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"RIGHT-TO-WORK" LAWS: SOME ECONOMIC AND ETHICAL ASPECTS

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CHAPTER I

THE ADVENT OF UNIONS

The road to industrial peace has proved to be long and devious. Since the beginning of the industrial revolution and the rise of the modern democratic state no one has ever reached the end of that road. Beset with uncertainties about the best direction to take and caught up in an institutional framework that seems to reward bigness and power, the two Goliaths leading the way, business enterprise and organized labor, from time to time have turned on each other and been distracted from the essential job of developing and employing the nation's resources to the fullest extent commensurate with national well-being and prosperity. While results prove, for the most part, that the unmapped road has served rather well, since practically nowhere in the United States is either labor or management so dominant that it can impose its unilateral will with complete impunity, it has often been extremely difficult to evolve the necessary compromises that will best serve the diverse interests of all the people.

In the highly complex industrial economy of the present-day United States, no two factors are more important for economic growth and balance than intelligent profit-seeking business entrepreneurs and management and intelligent income-seeking organized labor. Consequently, the efforts to blend these two highly individualistic aggregates into a cooperative team to produce the nation's goods and services have comprised one of the most fascinating stories of human relations in the past century. Successes and failures have illustrated the story day by day and often side by side.

While the achievements made by the joint effort of American capital and the American labor movement can be deservedly applauded, the account unfolded within these pages is concerned with a major dispute that has threatened to tear down painfully erected relationships, to harden the inevitably frequent areas of conflict over dividing mutually gained rewards, and to split a cooperating team into bitter and hostile factions permanently at odds on both economic and political issues. The dispute focuses on the traditional union objective that all employees in a given work-place ought to belong to a union in order to keep their jobs. Colored by new circumstances and altered by structural changes in the economic order, the controversy has moved from the exclusively economic arena to the public stage of political issues, and this gives the controversy its special character today. Coming before voters and legislators in the guise of "right-to-work" laws, the dispute clearly exposes the lines of the division that persists over the roles of organized labor and business enterprise and the rights of the individual person in a free and democratic United States.

While trade unions of some form or other are known to have existed almost from the beginning of urban life in America, their impact was little felt until about a century ago. As the United States became industrialized, the labor movement took greater hold in the economy, but only in relatively recent times has it been accorded legal recognition. That accomplishment, however, did not go unchallenged. The rights of unions have always been a focal point for many disputes.

The present chapter surveys the modern rise of labor unions in the United States. It also looks into the reasons which explain that rise and the eventual acceptance of unions as an integral part of American economic life.

The stress upon the acceptance of unions is important because it focuses upon a fundamental question. If society answers that unions are not acceptable in the American culture, the principal issue in this study does not even need to

be broached, namely, whether provision to safeguard the security of a union by some form of compulsory membership in the union is a reasonable condition of employment in the United States. If unions are held to be unnecessary or even harmful to the economy, the matter of union security becomes merely academic and hypothetical.

The whole controversy surrounding union security, which has already and still contributes more than its share of ill-will and bad feeling to the critical area of industrial relations, has been complicated by the intrusion of certain issues that are only indirectly related to the "right-to-work" problem. These are the problems of union monopoly, inflation, and union power. Because they are gravely important problems, they cannot be ignored. Because they are felt to be diversionary, however, they are discussed in a separate chapter before the principal subject is taken up.

The debate over compulsory union membership and union security has many other economic aspects, of which some of the more important will be subjected to analysis in later chapters. But an evaluation of the "right-to-work" laws is further complicated by the unhappy existence of some union practices which so conflict with approved standards of behavior that many people have been led to question whether a movement with so much alleged moral corruption should be protected by law. They wonder aloud if this corruption indicates that unions are an element foreign to the American way, or whether union security provisions can be reasonable which appear to impose serious restrictions on employee freedoms. Consequently, it becomes necessary to examine not only the economic aspects of "right-to-work" laws but also some aspects of the activities of unions and union members.

By examining the factors and circumstances which underlie industrial relations in the United States, the present study attempts to bring into clearer light the efficacy and value of the "right-to-work" laws. The ultimate purpose

of the study is to establish the basis for an ethical evaluation of these laws which purport to safeguard the rights of workers with respect to their union representatives.

Introduction

No one doubts that the American economic landscape is sharply altered and influenced by the presence of some very large labor unions and a great number of smaller ones. They appear to be rather solidly entrenched with no intention of giving way to other forces. Their birth and growth may be traced to grave social disorders and injustices. Nevertheless, the unions have also waxed strong under vastly improved economic and social conditions. The function they perform is certainly not merely a historical one.

The "right-to-work" question rises out of a much more fundamental question, namely, the right of unions to exist. If unions perform a legitimate function, then the question of required membership in one as a condition of employment merits further consideration. It must be demonstrated that the American labor movement grew out of a real need that has been generally recognized by the American people and remedied by law.

Some attention must therefore be given to the views of contemporary observers of the labor movement, especially political leaders and economists who have tried to appraise critically the role of the labor union. Nor must the opinion of moral and religious leaders be overlooked, for their special interest is that both freedom and justice be safeguarded so that all men may be able to seek a decent living that will promote their cultural and spiritual goals.

The Development of Unions

The relationships that existed between employers and employees changed

decisively and permanently as the industrial revolution took hold. Seeking the same rewards and ends, they often clashed in violent hostility that deepened the gulf between the two classes. Throughout the nineteenth century, but especially after the Civil War, theeffects of the industrial revolution were increasingly felt in the United States, if not so harshly as in western Europe.

The American labor movement first began to show significant growth during the same period. It is not surprising that it did so, because the rapidly increasing numbers of urban workers dependent solely on wages from their labor to maintain existence were the most severely affected by the drastic changes in technology, employment conditions, and business cycles. Often in desperate circumstances, many workers believed that America offered greater promise than they were experiencing. And once men have determined upon the necessity of achieving an objective, it is natural for them to band together to seek ways and means of implementing their goal. In its early struggle to establish itself the labor movement spawned numerous schemes to defend their rights and to counteract social unrest and dissatisfaction. Some of these programs were extremely radical or utopian, others were more moderate or conservative, but all pointed to a widespread desire for change in status and economic condition.

During the last half of the nineteenth century countless attempts were made at forming unions strong enough to wield some control and restraint over the superior economic and political power of the owners of capital. Most of these efforts proved abortive, cut down by the vagaries of business cycles, financial panics, wave upon wave of immigrants, social radicalism, the power of vested interests, and a host of other obstacles, not the least of which was a slackening of employee anxiety every time economic conditions improved. Nevertheless, a few attempts did take root, and by the end of the century a number of unions had

successfully established themselves, especially in the more highly skilled trades.[1]

In the first two decades of the new century employer resistance became increasingly more evident as organized labor experienced unprecedented growth, especially in the railroad brotherhoods and the craft affiliates of the American Federation of Labor founded in 1886. The organization of coal miners was particularly successful, while semi-skilled and unskilled laborers were also unionized in comparatively large numbers for the first time. Representation of organized labor on the National War Labor Board during World War I signified the first, if brief, recognition by the federal government of the right of employees to organize and bargain collectively over the terms of employment. Abandoning the radical and utopian aims of the previous century, most unions gave increasing importance to gaining collective agreements with employers and saw their total membership grow to more than five million by 1920.[2]

A variety of factors in the 1920's and early 1930's combined to halt and then push back the earlier gains of unions. The movement itself seemed to lose some of its zeal, employer pressure mounted, and public policies put restrictions on union activities. The subsequent economic collapse of the nation made further inroads on what remained of union strength in industry. By that time, however, many employers had seen the need of organization of their employees, but chose to protect their investment and retain control over their property by establishing some type of employee-representation plan or a company union free from outside union interference.

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[1] A scholarly study of the development of unions after the Civil War to 1900 is found in Lloyd Ulman, The Rise of the National Trade Union (Cambridge: Harvard University Press, 1955).

[2] U.S., Department of Labor, Brief History of the American Labor Movement, Bulletin No. 1000 (Washington: U.S. Government Printing Office, 1957), pp. 19-20.

Meanwhile the federal government after the first World War had reverted to its laissez-faire policy toward industrial relations. In practice, this meant the protection of individual and corporate property rights through the enforcement of anti-trust laws applied to unions and the extensive use of other legal restraints, especially court injunctions, against union activities directed toward forcing changes in employer-employee relationships.

The upheaval caused by the great depression, however, had a marked effect on federal policy toward the labor movement. The great economic crisis strikingly altered the dominant social philosophy of the American people, and that change was clearly evident in the national election of 1932. The psychological climate of those desperate times strongly favored social and economic experiments.

The development most pertinent to the status and role of organized labor was the legal recognition of collective bargaining as the normal relationship between employer and employees. The way had been opened by the enactment of the Norris-LaGuardia Act in the last year of the Hoover administration. The legislation severely limited the right of federal courts to issue injunctions in labor disputes, outlawed "yellow-dog" contracts, and proclaimed the right of workers to bargain collectively without interference from employers.[3] Prior to 1932 a series of Supreme Court decisions had made the injunction and the contract forbidding an employee to join a union the chief weapons for crushing union organizing attempts.[4]

This federal anti-injunction law, therefore, was a major advance toward

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[3] 47 Stat. 70, c. 90, 29 U.S.C.A. 101.

[4] Cf. Adair v. United States, 208 U.S. 161 (1908); Coppage v. Kansas, 236 U.S. 1 (1915); and Hitchman Coal & Coke Co. v. Mitchell, 245 U.S. 229 (1917).

the encouragement of the collective bargaining relationship in industry. While considerable progress had already been made toward acceptance of the relationship, skilled workers had been the chief beneficiaries. The great majority of industrial workers remained virtually untouched by organized labor. Violence and unrest among them, often born of desperation, and the consequent suspicion, fear, and hostility of peace-loving citizens and property-holders only served to deepen the convictions of many business leaders that collective bargaining could not effectively lessen the strife and tension in the mass-employment industries.

Throughout all this time there was lacking any formal procedure which employees might follow to gain recognition of their union from an employer. Most employers were unwilling to believe that agitation for a union came from more than a few radical socialists or unstable malcontents. Only a strike or other concerted employee action, such as a slow-down of production, could persuade an employer that a union represented a substantial portion of his employees. There could be no collective bargaining until the employees had a representative whom the employer recognized and with whom he would negotiate. It was the rare employer in the major industries, however, who could be persuaded that collective bargaining would work for the benefit of his business unless he had some control over the union. In those instances where he did recognize an independent union, the latter usually tried to gain a contract that would restrict employment to members only. The union also tended to restrict the number of its members in order to protect their hard-won gains. Most of the organization up to this time was by craft or trade, even in the mass-production industries.

The real turning point of modern union development occurred with the enactment of the National Labor Relations Act of 1935, or the Wagner Act, as it is commonly called.[5] This legislation was an offshoot of the National

[5] 49 Stat. 449, c. 90, 29 U.S.C.A. 151.

Industrial Recovery Act of 1933, which in its famous Section 7(a) affirmed the right of employees to engage in collective bargaining without interference, restraint, or coercion from employers. The Wagner Act became law shortly after the N.I.R.A. was declared unconstitutional by the United States Supreme Court.[6] But the Wagner Act was not merely a reaffirmation of the natural inherent right of employees to organize and bargain collectively through a union of their choice. The new law declared that employers could no longer resist the organization of their employees, for the federal government had taken upon itself the responsibility to protect labor's right to organize. The free choice of a union was to be made by employees in an election supervised by a government agency, the National Labor Relations Board, and thereafter the union winning a majority of votes would be the bargaining agent for all employees within the bargaining unit, whether they were members of the union or not.

The Wagner Act clearly expressed a new government policy toward labor organizations, the culmination of a movement that had begun so insignificantly after the Civil War. The new policy, which has continued in force to the present day, was stated in the first section of the Act as follows:

> It is declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions by encouraging the practice and procedure of collective bargaining and by protecting the exercise by 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.

Thus was legal expression given to the role of unions in the American economy.

The whole tenor of the law points to the determination of Congress to create a climate favorable to the bargaining process, in the belief that bargaining would work if given the right atmosphere. Congress refrained from

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[6] Schechter Poultry Corp. v. United States, 295 U.S. 495 (1935).

trying to establish through legislation the right attitudes in unions and management, since attitudes cannot be legislated. If bargaining failed, government regulation and mandate might be inevitable, at the price of destroying the freedom of both management and labor. Thus the newly adopted policy left the parties free to settle their own controversies. To have done otherwise would have removed the incentive to find solutions and encouraged recourse to government and therefore to political methods to get favorable decisions from government. Industrial decisions would then have become political issues to be decided in political campaigns, to the detriment of both government, on the one hand, and labor and management, on the other, in a democratic society.

When the Wagner Act was adopted, it was widely believed that a favorable environment for bargaining could be achieved in part by enabling labor unions to grow unimpeded by employer-made obstacles. The conviction prevailed, therefore, that effective unions are necessary. The same philosophy guided the several states which followed the path of the federal government and adopted so-called "little Wagner Acts" to apply to industrial relations in firms engaged only in intrastate commerce.

Under the impulse provided by the new labor laws, labor unions quickly began to revive and grow in numbers and strength. Another stimulating factor was the rise of exceptionally able union leaders who engineered employee organization of the major sectors of the nation's basic industries, although in accomplishing this astonishing feat they separated the Congress of Industrial Organizations from the parent American Federation of Labor. Rivalry between the two associations further stimulated union expansion. Consequently, during the period of the original Wagner Act, union membership increased from an estimated 4,164,000 in 1936 to 15,414,000 in 1947.[7]

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[7] U.S., Bureau of Labor Statistics, Handbook of Labor Statistics, Bulletin No. 916 (Washington: U.S. Government Printing Office, 1948), p. 130.

In the eyes of the law the role of unions had been established. This was truly an extraordinary development from the weak and ephemeral workers' associations of previous generations. But it was not a change imposed on the nation simply by government authority and decree. Social philosophy had changed and the new role of unions was in line with the thinking of the great majority of the people. Henceforth unions would attract a much broader sector of the labor force. They would largely shed their public identification as vehicles of social protest for wildeyed radicals. Nor would they remain secret societies fearful of identification, or small minority associations easily thwarted or disposed of by the interests of powerful men. Unions were to be effective representatives of the interests of their members, and indirectly of all workers, who sought security in their job-rights and a strong voice in determining the conditions under which they worked for an employer.

Acceptance of Effective Unions

Collective bargaining between management and unions over the terms of employment grew very slowly in the United States. Its gradual acceptance, however, provided the base for its rapid growth after the passage of the Wagner Act. Today it is generally accepted by the American public as the normal relationship between the two parties. Strong opposition still manifests itself, nevertheless, and its arguments cannot be ignored. For the present, however, attention will be directed toward the reasons that support the need for effective unions.

Acceptance by the Federal Government

The support of effective unions by the federal government has been fairly consistent since those days when Congress enacted the Wagner Act, and

President Franklin D. Roosevelt signed the bill, stating that it "defines, as a part of our substantive law, the right of self-organization of employees in industry for the purposes of collective bargaining, and provides methods by which the Government can safeguard that legal right."[8] The standard bearer of the Republican Party years later also stated his support of the federal policy. In his 1952 campaign for the presidency, Dwight D. Eisenhower expressed his views in these words:

> An industrial society dedicated to the largest possible measure of economic freedom must keep firm faith in collective bargaining. That process is the best method we have for changing and improving labor conditions and thus helping to raise the American standard of living. Healthy collective bargaining requires responsible unions and responsible employers. Weak unions cannot be responsible. That alone is sufficient reason for having strong unions. The contest between labor and industry cannot be abolished without abolishing economic freedom.[9]

The Supreme Court of the United States added its considerable weight to the cause of labor unions in the crucial decision that affirmed the constitutionality of the Wagner Act. Speaking for the majority, Chief Justice Charles Evans Hughes said:

> Long ago we stated the reason for labor organization. We said that they were organized out of the necessities of the situation; that a single employee was helpless in dealing with an employer; that he was dependent ordinarily on his daily wage for the maintenance of himself and family; that, if the employer refused to pay him the wages he thought fair, he was nevertheless unable to leave the employ and resist arbitrary and unfair treatment; that union was essential to give laborers opportunity to deal on an equality with their employer.[10]

Acceptance by Employees

The observations expressed by the Chief Justice go a long way toward

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[8] U.S., Congressional Record, 74th Cong., 1st Sess., 1936, LXXIX, Part 10, 10720.

[9] "Address to the Annual Convention of the American Federation of Labor, September 17, 1952," The New York Times, September 18, 1952, p. 22.

[10] N.L.R.B. v. Jones & Laughlin Steel Corp., 301 U.S. 1, 33 (1937).

explaining the solid support given the unions by their members. Occasionally an opinion is voiced that holds that workers are union members through fear, pressure, or the demagogic persuasion of their leaders. Studies of union members' attitudes indicate otherwise. The common thread that runs through these investigations is expressed by one in these words: "The conclusion that the union studied has strong membership support and little over-all opposition seems almost inescapable."[11] Some groups, like the plumbers and miners in Joel Seidman's study, when asked what things would be like if the union disappeared from the scene, found the idea almost impossible to grasp. Members of some other unions covered in the same study abhorred the thought of losing their union, in the belief that such an event would mean for them a return to arbitrary and oppressive acts by supervisors, insecure jobs, promotion by favoritism rather than seniority, increased work pressure, and reduced wages.[12] Another survey embracing twenty unions reached this conclusion: "Almost every worker interviewed was sold on his union. He was convinced that he needed it for protection against arbitrary management action and as an instrument for obtaining economic security."[13]

While the reasons for employee acceptance of unions have not been simple or unmixed or even strong enough to propel every worker into union membership, the motivation for joining unions, according to two authors of another penetrating analysis of unionism, has often been economic, but it has also been psychological and social. It satisfies the needs of freedom of action, protection

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[11] Hjalmar Rosen and R. A. Hudson Rosen, The Union Member Speaks (New York: Prentice-Hall, Inc., 1955), p. 117.

[12] Joel Seidman et al., The Worker Views His Union (Chicago: The University of Chicago Press, 1958), passim.

[13] Leonard R. Sayles and George Strauss, The Local Union: Its Place in the Industrial Plant (New York: Harper & Brothers, 1953), p. 222.

of personal dignity, and the bonds of group relations and community life.[14] In an intensive study of the packinghouse workers at the Swift plant in Chicago, another author notes that the employees' desire for a union was not imposed on them by union leaders. He states:

> Rather we found this desire growing out of the needs of the work life itself, the need for some protection for status, for representation, for "somebody to back you up" against the giant organization, with its many levels of authority, whose primary, though not exclusive concerns are inevitably production, market competition, and profits.[15]

A similar attitude has been noted among white-collar workers who join unions. A study of their motives concluded that they joined in order to obtain the middle-class dignity and independence denied them by management and the work situation.[16] This outlook seems to prevail among the great majority of members regardless of their degree of skill or whether they are craft, office, professional, or industrial workers.[17]

The helplessness of the individual worker to determine his own conditions of employment when confronted with a large business organization, long ago acknowledged in the declaration of policy in the Norris-LaGuardia Act, has worsened because of growing industrialization. A substantial majority of American workers are now employed in places which have more than a hundred

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[14] Clinton S. Golden and Harold J. Ruttenberg, The Dynamics of Industrial Democracy (New York: Harper & Brothers, 1942), pp. 5-7.

[15] Theodore V. Purcell, The Worker Speaks His Mind on Company and Union (Cambridge: Harvard University Press, 1953), p. 172.

[16] George Strauss, "White Collar Unions are Different!" Harvard Business Review, XXXII (September-October, 1954), 76.

[17] In addition to the studies previously mentioned, cf. Fred H. Blum, Toward a Democratic Work Process: The Hormel-Packinghouse Workers' Experiment (New York: Harper and Brothers, 1953); Arnold M. Rose, Union Solidarity: The Internal Cohesion of a Labor Union (Minneapolis: University of Minnesota Press, 1952); Richard McKeon, "What Are the Facts behind Rapid Growth of Engineering Unions?" Work, XIV (February, 1957), 7.

employees.[18] A still much larger proportion of the labor force consists of employees whose sole income is their wages. This pattern gives no indication of being altered. Industrialization continues to advance apace, having its effect on every element of society, including agriculture, where the number of independent farm families continues its steady decline. The pressure this circumstance places on the individual worker has been well described in the following words:

> We have become a nation of employees. We are dependent upon others for our means of livelihood, and most of our people have become completely dependent upon wages. If they lose their jobs they lose every resource, except for the relief supplied by the various forms of social security. Such dependence of the mass of people upon others for all of their income is something new in the world. For our generation, the substance of life is in another man's hands.[19]

In an economy where workers are so dependent upon others for necessary employment, especially when a surplus of labor exists, the alternative to collective bargaining is likely to be no bargaining. If the labor market is unorganized, the individual worker must choose his net economic advantage on the basis of alternatives over which he has virtually no control.[20] His weakness is demonstrated by the miserable conditions under which migratory and many other farm workers labor in the United States.[21] The same absence of

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[18] It is estimated that 1.65 per cent of the business firms in the United States employ 60 per cent of the almost 40 million business-firm employees. Each of these firms has over 100 employees. Firms with 300 or more employees comprise 52 per cent of business-firm employees. Cf. Orme W. Phelps, "A Structural Model of the U.S. Labor Market," Industrial and Labor Relations Review, X (April, 1957), 405. In 1951 less than .1 per cent of United States business firms accounted for 37 per cent of total employment. These firms each employed over 1,000 workers. Cf. H. M. Douty, "Labor Status and Collective Bargaining," Monthly Labor Review, LXXIX (June, 1956), 649.

[19] Frank Tannenbaum, A Philosophy of Labor (New York: Alfred A. Knopf, 1951), p. 9.

[20] This observation has been made by Joseph Shister, "Trade Union Policies and Non-Market Values," in Industrial Relations Research Association, Proceedings of the Second Annual Meeting, Champaign, Ill., 1950, p. 86.

[21] Cf. Report on Farm Labor (New York: National Advisory Committee on Farm Labor, 1956), pp. 5-20, 36-37.

market power holds down unorganized urban workers, especially in those occupations where unionizing has been thought of as involving a decline in status.[22] A further example of the individual employee's dependence on his employer has been noted by Secretary of Labor James Mitchell in reference to the minimum wage law which permits the Secretary to sue an employer to collect back wages only when the unpaid employee makes a request in writing. Only about 60 percent of the underpayments discovered by investigation are actually refunded to the workers because many of them fear to offend their employers, according to Mitchell.[23]

For the worker who is only one of many in the place of employment, consequently, union membership appears, first of all, to provide a sense of participation, however remotely, in the decisions that affect the terms under which he works. In the absence of special skills or a tight labor market, he has protection in a bargaining situation through his union whereas otherwise the odds are heavily one-sided against him.

The sense of having participated in these decisions becomes increasingly important as the terms of the employment contract embrace more and more aspects of the worker's daily life. Not only does the contract deal with wages and related benefits and the rules for administering wage problems that arise every day. It covers a wide variety of working rules pertaining to hours of work, such as overtime, holiday work, lunch periods. It determines whether changing clothes, cleanup, and travel are included within paid working hours. It also contains the rules pertaining to job security, such as layoff and recall, promotion, discipline, discharge, and transfer. Beyond all this are the

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[22] Cf. John K. Galbraith, American Capitalism: The Concept of Countervailing Power (rev. ed.; Boston: Houghton Mifflin Co., 1956), pp. 115, 149.

[23] The Wall Street Journal, December 5, 1958, p. 9.

contract rules covering the exceedingly important mechanism for handling and processing grievances on the job, an orderly procedure found in most contracts that has been more effective than any other measure in reducing labor unrest, dissatisfaction, and strikes.

Union membership, furthermore, has strong appeal to the worker because of the sense of freedom it can convey when the union is properly exercising its functions. Notably, the union provides a sense of protection from what otherwise can often be arbitrary, one-sided regulations and decisions related to his work-status. The unionized employee, for example, does not fear to report the employer who is paying less than the legal minimum wage. In fact, the union will probably help him to write up the complaint and will stand by to protect his job.

The development of rules governing hiring, firing, and working conditions is chiefly the result of demands that the employee be protected from unilateral decisions of employers. In place of authoritarian control the union contract applied consistently and objectively has substituted the idea of local self-government based on an agreement arrived at by negotiation and compromise. "It implies," says Dr. Orme W. Phelps, "that employees are first-class citizens with permanent, enforceable rights, rather than segregated recipients of temporary privileges which may be withdrawn at any time."[24] In no area has the employee gained greater protection from authoritarian control than in the matter of job security. Phelps remarks:

> The time-honored definition of a contract of employment as an agreement terminable at the option of either party is now out of date for millions of working men and women who retain their right to terminate at will, but whose employers do not, except for cause.[25]

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[24] Orme W. Phelps, "How Industrial Relations Contributes to Modern Society," Labor Law Journal, VIII (June, 1957), 384.

[25] Ibid.

The value of the union contract compared to no contract undoubtedly has influenced workers' acceptance of unions. While at common law, in the absence of a contract, a private employer has an absolute right to terminate employment at will, some state and federal statutes now restrict to a degree this previously unlimited power as a result of the growing social recognition of the employee's property right in his job. Still, less than a dozen states have laws requiring that a reason for discharge be given the employee, and a plausible reason is not hard to find. The restraint on the employer as found in the typical collective bargaining contract is much more effective in the employee's eyes, for, however vague the restraint, it does require the employer to state his reason for every discharge and to prove it was not arbitrary in the view of an impartial judge.[26]

Decisions on working conditions are also strongly influenced by the presence or absence of a union contract. It is common procedure for a new employee in a large industrial plant to be given a handbook of work-rules. Where there is no union these rules have been drawn up by the employer alone or by his representative, and the employee has no voice in the matter. Where there is no contract negotiated for the employees by the union representing them, the rules and all other terms of employment can be abrogated or changed without notice, and no recourse is available, unless the matter is specifically covered by some statute. Employees often find that without a union their opinions on working conditions are seldom requested, and all final decisions and their application are the exclusive prerogative of management. The unrepresented worker finds the rules of conduct and penalties for violation

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[26] Cf. "Loyalty and Private Employment," Yale Law Journal, LXII (May, 1953), 957-59, 964, 972-73, 983. Also cf. Arthur Lenhoff, "The Right to Work: Here and Abroad," Illinois Law Review, LXIV (November-December, 1951), 716.

listed in the employees' handbook, which usually says nothing about procedures for settling complaints or grievances.

