

UNDERSTANDING THE FARM WORKERS' POSITION ON LEGISLATION  
(with an attached historical sheet)

For 37 years Farm Workers have been excluded from the protections of federal collective bargaining legislation. For that reason Delano grape growers in 1965 could ignore the demands of their organized workers for union representation elections and negotiations. Farm workers said: "We are organized, we are willing to prove it with an election, we have suffered long enough, we want to meet with you as equals to discuss our grievances." Growers in effect said: "You don't exist; the law does not require that I meet with you; if you don't like it here then leave and I will find workers who are poor enough and hungry enough to do what I want without complaining." The workers went on strike. The growers fought back with strike breakers and the long struggle began in California's grape fields.

In the course of that struggle farm workers discovered a way to make progress. The growers did find strike breakers (many of them illegal workers from Mexico) and they were willing to absorb the losses of the strike. So farm workers went out on the boycott. They left the fields and went to strange cities across the country. Marcos Munoz went to Boston; Eliseo Medina went to Chicago; Jose Serda to Los Angeles; Andy Imutan to Baltimore; Dolores Huerta to New York City, etc., etc. Some left their families behind. Others took their families with them. They lived on next to nothing (room and board and \$5.00 per week). They worked hard, they sacrificed and they laid their cause before the consciences of the American people. And they won! They won in wine grapes and in table grapes. And farm workers all over the country began to stir from decades of poverty and misery.

Now, after farm workers have found a way to struggle and win through the strike and boycott, the Farm Bureau and other agribusiness interests have developed a keen interest in legislation. For 37 years they have opposed all protective legislation and denied all bargaining rights to their workers; now they say they want farm labor legislation. The Farm Bureau talks about "secret ballot elections" and "the rights of the workers" but their real legislative goal is to stop the boycott and to make strikes impractical.

In every major agricultural state the Farm Bureau has introduced anti-UFWOC collective bargaining legislation. In 1971 farm workers and their supporters defeated or delayed repressive legislation in Washington, Oregon, New Mexico, Michigan, Illinois, California, Colorado and other states. Some of the major defects in these state bills are as follows (these are only a few of the defects)

- 1) Prohibition against important elements of the boycott.
- 2) Prohibition against strikes at harvest time (when else are farm workers there).
- 3) A complicated election process that ensures that most seasonal farm workers will be gone before an election takes place.
- 4) Restrictions on the right of migrants even to vote in elections-if they happen to be around at election time.
- 5) Control of the election process by anti-UFWOC politicians (eg. Governor Reagan)
- 6) Elimination of card check elections and strikes as valid expressions of the will of the workers (under federal law card check elections are the most common form of election).
- 7) Inadequate remedies for workers against intimidation by growers and others in the community.

This Farm Bureau legislative thrust will continue at the state and federal level because growers want a "legal" way to stop Cesar Chavez and the farm workers union.

"SOME HISTORY AND SOME COMMENTS ON COLLECTIVE  
BARGAINING LEGISLATION FOR FARM WORKERS"

On April 16, 1969, Dolores Huerta appeared before the Senate Subcommittee on Migratory labor and read Cesar Chavez' prepared statement on collective bargaining legislation for farm workers. In order to understand that position it is necessary to take a brief look at the history of labor legislation in the USA.

