behalf of CIO unions. The committee majority accused NLRB executive member Edwin Smith of improperly involving himself in a labor dispute before no formal complaint had been made before the NLRB.[30] The committee majority accused Smith of attempting, in October 1936, to solicit participation in a boycott against the Berkshire Knitting Mills of

---

[29] House Special Committee to Investigate the National Labor Relations Board, *Intermediate Report of the Special Committee to Investigate the National Labor Relations Board: Minority Views* (Washington, DC: Government Printing, 1940), 12-13.
[30] Special Committee, *Hearings*, vol. 3, 657.

Reading, Pennsylvania, on the part of his former employer, Louis Kirstein, chairman of the Boston-based Filene Department Stores. Smith denied he attempted to solicit a boycott against the Berkshire Company and claimed he merely attempted to mediate an end to an economically disruptive dispute at the largest textile mill in the United States.[31] Committee majority member Charles Halleck and committee counsel Toland argued that Smith had improperly involved himself in a labor dispute when no charges had been filed against the company in question and no basis appeared to be present to charge the company with anti-union activities.[32] Smith insisted that his involvement in the case was an effort to mediate an end to an industrial dispute.[33] Committee majority member Harry Routzohn demanded to know why, if Smith was truly attempting to mediate an end to the dispute, he never contacted officials from the Berkshire Company. Smith admitted that he never contacted any official of the Berkshire Company before, on the advice of the director of the NLRB Philadelphia office, Stanley Root, he decided to end his supposed mediation efforts. [34]

Smith explained that he passed to Kirstein propaganda literature from the CIO hosiery union which contained charges that Berkshire engaged in sweatshop practices and also suggested that the union might call for a boycott of Berkshire products. Smith explained that he thought that there was a chance Kirstein would be concerned, if the charges of the union had any validity, about possible negative effects on his own company.[35] He thought that Filene stores might be a purchaser of Berkshire products and so Kirstein would possibly be interested in helping mediate

---

[31] Special Committee, *Hearings*, vol. 3, 655.
[32] Special Committee, *Hearings,* vol. 3, 615-617.
[33] Special Committee, *Hearings*, vol. 3, 657.
[34] Special Committee, *Hearings*, vol. 3, 620.
[35] Special Committee, *Hearings*, vol. 3, 660-661.

a peaceful settlement to the dispute.[36] He passed the union's literature to Kirstein at the Filene chairman's request without endorsing any of the charges contained in it, including the call for a boycott.[37]

The committee majority argued that in the exchange of letters regarding Kirstein's possible intervention in the Berkshire dispute, Smith subtly attempted to get the Filene chairman to join the CIO union's call for a boycott of Berkshire products. As proof for this assertion, besides Smith's passing to Kirstein the union literature that called for a boycott, the intermediate report of the Committee majority cited excerpts from correspondence involving Smith, Kirstein, and CIO hosiery union research director John Edelman. First the committee intermediate report quoted a letter from Edelman to Smith, italicizing a passage where Edelman stated that in his union's fight with Berkshire, they "will appreciate any cooperation possible" from companies that purchased Berkshire goods. Edelman did not explain what particular form of cooperation he desired, but obviously it related to the efforts of the union to secure a favorable settlement in its dispute with Berkshire. Next the intermediate report quoted a letter from Smith to Kirstein. In the letter Smith noted the CIO union's charges of sweatshop practices, along with the union's attempt to induce some of the customers of the Berkshire mills to pressure the company to ameliorate those alleged practices. He then wrote, "I do not know whether you will care to make any approaches on this matter to the Berkshire management *nor do I know what volume of business Filene's does with Berkshire. I do most certainly feel that any standard which you might adopt would be listened to with the greatest respect by the Berkshire Company* [italics by Smith

[36] Special Committee, *Hearings*, vol. 3, 655.
[37] Special Committee, *Hearings*, vol. 3, 660-61.

Committee intermediate report authors]." [38]Kirstein responded briefly that he would take a closer look into these charges and alert his associates about them. Smith then passed the union's literature containing the charges against Berkshire to Kirstein, included in which was a call for a boycott against the company.

The committee majority's intermediate report cited this correspondence as evidence that Smith subtly attempted to get Kirstein to join the boycott of Berkshire called for by the CIO union.[39]

Nowhere in the correspondence, except in the union literature passed by Smith to Kirstein, was a boycott of Berkshire mentioned. Regardless of the accuracy of the charge that Smith wanted to encourage a boycott, Smith gave the appearance of using his position to try to help a CIO union achieve its goals regarding wages at Berkshire, though the Wagner Act gave him no mandate to engage in such partisanship. After all, Smith wrote to Kirstein about the possibility of reaching a settlement on wages at Berkshire immediately after Edelman wrote him about the union's campaign to get other businesses to cooperate with the union's goal. Smith claimed that the incident merely illustrated his own effort to mediate an end to an industrial dispute, but Smith never contacted officials of the company about his mediation efforts. Smith gave the appearance of acting in a partisan role for the CIO union against the company as he supposedly tried to mediate the dispute. The committee intermediate report illustrated the case as an example of Edwin Smith's lack of "that judicious and impartial temperament which the American people demand from their quasi-judicial officers."[40]

In attempting to help Smith explain his position during the committee hearings, committee minority member Arthur Healy attempted to bring out Smith's concern with the

---

[38] Special Committee, *Intermediate Report*, 8.
[39] Special Committee, *Intermediate Report*, 7-9.
[40] Special Committee, *Intermediate Report*, 9.

implications regarding economic inequality in the Berkshire case. Under Healy's questioning, Smith explained that he felt concern about reports that Berkshire engaged in drastic slashing of the wages of its workers and thus harmed the purchasing power of those workers. Smith explained that he felt Edelman to be a trustworthy person and thus he felt safe forwarding Edelman's claims about Berkshire's practices to Kirstein. Healy stressed the fact that most workers at Berkshire did not belong to the CIO union and were thus "inarticulate," presumably needing Smith's efforts to succor them.[41] Smith stressed that while he held a concern about the possible undermining of wage standards in the textile industry by Berkshire, he only desired to call attention about this issue to Kirstein so as to encourage Kirstein to help settle the strike.[42] The dialogue between Smith and Healy illustrated a fundamental aspect of the debate during the committee hearings over the role of the federal government in supporting the efforts of unions to reduce economic inequality. The committee majority charged Smith with using his power to help the CIO union and potentially injure a business. However, Smith and Healy appeared to see nothing wrong with Smith's intervention in the dispute so as to help the CIO union advance its claims about issues revolving around economic inequality. The committee majority, of course, did not think Smith's intervention appropriate and in fact thought he had no business involving himself in the first place.

Other allegedly unjust actions by the NLRB charged by the Smith Committee included the claim that the NLRB gave itself a power that Congress had not given to it in the Wagner Act. This power was to order employers to hire and provide back-pay compensation to workers whom

[41] Special Committee, *Hearings*, vol. 3, 654.
[42] Special Committee, *Hearings*, vol. 3, 656.

they had originally refused to hire because of the union activities of these workers.[43] During the Committee hearings, board chairman J. Warren Madden argued that this power of the board could be read into the Wagner Act, even if it was not specifically enunciated, and that the board had the right to use this power because the NLRB operated as a Court of Equity. This policy of the board, of exercising a power not specifically granted to it in the Wagner Act, "shocks me very deeply," Committee Chairman Smith told Madden during the Committee hearings. Smith argued that the Wagner Act only applied to workers who had allegedly been subjected to anti-union abuses by their employers and did not apply to workers never hired by those employers. [44] From Madden's perspective this case appeared fundamentally to be about devising a remedy for an injustice against workers refused employment because of union activities. However, in the committee majority's intermediate report, the case was in essence about the Board, in its attempt to help workers refused employment because of union activities, arbitrarily inventing a statutory authority that Congress had never given it and forcing businesses to comply with it.[45] The case illustrated a fundamental disagreement between the NLRB and the Smith Committee over the proper method for a government agency to address inequitable relationships between capital and labor.

