

What the Supreme Court Did Say

The nation was misled by press reports on a decision concerning the National Labor Relations Board. How a ruling "in favor" was misinterpreted as one "against."

IT WOULD have been interesting to have eavesdropped upon the Supreme Court Justices as they commented upon the newspaper reviews of the Court's recent decision in the case of *National Labor Relations Board vs. Virginia Electric & Power Co.* and *Independent Organization of Employees of V. E. & P. Co.* Certainly the opinion of the Court cannot be squared with the joyous outbursts of anti-labor columnists and editorial writers. Yet it is the reaction of the press and of big business to the opinion which can be said to be the main result of the Court's decision; the law it laid down is at most a minor by-product.

Those who have read the papers will now be surprised to learn that the Supreme Court decided the case *in favor of the NLRB* and not against the board. The decision reversed the ruling of the Federal Circuit Court of Appeals, Fourth Circuit, which had rejected the board's findings and orders.

The National Labor Relations Board, after extensive hearings and upon considerable testimony, had concluded that the Virginia Electric & Power Co. had helped to set up a company union, disguised as the Independent Organization of Employees, and had fired workers for genuine union activity and for opposing the company union. It therefore directed that the company union be dissolved, the check-off dues be refunded, the fired workers reinstated with back pay, and ordered the company to cease and desist from its unfair labor practices in the future. Readers of the newspaper articles may have observed an absence of gloating over the "defeat" of the CIO. The explanation for that strange reticence is probably to be found in the fact that the charges against the company were brought not only by the Transport Workers Union, CIO, but by the Amalgamated Association of Street Car Employees and the International Brotherhood of Electrical Workers, both AFL.

Despite the many-sided forms of unfair labor practice indulged in by the company, practices which the board condemned in its findings and conclusions, the Circuit Court of Appeals, on the appeal of the company, rejected the board's decision, thereby sanctioning the company's anti-labor policy, its firings for union activity, and its company union.

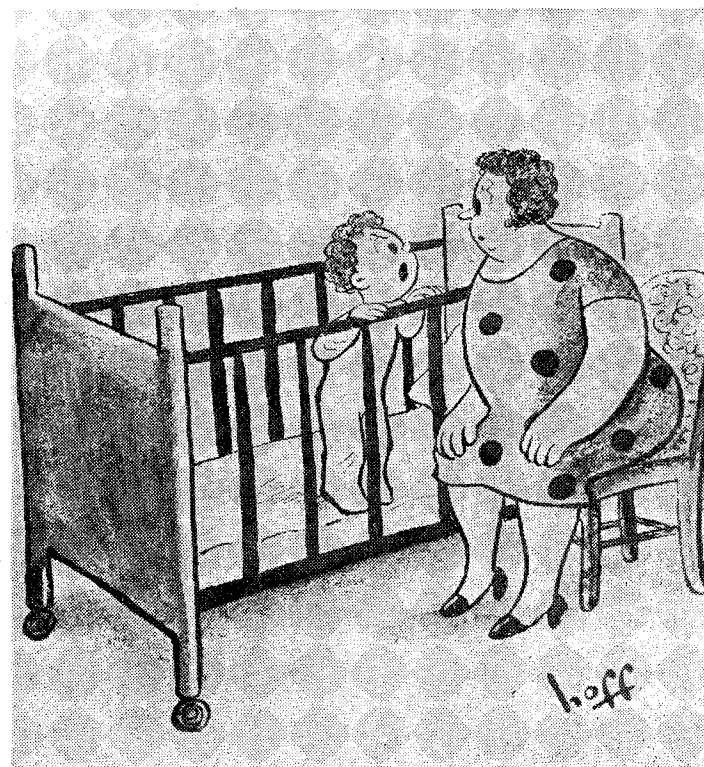
IT WAS this grave misapplication of the Wagner act which the Supreme Court passed upon and undid. In the course of his opinion Mr. Justice Murphy related at great length a series of acts practiced by the company which the AFL and CIO unions had disclosed to the Labor Board. They covered a period before the passage of the Wagner act and included the use of spies supplied by the notorious Railway Audit & Inspection Co., a fifth column service used by reactionary big business to stifle union activity. After the Wagner act was upheld by the Supreme Court in 1937, the company's tactics changed. While purporting to uphold the law, its supervisors warned the workers against the CIO and at the first sign of serious organizing activity diverted it toward the company union. Opposition to the company union led to firings, and the company union was quickly organized, bargained with, and a closed shop check-off contract signed.

