USA: From the coal wars to the Pittston strike

Wednesday 21 July 2010, by YATES Michael D. (Date first published: June 1990).

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The year is 1922. In southern West Virginia, coal miners and coal operators have been at war for the past five years. (1) The miners are on strike; they want a union and an end to the industrial serfdom which defines their lives. They live in squalid and isolated mining towns, owned lock, stock, and barrel by their employers. Their streets are patrolled by company police, who take a dim view of the Bill of Rights. When they lose their jobs, they lose their homes. To get work in the brutally dangerous mines, they must sign "yellow dog" contracts, swearing that they are not union members and will not join a union while working for the company.

The operators enforce this harsh regimen to minimize their labor costs and thereby maintain an advantage over their northern competitors. They are able to enforce it because they wield enormous economic and political power and because the nation's legal system, courts and police alike, is uniformly hostile to working people. During the strike, aptly named the West Virginia Coal Wars, thousands of miners are fired and evicted from their homes. Baldwin-Felts detectives terrorize them, assassinating two unarmed defendants on trial after the famous "Matewan Massacre"; operators form a private army complete with airplanes with bomb miners who have mobilized to liberate Mingo County and restore their union. These things are done with complete disregard for the niceties of the law. And no wonder. State police are virtual agents of the owners throughout the War, and in September 1921 federal troops invade the coal fields and destroy the union. What is more, the courts issue sweeping injunctions forbidding any union activity in the entire region.

An injunction is a court order which states that certain parties must cease doing certain things or face contempt of court charges and possible fines and/or imprisonment. (2) An injunction is issued by an equity court (today any court can be an equity court), whose duty is to do the fair thing in situations in which a party has no other viable legal recourse. Originally, injunctions could only be issued to prevent injury to tangible property. Since peaceful striking, picketing, and boycotting do not threaten to damage an emloyer's buildings or machinery, they could not be enjoined. However, in the 1880s, both state and federal courts, seeking to accommodate capital's need to disarm the growing labor movement, declared that among the employer's property rights was the "right to do business," that is, the right to deal with suppliers and customers, and that damaging this right was exactly the same as setting fire to the buildings. Since any successful labor action will interfere with an employer's business relationships, most such actions were enjoinable. Decade by decade, injunctions rained down upon the house of labor. During the 1920s, at least 2,130 labor injunctions were issued, enjoining 25 percent of all strikes and 46 percent of all secondary boycotts and sympathy strikes.

The most severe injunction was the “blanket” order, which forbade any and all activities by any person at any time at any place which would help workers involved in a labor dispute. A person not specifically named in the court order could violate it unknowingly, be convicted for contempt, fined, and sent to jail. This once happened to a barber who, during the railroad shopworkers’ strike of 1922, placed a sign in his window saying that he would not cut the hair of scabs.

The famous 1894 Pullman strike was crippled by blanket injunctions, which went so far as to deny Eugene V. Debs and the other strike leaders the use of the mails and telegraphs. The Supreme Court approved blanket injunctions in its 1985 decision, In Re Debs, opening the floodgates for a lot more of them. One of the most notorious blanket injunctions, Red Jacket, was issued during the West Virginia Coal Wars. This decree, which outlawed pro-union speech, was handed down in the union’s absence: unions had neither the right to be present in the courtroom nor to present or question witnesses in injunction hearings. The United Mine Workers (UMW) fought Red Jacket, along with hundreds of related injunctions issued during the War, spending millions of dollars, and ultimately losing its last appeal in 1927, many years after the War was lost.

Along with the prospective damage to the coal operators’ “right to do business” two other legal “principles” underlay the Red Jacket injunction. First, it was aimed at protecting the yellow-dog contracts, signed under extreme duress by the miners. The Supreme Court had already sanctioned yellow dogs in its 1917 Hitchman decision, and made it illegal for a union to encourage workers to break yellow-dog contracts. A union which did so, by trying to unionize a workplace, was guilty of “inducing breach of contract.” Inducing breach of contract was one of many illegal acts created by judges as part of the common law. In the United States, the common law had been sharply biased in favor of employers, and judges did not hesitate to develop new precedents as the needs of capital changed. By 1920, the common law was a powerful weapon for capital: inducing breach of contract violated the common law, many strikes were common-law conspiracies, picketing usually ran afoul of the common law, the “right to do business” and the injunctions which followed union interference with it were all creations of the common law.