A striking contrast is evident in the plant where a union is recognized as the bargaining agent of the employees, for there the work-rules in every detail are the result of an agreement between employer and union. No terms of the contract can be changed without notice. The employee can ascertain his rights as contained in the written contract, and bi-partisan review of managerial decisions affecting the employee is the norm, especially of those decisions concerned with the grievance procedure. The work-environment is thus characterized by a measure of certainty, regularity, and security not otherwise available. While standards of working conditions vary greatly from place to place, especially between factory and non-factory employment, in essence they are fairly uniform today, consisting, as Phelps notes, of "written contracts, formal methods of interpretation, established work rules, reliance upon definite and measurable standards for the determination of job rights, and compulsory union membership to assure equal treatment of the work force."[27]

The development of the collective bargaining contract has proceeded simultaneously with what has been called a genuine revolution in employee rights, acknowledged by employers who not twenty-five years ago fought uncompromisingly against any union recognition in the sincere belief that the system would not work.[28] Employees, once thought of almost in commodity terms, with management assuming few, if any, continuing obligations toward them and casting them aside when worn out or injured, even on the job, have benefitted exceedingly by the gradual change toward a welfare concept of employment. Of course,

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[27] Phelps, Industrial and Labor Relations Review, X (April, 1957), 417-18.

[28] Cf. Phelps, Labor Law Journal, VIII, 435.

unions are not solely responsible for the change. Consideration must be given to wartime shortages of labor, increased educational opportunities for the working classes, greatly declining immigration, and rapidly mounting industrial investment in employee training with the consequent advantages to industry of stable and satisfied employees. But unions have been on hand to spur corporate management toward an appreciation of the economic advantages of better personnel programs and human relations.[29]

It must be concluded that industrial employees and craft workers who have joined and stayed in unions have done so, by and large, because they believe that unions satisfy to some degree certain basic needs. Most union members are agreed that they achieve better benefits and rewards under a system of collective bargaining through their union representatives than they otherwise would. For this reason they must be regarded as among the strongest exponents of the need for effective unions.

Acceptance by Economists

Other groups, including economists, have also come to accept unions as fixed features in the American economy. The following statement expresses a view common to many labor economists: "Not arguments but events have determined whether unions and collective bargaining were to become established in America. They are established. The question is no longer, 'Shall we have unions and collective bargaining?' but rather 'What kind of unions and collective bargaining shall we have?'"[30]

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[29] Cf. Richard A. Lester, "Revolution in Industrial Employment," Labor Law Journal, IX (June, 1958), 440-41.

[30] E. Wight Bakke and Clark Kerr, Unions, Management and the Public (New York: Harcourt, Brace and Co., 1946), p. 3.

The needs of workers are cited by economists as a principal factor in explaining the development and acceptance of an effective labor movement. Among the needs that a union can fulfill, the following are commonly stressed: control of the labor supply to prevent cut-throat competition among workers, greater equality of bargaining power in negotiating employment contracts, enactment of a code of industrial law that defines the worker's rights in and to his job, establishment of an effective instrument with which to represent the worker's interests on the job and in the state, and provision for a medium through which the worker can realize his objectives and his desire for association with his fellow men. However imperfect unions might be, students of the labor market do not hesitate to say that if unions as now organized passed out of the picture, another institution would rise to fill their place as long as these needs persist.[31]

The benefits of collective bargaining are also cited by economists as lending support to their acceptance of unions. Although the economic benefits of unionism to workers are a subject of considerable argument, one of the most distinguished American economists writes:

> There is little question, however, that collective bargaining has resulted in elevating the status of the worker, in other than economic respects, both inside and outside of the shop. It has given him a good deal of protection in his job and greatly improved the treatment he has received from foremen and other supervisors. It has increased his self-respect and his stature with his fellows. To many workers it has opened opportunities for leadership and public attention which otherwise would probably never have come to them.[32]

While positive economic benefits of unionism may be questioned, it is widely held that in the absence of unions the power of modern capital could have held down labor's current share of the national income and greatly increased its

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[31] Ibid., pp. 6, 7.

[32] Edwin E. Witte, "Collective Bargaining and the Democratic Process," The Annals of the American Academy of Political and Social Science, CCLXXIV (March, 1951), 92. Hereafter cited as The Annals.

own. Thus another leading economist, while expressing the public disillusionment over the extent of corruption in some unions, warns of the dangers inherent in dispensing with unions. He says:

> Without the pressure of unions, wages and working conditions would be depressed to subnormal levels. Sweat shops did not come into being because employers of their day were evil, but because, in the absence of unions, there was no counter-pressure to keep wages up to certain levels, which all competitors had to meet if they were to attract and hold labor. And it could happen again, under the pressure of competition, even though the overwhelming sentiment of the community would be against it.[33]

The opinion just cited bears resemblance to the theory of counter-vailing power, advanced by John Kenneth Galbraith, who finds strong industrial unions to be a natural response of workers to the huge industrial complexes of the present day.[34] A comparable view of the historical development of American industry as one in which both corporate ownership and the working force have become anonymous and impersonalized, leads Frank Tannenbaum, economist and social philosopher, to the conclusion that the labor union, in his words, "is the formal expression of the socially inevitable grouping of men in modern industry, just as the corporation and holding company are new ways of organizing capital for industry."[35]

Acceptance by Management

Even among economists and specialists in labor law who most strongly object to and denounce the present-day structure, practices, and goals of most labor unions, there exists a general acceptance of the right of workers to

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[33] Benjamin M. Selekman, "Trade Unions--Romance and Reality," Harvard Business Review, XXXVI (May-June, 1958), 79.

[34] Galbraith, pp. 110-114.

[35] Tannenbaum, p. 106.

join unions and the right of unions to exist and bargain collectively.[36] The same can be said of some of the strongest defenders of "right-to-work" laws.[37] No organization has fought more vigorously to ban every form of compulsory union membership than the National Association of Manufacturers. Yet one of its spokesman forthrightly acknowledges the acceptance of the right of unions to exist and function. He states:

> One the side of management, while many labor leaders do not recognize it or do not admit it, recognition of collective bargaining as a means of determining wages, hours and working conditions has received overwhelming acceptance. Employers in general have concluded that if their employees want to be represented by a union for collective bargaining purposes, it is only good management and good business to make collective bargaining work. Since unions have now developed a strength of over 15 million members, management realizes that unreasoning opposition to recognition of unions must inevitably result in government determination of wages, hours and working conditions. Consequently, during the past 15 years, a managerial revolution has taken place and management's spokesmen are among the foremost defenders of free collective bargaining where that is the choice of the employees.[38]

It is no secret that business management vigorously resisted the inroads of unions into its preserve, notwithstanding the general extension of collective bargaining procedures in the late nineteenth and early twentieth centuries. Nevertheless, with the development of the large corporation employing thousands of workers, it became only too evident that some method of representation for employees was increasingly necessary.

The National Labor-Management Conference assembled by President Woodrow

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[36] E.g., Sylvester Petro, The Labor Policy of the Free Society (New York: The Ronald Press Co., 1957), p. 97; Donald R. Richberg, Labor Union Monopoly (Chicago: Henry Regnery Co., 1957), p. ix.

[37] E.g., John E. Coogan, "Can Nothing Be Said for State 'Right-to-Work' Laws?" The American Ecclesiastical Review, CXXXIII (December, 1955), 370. The acceptance of these rights is implicit in the publications of the Chamber of Commerce of the United States. Cf. The Case for Voluntary Unionism (Washington: Chamber of Commerce of the United States, 1957), p. 1.

[38] Leo Teplow, "Roadblocks to Good Employee Relations and Collective Bargaining," in Neil W. Chamberlain, Sourcebook on Labor (New York: McGraw-Hill Book Co., 1958), p. 1085.

Wilson after the first World War failed to accomplish any positive steps in bringing the two sides together. Yet the division there was not over whether there should be unions but whether unions should be restricted to the employees of a particular company. Employee-representation programs had already come on to the industrial scene and these continued to thrive after the war, often evolving into some form of company union over which the employer had considerable or even absolute authority.

As corporate enterprise expanded, bargaining with individuals over employment terms became impossible; collective bargaining became a necessity. To rely on individual bargaining was to invite disorder, even chaos, and to promote serious morale problems. If for no other reason than efficiency, collective bargaining had to be accepted.

Nevertheless, how much freedom of choice a firm's employees should have in choosing their representative for collective bargaining has continued to be disputed by employers. Many, though not all, have acceded to the free-choice principle embodied in the Wagner and Taft-Hartley Acts. Debate on this point, however, does not involve the right of workers to organise into unions. This right was not questioned when President Harry Truman convened another Labor-Management Conference at the close of the second World War. The collapse of the Conference was due rather to irreconcilable differences on the question of management prerogatives.

The most thorough study ever made of management's attitudes toward unions was one by a committee of the National Planning Association, which undertook an investigation of the causes of industrial peace. The labor relations patterns of thirty middle-sized companies were chosen as the best examples of historically hostile protagonists finding a system of co-existence that produced labor peace, a condition defined in the study as "the product of the relationship between two organized groups--industrial management and organized labor--in

which both co-exist, with each retaining its institutional sovereignty, working together in reasonable harmony in a climate of mutual respect and confidence."[39]

The committee making this study of industrial peace became convinced that one of the fundamental causes of peaceful relationships was found in the genuine acceptance of the employees' union by the employer. On the basis of careful investigation the conclusion made was this:

> First among the attitudes of management which are particularly significant as causes of industrial peace is a genuine acceptance of collective bargaining, and of the union institution, as permanent and large factors in the successful operation of the enterprise. Moreover, this attitude is one which in collective bargaining is felt to have positive values (even though it may have liabilities also) for the company.[40]

The committee also stated in its report: "When management's attitude is clearly one of acceptance of bargaining and of belief that it can be made to work successfully," one can expect "to find a basically healthy relationship, no matter how serious the specific problems of the moment may be. Evidence of this view is to be found in every one of the Case Studies."[41]

Even more to the point, the study found that labor peace in every case studied followed upon employer encouragement of strong unions and of employee union membership. Thus the committee remarks: "The employers saw positive advantages in bargaining with a strong and well-disciplined union, and were convinced that they should take steps, directly or indirectly, to encourage workers to join and support the organization which represented them."[42] The

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[39] Causes of Industrial Peace Under Collective Bargaining: Fundamental of Labor Peace--A Final Report, Case Study No. 14 (Washington: National Planning Association, 1953), p. 7. A later edition of this study has been published which includes Case Study No. 14 and abridged versions of the preceeding thirteen studies. Cf. Clinton S. Golden and Virginia D. Parker (ed.), Causes of Industrial Peace under Collective Bargaining (New York: Harper and Brothers, 1955).

[40] Ibid., p. 73.

[41] Ibid., p. 74.

[42] Ibid.

report then continues:

> There is clear-cut evidence, we feel, that direct or indirect encouragement of union membership by the employer is one of the causes of industrial peace under collective bargaining. If an employer accepts the union as a potentially positive force in industrial relations, he is necessarily concerned with the problems which union leaders face in developing a responsible and well-disciplined union. Consequently, he is usually convinced that some measures must be taken to build worker loyalties to the union as well as to the company.[43]

The fact that each one of these companies stressed the importance of a secure union genuinely accepted by management did not work against their growth or profit-making capacity. The companies studied were found to be among the most efficient in their respective industries, and, generally, they were steadily improving their efficiency. At the same time most of the firms were in relatively well-paying industries and able to match or surpass community wage levels.[44]

These studies seemed to indicate, furthermore, that the firms in question, while prospering in their respective industries, were also able to retain their managerial prerogatives even though dealing with strong unions. The possibility that a union could usurp managerial rights was recognized, but such a development, it was thought, would also clearly point to an irresponsible union dealing with a weak management. The studies point to a further conclusion that the union's willingness to recognize management's proper responsibility to the owners should ordinarily be the consequence when the union knows it has been completely accepted by management. For the union has less reason to interfere with managerial control once the threat of discrimination or coercion against the union has been removed.

If, however, management refuses to bargain or discuss some dispute

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[43] Ibid.

[44] Ibid., pp. 51,55.

because of its "right to manage," union suspicion and hostility will almost certainly be aroused, the studies found. In its final report the committee stated:

> Management usually gains by being willing to discuss anything at all, by being willing to state the facts and its position frankly, by putting its cards face up on the table, while insisting firmly upon its responsibility to the owners for the conduct of the business.[45]

Within these successful companies both management and labor were generally found to be, according to the report, "primarily interested in solving specific problems rather than in defining rights and prerogatives." The problem-solving approach, in other words, was grounded in the sound principle "that management and union policies in collective bargaining can be developed better by thrashing out concrete issues than by arguing about abstract concepts of managerial prerogatives and union job control."[46]

To solve the inevitable conflict of interest between management's concern with retaining its prerogatives and the union's interest in greater job control, most of these same companies followed the practice of consulting the union before taking any action which might affect the jobs of the workers, even when the contract permitted management to take unilateral action. This practice of itself was found to achieve for the union its goal of more job control by the very fact that the union knows what management is doing and has time to discuss and object to the decision under consideration. In a sense, the report acknowledges, the union is given a chance to participate in the managerial decision.[47]

Yet here is the crucial point on which industrial relations are most likely to flounder, the fear that a union will take advantage of its power to insist on decisions that will give it more than a fair share of the company's

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[45] Ibid., p. 79. [46] Ibid., pp. 84,85. [47] Ibid., pp. 85-86.

profits. The facts as revealed in the National Planning Association study indicate otherwise, however. For the report says:

> There is clear-cut evidence that the unions involved were concerned with the economic welfare of the companies. Yet their acceptance of the necessity for profitable operations is not vaguely grounded in a mere belief in a system of private enterprise. It seems to stem much more realistically from a hard-boiled recognition that the union as an institution and the job interests of its membership are dependent upon the economic success of the business and that, under the competitive conditions prevailing throughout most of the economy, there is no practical means for workers to get "more" except by bargaining with a company which keeps itself in a condition to provide "more."[48]

The National Planning Association study is not alone in supporting the conclusion that management's acceptance of the union greatly enhances the possibility of labor peace, even though that acceptance cannot guarantee peace.[49] This has been found to be equally true in small companies, according to a study of several firms confronted with dire crises, which were surmounted and the companies saved because of union cooperation.[50]

While it is true that many employers prefer to discount and brush aside the importance of "acceptance" of the union as contributing to improved industrial relations, a strong minority has come to believe that a truly cooperative relationship in the plant is impossible until the union's need for security and status is satisfied in a positive way by management. Until this happens, the union is likely to regard all proposals by management with suspicion and hostility.[51] This point of view has been stressed by Herbert O. Eby, general

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[48] Ibid., p. 79.

[49] Cf. Richard A. Lester and Edward A. Robie, Constructive Labor Relations: Experience in Four Firms (Princeton: Industrial Relations Section, Princeton University, 1948), passim; Joseph Shister and William Hamovitch, Conflict and Stability in Labor Relations: A Case Study (Buffalo: Department of Industrial Relations, University of Buffalo, 1952), passim.

[50] Cf. A. Howard Myers, Crisis Bargaining: Management-Union Relations in Marginal Situations (Boston: Bureau of Business and Economic Research, Northeastern University, 1957), passim.

[51] Cf. Dallas L. Jones, "The Implications of the 'Right-to-Work' Laws," Michigan Business Review, IX (November, 1957), 6.

labor relations director of the Pittsburgh Plate Glass Company, who believes that the union should be given full recognition as the spokesman of the employees, and that the company should not compete with the union for the employees' loyalty. Eby also holds that the company should recognize that the union has to do some things in a plant which are not wholly conducive to better business operations, simply because such activities are politically expedient for a political organization, which a union is.[52]

Employers who favor a strong union generally take the position that company pressure against the union increases tension and aggressive attitudes in industrial relations. Their experience tells them that a union in hostile territory must daily be alert to new organizing methods and opportunities and to any employer activity that might detract from union authority or prestige. In these circumstances the union leader can ill afford to suppor the employer on any issue, however necessary or reasonable, that is unpopular with the union rank and file. To make concessions, to ease pressure, or to accept a lesser benefit risks the danger of putting the union in a bad light with the employees whom it must constantly seek to keep in its fold or attract thereto. Lacking the support of management, the union must use every available means to expand its organization and to keep the support of the work force. This situation does not yield a high degree of industrial harmony, since union leaders are under pressure to continue their role of aggressive organizers rather than developing into mature administrators.[53]

In other words, according to this view, a political settlement has first to be made, however unbusiness like this may seem, in which the sovereignty of the union is established and its sphere of influence acknowledged. Only then

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[52] Cf. Harbert O. Eby, "Ten Ways to Build Union Responsibility," Personnel Journal, XXXIV (December, 1955), 246-50.

[53] Cf. Purcell, p.270.

can the union's leaders take serious and constructive view of the company's economic and productive problems, because only then can they hope to direct and withstand the contrary political pressure they must expect in a democratic organization.[54]

Other evidence also points to the benefits business derives from encouraging a strong organization of its employees and thereby promoting a spirit of labor-management cooperation within the enterprise. In his penetrating study of the workers in a packinghouse firm, the Reverend Theodore V. Purcell, S.J., found that much help could come to the company by this kind of approach. The many interviews he held consistently showed that the production-line worker knows his job better than the foreman could ever know it. Father Purcell says:

> The worker could make many suggestions for making money, for brilliant work simplification, but he will never do it. He will never trust the "suggestion system," if he is afraid that he will work himself out of a job, or have his rate cut, or see the company take all the benefits.[55]

But such cooperation by the workers, he continues, will remain forever untapped as long as the union and the workers remain unsure of their status with the company. There must first be a growth in mutual trust and good faith, and guarantees need to be written into the labor contract so that the worker knows he will not be downgraded in pay and status for his labor-saving suggestions.[56]

Not infrequently representatives of management seem to overlook other costs their firms are sure to incur when they resist their employees' unions and airily assert that union leaders must rely exclusively on their own wits in selling themselves to the employees, without any help or encouragement from the employer. In other situations management knows well enough that selling a product requires advertising. In this instance, unions can sell their product

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[54] Cf. Jones, p. 8. [55] Purcell, p. 259. [56] Cf. ibid., p. 270.

in no better way than by displaying bright new concessions and benefits granted by reluctant management. Alfred Kuhn develops the point in clear fashion when he writes:

> An important part of successful selling is to make the prospective customer dissatisfied with what he has, which leads the union into perpetual criticism of management. A traditional technique for showing one's prowess is to exaggerate the fearfulness of the opponent, which produces similar results. On the whole, the insecure union (like the insecure individual) often tends to be permanently aggressive and belligerent. This means seeking unreasonable concessions as well as reasonable ones from management. It means pressing every grievance whether right or wrong, and even inventing grievances. It means calling management nasty names or imputing improper motives to it. Whatever else such activities may do, they do not make for pleasant or sound relations between a company and its union.[57]

The costs of such antagonism can at times run very high.

Hardly any cost is higher or more frustrating to employers than that imposed on them by strikes or unstable labor relations leading to interrupted output. Many employers recognize that the collective bargaining contract has created a stability in labor relations that was conspicuously absent in pre-union days. It was not foreseen that the contract with unions would gradually be extended to longer terms, but this development has benefited both employers and employees. Whereas most contracts used to expire after one year, more and more of them are now adopted for two years and longer, thus assuring a sustained period of relative peace and increased control over costs that earlier agreement could not provide and that was completely unknown before the collective bargaining contract became an accepted feature of the labor market.

Employers, therefore, who have accepted the coming of strong unions can point to substantial reasons for doing so. No one of them will say that his approach to organized labor guarantees successful industrial relations, only that it lays the necessary groundwork. Many other factors carry strategic weight, such as the economic and political environment and the personalities of the

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[57] Alfred Kuhn, Labor Institutions and Economics (New York: Rinehart and Co., 1956), p. 117.

business and union leaders who negotiate agreements. The businessman who dislikes all unions on principle and the union leader who knows nothing good about businessmen would seldom, if ever, negotiate an agreement in a spirit of harmony and cooperation.

Nevertheless, the trend towards acceptance of unions by business management has continued to progress since it began to reveal itself around the time of the first World War.[58] Despite frequent anti-union statements by some important business leaders, employers do appear to be more resigned to the permanent presence of unions, even if they are not enthusiastic. The trend, while not a steady upward one, has been prompted more by external than internal pressures, according to Professors Douglas Brown and Charles Meyers. Among the external pressures they include labor shortages, increasing intervention of government in industrial relations, greater union strength, growth in the size of business enterprise, and the separation of ownership and management with the consequent development of a professional managerial group.[59]

The changing attitude does not nor need it imply a surrender to unions of management's right to manage. None of the evidence submitted herein supports the view that management has lost its necessary prerogatives or that organized labor has desired to seize control where labor-management cooperation has replaced the strife of former days. The basic fact stands that numerous representatives of business and management are today numbered among the great majority of Americans who acknowledge the right of workers to organize and join effective

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[58] Note the support given to this statement by Professor Neil W. Chamberlain in his Labor (New York: McGraw-Hill Book Co., 1958), p. 24.

[59] Douglas V. Brown and Charles A. Myers, "The Changing Industrial Relations Philosophy of American Management," Industrial Relations Research Association, Proceedings of the Ninth Annual Meeting (Madison, Wis., 1957), p. 95.

unions and bargain collectively for the terms of their employment.

Acceptance by Religious Leaders

The right to organize has also received strong support from religious leaders. No religious body has expressed its position more clearly than the Catholic Church. From the time of Pope Leo XIII in the late nineteenth century, Catholic thought has been unmistakably insistent in defending the right of labor to organize into freely chosen unions. The Catholic Bishops of the United States, in a document issued in 1940, affirmed this principle in the following words:

> Labor can have no effective voice as long as it is unorganized. To protect its rights it must be free to bargain collectively through its own chosen representatives. If labor when unorganized is dissatisfied, the only alternative is to cease work and thus undergo the great hardships which follow unemployment.[60]

Several reasons are advanced to support this teaching. Most basic is man's natural right to form societies that help him achieve his necessary ends. It is also maintained that to protect their common interests, workers are justified in organizing, especially because in modern life the structure of society ordinarily requires that men act through groups to secure their rights. Moreover, Catholic leaders have stressed the inadequacy of the individual confronted with the power of the state and industry to make his voice heard in defense of his right to decent treatment, just wages, and some economic security. Many say that as an isolated individual who needs the job more than the job needs him, the typical employee has no real power to bargain nor does he usually have the ability, knowledge, or experience to present his case to the employer.[61]

Catholic teaching holds that even if most injustice and exploitation in the labor market were removed, unions would still have a legitimate place in

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[60] The Church and Social Order (Washington: National Catholic Welfare Conference, 1940), p. 26.

[61] Cf. John F. Cronin, Social Principles and Economic Life (Milwaukee: Bruce Publishing Co., 1959), pp. 178-79.

society. One highly recognized authority expresses the thought in this manner:

> They [unions] are the normal voice of labor, necessary to organize social life for the common good. There is a positive need for such organization today, quite independently of any social evils which may prevail. Order and harmony do not happen; they are the fruit of conscious and organized effort. While we may well hope that the abuses which occasioned the rise of unions may disappear, it does not thereby follow that unions will have lost their function. On the contrary, they will be freed from unpleasant, even though temporarily necessary, tasks and able to devote all their time and efforts to a better organization of social life.[62]

If individual Catholic clergymen and laymen have sometimes given no more than a passing nod to the social pronouncements of the Church, there is still no doubt about the uniform support of Church authority for the right of workers to organize and even the necessity of their exercising that right in some circumstances. On the other hand, the teaching of other religious bodies is often more difficult to assess since it is not necessarily accepted by church members as binding in the way that authoritative pronouncements by Catholic leaders are by Catholics.

The Protestant attitude toward the rights of workers and union members has been mixed. Some churches have been reluctant to speak aloud about labor injustice or to appear favorable to labor's position. Local groups in the past not infrequently openly sided with management. It is true, of course, that Protestantism was closely associated with the growing middle classes and property holders in America. The working classes and the labor movement on their side, did not generally give strong support to the Protestant churches.[63]

Nevertheless, the picture of the Protestant view at a national level, especially in the North, is considerably different. While the pronouncements of Protestant groups may be far from receiving universal support from their

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[62] John F. Cronin, Catholic Social Principles (Milwaukee: Bruce Publishing Co., 1950), p. 418.

[63] Cf. Robert Moats Miller, American Protestantism and Social Issues, 1919-1939 (Chapel Hill: University of North Carolina Press, 1958), pp. 284-86.

members, still the declarations of some groups must be considered fairly representative of the thinking and attitudes of a great many Americans. A notable instance has been the repeated pronouncements of the Federal Council of the Churches of Christ in America in 1912, 1932, and 1940, and again in 1956 and 1959 by its successor, the National Council of the Churches of Christ in the United States, to the effect that labor unions are an important form of social organization. The Federal Council not only expressed its conviction that labor has a right to organize but that it is socially desirable for labor to exercise that right because of the need of collective action in the maintenance of standards.[64]

A highly influential position was taken by the churches after the violent 1919-1920 steel strikes. During the strikes Protestant statements mostly took the side of steel management. The feeling was drastically altered to one of sympathy for the strikers after the appearance of the Report on the Steel Strike of 1919 which summarized the findings of a Commission of Inquiry of the Interchurch World Movement. Roundly condemned by trade associations and industry, the forthright Report succeeded in bringing the churches and labor closer together.[65]

Particular churches have also made known their support of the principles underlying unionism. Especially worthy of mention were the efforts from 1920 on of the Methodist Episcopal Church, the Northern Baptist Convention, the Northern Presbyterians, the Congregationalists, and the Disciples of Christ. Among the undenominational journals of Protestant thought an effective voice

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[64] Cf. Benson Y. Landis, Religion and the Good Society (New York: National Conference of Christians and Jews, 1942), pp. 46-48; Miller, pp. 121-22.

[65] Cf. Miller, pp. 211-16, 256-61.

for the rights of workers has especially been found for many years in The Christian Century.[66]

Other statements of Protestant spokesmen also reveal a favorable attitude that became increasingly sympathetic with the onslaught of the great depression. Representative views are found in the series of studies on Christian ethics and economic life sponsored by the Federal Council and later the National Council of the Churches of Christ, which, though not pronouncements of the Council, do attempt to present Protestant principles applied to modern problems. One such principle states that "the businessman must respect the right of labor to organize and must join with labor in collective bargaining."[67] In the same series another writer states his belief that the facts as they exist today establish beyond doubt the importance, and even the necessity, of trade unions in modern industrial society.[68]

Representatives of Jewish groups have taken a similar stand. The Rabbinical Assembly of America has insisted upon labor's right to organize, as has the Central Conference of American Rabbis. The Conference observes that industry has the right to benefit itself through organization for the purpose of accumulating wealth, and businessmen have the right to gather into trade associations. Certainly then, according to these spokesmen of the Jewish belief, workers likewise may organize for their own ends and bargain collectively through honorable means, and they have the right to share in determining both

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[66] Cf. Ibid., pp. 223-24, 229-30, 233, 235-38, 241-42, 246-47.

[67] Howard R. Bowen, Social Responsibilities of the Businessman (New York: Harper & Brothers, 1957), p. 203.