- 1932 Norris-LaGuardia Act (N-LaG): In response to widespread use of repressive court injunctions that crippled legitimate organizing efforts, Congress passed the N-LaG Act. It required federal courts, considering labor injunctions to give notice to all parties involved, to hear testimony of witnesses with opportunity for cross examination and to issue injunction only if the Court finds that the lack of an injunction will result in irreparable property damage and that greater injury will result to complainant from denying injunction than to defendant from granting it. This act was weakened by provisions of the Taft-Hartley and Landrum Griffin Acts. In most states (including California) employers can still go to state courts for anti-strike injunctions.
- 1933 National Industrial Recovery Act: Established public policy in favor of labor organizing and collective bargaining. The U.S. Supreme Court declared the Act unconstitutional.
- 1935 Wagner-Connery Act otherwise known as the National Labor Relations Act (NLRA): It created the National Labor Relations Board (NLRB); established procedures for union representation elections and good faith collective bargaining; outlawed certain employer unfair labor practices.
- 1947 Taft-Hartley (T-H) Amendments to NLRA: Outlawed certain unfair labor practices by employees; outlawed certain kinds of boycotts; permitted states to pass laws that allow workers to have benefits of contract without joining union or paying dues (major agricultural states like Texas, New Mexico and Arizona are "right to work" or better "right-to-parasite" states).
- 1959 Landrum-Griffin (L-G) Amendments to NLRA: strengthened secondary boycott restrictions; outlawed clauses in contracts which permit non-handling of scab products ("hot cargo" clauses); made organizational and recognition picketing illegal under certain conditions; in each of the above three cases required NLRB to seek an injunction against unfair union practices upon issuance of NLRB complaint (UFWOC asked in April 16, 1969 testimony: why no "mandatory injunctions" in cases of employer unfair labor practices?).
- 1959 Landrum Griffin Act otherwise known as Labor Management Reporting and Disclosure Act: This Act as distinct from L-G Amendments to NLRA provides for union membership rights, protects democratic practices in unions and requires reporting on membership and money matters to Federal Government. UFWOC has no argument with legislative support for democratic unionism. The references to L-G in this paper refer only to the L-G Amendments to NLRA.

UFWOC and Cesar Chavez favor legislation that will make possible a strong farm workers union. They are not asking for preferential treatment. All they are asking for is the same protective legislation that industrial workers had when they were in the position that farm workers are in today. To quote from UFWOC's statement to the Senate Subcommittee:

*"The relief we seek today is neither very new nor very revolutionary. It has proved beneficial to the nation in the past when unions were weak and industry strong. We*

There will be a major push for farm labor legislation in California this year. Six collective bargaining bills have been introduced so far: AB-1 (Alatorre, D-LA), AB-159 (Maddy, R-Fresno), AB-393 (Mobley, R-Fresno), SB-205 (Rodda, D-Sacramento), SB-239 (Way, R-Exeter), SB-308 (Zenovich, D-Fresno). AB-159 is supported by the Teamsters Union and the Farm Bureau. Hearings on the Senate Bills will begin in mid-April in the Senate Industrial Relations Com.: Zenovich, Chn. (D-Fresno), Robbins (D-N. Hollywood), Cusanovich (R-Woodland Hills), Presley (D-Riverside), Rodda (D-Sacr'to), Russell (R-Glendale), Stull (R-Escondido).

SUMMARY OF ASSEMBLY BILL 1

Assembly Bill 1 has been amended by its author, Richard Alatorre, to speed up secret ballot election procedures, to protect farm workers from the unconstitutional decisions of rural judges and to ensure that unfair labor practices and unfair election practices will be quickly and effectively remedied.

In its amended form, AB-1 establishes a 3 person Agricultural Workers Board. (Section 1143) The members, who are called judges, will be appointed by the Governor with the advice and consent of the Senate. The Board will have the authority to hold elections, certify the results of elections, issue injunctions in cases of labor disputes and establish civil penalties against persons or organizations that violate the laws and regulations of the state relating to agricultural labor relations. The Board also has the authority to investigate strikes and certify that a union represents the workers if the Board finds that a majority of the workers have chosen to join in a recognition strike. (Section 1149.6)

Much of the day-to-day work of the Board will be carried on by Regional Councils in four areas of the state. (Section 1143.2) The decisions of the Regional Councils can be appealed to the Board. AB-1 will also establish the office of General Counsel for Agricultural Labor in the State Division of Industrial Relations. (Section 1144) The General Counsel will have the power to bring charges against persons or groups who violate the law. The Regional Councils and the Agricultural Workers' Board will determine the validity of such charges.

