LABOR AND THE LAW

By Judge John C. Knox

In this article an eminent federal jurist offers a solution for the strike problem that merits the attention of all American men and women, and will doubtless arouse great controversy. In the July issue Judge Knox's proposal will be critically analyzed by Louis Waldman, the distinguished labor lawyer. — The Editors

It must be obvious that labor relations stand high on the list of national problems that demand solution. But the subject has become so involved, and most politicians have come to be so fearful of the real or fancied power of organized labor, that we are being offered little constructive political leadership in this field. Neither major political party has proposed any sound, disinterested solution, and most of the minor parties are either special pleaders or are themselves interested groups whose arguments are highly suspect.

It consequently seems to me that the solution of the problem is primarily up to the people of the United States. Furthermore, I am convinced that they should decide it in their own great interest — not in the narrower interest of capital or labor, of politicians or of pressure groups.

It is with this primarily in mind that I respond to a suggestion of The American Mercury that I set down my ideas for a solution of the labor problem, realizing, as I do, that unless some constructive solution be soon evolved and adopted the American people are likely to rise up in their righteous wrath, and demand legislation so heavily restrictive that, while it may properly control and even punish the more irresponsible among labor's leaders, is likely to hit responsible leaders as well, and may even deprive labor itself of certain rights and privileges that should be retained.

So filled with feeling — with prejudice, fear, and selfishness — has the subject of labor relations come to be, that it is almost compulsory, these days, for any person who dares to discuss it, to introduce his remarks by pointing out that he is not anti-labor. And because a somewhat standardized preliminary statement seems to be expected, if not actually required, I hereby offer it, as follows:

JOHN C. KNOX *is Senior United States District Judge for the Southern District of New York. He is author of* A Judge Comes of Age *and* Order in the Court.

1. I believe in labor unions, which have greatly aided the American working man in improving his economic position.

2. I believe that labor should invariably be in a position to deal with management on equal terms.

3. I believe that the rights of labor are fully as great and as vital as are those of management.

4. I believe that the just rights of labor should at all times be maintained.

5. I believe that most American working men are sincere in their desire to maintain the American system.

6. It is obvious that both employers and employés are human, and are therefore fallible.

With that much clear, I hope that it is plain that I am not one who is bent on depriving labor — organized or unorganized — of any part of the proper gains it has made, that, in fact, my desire is to aid labor to even better things, while at the same time maintaining to the full the fundamental rights and privileges that, under our system, must be maintained for the protection of the people as a whole. It even seems to me that certain overenthusiastic "friends" of labor should also carry this point in mind, for though the people of this vast land of ours are apt to be long-suffering and overly willing to accede to demands made upon them, they have frequently demonstrated how overwhelmingly powerful they can be — and even how harsh — when, after long periods of provocation, they have risen in their anger and turned on certain of their tormentors. A current illustration, although a minor one, is what has recently happened to Petrillo and his musicians.

I can imagine that the average newspaper reader who is otherwise unacquainted with the labor problem, may be under the impression that it has come to be enormously complicated. That, however, is far from true. Complex though it frequently appears to be, there is nothing complicated about it when it is reduced to its basic essence. In fact, the whole thing boils down, in the last analysis, to nothing more than three points:

1. Justice to labor.
2. Justice to management.
3. Justice to the public.

I believe that every reasonable person must agree that these points are basic. I believe, also, that methods now in use too often fail to bring real justice to any of the three interested groups, and, where strikes are called, never assure it in advance.

It is because of this that I have proposed that disputes between labor and management, and even between labor groups themselves, be settled peaceably in courts of law, rather than by battle.

II

To me, at least, this suggestion seems so reasonable and desirable that I sometimes wonder why it did not develop naturally as the American sys-

tem grew. But it did not do so, and nowadays my mere suggestion that labor be held responsible under the law for its actions, as all other individuals and groups expect to be, has been received, in certain quarters, with astonishment, questionings, and doubt.

