CHAPTER TWO

Painting depicting President Roosevelt signing the Wagner Act, July 5, 1935.

The Wagner Act Years, 1935-1947

Senator Wagner's Bill

In the fall of 1934, Senator Wagner began revising his labor disputes bill, determined to build on the experience of the two earlier NIRA boards and to find a solution to the enforcement problem that had plagued them. In February 1935, Wagner introduced the National Labor Relations Act in the Senate.

The Wagner Bill proposed to create a new independent agency to enforce rights rather than to mediate disputes. It would obligate employers to bargain collectively with unions selected by a majority of the employees in an appropriate bargaining unit. The measure endorsed the principles of exclusive representation and majority rule, provided for enforcement of the Board's rulings, and covered most workers in industries whose operations affected interstate commerce.

Wagner's Bill passed the Senate in May 1935, cleared the House in June, and was signed into law by President Roosevelt on July 5, 1935. A new national labor policy was born.

The New York Times.

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NEW YORK, SATURDAY, JULY 6, 1935. TWO CENTS

ROOSEVELT SIGNS THE WAGNER BILL AS 'JUST TO LABOR'

It Is Important Step Toward Industrial Peace but Will Not Stop All Disputes, He Says.

MEDIATION NOT AFFECTED

President Explains New Board Will Act Only on Violations of the Right to Organize.

Special to THE NEW YORK TIMES.

WASHINGTON, July 5.—The Wagner Labor Disputes Bill, enacting into permanent law a Federal authorization for labor to organize for the purpose of collective bargaining [illegible] ers and labor, was signed by President Roosevelt today.

The signing had been postponed several days in an effort to arrange a ceremony, but after it had been found impossible to get together all the leaders who sponsored the legislation, Mr. Roosevelt approved the bill at the White House this morning before going to the executive offices.

Later he hailed the measure as "an important step toward the achievement of just and peaceful labor relations in industry," but at the same time warned the public that "it will not stop all labor disputes."

He used two pens in signing the bill, directing afterward that one be presented to Senator Wagner, co-author of the bill with Representative Connery, and that the other go to William Green, president of the American Federation of Labor, who has called the bill the "magna charta of labor."

The bill provides Federal machinery for the adjudication of disputes over the right of labor to organize when "violation of the legal right of independent self-organization would burden or obstruct interstate commerce," the President announced.

Adjudication would be placed in

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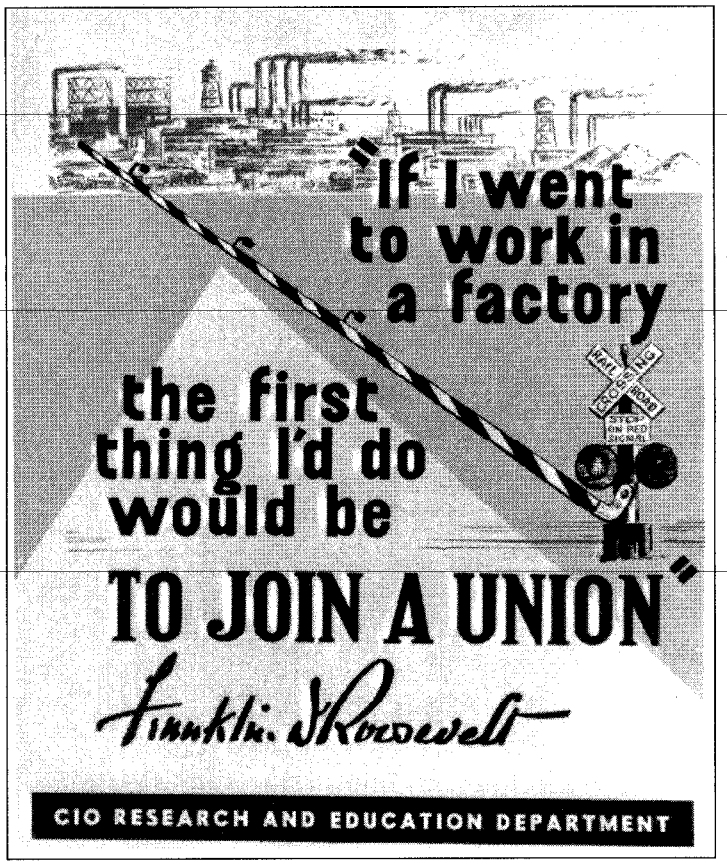
1. *The New York Times*, July 6, 1935

National Labor Relations Act

The constitutionality of the law rested on the premise that employer interference with the right of workers to organize into unions and the refusal of employers to bargain collectively led to labor disputes—which, in turn, interfered with interstate commerce. It was a premise soon to be challenged in the Supreme Court by the law's opponents.