AB-1 establishes ground rules for elections, including the following:

- 1) Petitions for an election must be filed at a time when at least 50% of the number of workers employed during the peak season are actually at work on the farm. (Section 1149.1a) (If Ranch A has a peak work force of 100, then the petition must be filed when at least 50 workers are on the job.)
- 2) A petition for an election must be signed by a majority of the workers. (Section 1149.1c) (In the case of Ranch A, if there are 60 workers employed at the time of the petition, 31 or more must request an election.)
- 3) If a valid petition is filed then the Board (through its Regional Council) must hold an election within 5 days. (Section 1149.1c)
- 4) Challenges to the petition process and the election will be heard after the election. If the Board finds a "substantial and material" challenge to the election then a rerun election must be held within 21 days of the original election. (Section 1149.5b)
- 5) If a union receives a majority of the votes cast, the Board will certify that union as the exclusive bargaining representative for the workers for 12 months. (Sec. 1149.2f) If there are three or more choices on the ballot (e.g., Teamsters, UFW, No Union) and none receives a majority then there will be a run-off election. (Section 1149.2g)
- 6) Workers can petition to hold an election to decertify a union that "represents them" if the contract with the employer was signed without an authorized union representation procedure. (Section 1149.1c)

- 7) If a union is certified as the representative of the workers, the employer is obligated to bargain in good faith with that union. (Section 1149.7)

### ISSUES

AB-1 is the only bill that comes out of the experience of farm workers who have been working for 10 years to build their own union. AB-1 is written to deal with the specific, down-to-earth issues that farm workers face as they try to organize in an industry that is hostile to their union. (The experience of the Teamsters is not relevant in this matter: they have not organized farm workers, led them on strikes and boycotts and tried to win against grower resistance. The Teamsters have not tried to represent farm workers; they have contracts because the growers have chosen them as an alternative to UFW.)

AB-1 has a number of features that are lacking in the other farm labor bills introduced to date:

- (1) AB-1 provides for expedited elections at the time of year when most workers are on the job. Other bills allow for off-season elections and for hearings and procedural challenges that could delay elections well past the peak work season.
- (2) AB-1 does not invalidate existing contracts but it does give workers under such contracts (UFW or Teamster) an opportunity to vote a union out if that union does not represent them. If the Teamsters genuinely represent the workers - as they claim - they have nothing to fear from this provision.
- (3) AB-1 includes all farm workers in the agricultural bargaining unit. Other bills provide for breaking farm workers into "craft units" (field hands, irrigators, tractor drivers, etc.) for the purposes of elections and collective bargaining. Craft units in agriculture will divide and weaken the work force and will lock into place the kind of racial discrimination that now exists. Black and brown field workers will gain seniority in their craft unit but they will not be able to advance, on the basis of seniority, to better jobs as irrigators, tractor drivers and mechanics.
- (4) AB-1 does not ask that farm workers give up their only effective, economic weapons—the strike and boycott—in order to gain the right to have union representation elections. Farm workers know from hard experience that there is a difference between winning an election and successfully negotiating a strong contract. After winning an election, the difficult give and take bargaining for a contract begins. In contract negotiations farm workers offer to give up the strike and boycott (for the duration of the contract) in return for better wages and working conditions. If the legislature weakens or takes away the strike or boycott, what will farm workers trade in return for strong contract protections?
- (5) AB-1 makes it illegal in California for growers and a union to sign a contract unless there has been a Board-supervised representation procedure. No more sweetheart contracts!
- (6) AB-1 protects farm worker unions from arbitrary, unconstitutional injunctions handed down by rural judges at the request of growers who are faced with strikes and boycotts.
- (7) AB-1 gives the Board (through its Regional Councils) the power to stop unfair election and labor practices quickly enough to prevent these practices from subverting or unduly delaying the election and bargaining process.

Farm labor legislation to protect the rights of farm workers is long overdue. AB-1 comes from farm workers and is carefully written to protect the rights of full-time, seasonal and migrant farm workers.

## ELECTIONS & LEGISLATION IN AGRICULTURE

-by the Rev. Wayne C. Hartmire, Jr.

Agribusiness interests, the Farm Bureau and the John Birch Society have decided on a common theme for attacking Cesar Chavez and the United Farm Workers: "Chavez is a power hungry labor boss who is opposed to secret ballot elections for farm workers." The growers, the labor contractors and their allies are now parading as the only true champions of the "rights of the workers." If it weren't a serious matter for the future of the farm workers' union, it would be laughable.