If the Committee majority attacked the NLRB's efforts to address the inequitable relations between capital and labor, they also accused NLRB officials of revolutionary aims. When NLRB officials advocated for the role of unions to reduce economic inequality in American life, the Smith Committee majority saw evidence of left wing radicalism. Thus the committee majority's final report alluded to Edwin A. Elliott, director of the board's Ft. Worth,

---

[43] Special Committee, *Intermediate Report*, 57-59.
[44] Special Committee, *Hearings*, vol. 15, 3199-3202.
[45] Special Committee, *Intermediate Report*, 57-59.

Texas office, and tried to show how he "gives an unmistakable indication of his adherence to the doctrine of class struggle and his conception of the function of the Wagner Act as an instrument to be utilized in connection with this struggle."[46] The only piece of evidence presented for this assertion was the following paragraph from an internal board memorandum supposedly written by Elliott in April 1937:

> It may be that we shall in some measure, through the validation of the [Wagner] Act, give such impetus to labor organization and the principle of collective bargaining that there may actually be a better distribution of the products among the masses....We shall have a better distribution of the economic goods of the country either through peaceful means or violent means, and I trust that the validation of our own Act has opened the way for the peaceful treatment and attainment of this end.[47]

The Committee majority's interpretation of Elliott's words indicated that they believed efforts to redistribute economic wealth to be a creator of strife between management and labor ("class struggle"). Elliott's sentiments were part of what the committee majority's final report claimed was "the existence of a large group among the Board's personnel motivated by the social concept of the employer-employee relationship based upon class conflict rather than cooperative enterprise."[48]

By using the phrase "class struggle," with its left-wing, revolutionary connotations, to describe Elliott's comments, the Smith Committee majority also wished to portray the pro-union views of NLRB officials as pro-communist. The citation of Elliott's quote appeared in the Committee majority's final report in the midst of numerous citations of evidence supposedly

---

[46] Special Committee, *Report*, 27.
[47] Special Committee, *Report*, 27.
[48] Special Committee, *Report*, 3.

indicating the Communist sympathies of some NLRB officials.[49] There appear to have been Communists employed by the NLRB, but, in calling attention to the alleged Communist sympathies of these officials, the Smith Committee majority appeared interested not merely in removing Communists from NLRB employment.[50] Rather, they wished to make clear that they believed the advocacy by NLRB officials of a role for unions in reducing economic inequality as excessively left-wing. It illustrated stark fundamental differences in the views between the NLRB and the committee majority over the role of the federal government in protecting unions for the purpose of reducing economic inequality.

The committee majority attacked Edwin Smith for alleged Communist ties, focusing on Smith's trip to Mexico in September 1938 to attend a series of conferences sponsored by the Mexican government, attended by representatives of labor and left-wing groups from throughout the world. Smith's visit elicited significant controversy in the American mass media, as the Mexican government was then locked in a controversy with the U.S. government over the level of compensation to be paid for property owned by American businesses that had been nationalized by the Mexican government. The business journalist Hartley Barclay produced a much publicized article attacking Smith for allegedly sanctioning the Mexican government's expropriations by his appearance, as a sitting U.S. federal government official, at the conferences. Before a conference of the International Industrial Relations Institutes (IRI) in Mexico City, Smith delivered a speech. One passage of the speech caught the attention of the Smith Committee majority. In this passage from the IRI speech, Smith noted that there were economists who argued that labor unions were harmful to business prosperity because they

---

[49] Special Committee, *Report*, 24-27.
[50] Gross, *The Reshaping of the National Labor Relations Board*, 143-150.

resisted wage cuts during depression and pushed too eagerly for wage increases when prosperity revived. Such ideas, Smith explained to his IRI audience, looked good on paper but had no bearing on reality. Specific courses of action pursued by labor unions may be harmful to the interests of the workers represented,

> but unions cannot err fundamentally by sticking to their militant determination to improve the workers' lot. The workers know instinctively that the great impersonal economic machinery of capitalism must shape itself to fulfill their very human needs. They cannot be expected to submit to an economist's or an employer's idealization of how capitalism might work if those who produce the goods of industry, the workers, were content to stand aside despite personal hardships and let things take their natural course. [51]

During the committee hearings committee majority member Harry Routzohn told Smith that this excerpt "[indicated] a tendency on your part to array class against class, and it is something you would expect to find in *The Daily Worker*."[52] By suggesting that Smith's sentiments were communistic, Routzohn illustrated a stark contrast in the views between the NLRB and the committee majority over the role of unions in advancing economic equality in the United States. Smith argued for the role of unions to protect workers from the vagaries of the capitalist system while Routzohn found such views communistic. The Smith Committee majority's final report included the excerpt mentioned by Routzohn and another brief excerpt from the speech where Smith declared that American employers as a class had historically been anti-union. According to the report, Smith declared that American employers had generally been anti-union because they did not want workers to have a voice in determining their own conditions of work. The final report labeled these excerpts as indicating that Smith viewed "industrial relations as a phase of class warfare." The report implied that the excerpts indicated a lack of the "highest degree of

---

[51] Special Committee, *Hearings*, vol. 28, 7183.
[52] Special Committee, *Hearings*, vol. 28, 7183.

impartiality" on the part of Smith, who was, the report noted, supposed to be an impartial adjudicator of disputes between business and labor.[53] The committee's final report illustrated the stark contrast in views between the committee majority and the NLRB over the role of the federal government in supporting unions for the purpose of advancing greater economic inequality. Smith appeared to see no problem in suggesting that employers desired to prevent economic equality with their employees, which, from Smith's perspective, led to the implication that workers needed unions to advance that equality. However, from the Committee majority's perspective, Smith's belief was a call for warfare between economic classes in the U.S.

The Smith Committee majority objected to the belief of NLRB officials like Edwin Smith that workers needed unions to protect themselves from possible exploitation by employers and to gain a greater share of the wealth of the United States. The committee majority portrayed this mindset by NLRB officials as indicative of a lack of impartiality and a friendly disposition toward left wing radicalism. The majority also used gender and sexuality in its critique of the attitude toward economic inequality expressed by NLRB officials, which is the subject of the next chapter.

[53] Special Committee, *Report*, 7.

Chapter 3: Gender in the Committee Majority's Attack on the NLRB

In January 1940, during the committee's second month of operation, committee counsel Edmund Toland called attorneys from the board's Review Division to testify. Officials of the Review Division served to provide the NLRB executive with summaries of evidence brought to light in NLRB hearings conducted across the United States. The executive used the summaries to guide them in rendering the final decisions in cases before the NLRB. The first six review attorneys Toland called to testify were women, although women numbered only eleven of the one hundred attorneys in the Review Division. James Gross comments that by calling these women to testify, "Toland obviously sought to convey to the public the impression that NLRB cases involving the major corporations in America were being decided by attractive young women" with little legal experience.[1] Gross observes that an ally of the Smith Committee majority, Congressman Clare Hoffman of Michigan, exhibited this interpretation of the testimony of the women. Speaking on the House floor Hoffman commented that the women appeared to be physically attractive, well groomed and not unintelligent. However, he claimed that the women had little training in the legal or industrial relations fields and yet, by virtue of their position, had significant power over the economic life of the nation.[2] Hoffman also expressed the doubt that any of them had ever baked a loaf of bread or changed a diaper.[3] Hoffman thus colored his disagreement with the on-the-job conduct of the attorneys by suggesting that they did not have what he conceived to be proper female attributes. During the committee hearings, Congressman Routzohn reflected the sexist spirit of Hoffman. Routzohn observed to review attorney Anne Freeling that, at the NLRB Freeling served "as a professional

---

[1] Gross, *The Reshaping of the National Labor Relations Board*, 182.
[2] Gross, *The Reshaping of the National Labor Relations Board*, 183.
[3] Gross, *The Reshaping of the National Labor Relations Board*, 182.

lady—we have all sorts of professional ladies."[4] The clause referring to "professional ladies" seemed to refer to the female review attorneys in general. As described by James Gross, the episodes with the female NLRB attorneys illustrated the use of gender by the committee majority (and its supporters) to try to bring public discredit upon the NLRB.