"Justice under the law is fine as a concept," some seem to say. "But how can even-handed justice ever prevail in this difficult field?"

It must be reasonably clear, of course, that justice to all those concerned all too rarely prevails under the methods now in use. Furthermore, I believe that no system of law and justice ever developed in the history of the world surpasses in impartiality and fairness that which has been developed under the Constitution and in the courts of the United States.

It follows, then, if we wish to have justice prevail in the settlement of labor disputes — and no person is likely to say that justice should *not* — that we should look for that justice to the courts of our land, whose single duty it is impartially to find and apply it.

I do *not* believe, however, that separate labor courts should be set up to hear labor cases. The existence of such courts could not fail to bring about an effort on the part of both capital and labor to influence or control the appointment of the judges who would sit on those benches. That, in turn, would bring about, promptly or ultimately, a degeneration of the courts themselves, which would prove disastrous to the welfare of everyone concerned, and might even injure the standing of our other courts as well.

Instead of this, it seems clear to me that the courts already established should have their jurisdictions broadened by appropriate legislation so that such cases as affect labor and management could be heard before them. In other words, these duties should be handled under established procedures in somewhat the same manner as cases of all other types are now handled. And if this suggestion were followed, I firmly believe that both capital and labor would soon come to accept this method with confidence and respect. Furthermore, our country would thereby be relieved of the economic and social losses that now are so frequently suffered by both contenders and by the public.

I realize that there are those who will contend that no court is capable of justly deciding matters so complicated. But no one adequately acquainted with court methods will hold any such belief. Our courts are constantly deciding controversies quite as intricate and involved as any that are at issue in labor disputes. In fact, Judge Robert N. Wilkin, U. S. District Judge for the Northern District of Ohio, says that "the judgments of such a court, with all the available data regarding costs of living and prices of materials and labor, could be more scientific and exact than the judgments we render in our courts for loss of life and limb." Furthermore,

in expressing himself in favor of this widening of the duties of our courts, he quite properly contends that "the right to do collective bargaining should not become a license to infringe upon the public weal."

There is, incidentally, an additional advantage offered by such legal decisions as I have in mind: The litigants would understand that each such decision would mean what it said, and that it was to be obeyed. The result would be that the peace, order, and security of the community would at all times be maintained, while the just rights of both contenders would be recognized and protected. And these matters are vital, for if this country is to thrive and prosper — if it is to remain free and happy — if the integrity of its government is to continue, a means must be devised whereby labor, capital, and the public may each maintain its rights while living in peace.

I know that some labor leaders may fear to bring their cases before our courts of law. But, except where their fear is based upon a consciousness that they are in the wrong, it cannot be made too plain that it is not our courts they need fear — it is, instead, the laws that an aroused public seems likely to demand in order that labor and labor leaders — yes, and even labor's legitimate gains — may be controlled, restricted, or restrained.

On the other hand, there are many questions that may very well be asked, and insofar as they are asked sincerely they deserve sincere replies. It may be asked, for instance, whether or not my suggestion means that arbitration in labor disputes would be compulsory, or, if not that, how the proposed method differs from arbitration, mediation, and conciliation.

III

Arbitration, mediation, and conciliation, as those terms are now understood, need in no way be affected by what I propose. If, by any such means, workers and employers maintain satisfactory relations it must be obvious that there is no reason to take anything to court. If, on the other hand, one side or the other — or even the public, if its interests were adversely affected to any considerable degree — were to take a labor dispute to court, it would no longer be a matter for arbitration. It would then have to be decided according to such laws as had been placed on the statute books. And the decision of the courts, having the weight of law, would be enforced, if necessary, by the constituted authority.

Those who think primarily of labor organizations, rather than of working men, might ask, at this point, what purpose a union would serve if labor were thus put under the law. Or they might wonder whether or not the law would so protect the individual against the power of the employer as to make unions unnecessary.