[68] John A. Fitch, Social Responsibilities of Organized Labor (New York: Harper & Brothers, 1957), p. 41.

the conditions and the reward of labor.[69] Dr. Israel Goldstein, president of the American Jewish Congress, reaffirms this opinion when he says: "Jewish religious groups have always vigorously supported the rights of laboring men and women to organize and to work in conditions of dignity and decency."[70]

Conclusion

It is evident, therefore, that the right of workers to organize into unions has received almost universal recognition as a principle of action in the United States. The moral arguments advanced by religious leaders have served to enhance the belief now accepted by government and business and social scientists that, in the words of Pope Pius XII, "unions have arisen as a spontaneous and necessary consequence of capitalism embodied in an economic system."[71] Not only is the ordinary employee's helplessness to achieve bargaining equality with a strong employer admitted, but the alternatives to collective bargaining are acknowledged as not in keeping with the principles of a democratic society.

The denial of collective bargaining procedures would entail either of two alternatives, ultimately resolving into one. In the first instance, individual bargaining or unions too weak to bargain effectively, while the state remained aloof, would create such pressure for social reform measures as to force the state to intervene eventually. Or, secondly, if the state entered directly into the control of labor-management relations, even by short steps,

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[69] Cf. Landis, pp. 46-47; Albert Vorspan and Eugene J. Lipman, Justice and Judaism: The Work of Social Action (New York: Union of American Hebrew Congregations, 1956), pp. 197, 198.

[70] "Right-to-Work" Laws: Three Moral Studies (Washington: International Association of Machinists, 1955), p. 30.

[71] Pius XII, "To Belgian Workers," September 11, 1949, The Catholic Mind, XLVIII (January, 1950), 59.

since a direct take-over would not be tolerated, the result must ultimately be an advanced welfare state or socialistic government. State control necessarily restricts freedom, not only of individuals, but of groups and associations within the state. Indeed, there must be some regulation of areas as important to the national well-being and public interest as industrial relations, but only the minimum necessary to safeguard a free society.

Thus the burden of responsibility rests on both employers and employees to make collective bargaining work and to solve their differences without appealing to the government. Assuredly, collective bargaining is not a panacea for solving all the problems that arise in industrial relations. Disputes will persist, and both sides may on occasion resort to coercion through strikes, lockouts, and picket lines. But modern society has yet to discover a more reasonable way than collective bargaining to deal with those disputes. For the state to remove or seize responsibility from the hands of management and unions would destroy the notion of democracy by rendering both powerless before the all-powerful state, which in itself is incapable of making all the decisions required in a highly complex industrial society. Accordingly, it makes sense to say that the rise of a strong labor movement has been a fortuitous and strategic bulwark in preserving the values and institutions of capitalism through lessening the need of government mandate and control of business and the economic system. Either unions too feeble to present their members' just claims effectively, or unions powerful but irresponsibly denying the just claims of business management and owners would spell the end of collective bargaining and require the government to enter into the direct control of the economic order and of industrial relations.

CHAPTER II

DIVERSIONARY ISSUES

Although union representation of employees has become a widely accepted feature of the American labor market, with reservations that will be noted later, widespread feeling exists that unions should not be allowed to become too strong. Conflicting appraisals of the present strength underlie the sometimes bitter and emotion-charged controversy over union power. The problem is not a new one, however, for throughout its history the American labor movement has been the object of complaints that it seeks monopoly control over the supply and use of labor and therefore restrains trade and commerce. More recently, as a consequence of its allegedly monopolistic position, organized labor has been cited as an important cause, if not the primary one, of inflationary movements in prices by its pressure for increased wages and hence higher costs. Thus the union drive to compel membership of all an employer's workers is often viewed as a means of enhancing a labor monopoly and promoting still more inflation.

It is the contention of the present study that the above issues are not basic to the "right-to-work" problem. They have been so frequently projected into the conflict, however, that they have often appeared to be fundamental objections. Their importance is sufficient to merit discussion before a formal treatment of the "right-to-work" laws is undertaken.

Union Monopoly

Since the enactment of the Sherman Anti-Trust Act in 1890, the term

"monopoly" has borne a rather sinister connotation. Attaching the label to unions implies that they conspire against the general welfare and must be rigidly regulated in the manner of franchised business monopolies or forced down to more competitive size. It has become the established practice of some editors, journalists, legislators, and organizations to see in every union proposal and action an expression of the monopoly power of unions and to demand that unions be placed once again under the surveillance of the anti-trust laws. This plea has often been phrased as an argument in favor of a "right-to-work" law to put an end to union membership as a condition of employment. The argument implies that the proposed law will end union monopoly over the supply of labor and restore some bargaining strength to management.

For many years the courts have wrestled with the problem of whether unions were to be construed as monopolies. In a series of historic Supreme Court cases union activities were found to be subject to the anti-monopoly provisions of both the Sherman and the Clayton Acts.[1] Beginning in 1940, however, legal theory produced new criteria for judging unions, which, in practice, have virtually freed unions from anti-trust charges.[2] One exception is collusion between union and management to effect a local monopoly which controls supplies and prices and so accomplishes the very thing the Sherman Act prohibits.[3] In general, the Supreme Court has taken the position that unions, as organizations

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[1] Notably, the Danbury Hatters' case, Loewe v. Lawlor, 208 U.S. 274 (1908); Duplex Printing Press Co. v. Deering, 254 U.S. 443 (1921); Coronado Coal Co. v. United Mine Workers, 268 U.S. 295 (1925); Bedford Cut Stone Co. v. Journeymen Stone Cutters Association, 274 U.S. 37 (1927).

[2] Cf. Apex Hosiery Co. v. Leader, 310 U.S. 469 (1940); United States v. Hutcheson, 312 U.S. 219 (1941).

[3] Cf. Allen Bradley Co. v. Local Union No. 3, IBEW, 325 U.S. 797 (1945); United States v. Employing Plasterers' Association, 347 U.S. 186 (1954); United States v. Employing Lathers' Association, 347 U.S. 198 (1954).

concerned with the labor services of men, are not to be considered in the same light as business enterprises which manufacture and sell products and commodities.

Many members of the legal profession, however, have not taken kindly to this view, as is seen, for example, in Dean Roscoe Pound's broadside attack on labor union immunities from obligations to which other organizations and persons are bound.[4]

On the other hand, as Paul Sultan points out, various lower courts have on occasion struck down union-shop contracts which monopolize employment opportunities or are used for illegal purposes, such as malicious and wanton interference with the right to work.[5] Most of these cases are now handled by the National Labor Relations Board as unfair labor practices.

Limiting legal action against unions to these comparatively few violations does not meet the problem of union monopoly, according to some proponents of "right-to-work" laws. They have not hesitated to allege an intimate and positive causal relationship between requiring membership in a union as a condition of employment and excessive union power resulting from monopolistic control. Representative of this position is the following statement of the Chamber of Commerce of the United States:

> Labor leaders have made it clear that their aim is to make the union shop universal . . . .

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[4]Cf. Roscoe Pound, "Legal Immunities of Labor Unions," in Edward H. Chamberlin et al., Labor Unions and Public Policy (Washington: American Enterprise Association, Inc., 1958), pp. 145-69. A still more severe attack on union monopoly from a lawyer's point of view is found in Sylvester Petro, The Labor Policy of the Free Society (New York: Ronald Press Co., 1957), especially pp. 202-207. For a rebuttal of Petro's arguments, see Mozart G. Ratner, Review of The Labor Policy of the Free Society, Virginia Law Review, XLIV (April, 1958), 514-20. In a more popular style is the impassioned condemnation of union monopoly by Donald R. Richberg, Labor Union Monopoly: A Clear and Present Danger (Chicago: Henry Regnery Co., 1957), especially pp. 73-133, 150-75.

[5]Paul Sultan, Right-to-Work Laws: A Study in Conflict (Los Angeles: Institute of Industrial Relations, University of California, 1958), pp. 38-41.

Attainment of this goal would mean union control of all the jobs in all important industries. This nation-wide labor monopoly would place in the hands of labor leaders an irresistible concentration of power.

They would dominate industry. Eventually, they would dominate the government through their control of union members.[6]

Requiring union membership through the so-called union shop is seen by the Chamber as the villain in this plot to take over the government. The Chamber, furthermore, contends unequivocally that the aim of all who favor the union shop "is to gain, through compulsory unionism, complete control of all employees, and complete control of all jobs. This means a monopoly control over all employment of labor, even though the history of the legal and economic development of this country is to legislate against monopolies."[7]

A similar view has been advanced by the National Association of Manufacturers. Thus a past-chairman of its board remarks:

> The cornerstone on which union monopoly power rests is compulsion--compulsion on the employer to sign a union-shop agreement; and compulsion on the working man to join the union if he wants to make a living. And the basic reason for seeking monopoly power is to be able to use compulsion whenever it seems, to be holder of that power, necessary or even just desirable; as an example to others, perhaps.[8]

This direct connection between the union shop and union power is stressed again and again. In another release, the N.A.M. asserts:

> A man's freedom to get and hold a job without regard to the compulsion of union membership is the basic issue in labor relations. Indeed, it goes to the very heart of the problem because forced union membership is the major contributing cause to union monopoly. It is a ready-made device to extend the tentacles of union power, without any cost or effort on their part, nor any obligation to merit the support of the members.[9]

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[6] Background for Decision on Voluntary Union Membership (Washington: Chamber of Commerce of the United States, n.d.), p. 9.

[7] The Case for Voluntary Unionism (Washington: Chamber of Commerce of the United States, 1957), p. 8.

[8] Cola G. Parker, Union Monopoly Power: Challenge to Freedom (New York: National Association of Manufacturers, 1957), p. 5.

[9] A Monograph Discussing the Major Aspects of the Intercollegiate Debate Issue, "Resolved: That the Requirement of Membership in a Labor Organization as a Condition of Employment Be Illegal" (New York: National Association of Manufacturers, 1957), p. 42.

The same item concludes:

> Our society, dedicated as it is to the freedom and sanctity of the individual, must decide whether unionism is to be voluntary or compulsory. If compulsory, we are knowingly permitting a single private group to be moved into the position of an authoritarian agency--and thereby jeopardizing the very fundamentals of our American system.[10]

Some farmers' groups have also stressed that unions have become too powerful and therefore "right-to-work" laws should be enacted to restrict that power. The National Grange in its annual convention in 1955, for example, included among its approved measures the following:

> Because it is as necessary to preserve freedom of labor from destruction by labor monopolies as to preserve the freedom of business from business monopolies, we recommend the expansion of "right-to-work" laws to all other states in the Federal union.[11]

In testimony before a Senate Labor Subcommittee, the president of the Louisiana Farm Bureau Federation stated:

> The picture of labor unions as relatively weak organizations, requiring special privilege to enable them to effectively further their members' interests, must give way today to a more realistic view of labor unions as extremely powerful concentrations of economic and political power.

The witness therefore recommended, among other things, that Congress enact legislation prohibiting compulsory union membership.[12]

This fear of excessive union power as a direct result of the union shop is not confined to business and farm associations. One of the most prominent spokesmen for "right-to-work" laws, who serves as general counsel of the Santa Fe Railroad which long opposed in the press and in the courts a union-shop contract with its employees, dramatically declared in a speech:

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[10] Ibid., p. 44.

[11] The Washington Post and Times Herald, November 22, 1955, p. 17.

[12] U.S., Congress, Senate, Subcommittee on Labor of the Committee on Labor and Public Welfare, Hearings, Union Financial and Administrative Practices and Procedures, 85th Cong., 2d Sess., 1958, p. 710.

> Any form of compulsory union membership is bad, but it is worse to give a big, modern, countrywide union a monopoly of employment in a great national industry. It would give the union a monopoly power and an economic strangle-hold dangerous to the public welfare. The danger would be multiplied if compulsory union membership should be enforced in all of the great industries of the United States. It would be compounded if all of these great monopolistic unions should be banded together so that a few leaders or perhaps a single leader at their head could dominate the course of affairs in this country.[13]

Wide circulation has been given to similar views of Donald R. Richberg, co-author of the Railway Labor Act of 1926 and the National Industrial Recovery Act, who has since taken up the cudgels against big unionism. Richberg writes:

> As a matter of fact, the unions are powerful, aggressive organizations that are engaged in a continuing warfare against the maintenance of a free competitive economy. Unless this civil war is stopped and peaceful competition is substituted for monopolistic coercion in labor relations, a socialized economy and a socialist labor government are inevitable. This, unhappily, is not a remote prospect but one that is rapidly developing.
>
> Today the union bureaucrats are plainly seeking supreme economic and political power. The union closed shop contract is a weapon of awesome force in that battle for power.[14]

One final example illustrates the tenor of this type of opposition to the union shop. The words are those of a vice-president of Standard Oil Company of New Jersey:

> This organization of national and international unions by trades and industries, and their federation into giant combinations to represent a great part of all the industrial workers of the nation, particularly when supported by compulsory union membership and the check-off system, brings about a monopoly power beyond anything dreamed of in the organization of industry. It also overrides the freedom of the individual employer, and poses a threat to the safety of our economy by making

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[13] Jonathan C. Gibson, The Legal and Moral Basis of Right to Work Laws (Washington: National Right to Work Committee, 1955), p. 32.

[14] Richberg, Labor Union Monopoly, pp. 175, 148.

> possible the paralysis of industry by nation-wide strikes involving not a single employer, nor even a single industry alone, but a number of employers and industries at the same time.[15]

Proposed solutions to correct the problem of union monopoly range from the enactment of "right-to-work" laws to rigid application of anti-trust laws. Numerous other proposals have also been advanced, as will be noted later. Most of them fail to see that once a union is recognized by an employer as representing his employees, it has by its very nature a monopoly over jobs. While its power may be increased or decreased by other conditions, by requiring or not requiring union membership, for example, the fact of monopoly is still present, since unions have been given legal protection to prevent unrestrained competition in wages, hours, and working conditions. To do away with that power solely because it is monopolistic assumes that all such power is evil, bad for business, and even un-American. Yet similar protection has been legally conferred on industry and agriculture by such devices as patent laws, fair trade laws, franchises, licenses, tariffs, oil and gas regulations to protect rates and encourage conservation, exemption of cooperative marketing associations from anti-trust laws, crop controls, subsidies, and a host of other measures sought and approved by diverse groups to lessen or even eliminate the undesirable effects of unrestrained competition.

The union-monopoly question is enormously complex and will not yield before a single legislative solution. No two unions have the same strength or monopolistic power, nor do any two employers. As Professor Edward Chamberlin makes amply clear, unions can acquire monopoly power only when there are monopoly elements present in the labor market. Collective bargaining by the union is

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[15] Hines R. Baker, "Labor and Management: A Common Interest and a Joint Responsibility," An address before the Great Issues Forum, The University of Texas, Austin, Texas, October 16, 1957, pp. 7-8.

indeed monopolistic, "but no more so than bargaining by the employer himself, who already has the same degree of monopoly power in his own labor market."[16] If a union does not attempt to achieve a monopoly in the jurisdiction it covers, it cannot hope to be an effective union. This is clearly recognized by Carroll M. Shanks, president of the Prudential Insurance Company of America, when he says: "There is no question that labor must have the legal right to monopolize, that is, to act in concert through a labor union if it is to achieve equal footing with the employer. The problem arises from the fact that we have not yet discovered methods of imposing sufficient safeguards to prevent the abuse of this legal monopoly grant."[17]

The goal of labor legislation should be to equalize bargaining power, not between two parties, but three: unions, management, and individuals.[18] With respect to unions the aim is to require them to act as responsible agents for collective bargaining, but not to put them out of business. By their very nature they will retain monopolistic characteristics. Some compromise is therefore required. Thus Neil Chamberlain comments:

> If this approach is accepted, then it seems clear that no principle has yet been defined to guide us in reconciling the public objective of maintaining competition in the product markets with the public objective of supporting workers' efforts to improve their conditions. The two objectives must be rendered compatible (they cannot be made consistent) on a pragmatic basis. It is foolish to deny that the unions exercise monopoly powers in the interest of their own members. It is equally unwise to assume that all such restraints on competition are socially desirable or that they are all socially undesirable. It is a matter of judgment, not of principle, as to where the line should be drawn between the licit and the illicit.[19]

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[16] Chamberlin et al., p. 15.

[17] "Should We Accept Inflation?" The Annals, CCCXXVI (November, 1959), 53.

[18] Sultan, Right-to-Work Laws, p. 133.

[19] Neil W. Chamberlain, Labor (New York: McGraw-Hill Book Co., 1958), p. 404.

It seems probable, therefore, that the emphasis of many upon a principle to appraise union power derived from monopoly has been unwise and unfortunate, at least with respect to achieving public understanding of the issue. But even more unfortunate has been the tendency to exaggerate the alleged relationship between required union membership and union monopoly. The contention that compulsory membership is the primary cause of union power and monopoly loses its force when the nature of unionism is more carefully understood. Yet it would be quite true to say that a law which bans compulsory membership does undercut union monopoly power, but only if it succeeds in weakening unions to a point where they can no longer bargain effectively. If a "right-to-work" law does not gravely weaken unions--and its proponents deny that this is the objective of the law--union monopoly will continue to exist as truly as it did before the law was enacted. The law cannot alter the fact that a government-certified union recognized by the employer still continues to bargain legally as the sole and exclusive representative of all employees in the bargaining unit. The "right-to-work" law clearly is not directed to the monopoly problem, and "solves" it only by accident, if at all.

It is to be observed further that a clause in a collective bargaining contract which requires union membership is normally the consequence of union power and not its cause. Several factors lend support to this judgment. One is that the degree of managerial control over employees is determined by the general content of the myriad details covered in the contract which has been hammered out during negotiations, and a union shop neither adds nor substracts anything from the other contractual clauses. If the union's bargaining power is sufficient to gain the union shop and management is powerless to resist it, the implication is that the union accumulated its power before the issue was presented during negotiations. Somewhere along the line the union acquired a

sufficient monopoly to impose its will, and this it must have done without benefit of the union shop.

A union's monopoly power in meeting the employer also rests in large part on the solidarity and support of its membership. Indeed it is not unknown that a union has used force and fear to impose a union shop on its members and other employees, or that a union shop has been incorporated into a contract by agreement with the employer but without the knowledge of the employees. But these abuses must be regarded as relatively rare and certainly not the rule.

Ordinarily a union would be unwise to try to impose compulsory membership when a majority or even a substantial minority of the employees whom it represents oppose the measure very strongly. Hostile members weaken a union, and an alert and able employer can detect this division and seize the initiative. He has an advantage because the Taft-Hartley Act prohibits the discharge of employees who refuse to answer a strike call or to assume any other union responsibility except to pay reasonable dues, fees, and ordinary assessments to the union. Thus the union-shop clause does not add to the bargaining power of a union or reduce the ability of management to produce efficiently, unless the union already has the staunch support and loyalty of its members who give it that monopoly power.[20]

Finally, there appears to be no essential relationship between the attainment of union objectives and the requirement that employees belong to the union. The experience of the railroad unions amply attests to the fact. Between the years 1934 and 1951, when all forms of required union membership were outlawed

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[20] Cf. Monroe Berkowitz, "'Economic Aspects of Compulsory Trade Unionism,' A Note," Oxford Economic Papers, VII (June, 1955), 223-24. Also cf. V.L. Allen, "Some Economic Aspects of Compulsory Trade Unionism," Oxford Economic Papers, VI (February, 1954), 80.

in the railroad industry, but not in most others, the railroad unions experienced their greatest growth and did not lag behind unions in other industries in their bargaining accomplishments for employees.[21]

Union Impact on Inflation

The question of excessive union power and monopoly has attracted the attention not only of businessmen and lawyers. In fact, the interest aroused by the "right-to-work" debate in which these economic issues have thrived has attracted comment from most professions. Economists especially have entered the fray and occupied themselves with the controversy for a good many years.[22] Their

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[21] Cf. Bernard D. Meltzer, "Recognition-Organizational Picketing and Right to Work Laws," Labor Law Journal, IX (January, 1958), 80.

[22] The literature on this subject is extensive. In support of the thesis that union monopoly is a grave threat to the economy, cf. Henry Simons, "Some Reflections on Syndicalism," The Journal of Political Economy, LII (March, 1944), 1-25; John V. Van Sickle, Industry-Wide Collective Bargaining and the Public Interest (New York: American Enterprise Association, Inc., 1947); Leo Wolman, Industry-Wide Bargaining (Irving-on-Hudson, N.Y.: The Foundation for Economic Education, 1948); Charles E. Lindblom, Unions and Capitalism (New Haven: Yale University Press, 1949); David McCord Wright (ed.), The Impact of the Union (New York: Harcourt, Brace & Co., 1951); H. Gregg Lewis, "The Monopoly Problem: A Positive Program," The Journal of Political Economy, LIX (August, 1951), 277-87; Monopoly Power As Exercised by Labor Unions (New York: National Association of Manufacturers, 1957)--a report prepared by a study group under the chairmanship of Leo Wolman; Chamberlin et al., Labor Unions and Public Policy.

For dissenting arguments, cf. Richard A. Lester, "Reflections on the 'Labor Monopoly' Issue," The Journal of Political Economy, LV (December, 1947), 513-36; John T. Dunlop, Review of Unions and Capitalism by Charles E. Lindblom, American Economic Review, XL (June, 1950), 463-68; Joseph Shister, "Trade Union Policies and Non-Market Values," Industrial Relations Research Association, Proceedings of the Second Annual Meeting (Champaign, Ill., 1950), pp. 85-99; Jerome L. Toner, "Union Shop under Taft-Hartley," Southern Economic Journal, XX (January, 1954), 258-73; Earl F. Cheit, "Public Policy toward Trade Unions: Antimonopoly Laws," Labor Law Journal, IX (September, 1958), 705-11.

That contradictory opinions continue to be forthcoming from economists is evident from several of the forty-seven papers contained in U.S., Congress, Joint Economic Committee, The Relationship of Prices to Economic Stability and Growth, 85th Cong., 2d Sess., 1958.

For a more complete study of the literature and a view opposed to the labor monopoly thesis, cf. George H. Hildebrand, "The Economic Effects of Unionism" in Neil W. Chamberlain, Frank C. Pierson, and Therese Wolfson (eds.), A Decade of Industrial Relations Research (New York: Harper & Brothers, 1958), pp. 98-145.

activity has been spurred by the growing interest in the charge that unions can exact gains not only from particular employers or industries but on such a wide front as to be responsible for inflationary wage and price increases in the whole economy. The efforts of economists to clarify the question of the inflation spiral have often generated as much heat as light and have not totally satisfied anybody.[23]

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[23]While this question of unions and inflation is often treated in the literature on union monopoly, as it was by several top-rank economists in Wright (ed.), The Impact of the Union, the controversy has produced its own abundant materials over the years. The earliest authoritative empirical study was one by Paul H. Douglas, Real Wages in the United States, 1890-1926 (Boston: Houghton Mifflin Co., 1930). The author concluded that unionization of an industry had only an initial effect on wages relative to other industries, a conclusion that some later studies tended to support. For various aspects and views, cf. James W. Beck, "An Interindustry Analysis of Labor's Share," Industrial and Labor Relations Review, XI (January, 1958), 231-46; Donald E. Cullen, "The Interindustry Wage Structure, 1899-1950," American Economic Review, XLIV (June, 1956), 353-69; Edward F. Denison, "Income Types and the Size Distribution," American Economic Review, XLIV (May, 1954), 254-69; H. M. Douty, "Union and Nonunion Wages," in W. S. Woytinsky and Associates, Employment and Wages in the United States (New York: Twentieth Century Fund, 1953), pp. 493-501; Milton Friedman, "Some Comments on the Significance of Labor Unions for Economic Policy," in Wright (ed.), The Impact of the Union, pp. 204-34; Joseph W. Garbarino, "A Theory of Interindustry Wage Structure Variation," Quarterly Journal of Economics, LXIV (May, 1950), 282-305; Clark Kerr, "Trade Unionism and Distributive Shares," American Economic Review, XLIV (May, 1954), 279-92; Clark Kerr, "Labor's Income Share and the Labor Movement," in George W. Taylor and Frank C. Pierson (ed.), New Concepts in Wage Determination (New York: McGraw-Hill Book Co., 1957), pp. 260-98; Clark Kerr, "Wage Relationships--The Comparative Impact of Market and Power Forces," in John T. Dunlop (ed.), The Theory of Wage Determination: Proceedings Held by the International Economic Association (New York: St. Martin's Press, Inc., 1957), pp. 173-93; Alfred Kuhn, "Market Structures and Wage-Push Inflation," Industrial and Labor Relations Review, XII (January, 1959), 243-51; Harold M. Levinson, "Collective Bargaining and Income Distribution," American Economic Review, XLIV (May, 1954), 308-16; Harold M. Levinson, Unionism, Wage Trends and Income Distribution, 1914-1947 (Ann Arbor: University of Michigan Press, 1951); John E. Maher, "Union, Nonunion Wage Differentials," American Economic Review, XLVI (June, 1956), 336-52; Frederic Meyers, "Price Theory and Union Monopoly," Industrial and Labor Relations Review, XII (April, 1959), 434-45; Elton Rayack, "The Impact of Unionism on Wages in the Men's Clothing Industry, 1911-1956," Labor Law Journal, IX (September, 1958), 674-88; Albert Rees, "Wage Determination in the Steel Industry," American Economic Review, XLI (June, 1951), 389-404; Lloyd Reynolds "The Impact of Collective Bargaining on the Wage Structure in the United States," in Dunlop (ed.), The Theory of Wage Determination, pp. 194-221; Arthur M. Ross, Trade Union Wage Policy (Berkeley: Institute of Industrial Relations, University of California Press, 1948); Arthur M. Ross and William Goldner, "Forces

One school of thought maintains that excessive union power has unquestionably forced up wages beyond the level of increased productivity, generated inflation and unemployment, and gained for the unions monopolistic benefits. The consequence is alleged to have been critical distortions in economic growth, serious wage imbalances, and declining profits because wage rates have been pushed beyond the ability of firms to pay and are totally unrelated to employee efficiency.

How widespread this view is can be deduced from a symposium sponsored in the late 1950's by the Committee for Economic Development. Forty-eight papers by notable authorities were received on invitation of the sponsor in answer to the question: "What is the most important economic problem to be faced by the United States in the next twenty years?" The second most frequently cited problem was inflation, and the leading concern of the essayists who cited it was trade union strength. One contributor to the symposium remarks: "If the relentless push of wages in excess of the gradual rise in overall productivity could be stopped, the problem of cost inflation would be solved and the remaining danger of demand inflation . . . could be dealt with by means of monetary and fiscal policy."[24] Another contributor states: "So long as we have not solved the basic problem of the excessive bargaining power

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Affecting the Interindustry Wage Structure," Quarterly Journal of Economics, LXIV (May, 1950), 254-81; Stephen P. Sobocka, "Union Influence on Wages: The Construction Industry," The Journal of Political Economy, LXI (April, 1953), 127-43; Sidney C. Sufrin, Union Wages and Labor's Earnings (Syracuse: Syracuse University Press, 1950); Paul E. Sultan, "Unionism and Wage-Income Ratios: 1929-1951," Review of Economics and Statistics, XXXVI (February, 1954), 67-73; Lloyd Ulman, "The Union and Wages in Basic Steel: A Comment," and, Albert Rees, "A Reply," American Economic Review, XLVIII (June, 1958), 408-33.