While Gross only discusses gender by itself, this chapter will describe the ways in which gender (and sometimes sexuality) intertwined with class in the expression of the fundamental philosophical differences between the NLRB and the Smith Committee majority. NLRB officials demonstrated a passionate desire to help under-privileged American workers secure the ability to form unions and improve their standard of living. A corollary to this passionate desire was that board officials displayed a considerable amount of moral indignation toward companies they believed to be anti-union and exploitative of workers. The committee majority believed that the NLRB--being a quasi-judicial institution of the federal government--needed to display strict impartiality in its treatment of all classes of Americans under the board's jurisdiction, whether businessmen or workers. In attacking the pro-union bias of NLRB officials, the committee described NLRB officials as distinctly un-masculine. They described NLRB officials as improperly emotionally attached to the cause of under-privileged workers, and showing an unprofessional level of moral indignation toward business respondents before the NLRB. They described these officials as lacking in the calm, rational-minded impartiality needed to adjudicate disputes between management and labor. The committee majority also utilized gender in a case where actions of NLRB officials allegedly encouraged male union organizers to physically attack a female worker. The picture of this attack painted by committee chairman Howard Smith suggested that female workers possibly faced attack by male union thugs as a result of NLRB

[4] Special Committee, *Hearings*, vol. 6, 1211.

actions. Meanwhile, the committee majority also called attention to the case of an NLRB official who advocated for the release of a union leader imprisoned in Iowa for engaging in sodomy. This association of the NLRB official with the imprisoned union member appeared to be an effort to attack the pro-union mindset of this official by suggesting that this bias also included acceptance of what was regarded as un-masculine sexual activity.

Herbert Vogt, a board field examiner (a gatherer of evidence and witness statements), was the NLRB official involved in advocating for the release of the convict. Committee counsel Toland introduced evidence that Vogt had been under investigation by the Federal Bureau of Investigation (FBI). FBI head J. Edgar Hoover wrote to NLRB chairman J. Warren Madden in late 1939 about Vogt's public advocacy for the release of the convict, Archie Carter, a former local Teamsters official and union newspaper editor. Regarding this case, Toland introduced documents into the hearing record, including two letters from Hoover to Madden, a memorandum by Vogt explaining his actions, and two memoranda by Board officials clearing Vogt of wrong-doing. Vogt wrote in the memorandum that he visited Carter at an Iowa penitentiary in order to learn information that Carter had about a case Vogt had been investigating.[5] Vogt was accompanied on his visit by a local AFL official who informed Vogt that a defense fund had been set up to procure Carter's pardon. Vogt then gave a speech to a local AFL Trades and Labor council in Iowa. During his speech, while remarking upon sundry matters, he mentioned that he thought that Carter might have been framed, by whom he did not say. In his memorandum, Vogt said that it saddened him to think, in light of the possible frame-up of Carter, that the man would have to spend so much time in prison. According to Vogt, after he spoke, this AFL assembly passed a measure urging all affiliated unions to contribute to

[5] Special Committee, *Hearings*, vol. 22, 4777.

Carter's defense fund. Vogt explained that he thought it was not improper for him to make these remarks about Carter because he had explained to his listeners that he made his remarks as a private citizen and not as a government official. He apologized if he was mistaken in that assumption and promised not to make any public remarks in the future that did not strictly pertain to his duties as an NLRB official.[6]

Toland introduced the documents related to the Carter case into the record but the committee engaged in no discussion of the case and the committee moved on to another case involving Vogt.[7] The Carter case was not discussed in either of the reports of the committee majority. However, perhaps more importantly from the committee majority's perspective in advancing its agenda, the case did receive mention in the newspapers. The *Chicago Tribune* ignored Vogt's explanation of his actions in its coverage of the committee's accusations of Vogt's improprieties, which included Vogt's alleged pro-CIO and anti-business biases. It merely reported that Vogt had been accused of advocating for the release of a man convicted of "an unnatural sexual offense" and that Vogt "denied" that he made such an advocacy.[8] The *New York Times* put the matter more delicately, writing that Carter had been convicted of a "sexual offense."[9] Vogt did not suggest that sodomy was an acceptable activity; rather, he argued that the court wrongfully convicted Carter of engaging in it. However, by making the association between this NLRB official and the convict, the committee majority implicitly attacked the alleged class bias of NLRB officials. This incident involving Vogt suggested that the passion for helping the underdog in American society—the class bias of the NLRB—extended toward a

---

[6] Special Committee, *Hearings*, vol. 22, 4776-4781.
[7] Special Committee, *Hearings*, vol. 22, 4781.
[8] "Reveal 3 Way Tie-up of NLRB, CIO, Reds," *Chicago Tribune*, May 7, 1940.
[9] Louis Stark, "Tour for a Convict Laid to NLRB Agent; Smith Committee Shows," *New York Times*, May 7, 1940.

union leader imprisoned for sexual deviancy. It associated the class bias of the NLRB with violations of the expected norms for male sexuality in the US.

Dealing more with gender than sexuality, the Smith Committee majority highlighted the case of the Donnelly Garment Company of Kansas City, Missouri, and its interactions with the NLRB in 1937. The NLRB charged the Donnelly Garment Company with running a company union for its employees. The attorneys for the company offered to put on the witness stand about one thousand employees of the factory to testify that they joined the factory union of their own free volition and without employer pressure. The board trial examiner (chief judicial officer at the case hearing) refused to consider this testimony on the ground that the employees were under pressure from their employer to say that the company union was legitimate.[10] According to Donnelly Company counsel, former U.S. Senator James A. Reed (whose wife Nelly Donnelly owned the factory), the rulings of the NLRB emboldened the efforts of the CIO's International Ladies Garment Workers Union (ILGWU) to try to organize the Donnelly factory. According to Reed, ILGWU organizers had used violence and threats to try to intimidate textile workers into joining their union in other states. Reed claimed that the ILGWU indicated that it would use similar methods to try to organize the Donnelly plant.[11] Reed stated that workers at the Donnelly plant came to his wife to ask for advice on how to protect themselves from the union thugs. She advised them to form their own union, which the NLRB later ordered disestablished on the grounds that it was a company union.[12] But these efforts to protect themselves did not deter a male ILGWU organizer from attacking a Donnelly female worker in the street and stripping off

[10] Special Committee, *Hearings*, vol. 23, 4739-4740.
[11] Special Committee, *Hearings*, vol. 23, 4743.
[12] Special Committee, *Hearings*, vol. 23, 4747-4748.

her clothes.[13] Howard Smith made much of this stripping incident. Smith, speaking on the House floor in June 1940 in support of his Committee's proposed amendments to the Wagner Act, cited the Donnelly case as an example of the harm the NLRB had done to ordinary workers. According to Smith, Donnelly employees tried to protect themselves from ILGWU predations by forming their own union. However, Smith explained, the Board ordered the union disestablished while ILGWU organizers swooped in and "absolutely stripped good respectable women naked in the streets."[14] In addition to the stripping of the Donnelly worker, there appeared to be at least two other stripping incidents involving ILGWU organizers attacking female textile workers in Dallas, Texas, and Memphis, Tennessee.[15] The stripping incidents involving workers at plants other than Donnelly's appeared to be the source of Smith's incorrect implication that evidence existed for the occurrence of more than one stripping incident involving a Donnelly worker.