The second legal underpinning of the Red Jacket injunction was the Sherman Anti-Trust Act. Enacted by Congress in 1890 to prevent the formation of business monopolies, it was quickly applied to unions. When the hatmakers’ union organized a boycott against Loewe and Company of Danbury, Connecticut, the company claimed that the boycott “restrained trade” in violation of the Sherman Act. In 1908, the Supreme Court agreeed; by the end of the 1920s, the high court had hinted that strikes also violated the Sherman Act. Judge McClintic, who issued Red Jacket, assumed that the UMW was a conspiracy in restraint of trade by its very nature, and this alone was enough to justify the injunction.

II.

Now, flash forward 67 years to 1989. The UMW is still fighting the coal operators, this time in southwestern Virginia.

The Pittston Coal Company seceded from the Bituminous Coal Operators’ Association (BCOA), preferring to confront the union alone. (3) It refused to ratify the 1988 UMW-BCOA agreement, insisting that the union agree to radical concessions. When the old agreement expired in January 1988, the union agreed to work without a contract, something it would not do during the Second World War. But the union is much weaker today, having lost hundreds of thousands of members to mechanization and non-union strip mines. It represents less than 50 percent of all coal miners nationwide. Pittston refused to bargain seriously, taunting the union to strike.

Once the contract expired, Pittston began making unilateral changes in wages, hours, and terms and conditions of employment. It refused to arbitrate grievances, terminated health-care benefits for some 1,400 retired miners and widows, many of whom are dying from black lung disease, and stopped paying royalties into the multi-employer health trust fund. Despite union concessions, including a no-strike promise at Pittston if the union had a labor dispute with the BCOA, the company refused to move, and in November 1988 presented the union with its final offer. This "last best offer" would mean the end of the union: it included complete company freedom to subcontract work, enforce mandatory overtime, compulsory work on Sunday, and massive cuts in health benefits, including those of retirees and widows. Still the union did not strike, despite the rage building in coal towns. A January 31, 1989 strike deadline was postponed by the union, yielding to political pressures from the governors of West Virginia, Kentucky, and Virginia. Finally, when the postponement failed to get Pittson to bargain, the union struck on April 5, 1989.

In the union's heyday, a strike picket was usually unncessary. Noboby would scab during a strike, but Pittston hired special strikebreakers from Vance International, many of whom were armed mercenaries, the kind of people who answer ads in Soldier of Fortune magazine. Vance not only provided the scabs, it also waged a campaign of terror against the union, flying helicopters over union homes, and photographing union members and supporters. The police ignored union complaints. To stop the scabs, the union initiated mass picketing, and miners sat down in front of loaded coal trucks. Hundreds of state police appeared to escort scabs to work and trucks to market. Throughout the strike, more than 60 percent of the state police were assigned to the strike; at one point, nine of every ten troopers were busy protecting Pittston's coal. It was impossible to get a motel room in the area; all of the rooms were occupied by the police. Hundreds of miners and strike supporters were arrested and jailed, and quite a few beaten. One week after the strike began, the company had a state judge issue an injunction which tightly restricted picketing. A month and a half later, a federal court issued a similar injunction. The union was soon found guilty of violating these injunctions, and contempt charges began to mount. Both courts imposed harsh fines on the union. By the end of the year, federal-court fines amounted to some $25 million, and state-court fines accumulated to more than $1 quadrillion! By comparison, in 1983, Pittston was fined $47,500 for safety violations which caused the deaths of seven miners. The definition of picketers was expanded to include persons who drove their cars too slowly on the winding mountain roads in front of coal trucks. A nun who helped strikers get food was arrested for this, accused of being a roving picket.