The new law created a permanent board of three public members and armed it with essential enforcement tools. Subpoena powers enabled the Board to enforce its investigative responsibilities, addressing a weakness that had undermined earlier NIRA boards. Congress also empowered the new NLRB to make findings of fact and issue cease-and-desist orders enforceable in court. It gave the Board the power to order affirmative remedies for the violations found, including employee reinstatement, back pay, disestablishment of "sweetheart" unions and good faith bargaining.

Employers were required to await a Board order directing them to honor election results before they could pursue a judicial appeal. The law granted the Board the right to seek enforcement of its own orders in the courts.



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2. CIO organizing poster, circa 1935.

Employer Unfair Labor Practice

THE REST of the Act pertained to employer unfair labor practices and employee representation elections and was intended to implement the employee rights in Section 7. The law made specified employer conduct unlawful: employers could not restrain, interfere with or coerce employees in the exercise of Section 7 rights; could not create or support "company unions"; could not discriminate against an employee for union activities or for assisting the Board in the investigation of cases; and could not refuse to bargain with a duly designated majority union in an appropriate bargaining unit.

Representation elections were to be based on the concept of exclusive representation. The statute defined the subject matter of collective bargaining in terms of wages, hours and other conditions of employment.

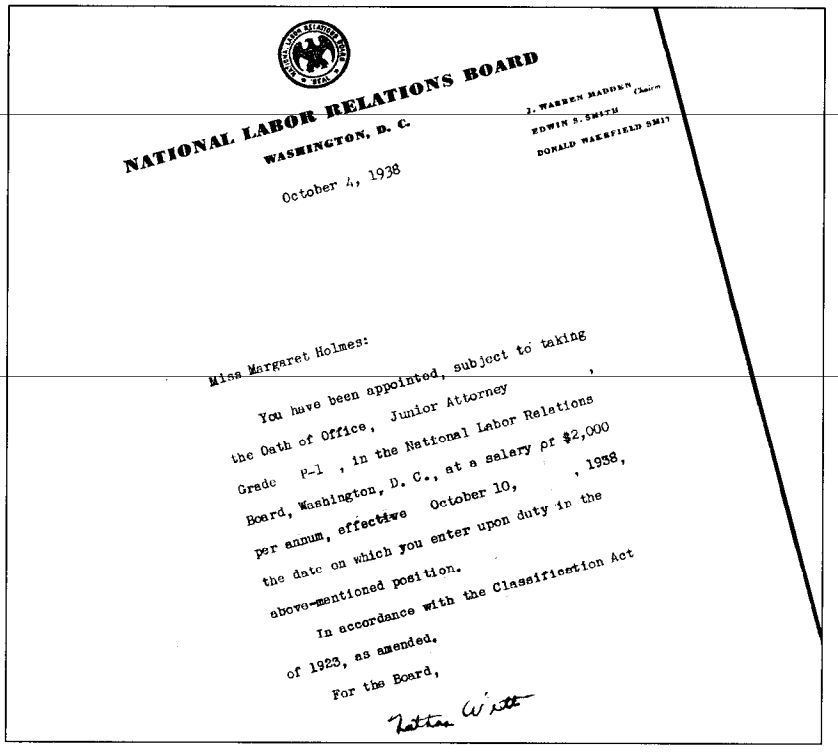
Congress directed the NLRB to determine appropriate bargaining units. Only employees within such a unit could vote in representation elections, and an employer's bargaining obligation was limited solely to employees in that unit.

The NLRB hired a significant number of women attorneys in the early years. In 1939, for example, 12 out of 91 of the Review attorneys were women. Margaret Holmes McDowell was hired as a "Junior Attorney" in Washington in 1938. Her appointment letter signed by Executive Secretary Nathan Witt is reprinted below.

Rights of Employees

Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3).

Section 7 of Wagner Act, giving workers right to organize and bargain collectively.



NATIONAL LABOR RELATIONS BOARD
WASHINGTON, D. C.

J. WARREN MADDEN, Chairman
EDWIN S. SMITH
DONALD WAKEFIELD SMITH

October 4, 1938

Miss Margaret Holmes:

You have been appointed, subject to taking the Oath of Office, Junior Attorney, Grade P-1, in the National Labor Relations Board, Washington, D. C., at a salary pr $2,000 per annum, effective October 10, 1938, the date on which you enter upon duty in the above-mentioned position.