During the Smith Committee hearings, Smith belabored ILGWU president David Dubinsky about the stripping incidents. Referring to the incidents, Smith told Dubinsky sarcastically that he "would like to have your idea of that kind of protection that you afford working women." Dubinsky denied that his leadership condoned any such violence on the part of his organizers. He claimed that the organizers carried out such acts on their own and that the ILGWU leadership had no foreknowledge of the attacks.[16] He insisted that one of the attackers, the organizer in Dallas, had been wrongfully convicted of the assault.[17]

From Congressman Smith's perspective, while the NLRB claimed to be protective of the female workers in question against an anti-union employer, it was in fact not the employer who

---

[13] Special Committee, *Hearings*, vol. 23, 4743-4744.
[14] *Amendments to the National Labor Relations Act*, 76th Cong.,3rd sess., *Congressional Record* 86 (June 6th 1940): 7714.
[15] Special Committee, *Hearings*, vol. 24, 4936, 4938.
[16] Special Committee, *Hearings*, vol. 24, 4927-4928, 4936, 4938.
[17] Special Committee, *Hearings,* vol. 24, 4930.

threatened the workers. Rather, it was the ILGWU organizers who thuggishly attacked the "good, respectable" women. It was also the NLRB which threatened the women (from Smith's perspective) by its rulings that encouraged the ILGWU organizers to further attempt to organize the Donnelly Plant and thus engage in violence against the women.

As the Smith Committee majority associated the NLRB with violence against "good, respectable" women, it utilized gender in other ways. Most prominently, it portrayed NLRB officials as having an inappropriate level of emotional attachment to the cause of workers allegedly victimized by anti-union employers. It also portrayed NLRB officials as displaying an unprofessional level of moral indignation against respondent companies in NLRB cases. This allegedly emotional attitude on the part of NLRB officials contrasted with the hard-headed, impartial and otherwise masculine mindset that the Smith Committee majority favored for the NLRB. Peter Phillips, director of the board's Cincinnati office, provided the Committee with an example for it to make this critique. During the hearings, committee counsel Toland made reference to a transcript of a telephone conversation found in the board's files. This conversation involved Phillips and an official of a company accused of anti-union activities. Phillips accused the company official, identified as "Mr. Greenfield," of forcing his employees into a company union. Greenfield told Phillips that this dispute over the union representation at his plant exasperated him and that he was thinking of shutting down the plant in question but did not want to talk to Phillips about this proposed shut-down. Phillips then responded, "You can't talk to the Government of the United States that way. I'll tell you, Greenfield, I'll get you." Before Greenfield abruptly hung up on him, Phillips clarified that by "I'll get you" he meant that he would bring the force of the law down against Greenfield. In the Committee hearings, Toland asked Phillips if this intemperate statement to Greenfield represented the words of a "fair and

impartial official of the Government of the United States." Toland obviously did not think that Phillips's statements represented fairness and impartiality. Toland argued that Phillips had personally accused Greenfield of engaging in anti-union activities before Greenfield's company had the opportunity to fully present its defense against such charges in an official hearing. Phillips responded that the chief of Greenfield's company had been making public statements declaring his intention to flout the Wagner Act and that the company had been found guilty of violating the Wagner Act in a previous case. In light of such a history of defiance, Phillips asserted, it was reasonable for Greenfield to be addressed with the "I'll get you" statement, which was not a threat of personal harm but a promise to apply the full force of the Wagner Act to any violations by Greenfield's company.[18]

For the committee majority, Phillips's rhetoric was an example of an NLRB official who, in his zeal to punish an allegedly anti-union business, flouted his responsibility to conduct himself as an impartial public official. While Phillips claimed that his intemperate response to Greenfield was reasonable in light of the anti-union past of Greenfield's company, the Committee saw Phillips as an official motivated by un-masculine behavior—an excess of emotion--in the conduct of his duties.

A similar case involved a board attorney, William Avrutis, and an allegedly anti-union mining company. This company was the Eagle-Picher Mining and Smelting Company, which controlled what James Gross describes as the "primitive mining town" of Picher, Oklahoma. The several thousand residents of the town lived in one-room shacks and shared fourteen bathtubs for which the company charged them 25 cents per bath. Avrutis privately described himself as astonished at the evidence of severe poverty and deprivation in the town. He recalled seeing men

[18] Special Committee, *Hearings*, vol.4, 804-807.

sick with lead poisoning and company workers going without lunch, apparently too poor to afford it. He gave several of the workers half-dollars to buy a lunch.[19] During the committee hearings, committee counsel Toland introduced into evidence a November 1937 letter from Avrutis to NLRB Chief Trial Examiner George Pratt. In the letter Avrutis evidenced a strong ardor to help alleviate the deprivation of Picher's inhabitants and showed visible moral indignation toward the Eagle-Picher Company. Avrutis reported to Pratt that he was preparing a prosecution case against the company with "gleeful malice" on his own part. He declared that in presenting his prosecution, he would "fry one malefactor at a time."[20] Avrutis also showed an interest in helping the Picher local of the CIO's Mine, Mill and Smelter Workers establish a "social program."[21] He described this "social program" as demands for better safety conditions at the company mine and the establishment of a medical clinic by the union for its members. He also discussed a public relations strategy for the union to present its case to the mass media about the allegedly oppressive treatment of workers by the company. [22]

During Pratt's testimony before the committee (Avrutis was never called to testify), Toland asked Pratt if the Trial Examiner chief considered Avrutis's statements in the letter to be a representation of "a fair and impartial Government official."[23] Toland obviously did not think that Avrutis's statements represented fairness and impartiality. Toland asked, "Mr. Pratt, would you want to be tried or.... be prosecuted and have your life, liberty or property at stake, by a

---

[19] Gross, *The Reshaping of the National Labor Relations Board*, 14.
[20] Special Committee, *Hearings*, vol. 9, 1868.
[21] Special Committee, *Hearings*, vol. 9, 1869-1870.
[22] Special Committee, *Hearings*, vol. 9, 1870.
[23] Special Committee, *Hearings*, vol. 9, 1871.

member of the bar and an employee of the Government of the United States who would make such statements as are contained in that letter?"[24]

The Smith Committee majority portrayed Avrutis as motivated by an unprofessional level of emotion in the conduct of his job. He displayed a personal animus against the Eagle-Picher company and also a passionate level of partisanship on behalf of the unionized workers of the company. The final report of the Smith Committee majority labeled as "vicious" Avrutis's statement regarding his "gleeful malice" and his desire to "fry one malefactor at a time."[25] The majority's final report also quoted testimony by J. Warren Madden during the Committee hearings. Madden stated that Avrutis had improperly involved himself in efforts to "bring about further reforms which aren't any of our business," presumably referring to Avrutis's enthusiasm to help the CIO local construct its "social program." Madden also suggested that Avrutis needed closer supervision from his Board superiors. Madden's words reinforced the Smith Committee majority's efforts to portray Avrutis as an un-masculine (that is, emotional) pro-union ideologue who did not have a proper conception of the impartial and judicious conduct required at his job.