Meanwhile, the Pittston strike captured the imagination of mining communities throughout the country. Many did not understand why the union had been conciliatory for so long, or why the leadership did not expand the strike. On June 12, 1989, wildcat strikes captured in ten states in support of the Pittston strike. Bands of roving pickets moved about the coal fields shutting down hundred of mines.

The wildcat strikes violated the UMW-BCOA agreements, so the strikers risked reprisals from their employers. But the wildcats are also a form of "secondary" labor action, the primary dispute being between the UMW and Pittston. Sympathy strikes, refusals to handle truck work, and boycotts are all secondary actions, and they are all illegal under the Taft-Hartley Act of 1947. Section 8(b) of Taft-Hartley defines seven union unfair labor practices, actions taken by unions which violate the law. The fourth of these, 8(b)(4), makes nearly every type of union secondary activity illegal. The National Labor Relations Board (NLRB) decides if a union has committed an unfair labor practice. However, whenever a union is accused of a secondary action, the NLRB immediately does a preliminary investigation, and if it concludes that their is prima facie evidence of a violation, it must by law seek a federal court injunction ordering the secondary action to stop. The NLRB also has the power to seek an injunction to stop an employer's unfair labor practices—these are in Section 8a—but it is not legally bound to do so. And it almost never does, which means that a worker fired for union activity

must wait for a regular hearing anda Board decision. Today, it takes the Board an average of 500 days to make an unfair labor practice decision. If the Board's ruling is appealed by the employer to a Federal Appeals Court, it will be at least another 500 days to a decision. If the worker is lucky enough to be reinstated, any money which she earned in the meantime, including unemployment compensation, will be deducted from the back-pay award.

Less than a month after the sympathy strikes began, injunctions ordering them to stop were issued at the NLRB's request. Within a few months, the union was charged with scores of 8b4 violations. Suits were also filed by employers against the union for losses suffered as a result of the wildcats. The union spent a small fortune defending itself in court.

III.

In both the Coal Wars of 60 years ago and the Pittston strike the police intervened early and often on the side of the employer. That the federal army crushed the miners in the Coal Wars does not sound strange to those aware of U.S. labor history; but that, in 1989, as much as 90 percent of Virginia's state police were deployed to break a single strike, surprises many people. Much the same could be said of the role of the courts. Did not workers win some important legal struggles during the 1930s? Do not working people in the United States enjoy rights today that they did not enjoy in 1922?

In 1932, Congress passed the Norris-LaGuardia Act, which barred the issuance of injunctions in labor disputes, irrespective of whether the disputes were primary or secondary or whether the disputes were otherwise illegal. The only exceptions were disputes marked by violence or fraud. Many states subsequently enacted "little Norris-LaGuardia Acts" patterned after the national law. In 1935, Congress passed the National Labor Relations Act or Wagner Act, giving workers, with some important exceptions, the right to form and join unions without employer interference. Once workers joined unions, their employers had to bargain with them. In fact, the Act's statement of purpose declared it the policy of the government to promote collective bargaining, and by implication unionization, as the preferred method for resolving labor-management conflict. The National Labor Relations Board (NLRB) was established to administer the Act. The first Roosevelt Board took the Act's purpose seriously and actively supported and protected workers' rights. So, too, did the courts, which, reflecting the new political reality, went so far as to rule that picketing was protected by the First Amendment as free speech.

These two Acts marked a radical departure from the preceding century of relentless legal hostility toward the working class. Along with the successful sitdown strikes, they represented a temporary defeat of capital, which labor began to extend in the workplaces and in the political sphere. John L. Lewis and the CIO seemed poised to form a labor party built upon class-conscious industrial unions. (4) However, the defeat of capital proved temporary. Twelve years after the Wagner Act, Congress, once again firmly allied with employers, dealt labor a decisive legal blow with the Taft-Hartley Act.