A little thought will show, I believe, that the suggestion I make need not affect the existence of unions in the

slightest. There would still be great need for them, for it must be obvious that labor should have effective organizations working to further their proper ends. Unions would still be faced with that duty, and would properly continue to work for the advantage of labor. Obviously, individual working men would be unable to accomplish much in that field, and unions would therefore continue to be as vital under the suggestion I make as they are now. It would be their task to assert and vindicate the rights of labor. They would still fight labor's battles, but they would do so under the law.

Some folk, of course, may wonder how the decisions of the courts would be enforced if they proved to be unpopular among large labor groups.

The answer to that is relatively simple. No one — not even a union — has the right to defy a valid court order. Decisions could be appealed to higher courts, and some no doubt would be, up to the Supreme Court itself. But our courts speak with authority — authority that is enforceable, and, in the end, any decision not reversed by a higher court, or not modified by it, would be final. If any group of men, under such conditions, cared to strike, the employer would have to be protected by constituted authority in his right to replace them with others willing to work.

But, some may ask, would this not mean that labor would be deprived of the right to strike?

At present, labor is the sole judge as to whether or not it has a sufficient cause to call a strike. But it should be accepted as an axiom that no one has the right to be the sole judge of his actions if they may result in serious injury to others.

Under the proposal I make, partiality would give way to impartiality, and having had created for it a better method of attaining its just ends, labor would thereby have lost the *necessity* for strikes. The *right* to strike would still be retained. On the other hand, because no strike could be continued if it infringed so seriously on the rights of others as to give them the opportunity of taking the matter to court, it is not unlikely that the right to strike would be retained only in theory. But the right to strike is of value only when some proper end of importance is thereby to be attained. If such ends can be gained as certainly, and with more likelihood of justice, in some other way, then the right to strike has lost its value — has, actually, been replaced by something better — the right to the attainment of justice under the law and through the courts.

Because labor disputes sometimes involve fundamental public policy, it may be felt by some that public debate should continue to play an essential part in their outcome. But my proposal would not eliminate such debate. It would merely transfer it from the heated atmosphere that so often surrounds soap boxes, union halls, and employers' offices to the

calmer and more orderly halls of Congress. There, after proper hearings and debate, the legislation under which the courts would be called upon to act would be written and adopted.

Nor need there be any particular difficulty for the courts to overcome in deciding, under the law, cases having to do with such matters as living wages, working hours, or vacations with pay. It would merely necessitate finding the facts, hearing the arguments, studying the law, and deciding these cases as more complicated cases in other fields are constantly being decided. Nor would decisions having to do with such affairs ever be reached by any judge merely because of what he, personally, might happen to think. Decisions would be based on the law and the judge's interpretation of it, often regardless of personal beliefs that the judge himself might hold.

IV

With this clear, it may be useful if I state again the fact that no one bent on obtaining justice for labor need fear the courts or the judges, for they could act only to the extent to which they were empowered to act by specific legislation, and, in any case, courts of appeals have been instituted for the added protection of those who believe they are entitled to it. It might be added, however, that wisdom in writing such legislation as would empower our courts to enter this field would suggest that the courts be granted reasonably broad powers enabling them to take jurisdiction over all such disputes as experience has shown are likely to arise.

The necessity for the occasional use of injunctions under the proposal I make seems fairly clear, and there are those who imagine that the Norris-La Guardia Anti-Injunction Act was drawn in order to prevent the use of injunctions in labor disputes. But that is to misinterpret that widely misunderstood law. There is nothing in the act that says that injunctions may not be used in such disputes, as can be seen from the text of the Act, which reads, in part, as follows:

"No court of the United States shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute . . . except after hearing testimony in open court (with opportunity for cross examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto. . . ."

From this it will be seen that though injunctions may be issued in labor disputes, their issuance is delayed by this Act. In fact, the delays brought about by the Act are frequently so great as actually to prevent the issuance of injunctions even in emergencies during which the protection of the public really requires such action — emergencies such as arose, for instance, during the tugboat strike in New York last winter when, for a time, the city was seriously endangered

for lack of fuel which could not be brought in while the tugboats were idle. Because such situations occasionally arise, it seems to me that the Norris-La Guardia Act should be modified.