[24] Gottfried Haberler, "Creeping Inflation Resulting in Wage Increases in Excess of Productivity," Problems of United States Economic Development, I (New York: Committee for Economic Development, 1958), 144.

of unions, we will have to 'roll with the punches.'"[25]

But this is only one view. An opposing view has been equally vocal. Those who counter the monopoly argument against unions point to evidence that profit ratios have not declined as a result of union wage pressures, nor have relative wages and distribution of labor income varied significantly from earlier patterns. They cite management spokesmen and economists who insist that no proof exists that unions through collective bargaining have obtained benefits superior to what could have been obtained by individual bargaining.[26] Some say that even if there is no convincing proof that unions have bettered wage earners' total share of income, by the same token it is possible that, in the absence of constant union pressure and bargaining power, the income of wage earners would have been pushed or held down and subjected to a financial oligarchy that would otherwise have developed.

The important question of how much additional power is gained by unions through compulsory membership is almost lost sight of in the more fundamental problem of finding an area of agreement between these conflicting schools of thought. One difficulty arises from trying to cope with the meaning of "power" as applied to unions. Power is not a static standard of measurement but one that constantly shifts under the pressures of market and nonmarket forces.[27] The importance of power also varies with circumstances. The power with which an agricultural workers' union, for example, seems to threaten the low-wage rates of an owner of a sugar cane plantation is not synonymous with that exerted

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[25] George Terborgh, "Wage Induced Inflation," Problems of United States Economic Development, I, 189.

[26] E.g., the economic-benefit theory of unions is flatly denied by Philip D. Bradley, "Involuntary Participation in Unionism," in Chamberlin et. al., pp. 59-62.

[27] Cf. Murray Edelman, "Concepts of Power," Labor Law Journal, IX (September, 1958), 623-28.

by a giant industrial union that can effectively hold out for a time against some of the largest concentrations of corporate wealth and power in the country. Again, one union may be powerful because it represents a small number of highly skilled workers strategically placed in an intermediate operation between raw material and finished product, while a much larger union of clerks in a retail outlet may have power of little more than annoyance value in a giant chain enterprise. A further difficulty arises in trying to apply the framework of economic theory to the upward pressure of unions on wages. Even assuming that unions are monopolies, doubt has been expressed whether it is necessarily true that under unionism wages are higher but employment is less.[28] An additional problem is finding a measurement of productivity that is understood and accepted by more than a minority of the controversialists.

Many students of inflation have also seriously questioned the way statistical evidence has been used to prove that unions are primarily responsible for the upward trend in costs and prices. While agreeing that unions have been a partner to the price spiral, some believe that other institutions bear equal or greater responsibility. The stability of labor's relative income over long periods is pointed out in the following words by Clark Kerr, who has studied the question perhaps as closely as any other economist:

> Employee compensation as a share of income originating within the business sector of the economy, after allowing for interindustry shifts in weights, has been quite stable over substantial periods of time. It was virtually unchanged from 1929 to the early 1950's. When viewed from other less meaningful vantage points, however, it has gone up. Employee compensation has risen significantly as a per cent of total income, but this is true, in part, because of the great shift of employees into government, where employee compensation is calculated as 100 per cent of income in that sector. It has also risen as a per cent of total private income leaving out government, but this is the case, in part, because industries (like construction) with a high wage and salary component in the income that they add to the economy have become relatively more important in our

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[28] Cf. Frederic Meyers, "Price Theory and Union Monopoly," Industrial and Labor Relations Review, XII (April, 1959), 445.

> national productive effort . . . . When the "industry mix" is held constant, there is little apparent increase since 1929 in labor's share; and it is since 1929 that the great growth in trade unions has occurred in the United States.[29]

Part of the reason for labor's ineffectiveness in redistributing shares of income, according to Kerr, has been that unions have not tried to cripple the freedom of employers to innovate and adjust employment and prices.[30]

There is also a possibility that some employers in key industries are themselves motivated toward higher wages in preference to lower prices as productivity increases. From time to time they must increase their labor force quickly even though they are faced with an inelastic labor supply accentuated by sluggish labor mobility. According to this view, employers find that the most dependable way to attract sufficient labor for their varying needs is through the reputation of being a high-wage firm. Of course, if the labor market were truly competitive, this reputation could not be maintained for any length of time. But it can be done where the labor market is imperfect enough to permit it. Consequently, it may be that the inflationary push to costs and wages is inherent in the structure of labor and product markets, and while unions may provide supplementary pressure, the process is capable of going forward without unions.[31]

Although it may be convenient and politically expedient to search out one culprit to blame for the post-war inflationary spiral, it is more clearly recognized today that inflation has its roots not only in wage demands. Great

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[29]Clark Kerr, "Labor's Income Share and the Labor Movement," in Taylor and Pierson (eds.), New Concepts in Wage Determination, pp. 280-81.

[30]Clark, Kerr, "Trade Unionism and Distributive Shares," American Economic Review, XLIV (May, 1954), 283-88, 291-92.

[31]Cf. Alfred Kuhn, "Market Structures and Wage-Push Inflation," Industrial and Labor Relations Review, XII (January, 1959), 243-51.

importance must be attached to the immense private and corporate savings accumulated during the war, in correspondingly intense consumer demands by both industry and individuals, in heavy government spending for military and defense purposes, in high profits, and in enormous capital investment by industry during a time of full employment.[32] Up to now it has been difficult to distinguish the correct weights to be assigned to each of these inflationary factors.

The unions, nevertheless, have been put on the defensive by the multi-pronged attack on their wage demands. They answer that labor has been the victim of inflation and not the cause of it, that the unhappy business of trying to raise wages to catch up with prices is invariably a losing fight.[33] Probably the unions have inevitably drawn criticism to themselves by the very fact that, as political institutions, they feel they must lay claim to achieving benefits for their members if they are to stay alive. Thus they have publicized any and every wage or pension increase or other new benefit as union victories, even when an employer may have been prepared to grant most of the increase. The strong support given by many labor leaders to the purchasing power theory of wages to defend wage increase or to resist decreases in periods of economic recession has also opened the door to critical attacks.[34]

The significance of wage differentials between unionized and nonunionized sectors of the economy viewed solely in terms of economic benefits has also led to considerable disagreement among economists. Some who hold that high union

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[32] For a clear and balanced discussion of these relationships, cf. Ewan Clague, "Prices, Wages and Productivity," Paper read before the American Management Association, New York, September 23, 1957 (Washington: Bureau of Labor Statistics, U.S. Department of Labor, 1957), passim. (Processed.)

[33] Labor, Big Business and Inflation (Washington: Industrial Union Department, AFL-CIO, 1958), pp. 4, 5, and passim.

[34] Cf. Paul A. Samuelson, "Economic Theory and Wages," in Wright (ed.), The Impact of the Union, pp. 332-41.

wage gains lead to unemployment have asserted that the unemployed would have been better off if they had stayed out of the unions and bargained individually for a wage more in line with the market rate.[35] Yet the statistical evidence is extremely difficult to assess because of the presence of so many imponderables, including the fact that many prices are administered rather than strictly determined by market forces. The dynamic influence of unionism, moreover, does not restrict itself only to union members. Many a firm has raised wages solely to keep out unions.

In view of the profound disagreements of professionals on this subject, it is probably unfortunate, if inevitable, that many publicists both for and against unions have chosen to defend their one-sided views so adamantly before general audiences without indicating that highly competent authorities qualify or thoroughly disagree with their opinions. The conflicting conclusions of serious studies on the impact of unions on wages and inflation move one author to comment as follows:

> The inherent weakness of all such studies is that the lack of a differential does not establish the absence of union influence. It is undoubtedly true that employers in nonunion sectors have been willing to offer sympathetic adjustments to their own employees in order to avoid unionism. It must be remembered that the underlying premise of most studies is that unionism is a single force, operating on a single variable, wages, whereas in reality any wage adjustment produces a multiplicity of repercussions which are, to use Arthur Ross's well-chosen phrase, "unpredictable before the fact and undecipherable after the fact."[36]

Because so much uncertainty remains among the professionals, the debate over the union impact on wages and inflation continues unabated. Yet the arguments

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[35] Cf. Bradley, pp. 54-57, 62-64, 74-78.

[36] Sultan, Right-to-Work Laws, pp. 127-28. Cf. H. M. Douty, "Unions and Nonunion Wages," in Woytinsky and Associates, Employment and Wages in the United States, p. 501.

have been consistently thrown into the "right-to-work" controversy and have thoroughly confused it. One side still insists that there is abundant evidence that unions have too much economic power.[37] The other side finds that the studies made in the post-war period, taken as a whole, suggest a limited and probably minor impact by the unions, insufficient to justify fears of distortion in the economy or that unions are anti-capitalist institutions using monopoly power to destroy free enterprise.[38] The confusion over the causes of inflation, and therefore how to control it, has reached such a degree as to prompt the federal government to explore the issue more thoroughly. To this end the executive branch in 1959 established a Cabinet Committee on Price Stability for Economic Growth under the chairmanship of Vice President Richard Nixon, and Congress set up its own joint Senate-House committee to study economic growth and inflation. Their reports indicate that opinions are strongly influenced by political affiliation as well as by economic evidence. Economists, meanwhile, pursue their own investigations.

Union Power versus Management Power

In addition to the concern over inflation, the obvious growth of unions since 1933 and the evidence of union abuses publicized by Congressional committees are responsible, in part, for the expanding investigations of union power, a step that reverses the emphasis of the 1930's and 1940's on business corporation power and its abuse. But since it is with corporations that most industrial unions must deal, it is necessary to raise the question of their comparative power. For in the controversy about excessive union strength it has been

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[37] Chamberlin et al., p. 46.

[38] George H. Hildebrand, "The Economic Effects of Unionism," in Chamberlain, Pierson, and Wolfson (eds.), pp. 120, 137.

charged that the unions are so strong at times that even a large corporation cannot resist the demand that all its employees be required to join the union representing them, since the firm can do little else but submit to the coercion exerted upon it, just as the employees must submit to union power.[39] This issue has been another feature of the "right-to-work" debate, since the open-shop law has many partisans who believe that it can effectively reduce or hold back the power of unions.

It is not so apparent, however, that business is easily coerced by organized labor, for the wide variety of union-shop requirements now in force indicates that frequently unions have had to settle for something less than they sought. Ordinarily more people are seeking work than there are employers hiring workers, which fact tends to give the employer a bargaining advantage. If bargaining breaks down, moreover, workers are more likely to be severely hurt by an extended work-stoppage than are employers or management. Large firms, therefore, may often have the superior power. Even if they do not, to make unions compete for members or to return to wage competition between workers may not be the most desirable way to equalize bargaining power between labor and management.[40]

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[39] This is the opinion, for example, of Fred G. Gurley, then president of the Santa Fe Railroad. He says: "Actually there is no such thing in this country as freedom of contract with respect to the union shop. The majority of employers in this country are opposed to any form of compulsory union membership, many of them nevertheless agreed to the union shop. It is a matter of common knowledge that they have done so not of their own free will but because of coercion--by strikes or threats of strikes. In any field where the ruling influence is coercion, freedom of contract is a misnomer." "The Right to Work," Vital Speeches of the Day, XXI (June 15, 1955), 1301. This view seems to rule out the legitimacy of any strike over contract issues. If management grants its employees a paid vacation, for example, because of the threat of a strike, the opinion assumes that management has no freedom of contract because of coercion. The same would apparently be true if the union demanded wages of fifty dollars an hour for all employees in lieu of a strike.

[40] Sultan, Right-to-Work Laws, pp. 129-30.

Granting the fact of union growth and the existence of anti-trust laws to prevent a corporate giant from becoming a pure monopoly, the concentration of corporate economic power which unions must face has clearly not declined or halted since the days of weak unions. The extent of that economic concentration is briefly described by Adolf A. Berle, an authority in the field of corporation law and finance, as follows:

> Today approximately 50 per cent of American manufacturing--that is everything other than financial and transportation--is held by about 150 corporations, reckoned, at least, by asset values. If finance and transportation are included, the total increases. If a rather larger group is taken, the statistics would probably show about two-thirds of the economically productive assets of the United States, excluding agriculture, are owned by a group of not more than 500 corporations. This is actual asset ownership. . . . But in terms of power, without regard to asset positions, not only do 500 corporations control two-thirds of the non-farm economy but within each of that 500 a still smaller group has the ultimate decision-making power. That is, I think, the highest concentration of economic power in recorded history. . . .
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> Many of these corporations have budgets, and some of them have payrolls, which, with their customers, affect a greater number of people than most of the ninety-odd sovereign countries of the world. . . . Some of these corporations are units which can be thought of only in somewhat the way we have heretofore thought of nations.[41]

The author just cited does not at all imply that this increasing concentration of corporate economic power is the product of evil-minded men, for it has often occurred because people want products that can be produced only by big firms. Yet the system has great dangers, Berle remarks. "Their power," he says, "can enslave us beyond present belief, or perhaps set us free beyond present imagination. The choice lies with the men who operate the pyramids, and with the men affected who can demand what they really want."[42] This is the business power with which unions must bargain.

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[41] Adolf A. Berle, Jr., Economic Power and the Free Society (New York: The Fund for the Republic, 1957), pp. 14,15.

[42] Ibid., pp. 15-16.

It is still more important, however, to recall that the attack on union monopoly often overlooks the fact that organized labor's power is derived from the monopoly power of the businesses with which unions bargain. Concerning this point Professor Neil W. Chamberlain observes: "The power of a union to bargain concessions from a company depends on the power of that company to make favorable bargains with consumers in the product market." Furthermore, he remarks, even where bargaining tends to become industry-wide, "industries no less than firms have limits to their control over prices. Even under the spur of the unions, they do not have monopoly power capable of indefinitely exploiting their customers, providing some private treasure for the enrichment of the unionists who hold the industry hostage."[43]

Thus the wage demands of unions must at some point be limited by the ability of the firm or industry to pay, which is dictated by direct or indirect competition. If this limitation is ignored, the union which pushes wages up will find its members replaced either by a substitute product from another industry or firm or by new productive processes that dispense with the too high-priced labor resource, for competition will affect unions as much as business firms. Thus Chamberlain concludes:

> If, then, we have any belief in the efficiency of competition in the product market over time, whatever temporary advantages some firm or industry may enjoy, it is not surprising to find that the power of unions to secure persisting and widening wage advantages for their members, relative to other workers, is probably not very great. Although unions can immunize their members from the rigors of market competition to some extent, the extent is generally quite limited, particularly with the passage of time.[44]

In the durable-goods markets, for example, as well as in a service industry

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[43] Chamberlain, Labor, p. 425.

[44] Ibid., p. 426.

like transportation, the unions share in the monopoly power that is characteristic thereof, and in prosperous times wage increases or higher prices may rather easily be passed on to consumers. But in the nondurable-goods markets where competition is much more prevalent, union monopoly power is relatively weak because of the ease of entry of new firms or because of the competition of non-organized firms. This weakness appears even in those nondurable-goods industries where the organized firms engage in industry-wide bargaining with the union and where wage rates have been standardized to eliminate wage competition. In local markets, such as construction and some service industries, where wages are a major portion of total cost, more elements of monopoly are found when unions standardize wages and thus remove them from the vagaries of competition. Without unions, employers and contractors in local markets have to resort to wage cutting as the primary means of reducing costs. But this is the very type of competition that unions were organized to prevent, and encouraging it is hardly in the public interest.[45]

Some new light was projected into this relationship between corporate and union power by Dr. John Kenneth Galbraith's interesting concept of "countervailing power" in the market, whereby, as he says, "power on one side of a market creates both the need for, and the prospect of reward to, the exercise of countervailing power from the other side."[46] He does not say that countervailing power is the only explanation for strong unions, nor does he deny that some unions are in a strategic position to enforce higher prices or restrictive trade practices. But he does find as a general, though not universal, rule that the strongest

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[45] Cf. Gladys W. Gruenberg, "Union Monopoly?" Social Order, VIII (March, 1958), 120-21.

[46] John K. Galbraith, American Capitalism: The Concept of Countervailing Power (rev. ed.; Boston: Houghton Mifflin Co., 1956), p. 113.

unions are found in industries where strong corporations prosper, whereas in agriculture no strong unions have developed and only in areas of large corporate farming have there been any serious attempts to organize employees. Against the great corporations workers need the protection of countervailing power, and, moreover, if their organizing is successful they can hope to get something more by sharing in the market power of the corporations.[47]

Galbraith also considers the difference between union power in time of prosperity when demand seems to be virtually unlimited and in time of recession when higher prices will cause shrinking demand. When demand is limited, the management of strong firms has a normal resistance to union wage demands, for to yield means higher unit costs which cannot be passed on to customers without further loss in volume of sales. Thus a strike over wage demands may indicate that management finds itself in a situation where increased wage costs cannot readily be passed along to someone else.[48]

But when demand is strong, the firm tends to lose its normal resistance to wage increases. Galbraith says of this turn of events:

> The management is no longer constrained to resist union demands on the grounds that higher prices will be reflected in shrinking volume. There is now an adequate supply of eager buyers. The firm that first surrenders to the union need not worry lest it be either the first or the only one to increase prices. There are buyers for all. No one has occasion, as the result of price increases, to worry about a general shrinkage in volume. . . . On the other hand, there are grave disadvantages for management in resisting the union. Since profits are not at stake, any time lost as a result of a strike is a dead loss. Worker morale and the actual loss of part of the working force to employers who offer better wages must be reckoned with. Thus when demand is sufficiently strong to press upon the capacity of industry generally to supply it, there is no real conflict of interest between union and employer. Or to put it differently, all bargaining strength shifts to the side of the union. The latter becomes simply an engine for increasing prices, for it is to the mutual advantage of union and employer

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[47] Ibid., pp. 114-15.

[48] Ibid., pp. 132-33.

> to effect a coalition and to pass the costs of their agreement on in higher prices. Other buyers along the line, who under other circumstances might have exercised their countervailing power against the price increases, are similarly inhibited. Thus under inflationary pressure of demand, the whole structure of countervailing power in the economy is dissolved.[49]

This enlightening passage brings out another important concept in weighing the relative power between labor and management, namely, that an imbalance in power is easily created by a shift in economic conditions. The balance also varies from firm to firm and from industry to industry.

The arguments advanced in favor of restricting union power likewise seldom pay heed to the importance of geographic location in determining union strength. The great majority of union members are concentrated in no more than ten states. The gains made by a few unions in those areas have a way of spilling over to other workers with an ease that is impossible in less organized areas. Geographic variations are also found within the same unions. Textile employees, for example, are strongly organized in the Northeast; in the Southeast their unions are mostly weak and impoverished. Tobacco and chemical factory workers have experienced the same contrast in union power. The strength of craft unions also differs widely from city to city.

The frequent clamor for "right-to-work" laws or other legislation as necessary to reduce union power in order to restore a balance with management power must also be considered in terms of what is actually occurring with regard to the size of unions. Since the end of the second World War the labor movement has stopped growing in the pattern of the preceding two decades. In more recent years its gains have scarcely balanced its normal losses through attrition. Union membership has even declined in such basic industries as automobiles, steel, and mining. The effects of automation and technological advances may have an important bearing on the power and future growth of unions.

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[49] Ibid., pp. 133-34.

These effects are already seen in the rapidly changing structure of the labor force in which white-collar workers and women workers are increasing at a far more rapid rate than are the blue-collar workers who comprise the great majority of union members. The labor movement has had little success and demonstrates little power in organizing these rapidly growing categories and in reaching into areas traditionally closed to it, such as agricultural employees and workers in the South and in less industrialized regions elsewhere.[50]

All these contrasts in union power which management faces point up the puzzling difficulties in trying to determine what restrictions on that power would be legitimate in view of the right of the worker to engage in effective collective bargaining and in view of the acknowledged role of the labor union in the economy. Some restrictions already exist through the limited application of anti-trust laws when collusion with employers creates a monopoly, and also through the prohibition of secondary boycotts and some forms of picketing under the Taft-Hartley Act as amended in 1959.

To limit the legal size of a union or restrict its activities may create a better balance of power in some instances. But in view of organized labor's intense hostility toward proposals placing it once again under the full sweep of anti-trust laws designed to regulate business enterprises, the question arises whether so encumbering unions might not produce a greater evil in social unrest and resentment.[51] Proposals that aim to weaken any union to the point where it cannot bargain effectively mean the denial of employee rights. These rights are no stronger than the obligation placed upon the employer, another union, or

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[50] Cf. Benjamin Solomon, "The Problems and Areas of Union Expansion in the White-Collar Sector," Industrial Relations Research Association, Proceedings of the Ninth Annual Meeting (Madison, Wis., 1957), pp. 238-43.

[51] Cf. William F. Kennedy, "Facing Our Economic Problems," Social Order, VIII (September, 1958), 328.

the community-at-large to observe them, and are no stronger than the ability of the union to compel their acceptance.[52]

By the same token, an employer also needs to retain a measure of economic power. Otherwise he has no defense against unreasonable union demands. Power on both sides sets the stage for potential labor-management conflict that is costly and wasteful. But under the present structure of economic society such conflict is the only way to keep the two protagonists in approximately even balance. Without the unions to check them, some employers would not hesitate to cut wage levels. Under the pressure of competition many more firms would be forced to return to the noxious hiring practices of a bygone era.[53]

Numerous and varied opinions are offered on how unions should be further restricted. The frequent appeal to unions and business firms for self-restraint in holding down wages and prices is unrealistic, human nature and the spirit of competition being what they are. A union leader would lose his job if he did not periodically ask for more wages. Nor will a firm refuse to raise wages when enough money is around so that customers can and will pay higher prices. "In effect," remarks one writer, "when anyone (in the Government or outside it) asks unions and businessmen to exercise restraint on prices and wages, he is asking them to behave as if business were bad."[54] There is no history of or organization for mutual understanding between business and labor on an economic issue of this kind which affects the public interest. Nor are many people agreed that there

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[52] Cf. E. Wight Bakke and Clark Kerr, Unions, Management and the Public (New York: Harcourt, Brace & Co., 1948), p. 112.

[53] Cf. Robert N. McMurry, "War and Peace in Labor Relations," Harvard Business Review, XXXIII (November-December, 1955), 53.

[54] George Shea, "The Outlook," The Wall Street Journal, January 19, 1959, p. 1.

should be.

Other proposals are more precise. The majority of the members of the Attorney General's Committee which made a report in 1955 on monopoly power supported the proposal to place all unions under the anti-trust laws.[55] This is much too sweeping, according to some, because it would endanger virtually all union functioning.[56] Others would say that the anti-trust laws should be applied only in such a way as to cover certain industries and certain abuses.[57] Still others favor laws against industry-wide bargaining.[58] But this proposal has been questioned on at least two grounds, first, that the unions cannot protect the interests of the worker, especially his nonmarket interests, if they do not have the right to set some standards throughout the product-market area to protect the entrepreneur;[59] second, that the existence of monopoly does not reveal the degree of a union's bargaining power. A union may have organized an entire industry and yet be compelled to bargain with a strong employer's association, so that the union has much less power than if it bargained with each employer separately, though it has a monopoly of the labor force in both

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[55] Cf. Report of the Attorney General's National Committee to Study the Anti-Trust Laws (Washington: U.S. Government Printing Office, 1955), pp. 304-305.

[56] Cf. Charles O. Gregory, "Fiduciary Standards and the Bargaining and Grievance Processes," Labor Law Journal, VIII (December, 1957), 849.

[57] Cf. Tracy H. Ferguson, "Anti-Trust Laws and Labor Unions," Proceedings of the New York University Eighth Annual Conference on Labor (Albany: Matthew Bender & Co., 1955), pp. 177-97.

[58] Monopoly Power of Labor Unions (Washington: Chamber of Commerce of the United States, 1955), p. 10.

[59] Cf. Shister, "Trade Union Policies and Non-Market Values," In Industrial Relations Research Association, Proceedings of the Second Annual Meeting (1950), p. 99.

instances.[60] If a union were restricted to a single firm by law but was an effective union, it is likely that in prosperous times the firm, if in an industry characterized by monopolistic competition, would just as readily pass on higher wage costs to consumers. If the unions were weakened in some industries, as they probably would be if split up, prices would still tend to be non-competitive, and the firms with lower wage burdens would still be the dominant and more rapidly growing ones in the industry. Monopoly elements could be climinated only by limiting the size of firms, too.[61] It has been further proposed that unions be confined within the boundaries of each state, which would effectively cut down the teamsters' union and lead to some interesting jurisdictional problems for the trucking industry. The proposal would leave some unions very strong and virtually wipe out others.[62]

Another suggestion would apply the anti-trust laws only to the restrictive labor practices of union, such as those labeled as "featherbedding." The effectiveness of this procedure is doubtful because of the circumstances which give rise to such practices. Many "featherbedding" practices now in common use were granted or permitted by employers during the war and post-war periods of full employment, especially in the construction trades, to attract and keep employees. However, there is no question that restriction of output by workers was widespread long before unions achieved their present power.[63] This is apparently

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[60] Cf. Joseph Skister, "Collective Bargaining," in Chamberlain, Pierson, and Wolfson (eds.), p. 48.

[61] Gruenberg, pp. 121-22.

[62] Cf. Anti-trust Laws and Labor Unions (Washington: American Enterprise Association, Inc., 1959), p. 37. This reference carefully analyzes the more recent anti-monopoly proposals.

[63] The classic work on this subject is Stanley Matthewson, Restriction of Output by Unorganized Workers (New York: Viking Press, 1931). Also cf. Van Dusen Kennedy, Union Policy and Incentive Wage Methods (New York: Columbia University Press, 1945), pp. 105-45; Sumner H. Slichter, Union Policies and Industrial Management (Washington: The Brookings Institution, 1941), pp. 164-227.

true of both the railroad and the construction industries, which are most frequently cited as plagued with the abuse. In both instances management consciously accepted some practices of questionable value in return for what it considered at the time to be of equal or greater value.[64] Two recognized authorities on the building trades believe it is clearly impossible to determine with any degree of accuracy how union working rules finally affect building costs or whether the gains outweigh the costs. But they do reach two tentative conclusions on the basis of their studies: first, "There seems to be no doubt that many of the rules impose a burden of costs upon society which is in excess of any reasonable gains to be obtained by the unions or their members," and, second, "An over-all evaluation of the extent and importance of working rules strongly suggests that their adverse effect is much less than has been widely alleged."[65]

Conclusion

These comments on three closely related and very controversial topics hint at the often unsuspected ramifications of many issues relating to the labor movement. As a consequence, the simpler the solutions proposed, the more suspect they tend to be.