In the course of outlining these clearly anti-labor practices, Mr. Justice Murphy considered two communications addressed by the company to its employees. He concluded that these communications, if considered by themselves, separated from all the facts which he had already described, might not be sufficient to constitute proof of coercion: "If the utterances are thus to be separated from their background, we find it difficult to sustain a finding of coercion with respect to them alone." The Court thereupon referred the case back to the Board so that it could make a finding based "upon the whole course of conduct revealed by this record."

It is unquestionable that "upon the whole course of conduct" the Board will reaffirm its original decision, reformulating its findings so as not to give the company further opportunity to raise the false issue of free speech.

It was on the basis of this false issue that so much ado was made by the press. The two communications considered in the opinion were addressed by the company to its employees, upon observing the wave of organization following the Supreme Court's decision in the famous Jones and Laughlin case upholding the Wagner act. The first addressed by the president of the company to its employees, said among other things:

"Such (organizing) campaigns are now being pressed in various industries and in different parts of the country and strikes and unrest have developed in many localities. . . . Certainly there is no law which requires or is intended to compel you to pay dues to or to join any organization. . . . If any of you . . . have any matter which you wish to discuss with us,



"The three bears, nerts—tell me when we're gonna beat the Axis!"

any officer . . . will be glad to meet with you. . . ."

When some workers took the invitation in the last phrase seriously, the second communication was composed and read to meetings called by the company in its plants in Norfolk and Richmond, Va. This time the workers were advised:

"The petitions and representations already received indicate a desire on the part of these employees at least, to do *their own* bargaining and we are taking this means of letting you know our willingness to proceed with such bargaining. . . . In view of your request . . . it will facilitate negotiations if you will proceed to set up *your* organization, select *your own* officers and adviser, adopt *your own* by-laws and rules and select *your* representatives to meet with the company officials whenever you desire." (My italics.)

The board found that these communications "interfered with, restrained and coerced" the employees within the meaning of the Wagner act. In view of the forthright command of the statute that "the findings of the board as to the facts, if supported the evidence, shall be conclusive," the Court's difficulty in accepting that finding is not readily understandable.

Certainly the layman, particularly the union man, will find it difficult to follow the Court's reasoning. Workers can be forgiven if they come to the conclusion that two such communications addressed to them by their bosses are not intended as academic lectures on labor relations. To the average worker, even the non-union kind, those words mean: "Stay out of the CIO and AFL; join the company union—or else!"

IT WOULD have been an aid to popular clarification had Mr. Justice Murphy not followed the technique of the Circuit Court in treating the company's communications as if they could be "separated from their background." That is arguing *in vacuo* and is too unrealistic for normal understanding.

Furthermore, the opinion provides uneasy analogy to the historic case of *Marbury vs. Madison*. There Chief Justice Marshall, while upholding President Jefferson's refusal to issue a judge's commission to Marbury, used the occasion to enun-