A case similar to Avrutis's involved NLRB Trial Examiner Charles Whittemore's conduct in a case in late 1938 involving the Hamrick Brothers textile mill in Gaffney, South Carolina. Like Avrutis, Whittemore displayed a passionate interest in giving assistance to the workers involved in a case in which he served as an NLRB judicial official. In a letter from Whittemore to George Pratt introduced into evidence during the committee hearings, Whittemore put forth a sociological analysis of the situation in Gaffney. Whittemore described the political life and law enforcement agencies in the area around Gaffney as dominated by the Hamrick

---

[24] Special Committee, *Hearings*, vol. 9, 1872.
[25] Special Committee, *Report*, 134.

brothers. He asserted that the Hamrick Company had paid preachers to organize "prayer bands" to visit Hamrick workers at their homes to warn them against joining the CIO because the biblical rapture would soon be upon the world and reveal CIO president John L. Lewis to be the devil himself. According to Whittemore, those workers who did not accept this religious message had the potential to face violence from "half a dozen thugs" employed by the Hamrick Company. Whittemore asserted that an eighteen-year-old Hamrick worker, who had refused to join the prayer bands, had told an NLRB attorney that he, the worker, had had a knife held to his throat by one of these thugs and warned that he would be assaulted with that knife once the NLRB left town. Whittemore declared that it was "heartrending" to see the Hamrick workers at the NLRB hearing obviously in a state of intimidation as they stuttered their testimony while one of the Hamrick brothers sat nearby.[26]

Whittemore discussed the example of Sam Bailey, an African American worker at the mill and leader of the segregated union local for black workers. Bailey, described by Whittemore as a "little darkey," had led a delegation of black workers to the office of one of the Hamrick brothers to ask for a raise in wages. Bailey wanted a raise from the 15 cents per hour he had been receiving at the mill for the past twenty years. According to Whittemore, the other black workers (described by Whittemore as "the other darkies") fled the scene in fear once they received access to Hamrick's office. However, Bailey stood his ground, asked for a raise, and was promptly fired and evicted from his company owned housing. Whittemore explained that he and board attorney Warren Woods walked five miles to a shack outside of town where Bailey now resided with his wife and ten children and engaged in tenant farming. Whittemore reported that Bailey thought violent retribution was possible after his testimony against the Hamrick brothers and had

[26] Special Committee, *Hearings*, vol. 9, 1795-1796.

possession of a shotgun in case of trouble. Whittemore and Woods left four one dollar bills with Bailey at which point Bailey's wife, according to Whittemore, remarked that with such money perhaps her children could be provided with a Christmas that year.[27]

Whittemore described the workers at the Hamrick mill as illiterate and "starved" with "stupid faces—resigned when sober but lynching brutes when roused by liquor." But Whittemore saw a silver lining that came to light as he walked back from Bailey's shack with Woods:

> We wondered, walking back, just how much good we were doing. We cannot police the village the county, or the State. We cannot prevent severe punishment being visited upon these witnesses after we leave. But Warren has one answer which is logical. For a few minutes at least—under the protection of the US government, these people can have their say—while 'Boss' Hamrick must remain silent. It may stimulate their courage, nourish their self-confidence, permit them to dare vision a time when they can demand social justice for and by themselves. [28]

The Smith Committee majority's intermediate report cited the last sentence in this excerpt—the hope that the workers of Hamrick might one day demand social justice—as an example of NLRB Trial examiners who failed to show an impartial mindset in the conduct of their duties.[29] In essence the Committee majority portrayed Whittemore as motivated by an excess of sentimental feeling for the Hamrick workers.

During the committee hearings, deputy committee counsel Roger Robb portrayed Whittemore as a man with a passionate concern to help the Hamrick workers but lacking a sense of his responsibilities as a quasi-judicial official of the NLRB. Robb implied that Whittemore lacked a properly neutral judicial mindset and had formed a prejudice against the Hamrick

---

[27] Special Committee, *Hearings*, vol. 9, 1796.
[28] Special Committee, *Hearings*, vol. 9, 1796.
[29] Special Committee, *Intermediate Report*, 41.

Brothers Company. Robb argued that the letter showed that Whittemore had improperly accepted as an unquestioned fact that the Hamrick Brothers had used thugs to repress union activists before the brothers had had an opportunity to refute such accusations during the hearing processes over which Whittemore presided.[30] Robb criticized Whittemore for privately asking one of the Hamrick brothers to publicly speak out in opposition to violence against union activists on the ground that this request was based on mere rumors of upcoming violence rather than hard evidence. Robb noted that the man who supposedly made the knife threat against the union member had denied doing so during the hearing. Whittemore asserted that the man had admitted during the hearing making a threat against the worker but denied using the knife. Whittemore suggested that it was not unreasonable to believe the story about the knife threat against the Hamrick worker because the man who allegedly committed the threat had been convicted some years earlier of killing his sister-in-law. Whittemore said that he thought he was justified in making this assertion in a private letter to Pratt.[31] Such an answer, from the perspective of the committee majority, suggested that Whittemore, with his passionate desire to protect the Hamrick workers, lacked a calm mindset and, in his excess of emotion, jumped too easily to conclusions.

Robb criticized Whittemore for allegedly violating proper standards of conduct for a judge because Whittemore had a private conversation with and gave money to Bailey, a witness in the hearing process over which Whittemore presided.[32] Robb also attacked Whittemore for talking about the facts of the case with Warren Woods, the Board prosecutor, an improper

---

[30] *Special Committee, Hearings*, vol. 9, 1798-1799.
[31] *Special Committee, Hearings*, vol. 9, 1801-1802.
[32] *Special Committee, Hearings*, vol. 9, 1798.

interaction between the Board's prosecutorial and judicial personnel.[33] According to Robb, it was improper that Bailey had told Whittemore that he was afraid of violence as a result of his testimony against the Hamrick brothers.[34] Hearings were continuing to be held in the case and, according to Robb, this statement by Bailey prejudiced the ability of the Hamrick Brothers to receive a fair hearing before Whittemore.[35] Robb suggested that Whittemore's interaction with Bailey was "inconsistent with your position as a fair and impartial trier [sic] of the facts."[36] Whittemore protested that he thought the interaction was not improper because there was a good chance that Bailey had no more testimony to give to the NLRB, though he admitted he was not completely sure that any further testimony from Bailey was impossible.[37] Moreover he and Woods had accepted Mrs. Bailey's invitation to dine in the shack on a meal of possum, which along with several rotting potatoes, appeared to be the only food items in the barren shack. He explained that, though he accepted the meal offered by Mrs. Bailey, he worried that he and Woods had burdened the already large Bailey household with more mouths to feed.[38] This worry is why he and Woods left the money with the Baileys. "I'm sure every member of the committee would have done exactly the same thing," he asserted.[39] He declared that his visit to Bailey was based on "purely a humanitarian motive."[40] This response of Whittemore demonstrated the philosophical divide between NLRB officials and the Smith Committee majority. The committee majority made no response to Whittemore's claim about his "humanitarian motive," but it was clear that they did not believe that such a motive trumped Whittemore's obligation to

---

[33] Special Committee, *Hearings*, vol. 9, 1799.
[34] Special Committee, *Hearings*, vol. 9, 1797-1798.
[35] Special Committee, *Hearings*, vol. 9, 1801.
[36] Special Committee, *Hearings*, vol. 9, 1798.
[37] Special Committee, *Hearings*, vol. 9, 1824.
[38] Special Committee, *Hearings,* vol. 9, 1818,1825.
[39] Special Committee, *Hearings*, vol. 9, 1818.
[40] Special Committee, *Hearings,* vol. 9, 1825.

demonstrate neutrality in the conduct of his duties. Whittemore with his sentimental (that is, un-masculine) attachment to the Hamrick workers showed a lack of the hard-headed impartiality demanded by the committee majority.

As the Smith Committee majority attacked NLRB officials with heavily gendered overtones, they gained support for reforming the Wagner Act and NLRB in a more conservative direction. By the time the committee ceased hearings in December 1940, and with the acquiescence of the Roosevelt administration and Congress, the NLRB and Wagner Act were already on a path toward business friendly reform.