While these topics will be again referred to from time to time, it seems

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[64] Cf. Benjamin Aaron, "Governmental Restraints on Featherbedding," Stanford Law Review, V (July, 1953), 719. For an opinion that no law can successfully regulate or ban featherbedding practices because of the impossibility of establishing norms of regulation, cf. Norman J. Wood, "The Wisdom of Outlawing Featherbedding," Labor Law Journal, VI (December, 1955), 821-24.

[65] William Haber and Harold M. Levinson, Labor Relations and Productivity in Building Trades (Ann Arbor: Bureau of Industrial Relations, University of Michigan, 1956), p. 199.

clear that requiring membership in a union is not a principal cause of union monopoly or inflation that may result from monopoly. The practice can increase union power under some circumstances, but it is not an isolated factor in determining the degree of power that a union holds when it meets with the employer.

These issues are not basic to the problem under consideration. On the other hand, the right of workers to organize and to be represented by effective unions is basic. Equally important is the safeguarding of the rights of individual workers. If the union shop is objectionable and unreasonable, it is on other grounds than those presented thus far.

CHAPTER III

UNION SECURITY IN THE AMERICAN TRADITION

The contemporary consensus with respect to the labor movement in the United States appears to be that American unions developed as a response to a definite social need, that they are here to stay, and, that if suppressed by superior economic or political power, they would be supplanted quickly by some other institution with similar goals. The public acceptance of unions, however reluctant or unenthusiastic it sometimes may have been, necessarily must include acceptance of collective bargaining by workers through their unions. It is beyond question that collective bargaining is generally regarded in major areas of today's industrial complex as both necessary and desirable.

Having adopted these premises, many people, nevertheless, do not go along with the union goal requiring membership as a condition of employment. They object to any form of compulsory membership as unreasonable, unnecessary, and even dangerous in a free society. The objection is not a new one, nor is the union goal one of late vintage.

In order to expose the roots of this disagreement the present chapter seeks to explain why union security became such a notable issue in the United States and not elsewhere. This requires some additional background by way of the historical development of the unions' quest for security and its concomitant, union membership for all who work with union members. Since compulsory membership is alleged to be the core argument of the "right-to-work" controversy, it is essential that the term be accurately understood in the light of contemporary

legislation and judicial interpretation. Hence special attention is accorded the extensive changes made by the Taft-Hartley Act in the meaning of the union shop. The provisions of the Railway Labor Act as amended concerning this matter are also considered because this law has had an important bearing on the dispute. The chapter concludes with a survey of the present extent of union-security agreements in collective bargaining contracts.

Compulsory membership in unions has taken many forms in the United States, and the distinction between them should be made clear. What some people call compulsory membership the unions speak of as union security, that is, some provision in the collective bargaining contract or agreement whereby the continued existence of the union is assured by requiring that all, or at least a great majority, of the work-force at an organized job-site must be members of the union. Particularly in the skilled trades, such as the printing and the building trades, union workers have traditionally refused to work with nonunion men. The closed shop is a form of union security whereby the employer may hire only union members if they are available, and they must then remain in good standing as a condition of employment. The closed shop in interstate commerce has been illegal since 1947 under the Taft-Hartley Act, but some states permit it in firms operating in intrastate commerce.

The union shop is a form of security that requires all employees covered by the collective bargaining contract to become and remain members of the union within a certain time, usually thirty to sixty days, after beginning employment, with the employer retaining complete freedom in his choice of employees. In earlier days before these definitions were refined, the union and closed shops were terms often used interchangeably, so that the closed shop often meant only that the employer recognized the union and bargained with it. His recognition did not necessarily imply membership in the union as a condition of employment,

although it usually did.

The open shop has also had a two-fold meaning. It may be a nonunion shop in which no union members are employed. Frequently it existed at a job-site in which the workers, either orally or in writing, stated that they were not union members and would not become members while employed in that job--the so-called yellow-dog contract. More often the open shop means that union members are employed and tolerated by the firm but are not recognized as such, in much the same fashion as exists today in many areas of government employment. In neither form of open shop is a union recognized as representing any employees, and, consequently, there is no collective bargaining with a union.

The union shop in its present-day meaning, that is, compulsory membership as a condition of retaining employment, is permitted by the Taft-Hartley Act. It is the focal point, however, of the modern union-security controversy, for, under the same Act, the states are free to enact legislation banning the union shop within their borders. This prohibition is effected in a state "right-to-work" law.

Several varieties of the union shop have evolved more recently which lessen its compulsive features. A modified union shop, found in some contracts, requires union membership of all new employees within a stipulated time, while old employees retain their freedom to join or not join the union that serves as their bargaining agent. Some of these contracts have contained escape-clauses, which periodically permit employees to renounce union membership if they choose. Another variety, though rapidly disappearing, is called maintenance of membership, whereby both old and new employees are given a choice of joining or not joining the union which represents them, but once they join they must remain members until the termination of the contract. Old members of the union are given an escape-period of fifteen to thirty days after the contract is signed to withdraw

from the union if they so desire.

A final form of union security is the agency shop. While it has had, under this name, only very limited acceptance in the United States, it will be clear later that it is virtually identical with the type of union shop permitted by the Taft-Hartley Act. Under the agency shop the employer deducts the payment of union dues from each employee's wages (a procedure known as the check-off), whether he is a union member or not, and turns the money over to the union as compensation for its services to the employees. A few contracts, however, require less than this amount, providing a payroll deduction from nonmembers of a bargaining fee that is usually less than union dues to compensate the union for its bargaining services. "Right-to-work" laws seek to outlaw all these forms of union security or compulsory membership and payments as completely as the Taft-Hartley Act outlaws the closed shop.

A Peculiarly American Problem

Visitors to the United States and foreign commentators, some well-versed in economic affairs, have sometimes been perplexed by the vehemence of the "right-to-work" controversy. Indeed there has been no comparable disagreement on this subject outside the United States. To Americans, however, the controversy is real and highly complex, which indicates that it is intelligible only in the light of conditions and practices in the United States.

American unions have traditionally sought in a written contract some assurance of security from employers with whom they negotiate. It is a peculiarly American practice. In fact, many students have felt compelled to conclude that the insistence upon closed and union shops is almost exclusively indigenous to the American business environment. Likewise, the arguments in favor of individual freedom and the right to choose or reject union membership without

restraint are given much less discussion in other countries.

The contrast has led to considerable confusion in the "right-to-work" debate when the rarity of union security contracts elsewhere, especially in Europe, is advanced as an argument in support of "right-to-work" laws.[1] Students of comparative labor movements have carefully delineated the significant differences between American and European political, social, and economic conditions. A brief look at some of the many variables adduces sufficient reason to warn the unwary against supporting or opposing "right-to-work" laws on the basis of experiences in other countries, except in a most limited way.[2]

In some European countries the closed shop is legal, but written contracts providing for it are rare. In many places, regardless of how the law reads, it is understood by employers and workers that nonunion workers are not employed to work with union members. A violation of this custom where it prevails would bring about a complete work-stoppage. There is a solid tradition in some countries that workmen join unions. There the matter of union security would be of little concern to anyone.[3]

An even more significant contrast exists between American and European unions. The former have traditionally placed strong emphasis on jurisdictional and trade differences, which have required, in effect, that only one union represent all the employees in a bargaining unit. In many European countries,

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[1] The argument is used, for example, in Edward A. Keller, The Case for Right-to-Work Laws (Chicago: The Heritage Foundation, Inc., 1955), pp. 54-59.

[2] Cf. Kurt Braun, The Right to Organize and Its Limits (Washington: The Brookings Institution, 1950), pp. 9-17, 147-57; Arthur Lenhoff, "The Right to Work: Here and Abroad," Illinois Law Review, XLIV (November-December, 1951), 669-718; Arthur Lenhoff, "The Problem of Compulsory Unionism in Europe," American Journal of Comparative Law, V (Winter, 1956), 18-43; "Dealing with Europe's Workers," Business Week, December 6, 1958, pp. 61-76.

[3] Cf. Leo C. Brown, "'Right-to-Work' Legislation," Social Order, V (March, 1955), 99-106.

on the other hand, dual unionism has flourished, that is, various unions cover the same industry or trade. The same bargaining unit is frequently composed of groups of workers represented by different unions. While these unions have often bitterly fought each other, they have exercised a certain self-restraint in competing with each other to be sole bargaining agent of all the workers in a bargaining unit. Despite their serious conflicts they have found cooperation necessary if they are to make a strong stand on the "battleline."[4]

The difference between American and European unions goes much deeper than an issue of adequate representation for purposes of collective bargaining. American unions, as a rule, have supported the prevailing economic system and have eschewed ideological and political alliances. They have concentrated on "bread and butter" issues and have offered few other social or even economic benefits except wages and closely related matters pertaining to employment conditions, which all receive, whether or not they are members. Business unionism is typically American. In Europe, however, ideology, religion, and political affiliation divide workers into different unions. Each union, as Kurt Braun notes, represents such different social, political, economic, and other tenets as to make unification impossible. Braun writes:

> In areas in which promotion of such tenets, in addition to advancement of occupational interests, is an essential part of the programs of the unions, application for membership implies a kind of confession of faith in ideology of the organization. Accordingly, changes in union allegiance may imply changes in convictions. The impossibility of bringing about a true change in conviction by means of compulsion explains, in part, why European unions functioning under pluralism usually object particularly strongly to the American type of closed, union, or similar shop and do not consider it a good device to strengthen their security.[5]

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[4] Cf. Braun, pp. 167-68. Latin American unions generally are also much more politically orientated than those in the United States. Many of them are dependent upon state support. Cf. "A Look at Latin American Unions," Business Week, February 27, 1960, pp. 45-55.

[5] Braun, pp. 166-67.

Thus employees' choice of union in Europe is determined in large part by matters independent of collective bargaining. While this may be true on occasion in the United States, those workers who oppose a union usually do so because they are opposed to all unions, or for reasons of expediency, or because the union has not obtained for them some expected benefit, or has provoked them in some other way. Ideology is seldom a factor. The American union member, usually, is not under pressure to change his religion, philosophy, or political affiliation because he joins one union rather than another. The difference is extremely important; yet it has been ignored by some who try to compare the American labor movement with those of Europe to prove some point.

The "right-to-work" controversy is rooted and grew up in American conditions. For more than a half-century it has appeared in one guise and then another. Consequently an understanding of it can only be approached in the American context.

A Historical View

Whatever importance may be attached to the contemporary "right-to-work" debate, it represents beyond doubt one of the oldest issues in the history of organized labor. The guild structure of late medieval society may be looked upon as a perfect example of a principle that became part and parcel of the closed shop of later times--none but guild members could work at a vocation; consequently all who exercised the vocation were to join the guild. The sanctions of the state enabled the guilds to exclude the many unskilled workers who sought jobs of higher status and skill.

The collapse of the guild system was practically complete long before its death-knell was sounded by the Combination Law passed by the English Parliament in 1799. This legislation denied workers the right to join any

guild or association or to refuse, after being hired, to work with any fellow-employee, under penalty of jail sentence. In this law formal statement was given to the doctrine of criminal conspiracy which English judges had formulated in the common law, namely, an action that is lawful when done by an individual may become unlawful when done by several in combination and concerted action. The judges reasoned that an individual worker could command in wages only what he was worth according to the market. He could gain more only if he combined with other workers, which constituted an invasion of an employer's property rights and violated the laws of economics. Therefore, to withhold labor in combination with other workers or to refuse to work with nonmembers of the combination was malicious and a criminal conspiracy that jeopardized the employer's business and the nation's trade.[6]

The ban on labor combinations in the United States, drawn from common law, was a characteristic of the struggle of American unions to organize in the first half of the nineteenth century. Prior to that time local craft unions from early colonial days had supported the principle of exclusive union hiring, that is, the closed shop. While examples are not numerous, sufficient evidence exists that the associations of craft workers in colonial and post-Revolution America frequently and widely sought to protect their trade from strangers and untrained workers. Despite the fact that the courts regularly ruled that associations of workers which put restrictions on hiring and conditions of work were criminal conspiracies, the closed-shop rule continued to develop, especially in the printing industry and in other trades as well.[7]

The doctrine that unions of their very nature are criminal conspiracies

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[6] Cf. Charles O. Gregory, Labor and the Law (2d rev. ed.; New York: W. W. Norton & Co., 1958), pp. 18-22.

[7] Jerome L. Toner, The Closed Shop (Washington: The American Council on Public Affairs, 1942), pp. 58-68.

received a telling blow in the decision handed down by Chief Justice Lemuel Shaw of Massachusetts in 1842 in the case of Commonwealth v. Hunt.[8] A complaint had been filed by a nonunion worker who accepted employment at a lower wage-rate than one agreed upon with his employer by a union of Boston bootmakers. When the employee refused to pay a fine levied by the union and to join the union, the employer was forced to discharge him. Departing from the pattern of earlier decisions, Chief Justice Shaw ruled that a closed shop could be directed toward good or bad purposes. In this instance, he said, there was nothing bad about union members refusing to work with a single worker who had violated standards which they had agreed upon. To make his point, Shaw compared the situation to one in which workers, for the sake of maintaining high standards, agreed not to work with an alcoholic, a refusal which the citizens would heartily endorse. Thus it is the purpose that matters, the Chief Justice said, not the closed shop itself, and since the prosecution had not established any unlawful purpose, the complaint was dismissed.

Because of Shaw's influence, the decision carried weight in the courts of other states. Nevertheless, from time to time similar disputes concerning strikes to enforce closed shops reached higher courts until about 1900, and in most of these cases the unions were found guilty of criminal or civil wrongs.[9] The insistence of the unions upon the closed shop continued to be a characteristic goal in all the craft trades during the later nineteenth century development of national unions.

Several forces were at work which caused organized labor to promote this policy. Perhaps most important was the impact of constant immigration

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[8] 45 Mass. (4 Met.) 111 (1842).

[9] Cf. Frank T. Stockton, The Closed Shop in American Trade Unions (Baltimore: Johns Hopkins Press, 1911). p. 42.

which gradually turned its direction to the cities more than to the rural areas. Most of the newcomers were unskilled laborers, but they seriously theatened the bargaining power of the skilled craftsman, especially because their lower cost gave added incentive to the development of specialized machinery for which they could be easily trained.[10]

The mobility of labor was another force encouraging local unions to restrict employment to the members of their own association. In fact, traveling workers were so common that the need to regulate them to protect local labor standards constituted a principal reason for the formation of national unions. Strangers who had never been union members were a particular concern to local unions. But equally disconcerting was the large number of union workers who came looking for jobs in answer to advertisements or who had left an area of surplus labor or who had been expelled from their own local. Not only did they threaten jobs and wages, but they were potential strikebreakers. The traveling card, or certificate of membership, was widely adopted by the unions to introduce some control over this problem of traveling members, and it met with varying success. In some localities the unions continued to exclude card-carrying unionists who came from other areas. The indignation of national union leaders when their local unions would refuse to waive exclusive jurisdiction and admit card-carrying traveling members was as furious as that ever displayed by any employer who objected to unions.[11] On the other hand, the ancient rule that union members must not work with nonunion workers was never questioned by union leaders.

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[10] Lloyd Ulman, The Rise of the National Trade Union (Cambridge: Harvard University Press, 1955), pp. 23-24.

[11] Cf. Ibid., pp. 68-152, 612-19.

The Knights of Labor in its earlier years after the Civil War did not put much stress on the closed shop, but in the 1880's it moved more strongly in that direction. However, it was not always successful and became less so as its power waned in the 1890's. The American Federation of Labor, with its emphasis on unions with exclusive craft jurisdiction, promoted the closed shop from its beginning in the 1880's. The union label became one of its most popular devices to strengthen the closed-shop principle, and the boycott was inaugurated against firms not using union labor or using supplies not made by unionized firms.[12]

In 1900 the unions in the United States reached a membership of about one million workers, who were concentrated, however, in a relatively small number of industries. Some significant gains had been made by unions in the preceding decade, and a unified demand in 1900 for a nine-hour day in several industrial centers by the International Association of Machinists helped to alert employers to organized labor's growing power.[13]

The resistance of employers to union success and particularly to any union control over jobs was augured by the battle of Homestead in 1892 after the Carnegie Steel Company refused to renew its agreement with the Amalgamated Association of Iron, Steel and Tin Workers, which had long provided for a union shop. The loss of its strike against United States Steel Corporation in 1901 virtually completed the rout of this union that up to then had been the largest national union in the country. Agreements with unions in the foundry and

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[12] Toner, The Closed Shop, pp. 69-73.

[13] Cf. Harry A. Millis and Royal E. Montgomery, Organized Labor (New York: McGraw-Hill Book Co., 1945), pp. 82-83; Selig Perlman and Philip Taft, Labor Movements, 1896-1932, Vol. IV: John R. Commons et al., History of Labor in the United States (New York: The Macmillan Co., 1935), p. 115.

machinery industries also collapsed and before long the big meat packers closed the doors to unions. The advance of the unions into the rapidly growing major industries was sharply reversed.[14]

A massive open-shop campaign, which characterized the first decade of the 1900's, was soon under way. The new campaign was not only directed against the closed shop, which heretofore had often meant no more than that the employer bargained with a recognized union while hiring whomever he wished, but was also aimed at some of the basic principles of unionism. The entire labor movement came under attack as representing an un-American spirit opposed to individual liberty, free competition, and property rights. The employers' crusade proved to be the opening salvo of the twentieth-century "right-to-work" battle.

The first successful offensive against the unions appears to have been launched in Dayton, Ohio, with the founding of the Dayton Employers' Association in 1901. By the following year the open shop had been restored in most of the city, and representatives of the Association went out to spread the word to other areas. Chicago and other cities set up similar programs, aided by the newly formed Citizens' Alliances, secret societies of business and professional men and frequently nonunion workers, which pointed the finger at organized labor's tyranny and greed, oppression of the workers, and interference with the employer's right to run his business in his own way.[15]

The anti-union movement found national leadership in the person of David M. Parry, president of the National Association of Manufacturers, an organization which from 1895 to 1903 had chiefly directed its efforts toward trade expansion. In the 1903 convention Parry denounced the "socialistic"

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[14] Cf. Perlman and Taft, pp. 97-123.

[15] Ibid., pp. 129-33.

labor movement and said it "knows but one law . . . the law of physical force--the law of the Huns and Vandals, the law of the savage."[16] Through the efforts of Parry and other leaders of like mind, the Citizens' Industrial Association was formed in late 1903 and became a potent force in the open-shop campaign through 1908. At its opening meeting the Association declared:

> The present industrial conditions have become so deplorable by reason of the indefensible methods and claims of organized labor that the time has come when the employing interests and good citizenship of the country must take immediate and effective measures to reaffirm and enforce those fundamental principles of American government guaranteeing free, competitive conditions. In its demand for the closed shop organized labor is seeking to overthrow individual liberty and property rights, the principal props of our government. Its methods of securing this revolutionary and socialistic change in our institution are also those of physical warfare.[17]

Meeting in 1906, the Citizens' Industrial Association heard its president, C. W. Post of "Post Toasties" fame, congratulate the membership on the fact that only two years before the press and the pulpit had been deploring the plight of the workingman. Post continued:

> Now this has all been changed since it has been discovered that the enormous Labor Trust is the heaviest oppressor of the independent workingman as well as the common American Citizen. The people have become aroused and are now acting. It has been the duty of this Association to place the facts before the people by various forms of publicity in the work of moulding public opinion to a point of active self-defense.[18]

The Association also formed branches by industries and crafts to promote its aims. A boycott of union-made goods was urged upon the members.[19]

Other organizations also joined the assault, notably the National Founders Association, a trade group of foundry employers, the National Metal Trades Association, composed of producers of metal products, and the National

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[16] Quoted in Philip Taft, The A. F. of L. in the Time of Gompers (New York: Harper & Brothers, 1957), p. 262.

[17] Quoted in Ibid., p. 263.

[18] Quoted in Perlman and Taft, pp. 136-37.

[19] Taft, p. 263.

Erectors Association, made up of employers in steel erecting. The first of these actively supported the open shop, provided strikebreakers, and gave financial assistance to struck firms. The Metal Trades Association continued its militant opposition to unions until 1955, including a spy system to gain information on union activities. The method was described by the Association as "a secret service system, by which members can place in their shops special contract operatives who will report on the loyalty of the workmen and even the foremen. Through these, the employer can learn of any agitator in the shop almost as soon as the agitation begins."[20] All three trade associations represented employers in direct contact with unions and wielded notable influence in promoting the open shop.

For several years the battle continued on numerous fronts. Private citizens, influential leaders, political figures, and clergymen were appealed to for statements in defense of individual liberties, the right to keep businesses operating during a strike for the good of society, and the right of the nonunion man to work. Legislation sponsored by the unions was opposed, and the first attempts of the American Federation of Labor to support political candidates who would resist the anti-union tide were staunchly counteracted. Two Supreme Court decisions based on the Sherman Anti-Trust Act further encouraged the open-shop cause by finding organized labor guilty of illegal boycotts.[21] Court injunctions, which had first been used to restrain railroad strikers in 1877, were more and more frequently used to halt labor disputes.[22]

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[20] Clarence E. Bonnett, Employers Associations in the United States (New York: The Macmillan Co., 1922), p. 112, quoted in Taft, p. 264.

[21] Loewe v. Lawlor, 208 U. S. 274 (1908), and Gompers v. Buck's Stove & Range Co., 221 U.S. 418 (1911).

[22] Cf. Millis and Montgomery, p. 97; Taft, pp. 264-71, 293-98; Harry A. Millis and Emily Clark Brown, From the Wagner Act to Taft-Hartley (Chicago: The University of Chicago Press, 1950) pp. 7-9.

One of the most successful programs against the unions was carried out in Los Angeles, which merited for it the title of "the model open-shop town." Spearheaded by the Los Angeles Times and the local Citizens' Alliance, the offensive frequently relied on the city's perpetual rivalry with San Francisco to point out the latter's sordid condition as a "poor bedeviled and union-ridden" city. Even the effects of San Francisco's earthquake disaster were said to have been multiplied by the selfish interests of the unions, whereas in Los Angeles, as the editor of the Times wrote: "We have not yet, it may be, entirely thrown off industrial thralldom--but we are steadily approaching that magnificent goal for which brave and free men everywhere should contend, until the entire country is free in this respect."[23] The triumph of the open shop there was assured when, in 1910, the Times building was dynamited and in a sensational trial the following year the McNamara brothers of the Bridge and Structural Iron Workers Union confessed their complicity in this deplorable crime.[24]

Aided by the public reaction to the McNamaras' trial, as well as to the irresponsibility of some sectors of the labor movement and the proneness of many workers to strike whenever it appeared advantageous regardless of contract obligations, the open-shop campaign proved highly successful. Union growth and the advance of the union and closed shop were retarded. Especially in smaller cities and agricultural states the unions suffered heavy losses and many disintegrated.[25]

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[23] Quoted in Paul Sultan, Right-to-Work Laws: A Study in Conflict (Los Angeles: Institute of Industrial Relations, University of California, 1958), p. 26.

[24] Ibid., pp. 25-27. Cf. Taft, pp. 275-86; Grace Heilman Stimson, Rise of the Labor Movement in Los Angeles (Berkeley: University of California Press, 1955), pp. 289-430.

[25] Cf. Millis and Montgomery, pp. 97-98, 99.

Despite the onslaught by its opponents, organized labor showed surprising resiliency, especially in the largest cities and in the trades affiliated with the A. F. of L. The rate of growth was indeed slower, but growth was still manifest. Then during the World War period that followed, under some government protection and recognition of the right of collective bargaining, the unions doubled their membership. The open-shop issue never completely disappeared but public feeling was no longer so strongly concerned.

Whatever hopes union leaders may have had that the comparative harmony of war-time labor-management relationships would open the door to wider recognition of unions for collective bargaining proved to be in vain. The hardening resistance of employers was evident in the Industrial Conference of 1919 called by President Woodrow Wilson. While the employer group acknowledged the worker's right to join a union, it would not agree with the union group's understanding of collective bargaining as expressed in the following resolution proposed by the union representatives: "The right of wage earners to organize without discrimination, to bargain collectively, to be represented by representatives of their own choosing in negotiations, and adjustments with employers in respect to wages, hours of work, and relations and conditions of employment is recognized."[26] The employers' proposal limited this right by allowing a wage earner to refrain from joining any organization or to deal directly with the employer if he chose. The Conference broke up over this disagreement.[27]

By the end of the following year, 1920, a new open-shop campaign was well under way. It was designated "The American Plan," and, as the title indicates, concentrated on ideals, moral principles, and patriotism to win public

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[26] Quoted in Taft, pp. 399-400.

[27] Perlman and Taft, pp. 489-90. Cf. Taft, pp. 397-400.

support for the open shop. The program also emphasized industrial democracy as found in the employee-representation plans developed by many firms during and after the war as company-controlled substitutes for unions organizing from outside the firms. Employers' kindness, frequently paternalistic, and workers' loyalty to the company were stressed. Advantage was taken of the prevalent post-war anti-communist fervor to arouse people against the "un-American" unions, and farmers' organizations were urged to oppose the monopolistic power the unions acquired through the closed shop and union recognition.[28]

Hundreds of open-shop associations were established throughout the country in 1920 and 1921, usually by the efforts of chambers of commerce, city and state merchants' and manufacturers' associations, and other employers' groups. The American Plan was adopted as the official name of the drive at a meeting in Chicago of twenty-two State Manufacturers' Associations in January, 1921.[29]

The unions did not have to wait long before feeling the effects of employer and public antagonism. At the same time, however, many other adverse factors were also pressing against unions, such as the rapid growth in the number of industrial workers, whom the craft unions did not seriously try to organize, and a much slower increase among skilled craftsmen, a decline in price levels and a rise in real incomes, a widespread migration of industry to areas where unions were weakly organized, and a growing concentration of corporate power. A great many workers, moreover, simply saw no benefit in unions. The unions themselves had lost much of their militant spirit and organizing zeal.[30]

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[28] Cf. Millis and Montgomery, pp. 166-67.

[29] Perlman and Taft, pp. 491-94.

[30] Millis and Montgomery, pp. 152-54.

Thus the environment gave impetus to the American Plan. The unions tried to resist cuts in wages and other standards by strikes. The net result for many was a gravely weakened bargaining position, if not loss of the closed shop or preferential hiring. A few unions in the printing and needle and clothing trades emerged virtually unscathed except for financial losses.[31]

Most seriously hurt were the unions which were the direct target of the American Plan, the previously redoubtable building-trades unions and the machinists who had greatly prospered during the war only to see most of their gains dissipated. The building trades in New York and Chicago were split asunder by shocking revelations of graft, corruption, and racketeering among employers and employees, and public resentment hastened the collapse of those unions. The American Plan achieved one of its greatest victories in the building-trades unions of San Francisco, a union stronghold. When the clash there between the unions and the banking and business interests was over, the open shop prevailed in the city.[32]

After 1923 the labor-management front settled into a state of relative quiescence. The protection and encouragement given by employers to company unions effectively blunted the organizing drives of outside unions. The methods of scientific management and improved personnel policies lessened workers' grievances, especially to the extent they shared in rising income and living standards. The unions that persisted in trying to organize were usually blocked without serious difficulty by the increasingly popular labor injunction, which, although by its nature a socially valuable and necessary instrument in courts of equity, became the object of grave abuse.[33] Especially as used in

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[31] Ibid., p. 168.