It is difficult to give a brief summary of the Taft-Hartley law, but the following are its most egregiously anti-labor provisions:

* Wording which gave workers the right to engage in collective action was changed to give them the right to refuse to do so. This has given the NLRB and the courts power to deny unions the right to discipline their members. A union rule which says that a member cannot resign during a strike is now illegal. (Section 7)

* Various forms of union security were made illegal. States are permitted to enact "right-to-work" laws which prohibit union shops (i.e., those in which all persons in a bargaining unit must join the

union after employment). When combined with employers' anti-union hiring practices (lie detector tests, psychological testing, etc.), right-to-work laws make union organizing and bargaining very difficult. (Sections 8[b][2] and 14[b])

* As mentioned above, nearly all secondary actions were made illegal. (Section 8[b][4]) It is illegal for a union to negotiate a clause which allows workers to refuse to handle struck work. (Section 8[7]) The NLRB must seek an immediate injunction to stop secondary action. (Section 10[1])

* Employers were given the right to say just about anything in a union election campaign, including false statements and subtle threats. (Section 8[c]) This provision has paved the way for the rise of labor consultants, modern-day union busters who understand that Taft-Hartley means open season on labor unions.

* Taft-Hartley declared war on labor radicals, the people who built the CIO and tried to make it a democratic, multiracial, and anti-imperialist organization of the working class. Union officers had to sign oaths swearing that they were not Communists. Refusal to do so meant that workers lost protection under the act. Employers could legally refuse to bargain, discharge union supporters, and recognize rival unions. (Section 9[h]) Many progressive unions were destroyed by 9h, and thousands of radicals were purged from the labor movement. The attack upon the left eliminated those forces committed to organizing black workers and opposed to U.S. imperialism. The results were profoundly destructive of progressive change. Readers who would like to know just how far the tide had turned against labor should read the Supreme Court decision upholding the legality of 9h, ACA v. Douds. (5)

* The President was empowered to seek an injunction to halt any national strike for 60 days during which employees had to vote by secret ballot on the employer's last offer. (Sections 206-210)

* Collective bargaining contracts were made enforceable in courts. (Section 301) The courts have used this provision to compel unions to forego strikes and utilize lengthy arbitration procedures to settle grievances. A union which strikes to enforce a contract is now subject to injunction, a direct violation of the Norris-LaGuardia Act, which, though still the law, has been to a large extent nullified by the courts.

The underlying philosophy of Taft-Hartley is that workers and society must be protected from unions, which can be expected to act in ways antithetical to workers' freedoms. While many of the basic protections of the Wagner Act are still part of Taft-Hartley, they are subject to negation on the grounds that they harm "society" or inhibit the "freedom" of the individual worker. As long as the labor movement maintained some political muscle, the NLRB and the courts hesitated to completely dismantle the Wagner Act, something which Taft-Hartley made possible. However, Taft-Hartley itself gravely weakened the labor movement, and economic and technological changes have crippled those strong industrial unions which survived it. The results have been a stunning legal victory for capital. It is now extremely difficult to organize a workplace in the face of legal employer opposition. But employers also routinely violate the law, making it all but impossible to win certification elections. Employer unfair labor practices have skyrocketed, increasing more than fivefold in the past 30 years despite rapidly declining union membership. One in every twenty workers is now illegally fired in union organizing campaigns. (6) Should a union win an election, it has about a 50 percent chance of getting a contract. Employers simply refuse to bargain, an illegal act for which there are no monetary penalties, and they hire scabs if the workers have the temerity to strike.

The decline of the labor movement, painfully obvious from the statistics on union membership, set the stage for the Reagan administration. The NLRB and the courts have become much more aggressive in interpreting the labor laws in a thoroughly anti-labor fashion. Not just the Wagner Act,

but the Civil Rights LAws and the Occupational Safety and Health Act have become dead letters. In many respects, we have returned to the legal jungle of the 1920s.

IV.

The development of labor law parallels the development of the labor movement. While it is beyond the scope of this essay, a strong case can and has been made out that the law has exerted a powerful, independent, and wholly negative effect upon the labor movement throughout most of our history. (7) By placing narrow limits upon legitimate worker action, it has helped to define labor organizations as outlaws. This image has penetrated the labor movement, helping to produce a conservative leadership always seeking legitimacy and hesitant to break the law. In other words, the law and the labor leadership have interacted to produce a compliant labor movement, willing to accept the organization of a minority of well-situated workers at the expense of the many less well positioned to combat capital.