Epilogue

Beginning in 1939, pressure by congressional conservatives led to the departure from the NLRB of officials such as Edwin Smith who believed in strong federal government intervention to assist labor unions. Bills embodying the Smith Committee's recommendations for reforming the Wagner Act and the NLRB passed the House numerous times but were always successfully bottled up in the Senate Education and Labor Committee, which was controlled by liberal Democrat Elbert Thomas.[1] The legislative effort to amend the Wagner Act in a more conservative direction would have to wait until after World War II. The Roosevelt administration backed business friendly reforms of the NLRB, though Congress and the executive branch tried, with limited success, to contain a growing wave of strikes and union militancy during World War II and before the passage of the Taft-Hartley Act in 1947. In the 1940s, Congress and the president showed a desire to weaken the ability of the CIO to alter traditional economic class relations in the United States.

Congressional conservatives themselves could not implement their desire to eliminate the pro-CIO mentality from the NLRB, but Roosevelt administration officials oversaw reforms of the NLRB that fulfilled many of the wishes of the conservatives. After 1939, NLRB policy making became more conservative. J. Warren Madden and Nathan Witt both left the Board in late 1940 when their terms of service were up, and the Roosevelt administration showed no enthusiasm for retaining their services.[2] Officials who had been appointed by Witt were purged.[3] Edwin Smith left his job in August 1941, by which time he had become a minority against the

---

[1] Gross, *The Reshaping of the National Labor Relations Board*, 210-211.
[2] Gross, *The Reshaping of the National Labor Relations Board*, 226-228.
[3] Gross, *The Reshaping of the National Labor Relations Board*, 231-232.

more conservative Leiserson and Madden's successor as chairman, Harry Millis.[4] Smith hinted to the Roosevelt administration that he would like to be appointed for another term on the board but was rejected.[5] Smith was replaced by Gerard Reilly, former solicitor general of the Department of Labor under Frances Perkins. Reilly, whose politics were increasingly conservative, devoted himself to countering the influence of the remaining board employees whom he conceived to be radical leftists. Reilly would, working for Senator Robert Taft, be one of the main drafters of the Taft-Hartley Act in 1947.[6]

The Millis Board, in the period 1939-41, before much of its jurisdiction was taken from it during World War II, engaged in a much more hands-off approach in contrast to the Madden Board's tendency to intervene to help unions construct a collective bargaining unit of maximum power.[7] The Millis Board allowed employers greater leeway to fire workers for union activity when such activities were construed as disrupting production or were for the purpose of opposing an existing collective bargaining agreement in the plant. It allowed replacement workers to vote in collective bargaining elections alongside workers whom they had replaced during a strike.[8] The policies of the Millis Board, presided over by persons who were more or less liberal, in many ways foreshadowed the Taft-Hartley Act of 1947, which was created by congressional conservatives.

---

[4] Gross, *The Reshaping of the National Labor Relations Board*, 232-239.
[5] Frances Perkins refused to support another term for Smith. She privately told Smith that since he began his NLRB service he had changed significantly from his previously moderate personality and well respected self. Smith implied that the reason for his own shift to the left politically was his constant exposure as an NLRB official to the injustices meted out to workers by big business. See Gross, *The Reshaping of the National Labor Relations Board*, 239.
[6] Gross, *The Reshaping of the National Labor Relations Board*, 242.
[7] Gross, *The Reshaping of the National Labor Relations Board*, 234-35.
[8] Gross, *The Reshaping of the National Labor Relations Board*, 236.

Meanwhile, in June 1940 Howard Smith successfully pushed through a law, which Roosevelt signed, applying World War I-era federal government criminalization of anti-war and anti-capitalist speech to peace time.[9] The first targets of the Smith Act were twenty-nine Trotskyist leaders of the Minneapolis Teamsters, leaders of the same local which spearheaded the major strike in the city in 1934. The Trotskyists were indicted by Roosevelt's Justice Department in June 1941 for preaching against American defense preparations and for advocating the overthrow of the United States government.[10] This indictment seems to have been a favor by the Justice Department to Teamsters President Dan Tobin and the rest of the conservative AFL leadership, who feared that the Trotskyists had plans to start a dual Teamsters union within the CIO.[11] The trial did not go well for the Justice Department: some of the defendants were acquitted outright while others received lenient sentences.[12]

While the Trotskyists received relatively light punishment, the Roosevelt administration increasingly worried about Communist union members in defense industries. The administration paid great attention to reports from the FBI and military intelligence detailing Communist union activity but refrained from launching any sort of major repression.[13] In June 1941, after five days of a strike by a Communist-led UAW-CIO local at the North American Aviation plant in Southern California, Roosevelt ordered the California National Guard to seize the plant. The strike was thus broken, but the administration's National Defense Mediation Board (NDMB), effectively granted the UAW local the substantial wage increases it had struck for. [14]

---

[9] Schrecker, *Many Are the Crimes*, 97-98.
[10] Schrecker, *Many Are the Crimes*, 104.
[11] Schrecker, *Many Are the Crimes*, 104; Bernstein, *Turbulent Years*, 781.
[12] Schrecker, *Many Are the Crimes*, 104.
[13] Schrecker, *Many Are the Crimes*, 100-101.
[14] Zieger, *The CIO,* 130.

However, strikes at North American Aviation and other defense plants, along with a lengthy strike by John L. Lewis's mine workers in late 1941, were seized upon by conservatives as intolerable dangers to national security during wartime.[15] On December 3, 1941, the House passed a bill, authored by Howard Smith and Georgia Democratic Congressman Carl Vinson, that banned strikes in defense industries.[16] The Vinson-Smith bill was eventually buried in the Senate Labor and Education committee.[17]

Labor unrest in the World War II era was confined not just to Communists and John L. Lewis (who had resigned from the CIO presidency in November 1940 and taken his miners out of the CIO by early 1942). From December 1941 to May 1945, there were 14, 471 strikes in the United States, the highest total for any period of similar length in American history.[18] Many of the strikes were wildcats (strikes launched without the authorization of union leadership). In particular, workers were angry with the National War Labor Board (NWLB), the government agency charged, in the interests of wartime economic stability, with keeping wage increases below the rapidly upward spiraling inflation rate. [19] Meanwhile, the CIO leadership, officially committed to civil rights for African Americans, struggled to rein in some of the organization's rank and file who struck or sometimes rioted to protest racially integrated workplaces or the granting of promotions to African American colleagues.[20]

If the rank and file had problems disciplining themselves to New Deal wartime production requirements, the CIO leadership worked to develop a cooperative relationship with

---

[15] Zieger, *The CIO*, 132, 136.
[16]Melvyn Dubofsky, *The State and Labor in Modern America* (Chapel Hill: University of North Carolina Press, 1994), 174; Zieger, *The CIO*, 132.
[17] Dubofsky, *The State and Labor in Modern America*, 174.
[18] Brecher, *Strike!* (Boston: South End Press, 1999), 243.
[19] Zieger, *The CIO*, 164-169.
[20] Zieger, *The CIO*, 154-155.

the administration.[21] The NWLB and other government wartime regulatory agencies often granted unions in defense industries the right of "maintenance of membership," a concept similar to a union shop. In return union leaders were expected to keep their members disciplined to war production tasks—in spite of rank and file militancy, the CIO leadership only officially authorized one strike. [22] AFL and CIO leaders, along with the American Communist Party, adopted a no-strike pledge after the United States entered the war, obviously a policy which directly contradicted the desires of rank and file workers to have their workplace grievances addressed.[23]