[32] Perlman and Taft, pp. 504-11.

[33] Cf. Gregory, pp. 95-104; Millis and Montgomery, pp. 429-40.

conjunction with the "yellow-dog" contract, the injunction prevented any attempt to organize employees.[34] Furthermore, the Supreme Court had again decided that unions were subject to the provisions of the Sherman Act in their boycotting activities, notwithstanding the exemption the Clayton Act had seemed to offer.[35] In the face of public support of the American Plan with its denial of the principle of union representation and collective bargaining, organized labor's strength gradually deteriorated, except in a few areas and trades, and union membership declined through the remainder of the decade and well into the depression that virtually paralyzed the nation's economy after 1929.

During the years of depression the social philosophy of the nation underwent an extraordinary transformation. Disillusionment with the so-called welfare capitalism of the previous decade and skepticism about the benefits of the free enterprise system changed political and economic thinking. Attitudes toward the labor movement were also profoundly affected. Probably the most important influence on organized labor, however, was the adoption of new labor policies by the administration that took charge of the federal government in 1933. The widespread acceptance of unions and collective bargaining which resulted was described in an earlier chapter.[36]

The National Labor Relations Act of 1935 went far beyond the earlier laws in establishing effective protection of the rights of labor. In Section 8(3) it was provided that other parts of the Act were not to be interpreted to preclude an employer from making an agreement with a labor organization requiring

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[34] The Supreme Court had ruled in 1917 that the individual yellow-dog contract made with an employer was entitled to injunctive protection. Cf. Hitchman Coal & Coke Co. v. Mitchell, 245 U.S. 229 (1917). Cf. Gregory, pp. 174-80; Millis and Montgomery, pp. 511-17.

[35] Cf. Duplex Printing Press Co. v. Deering, 254 U.S. 443 (1921); Bedford Cut Stone Co. v. Journeymen Stone Cutters' Association, 274 U.S. 37 (1927).

[36] Cf. Supra, pp. 7-37.

membership in that organization as a condition of employment. Two limitations were put on this union-security authorization: the organization must represent the majority of the employees in an appropriate bargaining unit, and it must not be given illegal assistance by the employer. The same section of the Wagner Act also prohibited employers from discriminating in hiring or discharging their employees for reasons of union membership.

While the circumstances of the time were certainly propitious for labor-union growth, and unions would hardly have remained in their dormant state with or without the Wagner Act, the protection of the Act greatly stimulated union expansion, especially after its constitutionality was affirmed by the Supreme Court in 1937.[37] The most unusual aspect of union development, however, was the successful penetration of industries and geographic areas which previously had so successfully resisted organization and been open-shop strongholds. For the first time the union shop became a feature of the mass-production industries. The closed shop, under which only union members are hired, had no particular advantage for industrial unions and would have imposed an impossible burden and responsibility where large-scale hiring was common. Especially when employment increased so rapidly in the defense and war periods, the unions were completely satisfied to leave the burden of hiring in the hands of employers, provided the employees then joined the union.

During the life of the Wagner Act, 1935 to 1947, three major problems concerning union security came before the National Labor Relations Board (NLRB), the agency established by the Act to administer the law. All three were partly due to the rivalry created between unions by the split in the American Federation of Labor which led to the founding of the Congress of Industrial Organizations,

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[37] N.L.R.B. v. Jones & Laughlin Steel Corp., 301 U.S. 1 (1937).

a development that the federal Congress could not foresee. One problem centered about unions which were assisted by employers in establishing union-security measures to keep out another union. The Board's policy was to set aside such contracts and allow the employees to vote on which union they wished to represent them. The second type of problem came about as a result of the war which caused an enormous growth in certain industries that had scarcely existed beforehand, shipyards, for example. In some instances compulsory membership in a union had been contracted for when employees were very few in number. In one such example that came before the Board, employees had increased from 257 to 90,000 in two years. The vast majority of these workers, as in similar cases, never had an opportunity to vote on representation. The Board was prevented by Congressional action from solving this problem in an adequate manner.

The third problem concerned employees who were discharged under the terms of a union-shop contract when they had been expelled by the representative union for supporting a rival union. The Board recognized the disruption in labor-management relations that can result from rival or dual unionism but declined to accept the contention of the A. F. of L. that the contracting union was established in perpetuity, regardless of employees' wishes to change affiliation. Consequently, the Board permitted employees to support a rival union without fear of discharge during the period when the contract was approaching termination. In a related type of case, the Board prohibited an employer from signing a union-shop contract when he knew it would be used by the union to force the discharge of employees solely because of rival union activities. An important principle was also laid down by the Supreme Court to the effect that a bargaining agent is obliged to represent all members of the bargaining unit impartially and without discrimination.[38]

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[38] Millis and Brown, pp. 204-13.

The union-security issue was beyond doubt the paramount labor controversy at the time when the United States entered World War II. Collective bargaining contracts had only recently been signed for the first time in many industries or were still being negotiated, and the goal of all newly-formed unions was a strong security clause. But within a month after Pearl Harbor the unions voluntarily made a "no-strike pledge" and in so doing surrendered their most potent weapon for securing a union-security clause in their contracts with management. It was not long before union security became the most difficult problem faced by the National War Labor Board, which had been given supreme authority over all labor disputes for the emergency. The unions feared that drastically changing employment conditions might well entail their destruction. Employers, on the other hand, could see no reason for giving the unions more government protection than they already enjoyed under the Wagner Act.

To protect the majority union from rival unions or from hostile employers, while safeguarding the employer's right to hire, discharge, and direct the workforce, as well as to forestall objections to compulsory union membership, the War Labor Board effected a compromise arrangement which provided for the maintenance of voluntarily acquired union membership for the duration of the contract period. At first this maintenance-of-membership contract was allowed only if the need for protection was established by the representative union. This restriction, however, was gradually relaxed so that maintenance of membership became a common feature of labor contracts. The Board justified its policy on the theory that stability in labor-management relations was a national necessity in time of war and that the unions needed some reassurance after giving up the right to strike and being made subject to the wage-stabilization program enacted by Congress. By the end of the war nearly three in every ten workers under collective bargaining agreements were covered by maintenance-of-

membership contracts.[39]

The war-time growth of unions was viewed with alarm in many quarters. Vehement opposition to the federal government's positive encouragement of union organizing and collective bargaining and to the outlawing of company unions under company domination had been clearly evident in the committee hearings which preceded the enactment of the Wagner Act Some employers' associations, many employers, though not all, and many officers of employee representation plans had objected to the Act.[40] Even the decision of the Supreme Court which upheld its constitutionality as a legitimate exercise by Congress of the commerce power did not soften the attacks made on the Act. While over the years most of the opposition to collective bargaining was abandoned, the law continued to be called unfair and in need of amendments. Compulsory membership in unions was particularly criticized and the term "right to work," which had appeared, though rarely, early in the century, began to come into prominence as a slogan around which the friends of the open shop could rally.

Leadership in the drive to amend the labor law was taken by the National Association of Manufacturers, and its position was strongly backed by the Chamber of Commerce of the United States. Both employers' groups in 1939 urged that the "right to work" be restored by making compulsory membership illegal. After the war began, the attack on the Wagner Act slowed down as other problems became more important. Toward the end of the war and in its aftermath of problems created by the reconversion of industry, the policy of government toward organized labor again became a foremost question. Labor

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[39] George W. Taylor, Government Regulation of Industrial Relations (New York: Prentice-Hall, Inc., 1948), pp. 121-25, 132-204; Millis and Brown, pp. 296-97. Cf. Frank P. Graham, "Maintenance of Membership: A Historical Note," Labor Law Journal, VI (August, 1955), 560-61.

[40] Millis and Brown, p. 27.

unrest was evident in huge and frequent strikes, and the unions insisted upon stricter forms of union security once the War Labor Board had been dissolved. At the same time, the propaganda campaign for a reform of labor law mounted furiously.[41]

Some developments on the labor side also contributed to a re-examination of the government's labor policy. Not only employers were numbered among the critics of the Wagner Act or of its administration. By 1939 the A.F. of L. was condemning the NLRB for its decisions on appropriate bargaining units which often were made on industrial lines rather than in terms of craft units within firms. The A. F. of L. bitterly protested that the law and the NLRB displayed favoritism toward the C. I. O. and the industrial unionism it fostered. This was a natural reaction for the old-line craft unions which saw their interests threatened by the new rival unions. The NLRB's work was immeasurably handicapped by the split in the labor movement.[42]

More significant in arousing public sentiment were some black marks on labor's escutcheon, many of which, however, were of a kind that the loosely organized federations could not control inasmuch as the abuses were perpetrated within autonomous unions or by individual officers and members. There is general agreement that labor's record during the war was excellent, but this was often lost sight of in the publicity given to work stoppages and slow-downs that interfered with production. There were unions which used their power to lay down ultimatums to employers. Boycotts and mass picketing were sometimes relied on to enforce demands or to organize in new areas. In other instances unions applied coercion to keep control of the expanding work-force and, in effect, denied workers their right to choose their own representatives. Some

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[41] Cf. Ibid., pp. 281-91; John C. Shott, How "Right-to-Work" Laws Are Passed (Washington: The Public Affairs Institute, 1956), pp. 6-16.

[42] Millis and Brown, pp. 69-70, 143-47.

unions used the closed shop to perpetuate their control, and dissident members were expelled and lost their jobs. Other unions came under left-wing domination. A few unions were notorious in their lack of democratic procedures or in financial abuses. Racketeering problems also caught the public eye as did some admission and expulsion practices aided and abetted by the closed shop. Finally, the strikes during the war, especially by the coal miners, and the wave of strikes after the war moved many people to accept the proposition advanced by the National Association of Manufacturers and the Chamber of Commerce, namely, that organized labor had become irresponsible and too powerful and had to be "cut down to size."[43]

By 1947 the majority of states had enacted restrictive legislation concerning unions and their activities. Some of the state laws were extremely harsh, prescribing traditional union conduct and calling for detailed union regulation. Moreover, some twenty states had either banned the closed shop, and usually all other forms of union security, or had put restrictions on it, such as requiring two-thirds or three-fourths vote of the employees in the bargaining unit, or declaring union-security contracts contrary to public policy and hence unenforceable. Other states had provided a measure of protection against restrictive admission and unreasonable expulsion in unions with valid union-security contracts.[44]

Thus "right-to-work" laws had already become a prominent feature of the legal landscape by the time Congress enacted its own restrictions on compulsory union membership in the Labor Management Relations Act of 1947, popularly known as the Taft-Hartley Act. While numerous bills had been introduced in Congress between 1935 and 1947 to regular union-security practices, as well as other

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[43] Ibid., pp. 274-81.

[44] Cf. Ibid., pp. 316-32.

union activities, no important changes had been made. Under the new law collective bargaining continues to be the basis of the national labor policy, although the law takes a peculiar twist in this regard, stemming from what Arthur J. Goldberg calls "the bifurcated philosophy behind the Taft-Hartley Act which speaks of encouraging both collective bargaining and individual bargaining--a complete contradiction of terms."[45] The law legally establishes unions as exclusive bargaining agents, yet makes provision for undermining them. This is partly seen in the new emphasis that employees are free to refrain from concerted activities and employers are free to encourage them to refrain. This shift of emphasis appears to place the government more in a position of neutrality toward collective bargaining rather than in one of positive encouragement, with the consequence that organizing activity takes on the aspect of a contest of employee loyalties between the union and the employer.[46]

The most obvious change in spirit and intent between the Wagner Act and the Taft-Hartley Act is a trend toward more regulation. Perhaps this was inevitable because of the frequent breakdowns in the collective bargaining process, though it must be allowed that the working of the Wagner Act was seriously impeded by the war emergency and the bitter hostility of its opponents, both of which militated against the development of favorable bargaining attitudes upon which the Wagner Act was premised. Too often the parties meeting at the bargaining table were inclined to be war-like, with the meeting serving only as an essential preliminary for disagreement with its consequent economic conflict and

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[45] Arthur J. Goldberg, "Labor-Management Relations, 1958-1959," Labor Law Journal, X (June, 1959), 381.

[46] Cf. Nathan P. Feinsinger, "Light and Shadows in Labor-Management Relations," Labor Law Journal, IX (September, 1958), 619.

endurance contest and appeal to the government for a solution favorable to one or the other party. These were the conflicts that attracted the attention of the public and the press, though they were only a small minority compared to the number of successful negotiations resulting from collective bargaining. But of those who refused to or could not make bargaining successful, too many were in industries that deeply affected the public interest. Often the parties demonstrated little consideration or understanding of each other's difficulties or of the public's interest in the peaceful settlement of controversies. Such attitudes could only invite government regulation by decree.

In the Taft-Hartley Act and in many state laws the nation finds an expression of its serious doubt as to the practicality of solving industrial conflict by collective bargaining alone without outside interference or regulation. Despite what the laws may seem to say, it is now the policy of the federal government and many states that some areas of the bargaining process must be regulated by law. One of these areas is the crucial one of union security.

The Taft-Hartley Union Shop

In the matter of compulsory unionism the Taft-Hartley Act seeks to give both the union and employees some protection. To accomplish this, Congress took half-way steps in two directions which produced considerable confusion and endless litigation. Restrictions were put upon union-security demands, while some individual rights were safeguarded to the extent of partially extinguishing union authority, and the states were permitted to enact their own laws and exercise their own jurisdiction in matters of union security.

In the first place, under the Taft-Hartley Act, the closed shop is outlawed as are hiring halls and preferential union hiring which discriminate against nonunion employees. The law permits the union shop if certain conditions

are fulfilled. The union must be the certified bargaining agent of the employees. New employees must be allowed at least thirty days before they are required to join the union. A third condition, deleted by Congress in 1951, required employee approval before the union could negotiate for a union shop. At least 30 per cent of the employees in the bargaining unit represented by the union seeking a union-shop contract had to say that they wanted the union to negotiate for that goal. Thereupon the NLRB would conduct a secret election in which a majority of all employees in the unit, not just a majority of those voting, would have to approve the union's request to bargain for the union shop. The purpose of this procedure obviously was to give the individual employees an opportunity by secret ballot to express their objections to compulsory membership and to offset any coercion that might be exercised to promote the union shop. The Taft-Hartley Act further provides that if 30 per cent of the employees give evidence of wanting to be rid of a union-shop contract, the NLRB will conduct a secret vote to determine if a majority is so minded. If a majority votes to deauthorize the union-shop provision, the union shop is withdrawn and the union cannot negotiate for it again for at least one year.

There had been a determined attempt on the floor of the Senate during the debate preceding the enactment of the law to eliminate the union shop altogether. Senator Robert Taft rose to speak in favor of keeping the practice. His argument was expressed in these words:

> Mr. President, this amendment, as I understand, proposes completely to abolish the union shop. I recognize the strength of the arguments made by the Senator from Minnesota. We considered the arguments very carefully in the committee and I myself came to the conclusion that since there had been for such a long time so many union shops in the United States, since in many trades it was entirely customary and had worked satisfactorily, I at least was not willing to go to the extent of abolishing the possibility of the union-shop contract.

The Senator concluded by saying:

> My own philosophy is that we have to decree either an open shop or an open union. The committee decreed an open union. I believe that will permit the continuation of existing relationships, and will not violently tear apart a great many long-existing relationships and make trouble in the labor movement; and yet at the same time it will meet the abuses which exist.
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> So I think it would be a mistake to go to the extreme of absolutely outlawing a contract which provides for a union shop, requiring all employees to join the union, if that arrangement meets with the approval of the employer and meets with the approval of a majority of the employees and is embodied in a written contract.[47]

Despite the Senator's approbation of the union shop, a section of the same law authorizes the states to reject his conclusion. The conditions and restrictions put on the union shop mean nothing if the states choose to take advantage of this provision which permits them to enact a stricter, but not milder, regulation of union security. Up to the time of the Taft-Hartley Act there existed considerable doubt that the states had acted lawfully in enacting stricter regulations in the form of "right-to-work" laws, since matters dealing with labor relations in firms engaged in interstate commerce come under the exclusive jurisdiction of the federal government. The "right-to-work" laws when applied to interstate commerce were clearly an exercise of state authority contrary to federal public policy proclaimed by Congress in the Wagner Act. Section 14(b) of the Taft-Hartley Act removed whatever doubts about state authority persisted, for therein Congress declares:

> Nothing in this Act shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law.

By this section of the law the states are ceded prime authority in regulating compulsory union membership. This is the legal provision that is the foundation on which all "right-to-work" laws rest.

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[47] U.S., Congressional Record, 80th Cong., 1st Sess., 1947, XCIII, Part 4, 4835, 4836.

The Taft-Hartley Act places one further restriction on the union shop which requires some elaboration because of its crucial importance in an evaluation of the economic and moral aspects of compulsory membership. The restriction is found in the second provision of Section 8(a)(3) and says:

> No employer shall justify any discrimination against an employee for nonmembership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership.

This means, in practice, that a union must admit all employees on the same terms, and it cannot request the discharge of any employee by the employer except for failure to pay initiation fees and periodic dues required of all members. Under a union-shop contract, therefore, if a union will not admit an employee or expels him, he can continue in his employment as long as he tenders dues and fees. For an employer to accede to the union's request to discharge an employee for any other reason makes the employer guilty of an unfair labor practice. At first glance the whole provision may seem simple enough, but its ramifications are manifold.

A first question concerns the meaning of union membership under the Taft-Hartley union shop. Traditionally membership has implied not only the payment of dues and assessments after a worker has made application and been accepted, but also attendance at some meetings and usually the taking of an oath of loyalty to the union. A close reading of Section 8(a)(3)(A) appears to mean simply that an employee cannot be discharged at the union's request if he has been discriminated against when he applied for union membership. But both the NLRB and the Supreme Court have concluded that the phrase in proviso (B), "membership. . . denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required," applies

also to proviso (A). Some commentators, therefore, have felt compelled to conclude that an employee is not even required to make formal application to or join the union if he is willing to pay initiation fees and dues.[48]

Others feel that an employee must show a willingness to join the union.[49] In fact the NLRB did rule that an employee must seek membership in the union and tender initiation fees and periodic dues.[50]

But another NLRB case strongly supports the contention that an employee need not join the union even under a union-shop contract. In that NLRB case the union and the company had concluded a valid union-security agreement. Three employees, however, who tendered the required initiation fees and dues, were denied membership because of their failure to meet other union requirements, namely, attendance at the next union meeting, when applicants were voted on, taking an oath of loyalty to the union, and payment at the meeting of the initiation fee and their dues for the first three months. Taking their refusal to comply with these conditions as a refusal to join the union, the employer at the union's request discharged the three employees. A complaint was filed before the NLRB, which, by a three to two majority, found both employer and union guilty of an unfair labor practice and ordered the employees reinstated with back pay. The two dissenting members of the Board maintained that a union cannot be said to have denied membership to employees who have not sought member-

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[48] Cf. Jerome L. Toner, "Union Shop under Taft-Hartley," Southern Economic Journal, XX (January, 1954), 258-73; also by the same author, "The Taft-Hartley Union Shop Does Not Force Anyone to Join a Union," Labor Law Journal, VI (October, 1955), 690-95. Cf. Frank M. Kleiler, "Union Security and Government Boards," in Proceedings of the New York University Fifth Annual Conference on Labor (Albany: Matthew Bender & Co., 1952), pp. 501-509.

[49] Cf. Charles Cogen, "Is Joining the Union Required in the Taft-Hartley Union Shop?" Labor Law Journal, V (October, 1954), 659-62. Also cf. Michigan Law Review, LII (February, 1954), 619-22.

[50] International Brotherhood of Teamsters, 116 NLRB 1398 (1956).

ship. Nevertheless, the United States Court of Appeals for the Seventh Circuit affirmed the Board's order and the Supreme Court denied a petition for certiorari.[51] On the basis of this decision it appears that the employee is protected if he tenders initiation fees and dues and is denied membership for any other reason. Under the Taft-Hartley law, therefore, the union shop seems to be little more than a method of collecting dues.[52]

Otherrulings by the NLRB further demonstrate the employees' protection from discrimination under a union shop. While there is no doubt that a union can legally deny membership for any reason, it cannot do so and then ask for the employee's discharge.[53] For example, if the union refuses to accept the employee's legally tendered dues and fees, he cannot be discharged by his employer.[54] If further attempts by the employee to submit his dues and fees would be futile, he will not be held bound to do so.[55]

A second question that arises under the meaning of the Taft-Hartley union shop concerns the power of the union to compel an employee's discharge once he has become a member. Board decisions are clear on the point that the union acts legally if it causes an employee to be discharged for failure to pay

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[51] Union Starch & Refining Co., 87 N.L.R.B. 779 (1949), enf'd, 186 F. 2d 1008 (7th Cir. 1951), cert. denied, 341 U.S. 815 (1951). For a similar decision, cf. N.L.R.B. v. Pape Broadcasting Co., 217 F. 2d 197 (5th Cir. 1954). In an earlier case the Board ruled that to require attendance at meetings would nullify Section 7 of the Taft-Hartley Act which guarantees to members the right to refrain from union activities. Injection Molding Co., 104 N.L.R.B. 639 (1953).

[52] Kleiler, p. 508.

[53] Kaiser Aluminum & Chemical Corp., 93 N.L.R.B. 1203 (1951).

[54] Union Starch & Refining Co., 87 N.L.R.B. 779 (1949); Biscuit and Cracker Workers Local 405, 109 N.L.R.B. 985 (1954).

[55] Baltimore Transfer Co., 94 N.L.R.B. 1680 (1951); Westinghouse Electric Corp., 96 N.L.R.B. 922 (1951); N.L.R.B. v. Machinists, Local 504, 203 F. 2d 173 (9th Cir. 1953).

initiation fees and periodic dues under a valid union-security contract.[56] But these are the sole grounds and are applicable only if no other circumstances exist to excuse the failure to tender dues and if the employer has no reason to assume that the request for discharge was for any other reason.[57] An employee cannot be discharged, for example, if he is expelled from the union because of a disagreement with the union, provided the reason is not the failure to pay dues.[58]

The Board has interpreted dues and fees very strictly. They may include regular assessments which must be reasonable, however, as must dues and fees.[59] Fines which the union may impose for disciplinary reasons cannot be interpreted as dues or assessments, and failure to pay fines cannot be a cause for discharge.[60] Special assessments for failure to attend meetings are also banned by the law as a condition of employment.[61] In another case the court found that the company had violated the law by discharging an employee who failed to pay a fine for refusing to picket and to pay dues that had accrued before the union-security contract had been certified. The union was also in violation of the law by forcing some members to pay extra sums of money above periodic dues to

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[56] Al Massera, Inc., 101 N.L.R.B. 837 (1952); Sinclair Refining Co., 115 N.L.R.B. 380 (1956); International Chemical Workers Union, 115 N.L.R.B. 772 (1956).

[57] Air Reduction Co., Inc., 103 N.L.R.B. 64 (1953).

[58] N.L.R.B. v. Acme Mattress Co., 192 F. 2d 524 (7th Cir. 1951).

[59] General American Aerocoach, 90 N.L.R.B. 239 (1950); United Automobile Workers, CIO, 92 N.L.R.B. 968 (1950); Ferro Stamping & Manufacturing Co., 93 N.L.R.B. 1459 (1951).

[60] Pen and Pencil Workers Union, Local 19593, 91 N.L.R.B. 883 (1950); City Window Cleaning Co., 114 N.L.R.B. 906 (1955).

[61] Electric Auto-Lite Co., 92 N.L.R.B. 1074 (1950), affirmed, N.L.R.B. v. Electric Auto-Lite Co., 196 F. 2d 500 (6th Cir. 1952), cert. denied, 344 U.S. 828 (1952).

remain in good standing.[62] Nor can a union urge discharge of an employee dropped from union membership because of his support of a rival union and failure to pay a fine before reinstatement.[63]

The NLRB and the courts have also considered the matter of delinquency in paying dues as cause for discharge. The policy eventually established by the Board holds that initiation fees and dues are legally tendered at any time before the actual discharge of the employee, regardless of how long overdue the payments may be.[64] A contrary ruling has been rendered, however, by a federal court which rejected this policy of the Board and declared that tendering delinquent dues was no protection from discharge under a valid union-security contract. The court added that such a person becomes a free rider and the law makes no provision for last-minute efforts to prevent discharge.[65] The conflict will have to be resolved by the Supreme Court.

The examples selected above, while representing only a few of the cases that have come before the NLRB, may be sufficient to indicate that union control over employees under union-security contracts has been restricted to an extraordinary degree.[66] Both union members and nonunion employees have been provided with a latitude that was simply unheard of under the former types of compulsory

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[62] N.L.R.B. v. Eclipse Lumber Co., Inc., 199 F.2d 684 (9th Cir. 1952).

[63] N.L.R.B. v. International Association of Machinists, 203 F.2d 173 (9th Cir. 1953).

[64] Aluminum Workers Union, AFL, Local 135, 111 N.L.R.B. 411 (1955). The Board was upheld in N.L.R.B. v. Aluminum Workers Union, 203 F.2d 515 (7th Cir. 1956). The policy was also applied in Technicolor Motion Picture Corp., 115 N.L.R.B. 607 (1956); International Association of Machinists, AFL-CIO, Lodge 1021, 116 N.L.R.B. (1956); International Woodworkers of America, AFL-CIO, Local Union 13,433, 117 N.L.R.B. 405 (1957).

[65] International Association of Machinists, AFL-CIO, Lodge 1021 v. N.L.R.B. 247 F.2d 414 (2d Cir. 1957).

[66] For other cases and more details, cf. Sultan, pp. 89-95, and Walter L. Daykin, "Union Fees and Dues," Labor Law Journal, IX (April, 1958), 289-97.

membership. While these restrictions on unions were designed to curb union leaders who tolerated no restriction on their authority and enforced it by threat of discharge, it seems evident, nevertheless, that the authority of the union may be weakened in ways that can hamper industrial relations. The union, being unable to enforce a fine or other penalty, for example, cannot compel cooperation or compliance from its members regardless of the justice of the union's position in trying to live up to the obligations of its contract with the employer, or, for that matter, in trying to meet honestly the needs of the employer which would ultimately benefit both employer and employees. Requiring nothing more than financial payments, this kind of membership places minimal demands on union membership. Yet this is what Congress intended, according to the Supreme Court, which declared in a case concerning these matters:

> The policy of the Act is to insulate employees' jobs from their organizational rights. Thus 8(a)(3) and 8(b)(2) were designed to allow employees to freely exercise their right to join unions, be good, bad, or indifferent members, or abstain from joining any union without imperiling their livelihood.[67]

At this point it may be noted that the Supreme Court, in interpreting the minimum requirements of compulsory union membership provided under the Railway Labor Act, has taken a position similar to that under the Taft-Hartley Act, which does not cover the railroads or airlines. While upholding the legality of the railroad union shop in which all employees must join the union certified by public authority, the Court declared: "The only conditions to union membership authorized by Section 2, Eleventh of the Railway Labor Act are the payment of periodic dues, initiation fees and assessments."[68] Since the law does not specify any other requirements, even though unions have considered them inherent

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[67] Radio Officers Union, C.I.O. v. N.L.R.B., 347 U.S. 17, 40 (1954).