Now and again, when such suggestions as mine are made, certain fears of prejudiced judges are expressed, and some folk seem to imagine that labor, were it brought into court, might sometimes be forced to appear before judges not properly impartial.

Such a feeling is based, it seems to me, upon a notable lack of understanding of judicial methods, for if any party to a law suit feels that the judge before whom he is to appear is biased, it is merely necessary for him to state that belief in an affidavit containing such facts as tend to bear out the contention — to "recuse" the judge, to use the technical term. In the presence of such a statement it is customary for a judge to step aside in favor of some other jurist, not necessarily on the ground that the expressed doubt is true, but merely because it has been seriously expressed.

Other questions than the ones I have propounded and attempted to answer could undoubtedly be asked, and I would be the first to insist that no such plan as mine should be adopted without careful thought and study. Nor should any act bringing such a change into effect be hurriedly prepared. On the other hand, though I would urge the most careful consideration of everything relating to it, I believe that the necessary basic legislation required to bring the proposed change into effect need not be unduly complicated.

Legislation would need to be written in order to liberalize the Norris-La Guardia Act so that preliminary injunctions could be issued pending final hearings *if the public interest was seriously affected.* In addition to that, little would need to be done except to pass an act broadening the jurisdiction of our courts so as to include such matters as I have been discussing. By such action two enormous strides would have been taken toward the attainment of real justice in labor disputes, and toward a better economic atmosphere.

Before that can be done, however, labor, management, and the public must be taught that this subject contains no taboos and is properly discussible. Once we have learned that, my idea or some better one will have vastly less trouble in being written into law.

After all, it must be clear that labor will rise immensely in the estimation of the public, and will consequently be in a much better position to further its own legitimate interests, if it more clearly recognizes its vitally important part in the further development of America. And how can that be better done than by agreeing to make itself answerable for its actions before the identical courts whose responsibility it is justly to determine and maintain the rights and the responsibilities of every American citizen and of every other American institution?

SCIENCE MOBILIZES AGAINST CANCER

By Frank E. Adair, M.D.

For untold centuries the mere mention of cancer has gripped mankind in a vise of fear. Much of the dread has stemmed from the belief that to be told one had cancer was equivalent to passing a death sentence on the patient. Until fifty years ago these fears were justified on the ground that medical science could offer cancer victims no more than the hope of a peaceful end under the influence of narcotics.

Today, thanks to the unceasing efforts of scientists and public-spirited bodies such as the American Cancer Society, most of the fear has been removed and the world now stands on the threshold of discovering cancer's secret.

The two greatest killers of Americans are heart disease and cancer. Slightly less than 300,000 Americans were killed on all fighting fronts from Pearl Harbor to V-J Day. In that same period 607,000 Americans died at home of cancer — more than twice the number killed during World War II. At present there are more than 790,000 cancer cases in the United States, with some 175,000 of them doomed to die during 1946.

These deaths will continue to rise each year unless methods of dealing with cancer are found. Nothing less than a coordinated and concentrated scientific effort can cope with the problem. The American Cancer Society undertook the first steps in this direction in 1945, when it allotted $4,000,000, raised by contributions, for an organized program of research, education and service.

The National Research Council, which was a scientific advisory board to the government during wartime, was asked to assume the same responsibility in setting up a program of scientific research for the American Cancer Society. A "Committee on Growth" was also organized, bringing together the best scientific minds in the country to serve as scientific advisers to the Society. Composed of the foremost scientists in many fields, the Committee functions as a board of strategy.

A program of research has been developed covering the fields of

FRANK E. ADAIR, M.D., *is President of the American Cancer Society, the leading organization in the fight against cancer. He also heads the Cancer Committee of the American College of Surgeons and has served as a surgeon and consultant in many public and private hospitals.*