First let's look at some history:

1. In 1935 growers successfully opposed the inclusion of farm workers in the original Wagner Act (National Labor Relations Act).
2. From 1935 to 1970 growers successfully kept farm workers out of the NLRA and most other protective legislation for workers.
3. For over 100 years growers have fought (often violently) to crush every labor organizing effort by farm workers.
4. In September 1965 Cesar Chavez and the grape workers asked the Delano grape growers for elections and were refused.
5. On August 30, 1966 UFWOC won the first secret ballot election in farm workers history despite the fact that the company campaigned for another union. (Results: UFWOC-530 Teamsters-DiGiorgio-331, No Union-12).
6. In September 1966 UFWOC asked Perelli-Minetti for an election and was refused.
7. In June and July 1967 UFWOC asked Guimarra Vineyards for an election and was refused. August 3, 1967, 90% of Guimarra's workers went on strike to prove they wanted to be represented by Cesar Chavez's UFWOC.
8. In the spring of 1968 UFWOC asked all California and Arizona table grape growers for elections; not one responded.
9. In July and August of 1970, UFWOC asked California and Arizona lettuce growers for elections; all but one refused. On August 24, 1970, 5-7,000 lettuce workers went on strike to prove they wanted to be represented by the UFW.
10. From 1965 to 1971, there have been well over 50 valid elections in California, Arizona and Washington agriculture. In every case but one the election has been won by United Farm Workers. The one exception is being appealed because the labor contractor illegally intimidated his Filipino workers ("If Chavez wins you will all be fired and replaced by Mexicans.")

The Farm Bureau has tried to argue that these many elections were not valid elections. But the evidence proves that they were:

- a. The elections were supervised by a neutral arbitrator chosen by all parties to the elections, e.g., American Arbitration Association, Federal Mediation and Conciliation Service, Protestant Clergy like the Rev. Lloyd Saatjian of the Methodist Church of Palm Springs and the Roman Catholic Bishops Committee.
- b. The rules and procedures for every election were agreed to in advance by all parties to the elections.
- c. The different kinds of elections used (card check, secret ballot and ratification) are all approved by the NLRA as valid expression of the will of the workers (under many circumstances strikes are also recognized by the NLRA as valid expressions of the will of the workers).

In the face of this history and this evidence the growers continue to try to sell the view that UFWOC is afraid of elections. What possible basis do they have for their argument? There are three happenings the growers point to in making their case:

1. Prior to strikes and boycotts the union has consistently called for elections. But in the face of grower refusal even to talk about elections UFWOC has said publicly that if a grower by his intransigence forces the workers into a strike

## ELECTIONS & LEGISLATION IN AGRICULTURE

then the strike will be the election (i.e. the expression of the will of the workers). Despite this formal position UFWOC has consented to elections in industry where there have been long strikes and boycotts.

2. On some farms and in some communities the farm workers have agreed that free and fair elections are impossible, e.g., where the whole community, including elected officials, police, etc. is intimidating the workers or where a grower has fired his original work force and replaced them with Anglo high school students.
3. UFWOC has fought against collective bargaining legislation struggles in Washington, Oregon, California and elsewhere, the growers argue that UFWOC is opposed to elections for workers. But, in every case UFWOC has opposed the legislation for other reasons:
  - The legislation outlawed the boycott or strikes at harvest.
  - It provided for elections but not for good faith collective bargaining.
  - It eliminated migrant and seasonal workers from the right to vote.
  - It turned over the election process to a group hostile to the farm workers' union (e.g. Governor Reagan and his political appointees).

Friends of the farm workers' union need to be very careful about collective bargaining legislation. Contrary to some views legislation is not the solution to all problems. Farm workers don't want legislation unless it helps them gain their primary goal: a strong union that will give all farm workers in this country collective strength, independence and new found dignity. Through 6 years of work and sacrifice Cesar Chavez and the farm workers with him have found a way to struggle and succeed. The Farm Bureau and the right wing would like to take that strike and boycott power away and leave farm workers with theoretical rights but no real program of pressure.