[68] Railway Employees' Department, A.F.L. v. Hanson, 351 U.S. 225, 235 (1956).

in membership duties, such as an oath of loyalty to support the program and policies of the union, attendance at meetings, and acceptance of union rules, the unions can exercise little disciplinary control. The Court ruled that the statute precludes the imposition of financial burdens for disciplinary purposes.[69]

The Supreme Court of Texas, in a literal interpretation of this decision, ruled that "membership requirements . . . of the union shop statute are merely formal or fictional aside from the financial obligation."[70] Consequently, regardless of what an employee does or refuses to do, for or against the union, the union cannot request his discharge by the employer as long as he meets the minimum financial requirements. The Texas court affirmed this restriction when it said: "The unwilling employee need assume no pledge of conformity nor promise of obedience, nor even make application for membership to retain employment under the union shop contract."[71] The United States Supreme Court has not yet ruled so strictly on this point, for its decision covered only the requirements upon members to pay dues and fees. It refused to rule on the legality of using those fees to promote ends other than collective bargaining strictly considered. The Court said only the following: "If assessments are in fact imposed for purposes not germane to collective bargaining a different problem would be presented."[72]

As the law is now interpreted, therefore, all employees of firms engaged in interstate commerce where a union shop has been legally contracted are held to no other requirement, either in joining or retaining membership in a union,

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[69] Ibid.

[70] Sandsberry v. International Association of Machinists, 295 S.W. 2d 412, 415 (1956); cert. denied, 353 U.S. 918 (1957).

[71] Ibid., at 416.

[72] Railway Employees' Department, A.F.L. v. Hanson, 351 U.S. 225, 235 (1956).

than the payment of initiation fees and regular dues and assessments which must be reasonable. If the union requires anything more of an employee, he can refuse to cooperate. If the union expels him for his refusal, it can do nothing further toward effecting his dismissal from his job without becoming liable for an unfair labor practice charge by the NLRB. If the employer cooperates with the union in effecting the employee's discharge, he faces the same charge from the Board. The NLRB has been very strict in enforcing this aspect of the law, requiring reinstatement of the employee with back-pay adjustments to be made either by the employer and the union or, frequently, by the union alone.

Much of the discussion in the remainder of this study will be concerned with arguments that often appear to ignore the legal developments that have stripped the union shop of its former meaning. These legal restrictions must be kept in mind even though some objectors to union abuses and to infringement of individual rights give no weight to the rapid evolution that has occurred in the concept of union security.[73]

Union Security on the Railroads

Although labor relations in the railroad and airline industries are governed by separate legislation, the concept of union security and compulsory membership in these industries has evolved in a manner similar to that in other

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[73] For example, Roscoe Pound appears to ignore the NLRB cases discussed above and argues that unions can freely discriminate against their members and nonunion employees, even to the extent of depriving them of their employment. Cf. "Legal Immunities of Labor Unions," in Edward H. Chamberlin et al., Labor Unions and Public Policy (Washington: American Enterprise Association, Inc., 1958), pp. 162-66. Of course, not all abuses are filed as complaints before the NLRB. The Reverend John E. Coogan, S.J., says that the average workman "is of limited education and is short of funds and therefore is no match for the large union that takes away his liberty." John E. Coogan, Voluntary Unionism for Free Americans (Washington: National Right to Work Committee, (1958), p. 8.

industries in interstate commerce which are subject to the Taft-Hartley Act. However, about the same time that legal approval was given to union-security provisions in contracts in the latter industries, they were outlawed on the railroads. Nevertheless, in the years that followed, the railroad unions enjoyed their greatest growth and did not lag behind other unions in gaining benefits through collective bargaining.

While union organization has a long history on the railroads, the closed shop does not, chiefly because for a long time it did not fulfill any useful purpose. Since about 1900 the railroad brotherhoods, particularly among the operating employees, have been so strong and secure as to face no threat from nonunion members or the employers. Other factors peculiar to the industry also made the closed shop unnecessary. One of these was the complete acceptance of the principal of seniority by the railroads, which to a high degree safeguards job tenure and promotion. Moreover, since disputes over seniority are settled between the operators and the union, an employee's protection largely depends upon the union. An unusual factor in railroad work is that an employee, under changing economic conditions, may be shifted from the jurisdiction of one union to that of another, as when a fireman becomes an engineer, or when an engineer is "bumped" back to fireman. The strict application of seniority thus served as a substitute for the closed shop. Furthermore, there is extremely low turnover in railroad employment so that the membership of the brotherhoods does not erode away as it does in most other industries having typically higher turnover, where the union must rely on the union shop to keep up its membership or engage in constant recruiting campaigns. Finally, railroad employees, especially in the earlier days, accumulated considerable financial investment in their unions through insurance benefits when, because of the high accident rate in railroad employment, most insurance companies would not cover railroad employees, and

the railroad unions went heavily into the business of insuring their membars. As a consequence, most employees were attracted to the unions and retained membership without the pressure of a closed shop.[74]

The Railway Labor Act of 1926 contained no provisions concerning union-shop agreements.[75] Largely a product of management and labor discussion and cooperation, the Act did recognize the right of employees to organize and bargain collectively without interference, influence, or coercion by employers. In the eight years following the enactment of the Act the union shop became widespread on the railroads, although it is estimated that over 20 per cent of the trade agreements were with unions that were company dominated and had officers who supported management proposals and programs regardless of employee wishes. In these instances companies had helped to form the unions, rendered them substantial financial aid, and extended special privileges to their members, such as group insurance and relief funds.[76]

Because of the union-shop feature in these contracts, the industry-wide unions or brotherhoods were effectively cut off in many areas from representing employees. The national unions therefore urged Congress to ban the company unions so as to permit better collective bargaining, and Congress responded by amending the Railway Labor Act in 1934. The interference, coercion, or influence banned in 1926 in the choice of representatives by either party was spelled out and penalties provided. The checkoff was banned and employer contributions or the use of company funds to assist labor organizations were outlawed. Secret ballots were ordered to determine employee choice of sole

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[74] Cf. Toner, The Closed Shop, pp. 98-109.

[75] 44 Stat. 577 (1926), 45 U.S. Code § 152.

[76] Leonard A. Lecht, Experience under Railway Labor Legislation (New York: Columbia University Press, 1955), p. 78. Cf. David Levinson, "Union Shop under the Railway Labor Act," Labor Law Journal, VI (July, 1955), 443; U.S., Congress, Senate, Committee on Labor and Public Welfare, Railway Labor Act Amendments, Report 2262 to accompany S.329", 81st Cong., 2nd Sess., 1950, pp. 2-3.

bargaining representative. These and other provisions effectively undermined the company unions.[77]

Congress could not resolve the conflicts between the various unions and the railroads on the union-security issue and so, contrary to the hopes of the national unions, expressly prohibited all forms of compulsory union membership. The Supreme Court upheld the legislation under the commerce clause.[78]

As a direct result of the 1934 amendments banning the closed or union shop, company unions virtually passed out of existence, while the industry-wide unions took their place and absorbed their members, so that by 1950 over 75 per cent of all railroad employees were members of these organizations.[79] This explains why the national unions grew so rapidly as soon as the union shop was banned.

Despite their success, the railroad unions, with the notable exception of the Brotherhood of Locomotive Engineers, were soon clamoring for the restoration of union security once the company unions had disappeared. They did not fail to note the progress made by other unions which could bargain for the union shop. Furthermore, some of the non-operating unions in the 1940's were faced with rival organization drives by the C.I.O. An emergency board appointed by President Roosevelt in 1942, however, ruled against the union shop.[80] The unions continued their appeal, nevertheless, and also stressed their belief that all employees ought to contribute to the expenses of their bargaining agent. Finally, in 1951, Congress again amended the Railway Labor Act and provided for the union shop in Section 2, paragraph 11, as follows:

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[77] Lecht, pp. 82-83.

[78] Virginian Railway Co. v. System Federation No. 40, 300 U.S. 515 (1937).

[79] Levinson, p. 443.

[80] Ibid.; Lecht, p. 177.

> Any carrier . . . and a labor organization . . . duly designated and authorized . . . shall be permitted--(a) to make agreements, requiring as a condition of continued employment, that . . . all employees shall become members of the labor organization representing their craft or class. . . .[81]

Subsequently the non-operating unions have obtained the union shop from practically all of the major carriers. On the other hand, the operating unions have entered into relatively fewer union-security agreements, the same reasons persisting in their branches that have always worked against the necessity of such agreements.[82]

One particular difference in this section of the Railway Labor Act permitting the union shop from that provided under the Taft-Hartley Act must be specially noted. The railroad legislation explicitly guarantees pre-emption in the matter of union security to federal law, that is to say, it stipulates that no lesser government body can legislate contrary to the law as passed by Congress. The 1951 amendment permits the carrier and the union to make these union-security agreements "notwithstanding any other provisions of this chapter, or of any other statute or law of the United States . . or of any State." This proviso is entirely different from Section 14(b) of the Taft-Hartley Act which allows the states to enact stricter legislation on union-security contracts. Yet the committee which reported the railway bill to the Senate considered the terms of the two laws to be substantially the same, and said: "Such differences as exist are warranted either by experience or by special conditions among employees of our railroads and airlines."[83]

The House Committee considering the bill likewise noted that the proposed changes would supersede state regulations. It reported:

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[81] 64 Stat. 1238 (1951), 45 U.S. Code §152 (1952).

[82] Cf. Levinson, p. 443.

[83] Railway Labor Act Amendments, Report No. 2262, p. 3.

> It will be noted that the proposed paragraph eleventh would authorize agreements notwithstanding the laws of any state. For the following reasons, among others, it is the view of the committee, that if, as a matter of national policy such agreements are to be permitted in the railroad and airline industries it would be wholly impracticable and unworkable for the various states to regulate such agreements. Railroads and airlines are direct instrumentalities of interstate commerce; the Railway Labor Act requires collective bargaining on a system-wide basis; agreements are uniformly negotiated for an entire railroad system and regulate the rates of pay, rules of working conditions of employees in many States; the duties of many employees require the constant crossing of State lines; many seniority districts under labor agreements extend across State lines, and in the exercise of their seniority rights employees are frequently required to move from one State to another.[84]

Amendments to this section of the Act were introduced in both Houses to make it inoperative in states having "right-to-work" laws, but they were defeated by large majorities.[85]

Railroad management had strongly protested the union-shop amendment and, after it was enacted, was reluctant to grant the security measure when the non-operating unions requested it. When a strike threatened in late 1951, President Harry S. Truman appointed an Emergency Board to investigate the dispute. The Board's report recommended the union shop on several grounds. It remarked that Congress had carefully explored the possibility that the union shop might jeopardize individual rights and had provided safeguards. It was also noted that the unions concerned had shown stability and responsibility in their activities. Moreover, since the unions do control the economic destiny of their members by their right and duty to represent all employees, it seemed reasonable that all employees participate in formulating union policy and expressing their criticism if they opposed it. The Board believed an employee's participation

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[84] U.S., Congress, House of Representatives, Committee on Interstate and Foreign Commerce, Railway Labor Act Amendments, Report No. 2811 to accompany H.R. 7789, 81st Cong., 2nd Sess., 1950, p. 5.

[85] U.S., Congressional Record, 81st Cong., 2d Sess., 1950, XCVI, Part 12, 16876, 17061.

in a union would contribute more to democracy than would his resignation from the union. Dissatisfaction with the union was suspected by the Board to stem from the unwillingness of the union to prosecute grievances or claims that it considered unmeritorious, and this the Board did not regard as a legitimate basis for nonmembership. Finally, the Board found that only about one-tenth of one per cent of the employees terminated employment because of difficulties over compulsion to join the union. With the law's restrictions on membership obligations confined to payment of reasonable dues, initiation fees, and assessments, the individual employee was felt to be well protected against arbitrary union discrimination. The promise of the unions to eliminate any other discriminatory practices of union admission encouraged the Board to urge that unions make membership easily available.[86]

It was inevitable that the conflict between the authorization of the union shop on the railroads and the ban on the union shop in the "right-to-work" states would be left to the courts to resolve. The decisions of the courts will be considered later as an essential part of the contemporary "right-to-work" controversy in the states.

The Extent of Union-Security Agreements

Contrary to the European experience the practice of negotiating union-security agreements has spread over the greater part of American industry. Surprisingly, the most rapid growth of this practice took place after the Taft-Hartley Act was passed. That law contained a provision allowing union members to decide by secret vote whether their union should have the power to bargain

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[86] Report to the President by the Emergency Board No. 98, appointed by Executive Order 10306, November 15, 1951, National Mediation Board Case No. A3744 (Washington: Government Printing Office, February 14, 1952), pp. 7-24.

for a union shop. The results were so one-sided in favor of the union that employers found themselves in no position to reject the union-shop demand on their previous grounds that only union officers were interested in obtaining it.

The union-shop polls conducted by the NLRB from 1947 to 1951 by direction of the Taft-Hartley Act still offer some of the clearest evidence of loyalty of members to their unions. The procedure was intended to protect the right of individual employees to express their mind on union-shop contracts. The scales were clearly tipped in favor of the open shop by the requirement that a majority of all employees, not just those voting, was necessary to authorize the representative union to bargain for the union shop. Workers not voting were, in effect, counted as opposed to it.

The procedure did not work at all in the manner that Congress presumably thought it would. By the time the so-called Taft-Humphrey Amendments of 1951 were enacted,[87] the NLRB had conducted 46,146 polls, involving 6,545,001 employees. Over 97 per cent of the polls resulted in granting approval to the union to bargain for the union shop, and 91.5 per cent of those voting were in favor.[88] The results gave the unions a potent weapon to promote a widespread extension of a security clause in their contracts. The results also punctured the arguments, at least temporarily, that large numbers of union members and other employees represented by unions wanted or needed the choice of joining another union or of getting rid of their union representative altogether, or that members will remain apathetic and disinterested even when a critical union issue is presented to them. Even if the polls were not usually conducted where there

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[87] 61 Stat. 136 (1947), as amended, U.S. Code, title 29, §141 (Supp. 1952).

[88] Monthly Labor Review, LXXVI (August, 1953), 837.

was a likelihood of union defeat, the results were so decisive and convincing that Congress readily agreed after a four-year experiment that the procedure was a waste of time and money and ought to be abandoned. Senator Taft was himself one of the sponsors of the amendment which halted the union-shop polls.

There can be no doubt that the polls appeared to union members to present a real threat to their organizations, for defeat, at the very least, would have exposed internal weakness and dissension. Such threats seem almost invariably to solidify union support[89] The results of the polls should have been predictable, for these same employees had already in unquestionably free elections cast their ballots in favor of the union as their bargaining agent and no particular developments, as a rule, had occurred to make them change their minds.

It can be argued, however, that the one-sided results of the polls proved not so much the overwhelming acceptance of the union shop as the loyalty of the members to their unions and their leaders. Elections of this kind which aim to bring into public view individual dissents which conflict with the union's purpose--strike votes are another example--seem doomed to failure if members view them as devices imposed by outsiders to weaken the organization. The elections will then prove nothing more than the members' loyalty to a union which they wanted enough in the first place to vote in as their bargaining representative.[90]

The expression of loyalty made through the union-shop polls stimulated

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[89] "Loyalty is always proportionate to the threat," write Fisher and McConnell. They add, however: "During the long interludes in which the questions do not involve ultimate loyalties, the interior differences within the membership are numerous and real." The authors hold that union leaders at these other times tend to stress loyalty for their own political advantage. Lloyd H. Fisher and Grant McConnell, "Internal Conflict and Labor-Union Solidarity," in Arthur Kornhauser, Robert Dubin and Arthur M. Ross (eds.), Industrial Conflict (New York: McGraw-Hill Book Co., 1954), pp. 141-42.

[90] Cf. Monroe Berkowitz, "Union Shop Authorization Referendum," Southern Economic Journal, XXII (July, 1955), 86-87.

the growth of union-shop agreements more rapidly than even the unions had dreamed possible. By 1954 approximately 64 per cent of the collective bargaining contracts in businesses with over 1,000 employees had a union-shop provision and 17 per cent had a maintenance-of-membership provision, or a total of 81 per cent with a specific union-security clause. Some 18 per cent of these agreements provided for a modified union shop allowing some exemptions from the membership requirement or, in fewer cases, an escape period after one year. Less than 8 per cent of the agreements were of the closed-shop variety in firms not covered by the Taft-Hartley Act. The union shop covered 68 per cent of employees in nonmanufacturing industries and 62 per cent in manufacturing industries. The fewest union-shop agreements were in the South where "right-to-work" laws are concentrated. The highest proportion was in the three Pacific Coast states where 78 per cent of the contracts studied provided for the union shop and 94 per cent of the workers were under union-shop or maintenance-of-membership contracts.[91]

The Bureau of Labor Statistics made another survey of union-security provisions in 1958-1959 which covered 1,631 collective bargaining agreements. Like the 1954 data, the later figures apply only to agreements which cover 1,000 or more workers, exclusive of the railroad and airline industries. The 7,500,000 workers covered by the survey represent almost half of the workers estimated to be under agreements.

Union-shop and closed-shop provisions were found in 71 per cent of the agreements which covered 74 per cent of the workers. Excluding the "right-to-work" states, the number of agreements and workers covered would be 76 per cent of all those surveyed. Less than 4 per cent of the agreements provided for the

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[91] Cf. Rose Theodore, "Union-Security Provisions in Agreements, 1954," Monthly Labor Review, LXXVIII (June, 1955), 649-58.

closed shop. About 20 per cent were a form of modified union shop, and these usually exempted employees who were not members of the union on the effective date of the agreement. The 10 per cent increase since 1954 in union-shop provisions was almost entirely at the expense of maintenance-of-membership agreements which had dropped to 7 per cent of the total. In nonmanufacturing industries, 66 per cent of the workers were under union-shop contracts, while in manufacturing industries the percentage had risen to more than 78 per cent. The highest concentration of union-shop provisions was in the Middle Atlantic Region (New York, New Jersey, and Pennsylvania) with 83 per cent. No union-shop provisions were reported in the "right-to-work" states of 1958, except Indiana, where the agreements had been negotiated prior to the effective date of the state "right-to-work" law. Only 15 agency-shop provisions were reported in the 1,631 agreements.[92]

Conclusion

The quest for union security has always characterized the American labor movement. At the present time more workers are covered by union-shop contracts than ever before. However, the restrictions placed by the Taft-Hartley Act and the Railway Labor Act on the meaning of union membership as a condition of employment have drastically altered the traditional union shop. The NLRB and the courts, on the whole, have favored a strict interpretation of the laws on this matter, so that the concept has been steadily narrowed down to where it means no more than a method of collecting dues.

It is the application of this concept that must now be considered, in the contemporary American context. Conditions have changed enormously since the days

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[92] Cf. Rose Theodore, "Union Security Provisions in Major Union Contracts, 1958-59," Monthly Labor Review, LXXXII (December, 1959), 1348-56.

when unions were regarded as conspiracies and major employers refused to recognize them. Still, the unions have persisted in seeking a security clause, while numerous states have regarded the practice as so pernicious as to require that it be outlawed. What the practice means to various sectors of society is the focal point of the following two chapters.

CHAPTER IV

SECURE UNIONS AND INDIVIDUAL FREEDOM

In the light of history the organized labor movement in the United States has obviously come a long way toward its goal of acceptance and security in the economic environment. Most business leaders seem to reflect the widely held public view that the labor movement has become a permanent organization which has to be accepted and lived with. Also government protection of the right to organize has now been a part of federal law for more than a quarter of a century. The courts, leading social thinkers, economists, and religious leaders have, by and large, sustained the right of unions to exist and function effectively. Nevertheless, some uncertainties seem to persist which cause union leaders to question the reality or the depth of the movement's security. The basis of their doubts must be surveyed.

While some of these difficulties lie within the movement itself and in the nature of collective bargaining and industrial relations, others come from outside sources. One of these has been the powerful hand of government. The development of labor law has not been entirely reassuring to organized labor. Almost every law seems to have engendered legislative and judiciary turmoil which sometimes aids the unions and at other times threatens to engulf them. Although federal law has tended to be protective, with some notable exceptions, the legislatures of many states on the other hand, have not been so kindly disposed. At all levels legislative bodies have always had a good number of outspoken critics of union privileges who have never ceased to make their stand

known. Over most of the years since the passage of the Wagner Act there has been a continuous battle for modification, repeal, or tightening of the national labor law. Within the states, numerous laws have been adopted to restrict union activities. The campaign for "right-to-work" laws has been only one phase of this legal development.

In the courts the unions have been faced with innumerable legal suits and judgments in which labor laws have been clarified, modified, interpreted, and reinterpreted. Some traditional union practices have been permitted or tolerated, others have been restricted or outlawed. Picketing and boycotting, for example, have been subjected to a wide variety of restrictions and judicial interpretations.

The courts have also upheld and enforced a provision in Section 9(c) of the Taft-Hartley Act which has particularly irritated and disturbed organized labor. The provision, considerably modified by the 1959 federal labor law, permitted employers to request of the NLRB a representation election during a lawful economic strike, if a year had elapsed since the previous election, and it rendered the strikers ineligible to vote if the employer had permanently replaced them with nonunion workers, who were allowed to vote. Such elections were almost certain to result in the defeat of the union as exclusive bargaining agent. How the courts will interpret laws regulating representation elections and other union activities worries union officials from day to day. In fact, the legal patterns of industrial relations have varied so much over the years that both labor and management have had little cause for security in these matters. It is the ever-present threat of being put under more laws with punitive provisions, such as anti-trust laws or "right-to-work" laws promoted to "cut unions down to size," that seems to make organized labor so sensitive and fearful about its security.

Besides the frequently unpredictable hand of government, the labor movement has had to contend with other forces that sometimes strongly attack the principles of unionism. It is with these elements that the present chapter is concerned. Some of the most widely used arguments in support of "right-to-work" laws focus on the freedom of the individual worker. There are workers who are alleged to be opposed to unionism in principle. There are other workers who the unions say are taking a free ride at the expense of union members. These issues have become entangled with disagreements over the relationship of individual rights and group rights and over the nature of unions under American law. The propensity of a large number of free American workers to change jobs frequently and to move to other areas has also had an impact on union security that must be accorded due weight. Finally, there are numerous pockets of clear-cut resistance to unions throughout the country. Whatever their reasons, the people most hostile to unions as they are presently constituted have been in the forefront of the fight for "right-to-work" laws.

Some authorities have contended that there is no way of settling the controversy between the proponents of absolute freedom of the right to work without joining a union and the unyielding proponents of the union shop except by way of a compromise. A look at various suggestions for a compromise concludes this chapter.

Freedom of the Worker

Keenly aware of the fact that many millions of employees work under union-shop contracts, the proponents of "right-to-work" legislation decry the situation and constantly stress the primacy of individual liberty. Phrasing most of their arguments in terms of freedom versus compulsion in union membership, they contend that everyone should be free to work in the place of his choice and where he is

hired without having to sacrifice his innate freedom by submitting to the condition of joining a union in order to keep his job. It is said that society already places enough restrictions on its members without adding new ones which are alleged to be unnecessary for the well being of either workers or society. Some common union practices, moreover, are an affront to human liberty, the proponents of "right-to-work" legislation insist, and these practices give added appeal to the campaign for employee freedom. Their arguments, therefore, center around the relationships of employees to their union, rather than around the needs of the union.

The particular freedoms that are said to be denied through required union membership may be catalogued under several headings. It is stated, first, that an employee who cannot work unless he joins a union is deprived of his right to work. The words of J. C. Gibson are to the point:

> In its American sense the /right to work/ signifies the inherent right of every man to an opportunity to seek and retain the gainful employment which he desires, for which he may be fitted, and which is available in our country. The right to work demands that this opportunity be unfettered by artificial and unnecessary restrictions or the imposition of unreasonable or arbitrary conditions, such as a requirement of union membership.[1]

The freedom of association is a second right said to be denied through compulsory union membership. The argument rests on the premise that there is no freedom to join unless there exists at the same time freedom not to join a private organization or association. Thus Gibson says:

> The right not to join is a necessary corollary of the right to join, for without a right not to join there can be no such thing as a right to join. Freedom rests on choice, and where choice is denied freedom is destroyed as well.[2]

Forced union membership, it is also stated, endangers freedom of religion

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[1] Jonathan C. Gibson, The Legal and Moral Basis of Right to Work Laws (Washington: The National Right to Work Committee, 1955), p. 3.

[2] Ibid., p. 7.

and conscience and also deprives a man of political liberty. Indeed, cases have come before the courts where workers have said they could not join any union because to do so would be a matter of conscience which opposed compulsion. The control exerted by union leaders over their members is described by the National Association of Manufacturers in the following words:

> Labor leaders are not content to force men to become union members and to pay tribute for the privilege of earning a living. They demand much more so that they--the union leaders--can achieve their goals. They demand that men surrender their individuality and become anonymous units of highly regimented groups. They demand that men accept unquestioningly their opinions of social, economic and political affairs and that men act in accord with their instructions.[3]

It is also argued by some that unions are political organizations holding their membership primarily by compulsory arrangements. One proponent of this view writes: "What a travesty on justice and mockery of freedom it is to force union members to support a political organization by means of a compelled membership."[4]

Still another reason cited for prohibiting forced membership in unions is that only by having complete freedom to withdraw from unions can workers be assured of protecting their individual rights. Otherwise there is nothing they can do except endure, in the words of one author, "the oppression and exploitation of their leadership."[5] Compulsory membership is considered to be an instrument that greatly increases the power of union leaders, separates them from the interests of the members, and turns leaders into bosses. The practice

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[3] A Monograph Discussing the Major Aspects of the Intercollegiate Debate Issue: "Resolved: That the Requirement of Membership in a Labor Organization as a Condition of Employment Should Be Illegal" (New York: National Association of Manufacturers, 1957), p. 17.

[4] William Ingles, The Right-to-Work Handbook (Washington: Labor Policy Association, Inc., 1958), p. 28.