Until the 1930s there were few indications that organized labor could or was willing to try to lift the burden which the legal system had put upon it. Perhaps Debs's American Railway Union would have tried, but the law crushed it before it was strong enough to do so. The AFL quickly retreated from secondary action once a solid core of highly skilled workers was organized. The Great Depression, however, was such a catastrophe for capital that labor was able, through mass strikes, factory occupations, and radical politics, to successfully challenge the legal structure and force it to change. Not only did the Norris-LaGuardia and Wagner Acts give workers unprecedented rights, they also placed practically no restrictions upon the tactics which labor could use to combat employers.

Yet, the era of progressive labor legislation lasted only fifteen years, from 1932 to 1947. Since Taft-Hartley, the legal system of laws, courts, and police has steadily regressed, and so has the labor movement. To put this in perspective, consider that labor's first confrontation with the law occurred in 1806 when a union of Philadelphia shoemakers was convicted of criminal conspiracy. In the 184 years since, workers enjoyed a modicum of real freedom for 15 years, or less than 9 percent of that time. This is not the situation in many other advanced capitalist countries. Since the 1930s Sweden has enacted labor laws which are the envy of workers everywhere. Closer to home, Canada's labor laws are considerably more liberal than ours, allowing for speedy elections and prescribing stiff penalties for employer violations. Not surprisingly, union membership has been growing in Canada despite the fact that the economic environment has been no more conducive to union growth than has ours. Had circumstances been different, the 1930s would have marked only the beginning of progressive labor legislation and not a lonely bright spot in a long sad story.

What went wrong? My view is that much of the blame for Taft-Hartley must be placed upon the leaders of organized labor. I do not mean that the leaders sold out the membership, although it is true that Roosevelt successfully coopted leaders like Sidney Hillman and Phillip Murray, helping to make them into opponents of the more militant John L. Lewis. What I do mean is that the labor movement lacked a coherent labor ideology and therefore could not build upon its victories. The AFL attacked the NLRB, and by extension the Wagner Act, as a way to attack the CIO. It made deals with employers, and it red-baited its industrial-union rivals. The CIO had radical potential; the normally conservative Lewis was ready to help form a labor party. But the CIO had no ideology either. Most of its leaders shared the same worldview as did those of the AFL from which after all they had come. The CIO proved itself no different from the AFL when it used Taft-Hartley to hound the radical unions out of the labor movement. It generally allied itself with corporate capital, becoming an active participant in U.S. imperialism and abandoning the struggle for racial and sexual equality. Today it is a rare labor leader who does not support the latest versions of labor-management

cooperation.

Labor ideologies can be simple or complex. Liberation theology is what I would call a simple labor ideology. Its proponents say to peasants that it is God's will that they be able to live as full human beings in this world. They do not have to wait for death to get enough to eat; they have a right to food now. It is not God's will that there be both rich and poor; everyone has a right to share in humanity's worldly goods. As peasants absorb these radical ideas, their lives are transformed to the point that they are prepared to take actions necessary to make them a reality.

Marxism is the leading example of a complex labor ideology. In addition to a belief in equality and democracy, Marxists internalize the more complicated notions of class struggle and mode of production, which in turn lead them toward more complex political analyses and responses than are possible on the basis of liberation theology.

The importance of labor ideology is twofold. First and foremost it is a class ideology that gives working people their bearings; it helps them to know their friends and their enemies and to know what to favor and what to oppose. A Marxist has an automatic sympathy for oppressed people and an automatic distrust of employers. Marxists cannot uncritically support labor-management cooperation, although they may see the need for temporary truces. Second, class ideology commits people to a vision of what ought to be; it has a rational basis, but it grips emotions as well. Committed people can help to move a society in a radical direction when social crises occur and the normal legitimacy of a ruling class is weakened. They can get masses of people to comprehend their everyday experiences, which by themselves are not typically capable of leading people to imagine a better world and to take the actions necessary to create one.