As legislation appears that is designed to "help farm workers" please ask questions like the following:

1. What do organized farm workers think of it?
2. Who is supporting it? (labor contractors are not farm workers)
3. Does it outlaw strikes at harvest time?
4. Does it outlaw the secondary boycott?
5. Who will supervise the election process? Is that party acceptable to the workers and the growers?
6. What is the election process like? Are hearings involved? Who is eligible to vote? Will the seasonal farm workers be around when the election finally takes place?
7. Does the legislation provide for other kinds of elections other than secret ballot elections (under federal law card check elections are the most common form of election)?
8. Does the farm workers' union have to be approved by state officials? Is this a special requirement that only applies to farm worker unions?
9. Are their remedies for workers against unfair pressure and intimidation by growers and others in the community?
10. Does the bill ban bargaining on certain specific issues (e.g., one bill eliminated pesticides as an issue for collective bargaining)?

Cesar Chavez and the farm workers' union are not afraid of fair elections nor are they opposed to legislation that provides for elections. They have already testified that they want the protections of the original NLRA (Wagner Act of 1935). In the final analysis legislation is not the main issue. Church people and others have supported the farm workers because we believe in self-determination and because we are convinced that only a strong, creative and determined union can bring a measure of justice and dignity to the people who work in the fields.

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Columbus Boycott Office  
379 Loeffler, Columbus, Ohio 43205

TO: Cesar E. Chavez and UFWA  
FROM: Jerry Cohen and Tony Gaenslen  
SUBJECT: Proposed Comprehensive Labor Laws

1. For Introduction at State Level
2. For Introduction at Federal Level

DATE: January 20, 1975

State Law:

We intend to introduce a comprehensive labor law which will serve as an amendment to AB 1 which has already been introduced by Richard Alatorre. This comprehensive labor law will contain four parts:

1. An election law which is the same as AB 3370, the Assembly bill which we introduced last year and with which all of you are familiar.
2. It will contain a State-level Wagner Act.
3. It will contain an anti-injunction law--a miniature Norris-LaGuardia Act.
4. An Unemployment Insurance provision to cover agricultural labor.

First, the election provisions. AB 3370, now AB 1, provides that a petition should be filed at the peak season. This is to insure that the seasonal workers will be allowed to vote, not just the year-round workers. A petition for an election is to be filed, if at all, only when 50% or more of the peak agricultural employment for the current calendar year is on the payroll immediately preceding the filing of the petition. Peak employment shall be determined from past employment records, current crop data, and such other relevant evidence as may be available. When a petition is filed, the petition must allege under penalty of perjury that the labor organization named therein has not, within the twelve months immediately preceding the filing of the petition discriminated against any member or prospective member of the union who is engaged in agriculture on the basis of race, color, national origin, religion, sex, or other arbitrary or invidious classification. Any issue of discrimination is to be determined by the Commission at a hearing following the election. If the Commission determines that discrimination has occurred, it will either refuse to certify the union if the union has not yet been certified, or decertify it if it has been certified. Once a petition has been filed and supported with authorization cards, the Commission will investigate the allegations of the petition and if it finds reasonable cause to believe that they are true, it shall within 7 days of the filing of the petition and on 48-hours notice of the parties conduct a secret ballot election in the bargaining unit. A bargaining unit is required to be employer-wide under our bill. However, if the agricultural employees of an employer are employed in non-continuous geographical areas, the Commission has the power to determine appropriate units on a geographical basis for each employer. Eligibility vote in a secret ballot election is accorded to the employees who are on the payroll immediately preceding the filing of the petition; all agricultural employees who left the

employment of the employer pursuant to a strike or work stoppage and who have not accepted permanent employment elsewhere; to all agricultural employees previously on the payroll of the employer and whose employment was terminated as a result of an unfair election practice; and finally, people who were laid off as a result of a pre-existing labor dispute are eligible to vote. Your suggestions are solicited for deciding exactly what criteria should be used in determining which employees participated in the pre-existing labor dispute.

The Commission, upon investigating a petition and finding reasonable cause to believe that the allegations are true, directs the election to take place within 7 days of the filing of the petition and 48-hours notice to the parties. The eligibility of any particular voter may be challenged at the time of the election. In addition, the act sets forth a series of unfair election practices which will be discussed more fully later on and which the Commission investigates if any party alleges that unfair election practices may have affected the outcome of the election. While the Commission is determining the issues raised by such an objection, it conducts a rerun election within 21 days after the holding of the original election and impounds the ballots from that second election pending its determination of the challenges to the first election. If the first election must be set aside, then the ballots of the second election are counted. If unfairly, election practices have affected the outcome of the second election, as well, the Commission is to determine whether or not those unfair election practices on the part of the employer were willful, and if they were willful then the Commission must certify the union as the collective bargaining representative of the employees, even though the union may not have gotten a majority of the votes.