Hilda Terry

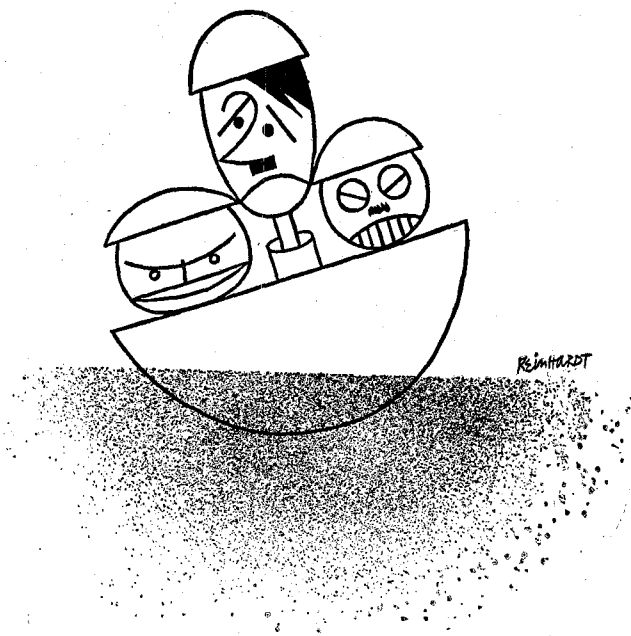
"We must win! Why, under Hitler, we'd never get to be president!"

ciate the doctrine of the Court's power to pass upon acts of Congress. It would have been well for Mr. Justice Murphy to have made clear to the Circuit Court and future tribunals that his opinion is not intended to permit, through specious invocation of the Bill of Rights, an unwarranted judicial interference in the area of administration. There Congress properly made the board the final authority.

Despite the infelicitous language of the opinion and despite the anti-labor press, the decision cannot be considered as relieving the restriction on employers against interference, coercion or threat of their employees. It does not give employers the right under the guise of exercising free speech to oppose the CIO or AFL, to threaten workers with discharge or reprisal if they join up; to induce them to join a company union in preference to a bona fide organization, or in any way to subvert the intent of the Wagner act.

The issue of free speech is as absent in this case as it would be in the case of a highwayman who, pistol in pocket, says: "Madam, please give me your money." He could as fairly contend when charged with attempted robbery that since he did not flourish the pistol and couched his desires in polite language, the Court must protect him or be guilty of violating his freedom of speech. A Court would be properly outraged at such an argument from the highwayman. It is high time in the light of its own experience—not to say the example of numerous NLRB appeals—to be equally critical when anti-labor employers use the Bill of Rights to justify breaches of law and anti-social acts.

ABRAHAM UNGER.



Ad Reinhardt

Three wise men of Gotham
Went to sea in a bowl,
And if the bowl had been stronger
My song had been longer.
—A Mother Goose Rhyme.

**Have you petitioned the President to
release Earl Browder from prison?**

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The President Speaks

PRESIDENT ROOSEVELT's magnificent Washington's Birthday speech gives clarity and strength to simple men and women throughout our country and to the millions in far-off lands who hunger and fight for freedom. In that utterance and in Stalin's, coming within a day of each other, will be found the measure of that great struggle which twenty-six united nations are waging on all the continents and seas of the globe. In this speech the President was, above all, teacher and guide of the people. This is as it should be. Nothing could so well emphasize the gulf that lies between us and the degenerate gangs in Berlin, Rome, and Tokyo who maintain their power by terror, threats, and brazen deception of the people.

By calmly explaining the strategy this country must pursue in the Far East and in Europe, by refuting the false counsels of the appeasers who seek to sow panic and dissension, by his linking of our struggle with the efforts of the other nations united with us, and by his emphasis on our tasks and responsibilities, particularly on the production front, the President has provided the man in the street and the man on the farm with a compass of victory. And in the spirit of Valley Forge he made this challenging pledge:

"We Americans have been compelled to yield ground, but we will regain it. We and the other United Nations are committed to the destruction of the militarism of Japan and Germany. We are daily increasing our strength. Soon we, and not our enemies, will have the offensive; we, not they, will win the final battles; and we, not they, will make the final peace."

This Is the Year

THE most memorable passage in the President's press conference a week ago Tuesday concerned the Cliveden set, which is by now a national issue. But there was one other item in Mr. Roosevelt's remarks that oughtn't go unnoticed. We refer to the news that shipments of war materials to the Soviet Union will be up to schedule by the first of March.

The President did not comment directly on the reports that were current a month ago to the effect that shipments were being sabotaged by the Clivedeneers; he attributed the interruption of shipments to the attack on Pearl Harbor. But he added that another large loan to the USSR is being contemplated, and said that soon after the first of March the lag in shipments would be overcome. And that is, of course, reassuring.