Congressional conservatives who were worried about the high wartime strike level, led by Democratic Senator Tom Connally of Texas and Howard Smith in the House, passed the War Labor Disputes Act over Roosevelt's veto in June 1943.[24] The bill gave the president the power to seize any business essential to the defense industry that was wracked by a strike, required workers to give 30 days' notice and to take a rank and file vote before a strike and barred political donations by unions. The authors of the bill assumed that strikes were rooted in the initiative of union leaders and if the rank and file were given an opportunity to directly vote on a strike, they would vote against it. However, they were proved wrong.[25]

The Smith-Connally Act retroactively justified Roosevelt's seizure of the nation's soft-coal mines in May 1943, which were wracked by a strike of John L. Lewis's United Mine Workers (UMW). Lewis's actions caused obloquy to rain down upon him from politicians across

---

[21] Zieger, *The CIO*, 178.
[22] Zieger, *The CIO*, 145-147, 172.
[23] Zieger, *The CIO*, 146, 150, 172; Brecher, *Strike*, 237-240.
[24] Ruth O'Brien, "Taking the Conservative State Seriously: Statebuilding and Restrictive Labor Practices in Postwar America," *Labor Studies Journal* 21 (1997): 46.
[25] O'Brien, "Taking the Conservative State Seriously, 46-47.

the political spectrum for striking in an industry that supplied an important resource to the war effort.[26]

The war ended in August 1945, but the rest of the year and 1946 saw a dramatic increase in the number of strikes.[27] The percentage of the civilian workforce that was unionized reached what was, for the United States, the unprecedented level of 35 percent.[28] Harry Truman, who had become president after Roosevelt's death in April 1945, tried to contain the rising militancy. He proposed legislation that increased government power to intervene in strikes in industries deemed vital to the public interest, with corresponding restrictions on the right of workers to strike in such industries.[29] He threatened to use military conscription to force striking railroad workers back to work.[30] In the spring of 1946, he ordered the military to temporarily seize the nation's bituminous coal mines, which were wracked by strikes of John L. Lewis's UMW.[31] Meanwhile, at General Motors and in the steel industry, Truman backed management against a push by some prominent CIO leaders for the principle that unions should have a voice in a company's investment and production decisions.[32]

These postwar strikes led to an attack by conservative politicians and business groups on the Truman administration for allegedly being too soft on organized labor. Business groups like the National Association of Manufacturers (NAM) and the Advertising Council swung into action. Such groups began massive propaganda campaigns in schools and in the mass media denouncing government regulation of the American free enterprise system and linking unions to

---

[26] Dubofsky, *The State and Labor in Modern America*, 189-191; Zieger, *The CIO*, 169.
[27] Zieger, *The CIO*, 212-227.
[28] Dubofksy, *The State and Labor in Modern America*, 192; O'Brien, "Taking the Conservative State Seriously," 48.
[29] Zieger, *The CIO*, 222.
[30] Dubofsky, *The State and Labor in Modern America*, 222.
[31] Dubofsky, *The State and Labor in Modern America*, 194.
[32] Dubofsky, *The State and Labor in Modern America*, 194; Zieger, *The CIO*, 226.

communism and other un-American forces.[33] In the November 1946 mid-term elections Republicans captured both houses of Congress for the first time since 1928 and allied with Southern Democrats and business groups to launch a successful push to amend the Wagner Act in a much more conservative direction.[34]

The result in Congress of the conservative effort was the Taft-Hartley Act of June 1947, passed over Truman's veto. To investigate and prosecute cases before the NLRB, the act created an Office of General Counsel, which would maintain autonomy from the NLRB executive, which now had responsibility only for judicial oversight of cases.[35] The act offered employers the right to speak out against efforts of their own employees to unionize and gave state governments the right to enact "right-to-work" laws which effectively banned closed shop contracts, thus depriving unions of an effective tool for organizing a workplace.[36] It reduced restrictions on the ability of federal judges to issue injunctions against union activity.[37] It created a list of activities that made a unionized worker liable to be fired if she engaged in them, including solidarity strikes, wildcat strikes, and boycotts.[38] It required the Labor Department to establish close monitoring of internal union governance to ensure financial transparency.[39] It targeted radical unionists by requiring that the NLRB could not deal with any union whose leaders did not sign an affidavit declaring opposition to the Communist Party.[40] The requirement

---

[33] Elizabeth A. Fones-Wolf, *Selling Free Enterprise: The Business Assault on Labor and Liberalism, 1945-1960* (Urbana: University of Illinois Press, 1994), 35-57.
[34] Fones-Wolfe, *Selling Free Enterprise*, 41-44.
[35] James Gross. *Broken Promises: The Subversion of US Labor Relations Policy, 1947-1994.* (Philadelphia: Temple University Press, 1995). 18-19.
[36] Dubofsky, *The State and Labor in Modern America*, 204; O'Brien, "Taking the Conservative State Seriously," 57; Zieger, *The CIO,* 246-247.
[37] Dubofsky, *The State and Labor in Modern America*, 204.
[38] O'Brien. "Taking the Conservative State Seriously," 55.
[39] O'Brien. "Taking the Conservative State Seriously, 58.
[40] Schrecker, *Many Are the Crimes*, 336-340; Zieger, *The CIO*, 251.

of the anti-Communist affidavit seemed to target labor unions as a unique source of left-wing subversion in American life. Indeed, CIO president Phil Murray, a staunch anti-Communist, refused for two years to sign the anti-Communist affidavit on the ground that the requirement unfairly singled out organized labor as a potential source of disloyal Americans.[41]

President Truman vetoed the Taft-Hartley Act, but in private he may have thought that the bill was actually a reasonable response to the disruptive activities of labor unions. NLRB executive member James Reynolds would later claim that Truman privately implied to him that he had vetoed the bill only to ensure CIO votes in future elections and that he (Truman) believed in reality that the Act was needed to contain labor's excesses.[42] Though Truman publicly vetoed the bill, he would utilize its injunction provision eighty times before he left office in January 1953.[43]

The Taft-Hartley Act was one of the opening salvos in a new Red Scare, of which the Republican Senator Joseph McCarthy was to become the most prominent figure. The political climate encouraged the CIO leadership in 1949 and 1950 to expel from their organization eleven left-wing unions it accused of hewing to the Communist Party line. [44]

Financially troubled and its organizing activity decreasing, the CIO merged with the AFL in 1955 to become the American Federation of Labor-Congress of Industrial Organizations (AFL-CIO).[45]American labor's twenty-year "civil war" was effectively over, as was the threat of viable anti-capitalist radicalism within unions.

---

[41] Zieger, *The CIO*, 251.
[42] Gross, *The Reshaping of the National Labor Relations Board*, 258-259; Zieger, *The CIO*, 275-276; Dubofsky, *The State and Labor in Modern America*, 205.
[43] Zieger, *The CIO*, 304.
[44] Zieger, *The CIO*, 277-292; Schrecker, *Many Are the Crimes*, 338-340, 390-91.
[45] Zieger, *The CIO*, 343-371.

Conclusion

A notable indication of the success of the conservative attack on the NLRB's ability to increase the ability of unions to secure greater economic inequality occurred when President Truman appointed Robert Denham as NLRB General Counsel in June 1947.[1] Under the Taft-Hartley's reforms of the Board, the General Counsel had exclusive responsibility for oversight of the prosecutorial and investigatory functions of the Board while the NLRB executive had exclusive responsibility for the Board's judicial functions. Denham, in the previous nine years, had been an NLRB Trial Examiner. He belonged to the conservative wing of NLRB employees; in one incident his superior officers ordered the elimination of racist remarks about black workers he made in one of his reports.[2] Unlike the NLRB officials quoted in this thesis, Denham exhibited no passion for using his power to help unions secure greater economic equality for American workers. Denham exhibited his philosophy in a speech before the Building Trades Employers' Association of New York City in January 1950. In the speech, Denham criticized the Wagner Act as "social legislation." He asserted that the Wagner Act had been constructed so as to unjustly give benefits to workers at the expense of businesses. He argued that the Taft-Hartley Act had eliminated these injustices, giving both labor and management a fair and equal set of responsibilities and benefits. However, he complained that in spite of Taft-Hartley's implementation there were still many NLRB officials who held to "the religion of the Wagner Act." He explained that this religion was founded on the principle that unions had to be protected by the NLRB "no matter what" and that businesses were to blame for all the problems in labor-management relations. He asserted that NLRB officials held to this principle even though unions

---

[1] James Gross, *Broken Promises: The Subversion of US Labor Relations Policy, 1947-1994* (Philadelphia: Temple University Press, 1995), 18-23.
[2] Gross, *Broken Promises*, 20.