The bill provides that any collective bargaining agreement which was executed by an employer and a labor organization certified by the Commission will bar a petition for an election among the employees for a period of three years provided that:

- a) the collective bargaining agreement is in writing and executed by all the parties;
- b) it is ratified in open meeting by a majority of the employees; and
- c) it incorporates all of the substantive terms and conditions of employment of such employees.

Once a petition for an election has been filed, any labor organization qualified to appear on the ballot has the right to communicate peacefully with the employees at their residences or dwelling places or on the property of the employer during non-working hours, including meal and rest periods or other breaks, provided that the labor organization will not interfere with the performance of work in the exercise of these rights. The bill allows the union to go into court to enforce this right.

If a union enters into a contract with an employer without going through the procedures set forth in this act, then the employer is liable to make restitution of all the dues collected from all the employees to those employees.

The law also provides that a pre-existing contract, such as the contracts that the Teamsters executed with the growers prior to the passage of this bill will not bar an election petition. Similarly, the contract that we, for example, have with Interharvest, will not bar an election.



In addition to the election procedures, our bill provides for a recognitional strike. It simply says that if, during the seasonal peak, a majority of the employees engage in a recognitional strike they will be deemed to have selected the labor organization in the same manner as if it had been certified after an election. The bill gives the employer the right to petition the Commission within 48 hours of the commencement of the recognitional strike for verification that a majority of the employees are, in fact, engaged in a recognitional strike. If the Commission determines that a majority have engaged in a recognitional strike, then the union is the equivalent of certified.

The unfair election practices which warrant setting aside the election under the procedures which were discussed above are as follows:

- a) It is an unfair labor practice for an employer to interfere with, restrain, or coerce employees; to dominate or interfere with the formation, selection, or administration of labor organization.
- b) To contribute financial or any other support to labor organizations.
- c) To threaten loss of jobs or benefits.
- d) To recognize a unit which has not been certified.
- e) To discharge or otherwise discriminate against an employee because he has invoked the procedures of this act.
- f) To interfere with a labor organization or its agents.
- g) To interrogate, poll, or inquire into the views of his employees.
- h) To engage in surveillance or cause a surveillance of his employees.
- i) To visit the residence or dwelling place of his employees during the pendency of a petition.
- j) To communicate any preference, express or implied, for recognizing, bargaining with, or otherwise dealing with any particular labor organization.
- k) To discriminate in regard to hire or tenure of employment and provide a termination of the employment of any employee after the initiation of an organizational drive is presumed to be an unfair practice, absent clear and convincing proof to the contrary.

It is an unfair labor practice for a labor organization or its agents to do any of the following:

- a) Interfere with, restrain, or coerce employees.
- b) Influence or attempt to influence the outcome of a ballot by threatening loss of jobs.
- c) To solicit or accept financial or other support from an employer.
- d) To bargain with or sign an agreement with an employer if it hasn't been certified under this act.
- e) To threaten any agricultural employee with injury to his person or property.
- f) To injure or cause injury to the person or property of any agricultural employee or any member of his family.
- g) To cause or attempt to cause any employer to discriminate against any agricultural employee in regard to hiring or tenure of employment.

The Commission which is established under the act is a three-member Commission that is created as an agency of the State and its members are appointed by the

Governor on the advice and consent of the Senate. One member is chosen from interests representative of agricultural employers; one from interests of the workers; and one, who is the chairman, is chosen from a representative of the public. The Commission maintains principal offices in San Francisco and Los Angeles and travels from place to place within the State of California to hear the matters brought under this part. The Commission has fairly broad powers to investigate into the practices of employers without harassment. The Commission issues its decisions but if it wants them enforced it must go into the State courts and seek enforcement there.