But the problem of maintaining our supply schedule to the Russians is only one phase of our responsibility in forestalling Hitler's big spring offensive. The other is the organization of a British and American offensive on the continent of Europe. As our editorial "After Singapore" emphasized last week, an Allied offensive this spring is the surest way of stopping Japan in her tracks, and making possible the break-up of Hitler's power this year. It was good to read that Secretary of State Stimson opposes the dispersal of our armed forces as defensive units but insists that "the only way to end the war is to take the offensive, and take it as vigorously as possible." "We are building an offensive force on land, on the sea, and in the air," Stimson continued, "and we shall seize every opportunity for attack, and utilize every opportunity for surprise."

The only remaining issue, therefore, is one of timing. And in this connection we came across an interesting paragraph in one of Ralph Parker's dispatches from Moscow last week to the *New York Times*. "It is generally held," says the correspondent, "that Germany will do everything possible to shorten the war, and that unless the Allies come around to the Russian way of thinking and forestall that massive German endeavor, they will have to face troubles that might have been avoided."

This is the essence of the problem of a "second front," but we can hardly agree that foresight of future troubles must represent an exclusively Russian way of thinking. It is in our own interest as Americans that everything be done to defeat Hitler this year. That is why the offensive and surprise actions of which Secretary Stimson speaks are so urgent.

Stalin's Speech

IT WAS only a brief "order of the day" that Stalin issued on the twenty-fourth birthday of the Red Army, but it rang round the world with its characteristic conciseness, its sober confidence, and pithy emphasis on the central issues of the war. The twenty-fourth birthday of the Red Army was itself a world holiday this year. From China came Chiang Kai-shek's congratulations; from Winston Churchill, amid the many other toasts in London, came the stress on Anglo-Soviet co-operation through the war and into the peace. General MacArthur, embattled in Bataan, issued perhaps the most meaningful greeting of

all: the "scale and grandeur" of the Red Army's defense and its offensive, said the general "marks it as the greatest military achievement in all history." And in the President's powerful fireside address last Monday night came the "salute" in the name of all the United Nations for the "superb Russian Army."

Two ideas in Stalin's speech are particularly noteworthy. One was the serious way in which he reminded the Soviet people that the "enemy is not yet beaten, and a stern struggle is ahead of us." This was addressed not only to the Red Army, but by implication, to the whole world. Too many have indulged in the idea that the Russians themselves would finish off the foe: not only an unmoral idea, but unreal. For the year 1942 projects great dangers for the United Nations and requires their maximum unity and coordination of offensive power.

And the second noteworthy passage was the way Stalin addressed the German people. He distinguished between the people and their Nazi marauders; he put it up to the German people themselves, if they wished to avoid annihilation, to step forward and do their share to destroy their misrulers. Thus Stalin undermines one of Goebbels' favorite propaganda devices, and thus Stalin gives a line, which as the *New York Times* editorial observes, is one that Great Britain and the United States may well follow. Only a policy which distinguishes between the German people and the Nazis, but at the same time calls upon the German people to fulfill their own obligation in defeating Hitler, will make possible a shorter war and a really lasting peace.

Obscenity in Riom

A WEIRD "trial" opened in the tapestried castle of the Duke of Auvergne last week, in the little town of Riom, France; a "trial" to determine responsibility for France's defeat. It's a weird affair, first, because the accused have already been sentenced by Marshal Petain to life-long imprisonment, and second, because the accusers are really the ones who ought to be in the dock.

Not that Leon Blum, Edouard Daladier, Marshal Gamelin, and the other defendants are blameless in France's catastrophe; but to dwell on that would be to overlook the motivation and historical circumstance of this particular trial. It is obviously an attempt on Vichy's part to please its German masters. In his diabolical cunning, Hitler endeavors to rake up all the old issues and controversies of the past for the purpose of paralyzing the French people at a moment when they are recovering their energies in the struggle against both Vichy and Germany.

The defendants have already done much to expose the real character of the trial. Ex-