Is Bargaining Free?

by Henry Hazlitt

TWENTY-SEVEN years of experience have demonstrated not that our Federal labor law is "inadequate" to deal with strikes, but that it encourages and strengthens them. Eventual settlement of nationwide strikes has come not because of the Taft-Hartley Act, but usually in spite of it.

When the President, after holding off thirteen weeks, finally resorted to the emergency provisions of the Taft-Hartley Act, his action was widely criticized. David J. McDonald denounced "injection of Taft-Hartley into this situation" and forcing "free American steelworkers back into the mills." He professed to favor leaving the decision to "free collective bargaining." Senator Kennedy accused the Administration of trying to "break the strike." He urged the "necessity of Congress's rewriting the national emergency section of the Taft-Hartley law in order to prevent a repetition."

Those who favor a free economy should sympathize with these objections. It is not desirable that men should be ordered back to work. But it is either uninformed or disingenuous to talk as if this were the first interference by the government in the steel strike. Existing Federal law heavily loads the dice in favor of union bosses and strikers. The Norris-La Guardia Act of 1932 enormously strengthens the power of strikes. It in effect deprives those who want to work of their right peaceably to continue in their jobs and the employer of his right to try to continue his business unmolested. For it denies injunctive relief to persons suffering irreparable injury from unlawful conduct.

COMMON-LAW RIGHTS

The emergency provisions of Taft-Hartley, giving the Federal government the right to seek injunctions, are a fumbling attempt to find a substitute for the common-law rights denied to private persons. But the Taft-Hartley attempt goes too far in the wrong direction and not far enough in the right one. It orders workers back to their jobs against their will—whereas the court injunctions formerly granted to private parties merely ordered strikers to desist from violence, mass-picketing, or vandalism—in short, merely to desist from clearly unlawful interferences with the rights of others. On the other hand, the Taft-Hartley provisions not only allow a strike to be resumed in 80 days, if no agreement is reached; but they also allow the strikers to resume mass-picketing and other forms of intimidation.

In directing his attention at last to the Taft-Hartley Act, Senator Kennedy now concedes by implication that neither the bill he sponsored nor the law he got deals with the central labor problem today. This is the power the law puts in the hands of a single union or a single labor leader to shut down a nationwide industry until his demands, no matter how unreasonable, are met.

NEED FOR REPEAL

The chief cure is not still further government interference in labor relations, as represented by the Landrum-Griffin law, but modification or repeal of existing legislation. What is most urgent is repeal of the pernicious Norris-La Guardia Act. This alone might have permitted steel companies to continue operations. It would also be desirable either to repeal the Taft-Hartley-Wagner Act completely (a step which union spokesmen sometimes profess to favor) or to amend it drastically—by abolishing, e.g., the government grant of *exclusive* bargaining power to unions which represent a mere majority of employes.

McDonald still professes to favor "free collective bargaining." But this phrase is a mockery when one party, the employer, is not at all legally free to choose the person or persons with whom he can bargain—to turn to B, say, when he cannot make an acceptable bargain with A. Moreover, what McDonald and others who use this cant phrase have been asking is that the President appoint a "fact-finding" board with power "to make recommendations." If this is not asking for compulsory arbitration, it is at least trying to get a government board to force more concessions out of the companies than "free collective bargaining" has succeeded in doing.

Why not try restoring genuine freedom of bargaining, collective and individual, to employers and workers?