In addition to the foregoing election procedures, the proposed legislation also contains a miniature Wagner Act. In this connection, it is important to note the distinction between the Wagner Act, which was passed in 1935, and the Taft-Hartley Law, which is what most of our enemies want to bring us under. The Tunney Bill in Washington and the Maddy Bill in Sacramento are both miniature Taft-Hartley laws and strongly anti-labor. The Wagner Act differs from Taft-Hartley in a couple of important respects. First of all, the Wagner Act had no unfair labor practices against unions. It was only the oppressive practices of employers that were prohibited therein. Second of all, Taft-Hartley gives the General Council of the National Labor Relations Board broad powers to go into court and enjoin unfair labor practices which are committed by unions, but it does not give the General Council the same kind of power to go in and get injunctions against employers. In other words, Taft-Hartley is loaded against unions. And, in particular, the secondary boycott provisions of Taft-Hartley provide that the General Council shall have broad power to go into court and get an injunction against the union. Our bill is modeled on the Wagner Act, first of all, because with the exception of a partial limitation on the right to conduct a secondary boycott there are no unfair labor practices against unions provided in it. Second of all, we have none of the injunction procedures against unions which the General Council of the National Labor Relations Board has under the national act. The unfair labor practices which an employer may not conduct under our bill are as follows:

- a) He may not interfere with, restrain, or coerce employees in the exercise of their right of self-organization and free association.
- b) He may not dominate or interfere with the formation or administration of any labor organization.
- c) He cannot discriminate with regard to hire and tenure of employment so as to encourage or discourage membership in a labor organization.
- d) He cannot discharge or discriminate against any employee who has filed a charge or given testimony under our act.
- e) He may not employ in any work place during the existence of a strike or lockout any individual who is not domiciled in the United States.
- f) He cannot refuse to bargain collectively with the representatives of his employees.
- g) He may not recognize, bargain with, or sign a collective bargaining agreement with any labor organization which has not been certified under the election provisions which we discussed earlier.

The unfair labor practice provisions against the labor organization which we have in our bill are limited to a limited restriction on the right to conduct a secondary boycott. Taft-Hartley, the national law, does not permit any secondary boycott activity at all. Our bill restricts the right of a labor organization to engage in

a secondary boycott only if the labor organization has participated in and lost an election with the employer in question within the preceding twelve months. If it has not lost such an election, it is free to engage in a secondary boycott. In addition to the foregoing, our bill also contains a provision which gives us additional freedom to act. Thus, even where we have participated in an election and lost we can still engage in a secondary boycott of a retail outlet, such as, for example, Safeway, unless the retail outlet deals exclusively in the products of the primary employer with whom we lost the election. In other words, in order to insulate itself from secondary boycott in this situation, Safeway would have to buy only the products of employers who had won elections against us. Moreover, our bill also gives us the right to engage in informational picketing for the purpose of advising the public, including consumers and members of the labor organization, that products produced by an employer with whom we have a primary dispute are processed or integrated into the product or products of another employer, if such other employer processes or integrates any of its products with the products of an employer with whom the labor organization has a primary dispute. For example, this provision would cover the situation where Gallo would buy some of its grapes from employers with whom we had a valid primary dispute, although Gallo would also buy some grapes from growers with whom we did not have a dispute. We would then be permitted to go after Gallo because some of the grapes used in making its wine would have been produced by an employer with whom we had a primary dispute.

The bill also contains a small-grower, pre-hire contract arrangement. Thus, it is not an unfair labor practice for an employer who, in the preceding year had 40 acres or less and harvested his entire crop within two days to make an agreement with the union that all the people who will be coming on to pick his grapes will be members of the union. However, such a contract would not bar an election to determine the choice of those employees once they actually started to work.