In accordance with the Classification Act of 1923, as amended.

For the Board,

Nathan Witt

First Board and General Counsel

President Roosevelt named J. Warren Madden as the new Board's first chairman, and John M. Carmody and Edwin S. Smith as its first members. Madden had been a law professor at the University of Pittsburgh school of law. Carmody had served on the "Old NLRB" established by Resolution 44, and Smith had been a member of the National Mediation Board, which administered the Railway Labor Act.

Carmody resigned in August 1936 and was succeeded by Donald Wakefield Smith, a Washington attorney. Succeeding Smith in 1939 was William M. Leiserson, who briefly had been the secretary of the original NLRB in 1933.

As its first general counsel, the Board chose Charles Fahy, who later served as Solicitor General and as a judge of the U.S. Court of Appeals for the District of Columbia.

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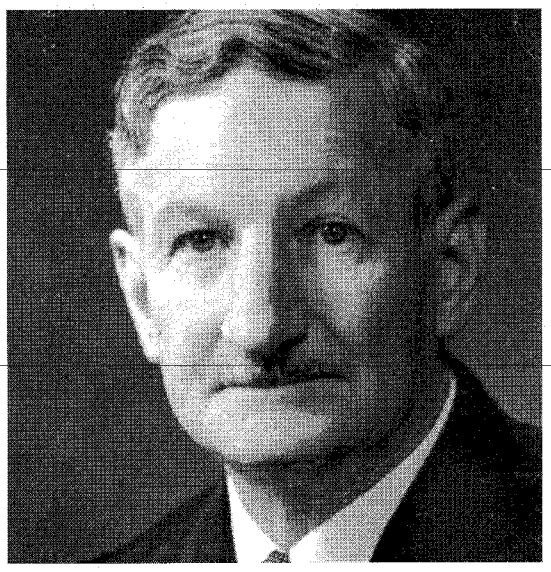

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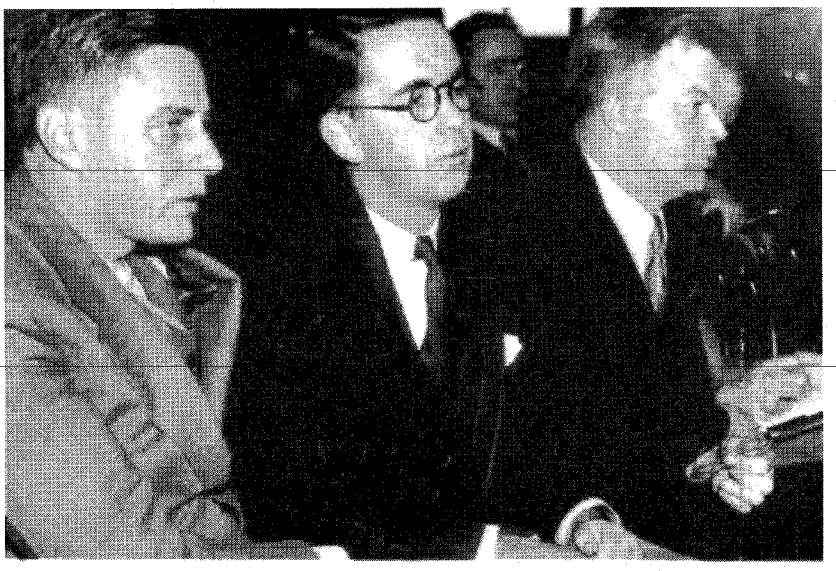

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1. Member Edwin S. Smith, center, Charles W. Hope, left, Director of NLRB Seattle office, and Malcolm Ross, NLRB Director of Publications, arrive for hearing on strike by American Newspaper Guild's Seattle chapter against *Post-Intelligencer*, Seattle, Wash., Sept. 1936.