It would be difficult to demonstrate that the U.S. labor movement has or ever had a labor ideology, unless we consider the self-serving pragmatism of Gompers and the AFL bureaucracy to be one. The Communists and other radicals who built the CIO were labor ideologues, and this was the basis of their influence and their success. Unfortunately the radicals were defeated. When the left unions quit, or were expelled from the CIO, organized labor lost whatever chance it had to capture the hearts and minds of the working class. AFL and CIO leaders vowed to have Taft-Hartley repealed, yet they used it to purify their unions of the taint of ideology. They themselves stood for nothing, not democracy within their own unions much less racial equality here or the liberation of oppressed peoples everywhere. It is no wonder that the laws have not changed, or that solidarity is so rare, or that unions find it so hard to rally the general public behind them. This is a pity, because the field is left open for the right, which does have an ideology to which it is passionately committed, and which it has used to transform our political landscape. By comparison, labor looks like the special interest that reactionaries say it is.

V.

There is no doubt that our labor laws must be changed, because as things stand now, the legal structure is once again a powerful barrier to a better life for workers. However, only a committed, ideological labor movement can bring about the necessary changes. Unfortunately, there are few indications that the labor movement is developing a class ideology. Some hopeful signs have appeared, notably within local unions. Rank-and-file opposition to the "new" labor relations in the auto industry, to corruption in the Teamsters, and to U.S. operations in Central America as well as Oil, Chemical, and Atomic Workers Union leader Tony Mazzochi's vigorous call for a national labor party have led some observers to talk about a rebirth of the labor movement. (8)

While it is true that there are thousands of progressives within the labor movement, this has not yet

translated into a reborn labor movement. The perilous state of organized labor should give the optimists pause. Few workers are being organized, and the law forces a union to undertake a heroic effort every time it tries to enlarge its membership. The same can be said for winning a first contract or any strike. Unions have experimented with innovative tactics in confrontation with employers, but these have seldom resulted in victory. Most major strikes in the 1980s, from the Air Traffic Controllers to Eastern Airlines, have been lost. What is more, labor progressives are a distinct minority. As a long-time labor educator, I can attest that jingoism, sexism, and racism are alive in labor unions. And the timidity of labor's national leaders, after ten years of intense assault by capital and government, is not encouraging. This is especially troublesome when it seems unlikely that the state would respond to "illegal" action by private-sector workers in the repressive way it routinely did in the 1920s, especially now that the state would not want to appear more onerous than its counterparts in Eastern Europe. As of this writing, it appears that the UMW has beaten Pittston, which should be a valuable lesson to all workers that unwavering solidarity can successfully confront the worst corporate outlaws.

Will this lesson be learned? When workers begin to feel comfortable using the words capitalism and class to describe the world in which they live, they may be able to clearly see where they are and where they should be. Only when the labor movement develops an appropriate class ideology will it be prepared to get there.

Michael D. Yates

NOTES

(1) On this and other labor wars, see Jeremy Brecher, *Strike* (San Francisco: Straight Arrow Books, 1972).

(2) Injunctions and most other aspects of labor law are discussed in Michael Yates, *A Labor Law Handbook* (Boston: South End Press, 1987).

(3) A good analysis of the Pittston strike is Phil Kwik, "Pittston: Class War in the Coalfields," *Against the Current* (January-February 1990), pp. 7-9.

(4) David Milton, *The Politics of U.S. Labor: From the Great Depression to the New Deal* (New York: Monthly Review Press, 1982).

(5) Ann Fagan Ginger and David Christiano, editors, *The Cold War Against Labor*, 2 vols. (Berkeley: Meiklejohn Civil Liberties Institute, 1987).

(6) Paul Weiler, "Promises to Keep: Securing Workers's Rights to Self-Organization Under the NLRA," *Harvard Law Review* (June 1983), pp. 1769-1825.

(7) William E. Forbath, "The Shaping of the American Labor Movement," *Harvard Law Review* (January 1989), pp. 1111-1256.

(8) Jeremy Brecher, "Crisis Economy: Born-Again Labor Movement?" *Monthly Review* (March 1984), pp. 1-18.

P.S.

* From Monthly Review, June, 1990:
http://findarticles.com/p/articles/mi_m1132/is_n2_v42/ai_9173297/

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