In addition to the foregoing, our bill contains a State anti-injunction law, that is to say, a miniature Norris-LaGuardia Act. Since it is impossible to entirely prevent employers from going into court and getting injunctions against "union violence", the attack which must be taken is to place as many procedural safeguards as possible into the bill to make sure that employers will not abuse the processes of the courts. Thus, our bill provides that no employer may get an injunction upon affidavits. Instead, the employer himself must come into court and give live testimony, subject to cross-examination by the union. The union also has the right to bring in its own witnesses who will give testimony and can be cross-examined. It is only upon such oral testimony that the Court is empowered to grant even a temporary restraining order, and such temporary restraining order will remain in effect for only five days. At the end of five days, the employer must move to get a temporary restraining order and, again, to do so he must proceed with live testimony, the production of witnesses, the opportunity to cross-examine, and the like

It is to be noted that this provision of our bill is borrowed from the Massachusetts provision and therefore contains nothing which is startling or new. Our bill also contains a provision borrowed from the New York law, that an employer must post a bond as a condition preceding obtaining either a temporary restraining order or a preliminary injunction. The minimum amount of the bond is \$20,000.00, with a

provision for increasing the amount of the bond at the rate of \$10 for every member of the union sought to be enjoined.

The bill contains a provision borrowed from the Pennsylvania anti-injunction law that an employer may not hire strikebreakers to replace people who are out of work as the result of a strike if he wants to get the injunctive powers of the Court. Thus, an employer has a choice. He can either use strikebreakers and not use the injunctive powers of the Courts or else he can go for an injunction, but he is precluded from using strikebreakers. In addition, our bill contains a provision also borrowed from Pennsylvania law that every injunction against a labor organization must also contain an injunction of preventing the employer from using violence or threats of violence or otherwise intimidating the union or its agents in any way during the course of the strike. Finally, the anti-injunction provisions of the bill provide for an expedited appeal to the courts and to the Supreme Court of California. That way, cases which involve injunctions against the union will be heard in a much shorter period of time than the two-year delay between the strike in Salinas and the decision in our favor in the Supreme Court of California in *Englund vs. Chavez*.

#### Federal Legislation:

##### National Agricultural Labor Court

Our bill establishes a National Agricultural Labor Court which is modeled after the Tax Court of the United States. A court is different from the National Labor Relations Board in that the decisions of the Tax Court would be self-enforcing. As it now stands under the National Labor Relations Act, the National Labor Relations Board must go to Federal Court of Appeals in order to get enforcement of its orders, and an employer who does not want to obey the orders of the Court can delay until after the Court of Appeals has rendered its decision before it is compelled to obey. The Court which we have established would consist of three judges with staggered five-year terms.

The Federal bill envisions the establishment of two completely separate administrative sections. The first of these is the representation function which is vested in the Court itself and under the terms of which the Court must delegate all of its powers to certain Regional Councils. All the powers which are encompassed within this section are the same powers to conduct elections and to verify recognitional strikes as are contained in AB 1 and as were contained in AB 3370. The substantive provisions of the Federal law and of AB 1 are exactly the same. The difference is that after the Regional Council has made its decision, there is an appeal to the Court which will review the decision of the Council. If the Court decides to enforce the decision of the Regional Council, that decision is self-enforcing. The Court also retains the power to make all of the rules and regulations that relate to the conducting of elections and the administration of the representation section of the act. All of the day-to-day functions are vested in the Regional Councils themselves. The act provides for a maximum of eight Regional Councils throughout the country, with establishment of as many local

offices as are needed to conduct elections within the extremely short time periods built into the act.

The Federal bill contains a completely separate structure for the investigation and remedying all unfair labor practices. Thus, it creates a Division of Agricultural Labor within the Department of Labor under the direction of a General Council for Agricultural Labor. This General Council acts as a prosecutor or a US attorney in the matter of unfair labor practices, investigating charges that employers or labor organizations have engaged in unfair practices within the meaning of the act. Once the Department of Labor has conducted its investigation, it acts as a prosecutor in a fashion analogous to the US attorney. The trials are held before administrative law judges, in much the same way the decision of a Court would be made. The administrative law judge renders his decision which can then be appealed to the Labor Court, that is to say, the same Court which hears appeals from the representation cases. Once the Labor Law Court has rendered its decision there is an appeal to the US Circuit Court of Appeals in the same manner as there is an appeal from a US District Court. The bill also provides for certiorari to the United States Supreme Court in the event that the Circuit Court of Appeals renders an unfavorable decision.

Your comments and suggestions are requested about ways in which to make the bill as strong as possible and to think of specific problems which arise from your experience which should be covered which we may not have thought of.

Viva La Causa!

Jerry Cohen  
Tony Gaenslen

TG:lk  
1-28-75

cc: J. Cohen  
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