2. First General Counsel, Charles Fahy (1942 photo).

3. Board members Edwin S. Smith, Donald W. Smith and J. Warren Madden, 1938.

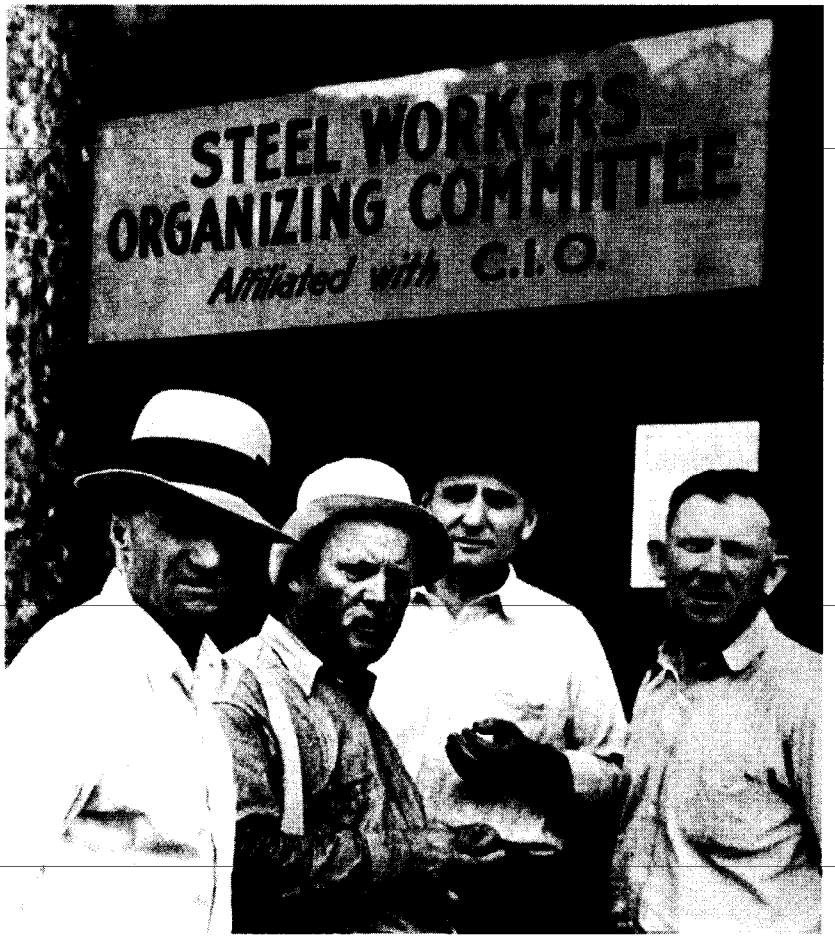
4. First NLRB members (from left) John M. Carmody, J. Warren Madden, and Edwin S. Smith, 1935.

Collective Bargaining Encouraged

And so, with a budget of $659,000 and an employee complement of 196—of whom 86 were based in the Washington, D.C., headquarters and the balance in 21 regional offices—the agency took its first steps to implement its statutory function of protecting the right of employees to participate in controlling their economic destiny.

The secret ballot took the place of the recognition strike. The long search for a national labor policy had finally coalesced with the Congressional declaration:

> It is hereby declared to be the policy of the United States to eliminate the certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise of workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.



1. Steel workers, Aliquippa, Pa., July 1938.

The Board's Structure

Administratively, the Board was divided into five divisions. The Legal Division, supervised by the General Counsel, had a Litigation Section, which prosecuted unfair labor practice cases before the Board and represented it in court, and a Review Section, which reviewed case transcripts and drafted preliminary decisions. The Office of the Executive Secretary directed the internal administrative operations of the agency, including the regional offices. The Trial Examiners Division conducted hearings on behalf of the Board (the Board made the trial examiners into a separate division in 1938). The Economic Research Division gathered economic data for use by the Board in certain cases and produced monographs on labor relations problems to guide the Board as it formulated policies. The Publications Division handled press relations, answered public inquiries and prepared materials about the NLRB's activities.