"may frequently be" the actual source of problems in industrial relations.[3] In this attack on the "religion" of NLRB officials, Denham mirrored the gendered attacks of the Smith Committee on the NLRB. He did so by attacking the alleged passion (un-masculine ardor) for protecting unionized workers by NLRB officials, arguing that with this mindset, these officials had a bias against business and ignored problems in industrial relations caused by unions. In essence he argued that NLRB employees lacked the emotional maturity to see that unions were not always the underdogs and were in fact often a source of problems in industrial relations. Truman fired Denham in August 1950 for allegedly attempting to usurp some of the powers of the NLRB's judicial branch, overseen by NLRB chairman Paul Herzog, with whom Denham had been engaged in an intense personal feud. [4]

Denham presented a critique of the NLRB that was not dissimilar to the critique made by the conservatives on the Smith Committee. This thesis surveyed the critique made by the Smith Committee conservatives about the NLRB. It showed that the committee conservatives portrayed NLRB officials as so intensely committed to using their authority to help CIO unions that they disregarded their obligations to be completely neutral in conflicts between labor and management. The committee majority portrayed these NLRB officials as distinctly un-masculine in the sense that they allegedly had excessive emotional attachments to the cause of ordinary workers. According to the Smith Committee conservatives, this pro-CIO bias caused NLRB officials to use their position to try to bring harm to allegedly anti-union businesses and defend union activists involved in criminal offenses. The committee majority portrayed the desire of NLRB officials to help unions achieve greater inequality in American life for American workers

---

[3] Robert N. Denham, "Climate of Labor Relations has been Changed by Congress: NLRB Still Saturated with old Wagner Act Social Thinking," *Vital Speeches of the Day*, February 1, 1950, 226.
[4] Gross, *Broken Promises*, 58-69.

as evidence of left wing radicalism on the part of those officials. These negative consequences portrayed by the Smith Committee conservatives paved the way for reforms of the Wagner Act and the NLRB in a more conservative direction.

This thesis is a contribution to the history of the New Deal, the National Labor Relations Board and the history of efforts by powerful forces in American life to marginalize certain political and social ideas, persons and groups. It describes an effort by powerful American conservatives to impede processes involved in relations between economic classes that they believed fundamentally disruptive to traditional American life.

Works Cited

Journal Articles

Denham, Robert N. "Climate of Labor Relations has been Changed by Congress: NLRB Still Saturated with old Wagner Act Social Thinking." *Vital Speeches of the Day,* February 1, 1950, 226-231.

Farhang, Sean, and Ira Katznelson. "The Southern Imposition; Congress and Labor in the New Deal and Fair Deal." *Studies in American Political Development* 19 (2005): 1-30

Gilbert J. Gall, "CIO Leaders and the Democratic Alliance: The Case of the Smith Committee and the NLRB," *Labor Studies Journal* 14 (1989): 3-27.

Harrison, Pat. "The Wages and Hours Bill: Its Effect on the South and the Country." *Vital Speeches of the Day*, August 15, 1937, 644-648.

O'Brien, Ruth. "Taking the Conservative State Seriously: Statebuilding and Restrictive Labor Practices in Postwar America," *Labor Studies Journal* 21 (1997): 33-63.

Roosevelt, Franklin D. "A Changed Moral Climate in America." *Vital Speeches of the Day*, February 1, 1937, 226-228.

Sargent, James E. "Woodrum's Economy Bloc: The Attack on Roosevelt's WPA, 1937-1939." *Virginia Magazine of History and Biography* 93 (1985): 175-207.

Smith, Howard W. "NLRA: Abuses in Administrative Procedure." *Virginia Law Review* (1941): 615-632.

Wolfinger, James. "The Strange Career of Frank Murphy: Conservatives, State-Level Politics and the End of the New Deal." *Historian* 65 (2002): 377-403.

Books

Brecher, Jeremy. *Strike!* Boston: South End Press, 1999.

Cuordileone, K. A. *Manhood and American Political Culture in the Cold War*. New York: Routledge, 2005.

Dierenfield, Bruce. *Keeper of the Rules*: *Howard W. Smith of Virginia*. Richmond: University of Virginia Press, 1987.

Dubofsky, Melvyn, *The State and Labor in Modern America.* Chapel Hill: University of North Carolina Press, 1994.

Fredrickson, Kari. *The Dixiecrat Revolt and the End of the Solid South, 1932-1968.* Chapel Hill: University of North Carolina Press, 2001.

Fones-Wolf, Elizabeth A. *Selling Free Enterprise: The Business Assault on Labor and Liberalism, 1945-1960.* Urbana: University of Illinois Press, 1994.

Gross, James. *Broken Promises: The Subversion of US Labor Relations Policy, 1947-1994.* Philadelphia: Temple University Press, 1995.

_____. *The Reshaping of the National Labor Relations Board: National Labor Policy in Transition: 1937-1947.* Albany: State University of New York Press, 1981.

Johnson, David K. *The Lavender Scare: The Persecution of Gays and Lesbians in the Federal Government.* Chicago: University of Chicago Press, 2006.

Katznelson, Ira. *When Affirmative Action was White: An Untold History of Racial Inequality in Twentieth Century America.* New York: W. W. Norton & Company, 2005.

Leuchtenberg, William. *Franklin D. Roosevelt and the New Deal.* New York: Harper Perennial, 1963.

Roosevelt, Franklin. *The Public Papers and Addresses of Franklin Delano Roosevelt.* Vol. 5: *The People Approve, 1936.* New York: Random House, 1938.

Schrecker, Ellen, *Many Are the Crimes: McCarthyism in America.* Princeton NJ: Princeton University Press, 1998

Sullivan, Patricia. *Days of Hope: Race and Democracy in the New Deal Era.* Chapel Hill: University of North Carolina Press, 1996.

Swain, Martha H. *Pat Harrison: The New Deal Years.* Jackson: University of Mississippi Press, 1978.

Tomlins, Christopher. *The State and the Unions: Labor Relations, Law and the Organized Labor Movement in America, 1880-1960.* New York: Cambridge University Press, 1986.

Zieger, Robert H. *The CIO, 1935-1955.* Chapel Hill: University of North Carolina Press, 1995.

Congressional Documents

U.S. Congress. House. Special Committee to Investigate the National Labor Relations Board. *Hearings before the Special Committee to Investigate the National Labor Relations Board.* Vols. 1, 3, 4, 9, 15, 23, 24. 76th Cong., 2nd sess. Washington, D.C.: Government Printing Office, 1940.

U.S. Congress. House. Special Committee to Investigate the National Labor Relations Board. *Intermediate Report of the Special Committee to Investigate the National Labor Relations Board.* Washington, D.C.: US. Government Printing Office, 1940.

U.S. Congress. House. Special Committee to Investigate the National Labor Relations Board. *Intermediate Report of the Special Committee to Investigate the National Labor Relations Board: Minority Views.* Washington, D.C.: Government Printing Office, 1940.

Newspapers

Chicago Tribune. 1940.

New York Times. 1940.