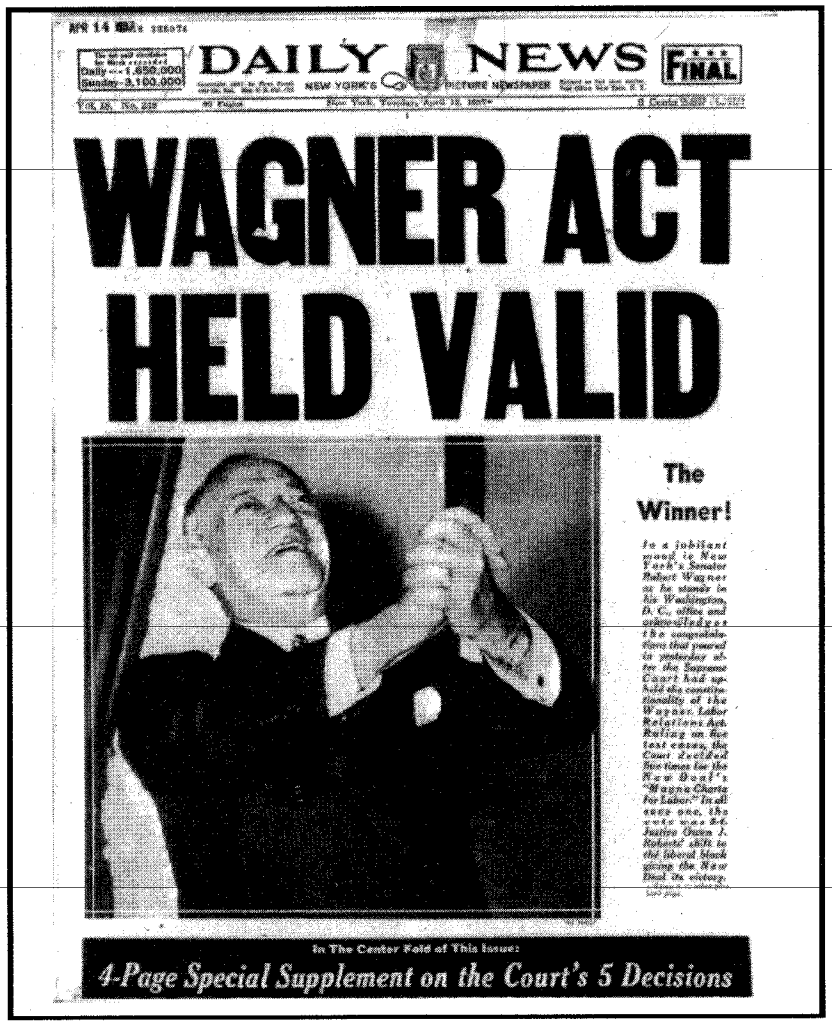
2. NLRB Trial Examiner William Ringer inspects lead and zinc mine shaft, Picher, Okla., 1938.

Wagner Act Challenged

No sooner had the Wagner Act passed than employer groups mounted a campaign against it. On the date of passage, the National Association of Manufacturers denounced the new law as unconstitutional. In September 1935, the American Liberty League issued a lengthy brief arguing against the constitutionality of the law and advising employers to disregard it.

Employers had ample cause for doubting the constitutionality of the Wagner Act. In the period from the Liberty League's brief to the 1936 presidential election, the Supreme Court declared unconstitutional much the New Deal's innovative economic legislation.

In that climate, the federal courts issued nearly 100 injunctions against the operation of the Act. The Board effectively was paralyzed until the Supreme Court ruled on the law's constitutionality.


DAILY NEWS
FINAL
WAGNER ACT HELD VALID
The Winner!
In The Center Fold of This Issue:
4-Page Special Supplement on the Court's 5 Decisions

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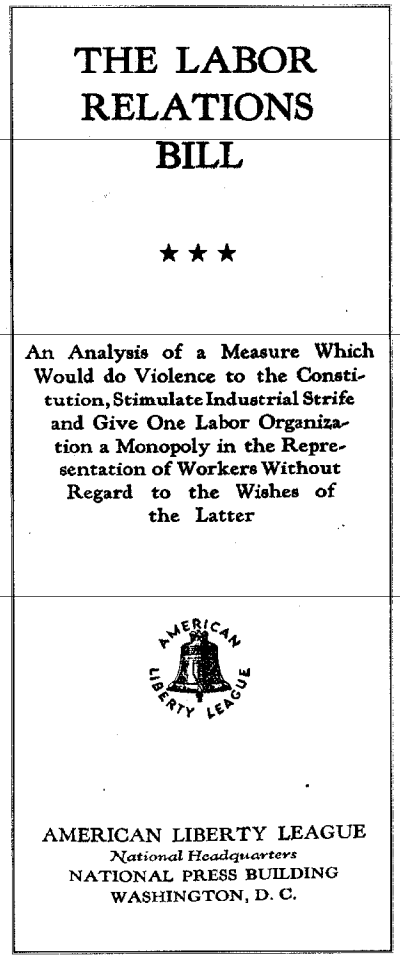
THE LABOR RELATIONS BILL

★★★

An Analysis of a Measure Which Would do Violence to the Constitution, Stimulate Industrial Strife and Give One Labor Organization a Monopoly in the Representation of Workers Without Regard to the Wishes of the Latter

AMERICAN LIBERTY LEAGUE
National Headquarters
NATIONAL PRESS BUILDING
WASHINGTON, D. C.

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