[5] Sylvester Petro, "Compulsory Unionism and Responsible Unionism," Labor Law Journal, VIII (December, 1957), 871.

is alleged to have led union members into slavery and bondage, for it has taken away the member's only effective voice, opposition through the power to withdraw financial and moral support.[6]

A further charge against the unions is drawn from their majority-rule argument, which states that if a majority wants the union shop, all should join. The union argument is said to invent a democratic principle that compels a minority to join the party of the majority and to participate involuntarily in its actions, as if it had the power of government to coerce. William Ingles attacks the argument in these words:

> Unionists put themselves in a peculiarly vulnerable position when they invoke democratic doctrine, for the thought processes and practices of unions are as far removed from democracy as is communism. The union chant, "Solidarity Forever", is a paean to the liquidation of the individual; union picketing methods deny the right of the individual to his property; its derogation of minorities as "scabs," the practice of treating dues-paying members as pawns, avoidance of democratic procedures in election of officers and adoption of policies, rejection of surveillance of the use of the members' funds, dictatorial practices, and, above all, the violence to which unions resort for the achievement of their ends, are not consistent with democracy as we know it in America. There is nothing democratic about the tyranny of an unrestrained majority.[7]

Another argument urged against required union membership and in behalf of freedom for the worker is expressed in terms of union abuses. Limiting union membership to free choice of the workers is advanced as an important means of preventing and resisting the use of violence and coercion, the obliteration of minority rights, the domination of leaders, misuse of union funds, racketeering, and other evils exposed to public view in Congressional investigations.[8]

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[6] Cf. A Monograph Discussing the Major Aspects of the Intercollegiate Debate Issue, p. 11; William T. Harrison, The Truth about Right-to-Work Laws (Washington: The National Right to Work Committee, 1959), pp. 12, 18; Ingles, p. 41.

[7] Ingles, p. 60.

[8] Cf. Ibid., pp. 43-44.

Other arguments propose a return to individual bargaining or defend the free rider as a forced follower. These will be examined below in more detail. The above list comprises the main outline of the case for "right-to-work" laws to protect individual freedom.

The opponents of the laws have replied to each of the preceding arguments. They deny the substance of each one. In brief, the supporters of the union position hold that the right to work has been given greater protection by organized labor than the typical employee can ever hope to secure by his own efforts or through the unilateral decision of an employer. It is argued that the freedom of association has only recently come to be a legal right of employees, having previously been staunchly resisted by employers. The unions believe they have fought for and protected that right. They maintain that the compulsion associated with union membership is no different from that exercised by other groups in society, such as professional and semi-professional associations.

The advocates of union security also contend that some of the practices condemned by their opponents do not exist while others are essential for the welfare of the employees and their unions. Organized labor argues that it has been the means of introducing democracy into industry and that unions are founded on and adhere to democratic principles. Union leaders maintain that economic democracy is enhanced by participation, not by withdrawal from or refusing union membership. Most members, it is said, recognize the value of their union once they have become acquainted with it. The practice of educating and informing members about political issues is defended as an essential function for encouraging political participation and interest by workers. The unions say they know they cannot deliver the vote to any particular candidate, even if the unions support him. While acknowledging the existence of serious abuses in the labor movement, union spokesmen argue that these do not represent the practices

of most sectors of organized labor, that they are trying to clean up what is wrong, and that they want legislation that will help them to do the job but will not destroy honest unionism at the same time. The basic contention of the union view is that the enactment of "right-to-work" laws solves none of these problems and serves only to hamper collective bargaining and hurt union organization.[9]

The allegations made by both sides of the controversy must be weighed in terms of facts insofar as they can be learned. Beyond doubt some of the arguments are overstated in the heat of conflict. Some accusations made against the entire labor movement seem scarcely worth investigation, for they assume that all union members are knaves or fools. Obviously most members do not believe for a moment that they have been enslaved or hoodwinked by their officers. On the other hand, the behavior of at least some officers and members has so disturbed most citizens and raised such grave questions about the protection of employees' rights that Congress deemed it necessary to include a bill of employee rights in the Labor-Management Reporting and Disclosure Act of 1959.[10] A number of these union practices are discussed at greater length in a later chapter devoted to that subject.

Individual Rights versus Collective Rights

As a distinct entity, the union, like any other association, seeks ways and means of protecting its existence and assuring its survival. If it can attract more than 50 per cent of the voters in a representation election and

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[9] Cf. Union Security: The Case against the "Right-to-Work" Laws (Washington: AFL-CIO, 1958), passim.

[10] Act of September 14, 1959, P.L. 86-257, 86th Cong., 1st Sess.

hold on to them, it can continue indefinitely as the employees' bargaining agent. Employees who do not belong to the union are legally subject to the terms of employment contracted for by the employer and their agent. These nonmembers represent a challenge to the union. If their numbers are increasing they may pose a real threat to the union's status and role.

Some aspects of the relationship between the union and nonmembers in the bargaining unit must be considered. This relationship lies at the very heart of the "right-to-work" controversy. Some workers do not want to join unions. Indeed, some are probably economically hurt if they must join. This fact raises the question whether collective bargaining ought to be the national labor policy or whether individual bargaining should be restored. If workers are represented by the union, the question then arises concerning a policy toward those who do not want to give financial support to the union, the so-called "free riders."

It hardly needs to be stated that not all union members benefit equally from their membership or from the contract negotiated with their employer by the union. The members, whatever their similarities, represent a host of diverse interests and conditions. Age, seniority, family situation, savings and debts, desire for more leisure or higher income, and degree of skill are only some of the variables that face a union's negotiators when they prepare an outline of their terms for a contract. It is impossible to achieve an advance in each area, and no amount of adjustment or compromise will satisfy all the members. Perhaps many will grumble, some certainly will, when the terms are negotiated, and some will argue that they could have done better by their own efforts.

It is true that some employees see no benefit to themselves in union membership or in collective bargaining. Particularly workers with highly developed or uncommon skills may have strategic bargaining power without union aid. There are other workers who have no realization of their weak bargaining position as individuals because they were not in the labor force before unions

became a powerful instrument in the employee's world. There are also employees who have had all or most of their job experience with firms and employers who are deeply and actively interested in their employees' welfare and have provided such excellent working conditions that their employees believe a union would offer little or no gain. Finally, there are employees who have always been opposed to organized labor because of their background or environment or who, as workers, have acquired attitudes unfavorable to unions. If a union is certified to represent them, the stage is set for conflict.

Historically the mixing of union and nonunion workers on the same job has been a common cause of friction and bad feeling and undoubtedly interferes with production. While the reasons for this tension may not always be valid, they are not hard to find. For example, although cases differ greatly because of circumstances, nonmembers are usually more sympathetic to management than to the union representing them. Thus Dr. Orme W. Phelps remarks:

> It is probable that most nonunion men working under a labor agreement will look to management rather than the union for aid and comfort. That they are already management-oriented, rather than union-oriented, is clear from the fact of non-membership. . . . Their status as holdouts is indicative of strongly held antiunion attitudes. Such attitudes are maintained most easily with employer encouragement, and a wide variety of modified union shops and membership-maintenance clauses are evidence that the managements involved refused to yield on compulsory membership for those workers who hold the union at arm's length.[11]

The presence of many nonunion workers in an industry or trade certainly hinders the unions in establishing and enforcing their work standards. Whether or not the nonunion men are working for lower wages, their presence weakens the unions and may actually be a major deterrent to any serious organizing campaign.[12]

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[11] Orme W. Phelps, "A Structural Model of the U. S. Labor Market," Industrial and Labor Relations Review, X (April, 1957), 423.

[12] Cf. Kurt Braun, The Right to Organize and Its Limits (Washington: The Brookings Institution, 1950), p. 152.

Particularly when the supply of workers in a trade exceeds the demand, the union's weakness is multiplied. From the union's point of view, therefore, the goal must be the enrollment of as many workers as possible, preferably all of them.

As an institution the union is peculiarly weakened by the failure of sizable groups of workers to join. Much more true is this of a union than of a church, a club, or many other organizations. For even with legal recognition as exclusive bargaining agent, the union's bargaining power can be substantially undercut if a large minority of nonmembers in the bargaining unit openly oppose a contract provision sought by the union. The weakness can be more glaring if these nonmembers announce that they will not support union objectives by going on strike. The strike weapon under these conditions may virtually be denied the union regardless of the support it has from its own members. This fact does not necessarily or under all circumstances justify compulsory membership, although it throws light on why many unions, both craft and industrial, so adamantly oppose putting their members on jobs alongside unorganized workers.

Disregarding for the moment the conflict between organized and unorganized workers, it must be recognized that a very basic issue is involved when people condemn the denial of the right of individual workers to bargain for themselves independently of the union that is certified to represent them. Support of this individual right runs headlong into the federal labor policy adopted by Congress in the Wagner Act and renewed in the Taft-Hartley Act. A person who rejects that policy is rejecting the right of a union to be sole bargaining agent for workers.

The federal government does not deny the right of individual workers to make their own employment contract where a union is not involved. If a majority of workers in a bargaining unit choose a union as their bargaining representative,

however, then the union becomes the sole bargaining agent, and individual employees act unlawfully if they attempt to set their own terms. In other words, in this situation the collective contract is given primacy over the individual contract of employment. The Supreme Court affirmed this judgment in the following words:

> Individual contracts, no matter what the circumstances that justify their execution or what their terms, may not be availed of to defeat or delay the procedures prescribed by the National Labor Relations Act looking to collective bargaining, nor to exclude the contracting employee from a duly ascertained bargaining unit; nor may they be used to forestall bargaining or to limit or condition the terms of the collective agreement.[13]

The Court also recognized the objection that some individuals may be deprived of getting better terms for themselves and declared:

> The workman is free, if he values his own bargaining position more than that of the group, to vote against representation; but the majority rules, and if it collectivizes the employment bargain, individual advantages or favors will generally in practice go in as a contribution to the collective result.

The Supreme Court thus gave priority to the common good, even if certain individuals are to some extent disadvantaged. The Court's reasoning was expressed as follows:

> The very purpose of providing by statute for the collective agreement is to supersede the terms of separate agreements of employers with terms which reflect the strength and bargaining power and serve the welfare of the group.[14]

Congress was affirmed to be within its constitutional rights when it established freely chosen unions as exclusive bargaining agents. The employee is not under compulsion to remain in his employment and accept the union, since he is free

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[13] J. I. Case Co. v. N.L.R.B., 321 U.S. 332, 337 (1944). Cf. Order of Railroad Telegraphers v. Railway Express Agency, 321 U.S. 342 (1944).

[14] 321 U.S. 332, 338-39 (1944). This power of Congress was reaffirmed in Railway Employees' Department, A.F. of L. v. Hanson, 351 U.S. 225 (1956).

to go elsewhere if he cannot accept the decision of the majority.

Undoubtedly the national labor policy brings hardship and the loss of some freedom to work where one wishes. In many ways this policy rests on value-judgments alongside empirical facts. At the present time, however, most citizens seem to prefer to continue the policy of collective bargaining as necessary in this industrial age, even if individual decisions of workers must frequently be subordinated to majority control. The safeguards provided in law for individual rights may well stand in need of further implementation, but this cannot be done by giving the individual employee absolute freedom to accept or reject the majority decision, to go his own way, or to ensure that his individual wish or whim carries as much weight as the majority. Such freedom could only mean that the union is no longer in a position to represent or bargain for the majority, as the law stipulates, and collective bargaining will be replaced by chaotic conditions once again in labor-management relations.

Collective bargaining and individual bargaining are contradictory. Because the latter, in the real world of today, can be so arbitrary and unequal, the federal government, as early as 1926 in the railroad industry, decided to protect and guarantee the former. Once the principle of union representation is accepted by the civil society as a means of promoting more peaceful and orderly industrial relations, it is absurd to think that if a majority of workers organize to bargain for specific work standards they are going to stand by with apathetic indifference while the free individual employee contracts to undercut those standards achieved often by great effort and expense. As Dr. Charles Killingsworth has pointed out, even if all the members of a bargaining unit were to give wholehearted support to their bargaining agent--a most unlikely event--new employees are deprived of a free choice of a union they may prefer to associate with, except for the fact that they are supposedly free to work elsewhere.

This is just as true when a union is simply the certified bargaining agent as when it has a union-shop.[15] A "right-to-work" law, therefore, cannot change this situation.

All workers, not only the individual who would prefer to bargain for himself, necessarily surrender some freedom of action when they join a union, whether they do so voluntarily or because a union shop is in force. The very nature of organization replaces individual with collective action to secure benefits for the members through united strength, benefits which presumably would not be forthcoming through individual action. The very fact of collective effort means that the individual must forego the privilege of unrestrained action in return for the greater security and ordered liberty he hopes the group action will bring. Obviously this is not peculiar to unionism, for it is found in every instance where people unite in an organization for mutual benefit or profit.

Some writers who oppose the union shop include among their objections that it destroys the right of individual bargaining.[16] The objection misses the important point that it is not the union-shop clause that makes a notable inroad on the freedom of employees but the federal law that gives a union exclusive bargaining rights. Whether or not a union shop is provided for in the contract, once the union is certified it represents all employees in the bargaining unit, regardless of their membership status. If they do not like the terms agreed to by the majority, their quarrel is not with the union shop, for they

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[15] Charles C. Killingsworth, State Labor Relations Acts (Chicago: University of Chicago Press, 1948). Killingsworth discusses the conflicts between individual and collective bargaining throughout his work. See especially pp. 15-17, 87-88, 254-64.

[16] Cf. Ingles, p. 37.

are as bound by the terms in the absence of a union shop as with one. Under federal law the union shop has no bearing whatever on the choice of union members or nonmembers within the bargaining unit to abide by or disregard the terms legally contracted for between their legal representative, the union, and the owners' representative, company management. The nonmembers are under the jurisdiction of the union in regard to their employment terms, and no ban on the union shop by state law can have the slightest effect on this situation. It has long since been decided by the federal government that collective bargaining is a legitimate end of national economic and social policy.

Free Riders

The controversy over so-called "free riders" has provoked some of the most outspoken expressions of opinion in the entire "right-to-work" debate. The issue appears to be more closely related to the problem of collective bargaining versus individual bargaining than to the question of individual freedom, although it is often argued solely in terms of the latter question. As already remarked, the worker seems to surrender more freedom when a union is empowered to represent him than when he must join a union under a union-shop contract, if the present restrictions imposed by the Taft-Hartley Act on the duties of union membership are kept in mind. The latter can require no more than a financial obligation; the former covers all the terms of a man's employment.[17]

As the freely chosen bargaining agent of employees, the union is required by law to represent all the workers equally and fairly, whether they are members of the union or not.[18] Those workers who decline to join the union which

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[17] Cf. supra, pp. 96-106.

[18] This obligation was affirmed in Hughes Tool Co., 104 N.L.R.B. 318 (1953).

represents them have been labeled "free riders," not only by the unions but even by the courts. Others say the term is pejorative and misleading, as well as false, because such employees are doing no more than exercising their right to freedom of choice.

Those who would outlaw the union shop argue that the unions themselves sought and obtained the power to represent nonunion as well as union employees to prevent employers from showing favoritism toward nonunion workers. Hence, it is said, the unions cannot logically plead that this obligation is a heavy and costly burden. In truth, the argument continues, the nonmembers have paid heavily by the loss of their freedom to bargain for themselves and are reduced to the status of forced followers, not free riders.[19] Sylvester Petro adds that, if the unions continue to use the free-rider argument, the provision allowing them to bargain for employees not members of the union should be repealed. In fact, Petro says:

> That provision is bad on principle, anyway, and if it were repealed there would be no need of an NLRB at all, for representation elections would no longer be necessary if unions were bargaining agents for only those employees who voluntarily designated them as such.[20]

The unions' free-rider argument is also charged with being founded on a concept completely alien to the democratic way of life, for it assumes that all who receive benefits from a private organization or group may be compelled to contribute to its support. Many such voluntary groups benefit people who contribute no financial or other support, or as Donald R. Richberg phrases it:

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[19] Cf. Sylvester Petro, "The Right to Join--Or Not," National Review, June 15, 1957, p. 568; Gibson, pp. 22-23; G. George Niebank, Jr., "In Defense of Right-to-Work Laws," Labor Law Journal, VIII (July, 1957), 510.

[20] Sylvester Petro, Power Unlimited--The Corruption of Union Leadership (New York: The Ronald Press Co., 1959), p. 297.

> Fraternal organizations, churches, and civic and political organizations raise money, organize work, and carry it on for the benefit of a large number of persons who contribute no support. How absurd it would be to suggest that whenever a voluntary organization benefits any group of people it should be empowered to compel them by law or by economic pressure to contribute support.[21]

Governor Gordon Persons, when signing Alabama's "right-to-work" law in 1953, used the same argument, stating that churches, veterans' clubs, and other service organizations have provided many benefits, but they have not forced membership or dues upon the recipients.[22] To force payment of dues, the argument notes, is the equivalent of forcing the payment of taxes, and only a sovereign government has the power to require that. For the unions to contend that they are a type of industrial government for employees is only nonsense, say the defenders of the free riders. The unions at best, they say, are analagous to a political party, which cannot require support and can be removed by the electorate. To equate a political party with the state is incompatible with representative government. But even this analogy is inaccurately applied to a union, as one writer says:

> The governing unit is not a constitutional state and there is no provision for constitutional government of the bargaining unit; nor is the bargaining unit a governmental body possessed of the sovereign power to tax. The union is really most nearly analagous to a legal counsel employed to serve as one's agent.[23]

A third argument cited against identifying nonunion workers as free riders brings up again the question of union benefits. It rests on the premise that unions have provided no benefits to the workers and therefore there is nothing for nonmembers to pay for. Dr. Petro states the point directly:

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[21] Donald R. Richberg, Labor Union Monopoly (Chicago: Henry Regnery Co., 1957), p. 119.

[22] Quoted in "The Right-to-Work Issue," Industry Reports (National Association of Manufacturers), August, 1957, p. 4.

[23] James R. Morris, "Repeal of the Railway Right-to-Work Law--An Appraisal," Labor Law Journal, VII (February, 1956), 107-108.

"The fact is that unions never produce anything at all; they cannot exact more than fair wages without engaging in socially abusive conduct. Workers who do not wish to participate in and finance such conduct ought not to be forced to do so."[24] In similar vein another author declares that the union pretension that all gains in wages and working conditions are due to its activities is an illusion like that held by primitive peoples, who, by beating drums before the dawn, believe they have caused the sun to rise.[25]

Notwithstanding the wide acceptance given the above arguments, many industrial relations experts and, of course, the unions remain singularly unimpressed of their worth. Since the free riders are most strongly defended by the organizations which have consistently attacked organized labor, the unions look upon the defense as simply another facet of the attack. They maintain that support of the free riders returns dividends to employers if contract negotiations break down and a strike ensues, for then the nonunion employees play the role for which the company has prepared them--leading a back-to-work movement to break down the morale of strikers.

Union leaders acknowledge that they insisted upon the right of exclusive bargaining agent, but contend that to have done otherwise would have rendered collective bargaining ineffective and chaotic. Yet they maintain it is a heavy financial burden. This is attributed, first, to the fact that the costs of negotiating contracts have increased greatly over the years. Not only do some unions now negotiate as many as several thousand agreements with employers, but the technicalities have become so complex that they require a corps of staff members and specialists whose services are also often used by local unions. Secondly, the services performed by unions are also said to have become

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[24] Petro, Power Unlimited--The Corruption of Union Leadership, pp. 296-97.

[25] Morris, p. 104.

increasingly costly, particularly in regard to processing grievances. It is pointed out that on rare occasions an employee will successfully handle his own grievance case, but most of the time both members and nonmembers need and expect the union's help. Under the law the union must then place its organization and funds at the service of each employee. Depending upon the nature of the grievance, the unions argue, the costs may run high to cover the time that the union steward and committeeman must spend on the case, perhaps to pay for an arbitrator, and to defray the expenses of union officials and staff, such as lawyer, economist, industrial engineer, and field representative. Unions therefore look upon the refusal of a worker to pay his share of the costs of negotiations and services as an insult to members and a hindrance to peaceful labor relations.[26]

Another aspect of the free-rider argument is the accusation that it smacks of totalitarianism. Naturally the unions do not believe that some pressure or compulsion upon workers to share in the expenses of their bargaining agent is incompatible with democracy. Labor spokesmen have used the analogy of college students who are required to pay athletic fees whether they participate in sports or not, or faculty members who bow to social pressure and share in the costs of a faculty club they do not use, or citizens who pay taxes for facilities they neither use nor approve of. In the same way, the labor movement argues, workers should pay their share of the benefits of lawful collective bargaining which they cannot help accepting and using. The unions particularly protest the unfairness, where hiring procedure is carried out through hiring

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[26] Cf. Neil W. Chamberlain, "The Problem of Union Security," in Proceedings of the Academy of Political Science: The Right to Work (New York: The Academy of Political Science, Columbia University, 1954), p. 11; Work for Rights (Pittsburgh: United Steelworkers of America, 1958), p. 28; Nathan Goldfinger, "The Case against Right-to-Work Laws," International Labour Review, LXXVII (February, 1958), 126-27.

halls, of having to maintain the hall to provide equal opportunity for jobs to those workers who refuse to join the union or contribute any financial support. It is the unions' contention that even if under democratic government students, professors, citizens, and employees are not so free to move elsewhere, as it is alleged they can do if they do not like the arrangements, they must either accept the rules of the majority or try to have the rules changed.[27]

Attention has previously been given to the unresolved debate between economists over what economic benefits unionism has gained for its members.[28] No doubt most members believe there have been benefits or they would long ago have ceased to support their unions. Many economists do not accept Professor Petro's opinion that no economic benefits accrue to unions except through "socially abusive conduct." They believe that, at least in some industries and trades, there have been economic gains, especially where management has seen little benefit to itself in resistance, or, in other words, where resort to countervailing power would not help profits but probably yield losses. Many would argue that at least unions have forced greater efficiency upon producers to keep unions from capturing wages at the expense of profits. As Professor George Hildebrand points out, however, the main contributions of collective bargaining lie elsewhere: "shorter hours, a new system of wage compensation, a private social security system, more orderly plant wage structures, and a system of jurisprudence that regulates the employment relationship to reflect the interests of employees as well as those of management and consumers."[29]

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[27] Cf. Robert R. R. Brooks, Unions of Their Own Choosing (New Haven: Yale University Press, 1939), pp. 188-89.

[28] Cf. supra, pp. 49-57.

[29] George H. Hildebrand, "The Economic Effects of Unionism," in Neil W. Chamberlain, Frank C. Pierson, and Theresa Wolfson (eds.), A Decade of Industrial Relations Research (New York: Harper & Brothers, 1958), p. 137.

At the same time, it should be realized, unionists put great stock in the non-economic benefits of unionism, such as protection from arbitrary discharge, favoritism, and assignments by foremen or higher management.

These benefits also cost money, the unions declare, and would not be possible unless the organizations are maintained as all going-concerns must be. While note must be taken of a distinguished theologian's opinion that the worker who pays no dues can make some other return to the union by way of good example, visiting sick workers, or providing some spiritual benefit to his fellow employees, union officials say that the worker who refuses to support the union is often of a mind to do none of these things.[30] The attitude of the free rider, say the unions, tends to be that he owes no one anything, that he will not pay tribute to work, that he did not choose to have the union as his legal representative, and that if the union has to represent him, it is the union's misfortune.

The rejoinder made by the unions to those who cite the services rendered by churches, the Red Cross, the American Legion, and other voluntary service organizations is that none of these is compelled by law to represent and serve nonmembers without discrimination as the unions are. Some authorities regard the defense of the free rider based on the free services offered by other private organizations as particularly specious. For example, it is observed that organized labor does in fact provide many free services without expecting payment, such as its promotion of social legislation and community projects. More pertinent, however, is their observation that no individual unless he is a

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[30] Cf. Letter by the Very Rev. Francis J. Connell, C.Ss.R., to the Very Rev. Msgr. Philip M. Hannan, J.C.D., Washington, D.C., May 31, 1955, quoted in Edward A. Keller, The Case for Right-to-Work Laws (Chicago: The Heritage Foundation, Inc., 1956), p. 42. Also cf. Chamberlain, "The Problem of Union Security," in Proceedings of the Academy of Political Science (1954), p. 11.

paying member has a claim to the services of a private organization. Services made to nonmembers usually take the form of charities, often disbursed from funds donated by the community. It is further observed that employees covered by a collective bargaining contract are not indigents in need of charitable assistance who cannot afford to contribute to the union which must serve them according to the law, nor does the community at large donate any funds to aid the union to comply with its obligations. A further significant difference from other private organizations has been noted, namely, that while unions do exist to assist individuals, they must have maximum support, both financial and moral, from the workers whom they assist, or they will be unable to function effectively. On the other hand, other service organizations which render gratuitous assistance neither expect nor need support from their beneficiaries.[31]

The charge that it is un-American and undemocratic to require workers to pay for services rendered by their unions, or to join the union for the same purpose, or that the abridgement of liberty is sufficient recompense for union services was denied by the United States Supreme Court. It ruled that the legislative history of the Taft-Hartley Act clearly indicates that Congress, when it permitted the union shop, wished to put restrictions on it so that it could be used only to compel payment of dues and fees. The Court said:

> Thus Congress recognized the validity of unions' concern about "free riders," i.e., employees who receive the benefits of union representation but are unwilling to contribute their share of financial support to such union, and gave unions the power to contract to meet that problem while withholding from unions the power to cause the discharge of employees for any other reason.[32]

Since the union member is not held to any other union activity or

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[31] Cf. John V. Spielmans, "Bargaining Fee versus Union Shop," Industrial and Labor Relations Review, X (July, 1957), 613-14.

[32] Radio Officers Union, C.I.U. v. N.L.R.B., 347 U.S. 17, 40 (1954).

obligation after he pays his dues and fees, some industrial relations experts find it difficult to accept the argument that the so-called free rider would be subject to virtual enslavement if he must join a union. Walter Gordon Merritt, distinguished lawyer with over a half-century of industrial relations experience, raised the following two questions when discussing this matter:

> If the majority can vote to reduce the wages of their non-union fellow employees without consulting them, why should it be denied the power to require a deduction from wages to pay the cost of their overall bargaining agency and thus to encourage them to play their part in the existing scheme of affairs? Should men enjoy a financial advantage or financial immunity by shunning responsibility in such matters?[33]

According to Merritt, the nonunion employees can be rightly considered as no more than unconsulted wards where a majority has elected a union as its bargaining agent, for they have no right to choose those who will bargain for them and no voice in fixing their own terms of employment. Their "freedom," he remarks, is that of second-class citizens and wards, from which status they can escape only by paying union dues. "This," says Mr. Merritt, "becomes the price for the right to participate in the union government which our laws have placed over them. That is the price which the non-union men must pay to lift themselves from a state of indignity to a state of dignity."

The nonunion members do not lose rights by the payment of dues, Merritt observes, rather "they regain rights which they did not formerly enjoy. They are no longer wards. They assume full status as industrial citizens sharing equal rights with fellow employees." Taking careful note of the greatly restricted union shop under the Taft-Hartley law, this authority points out that the defenders of this type of membership want all employees in the bargaining unit to assume responsibility for the conduct of their statutory agent. He continues:

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[33] Walter Gordon Merritt, "The Union Shop," Paper read before the National Industrial Conference Board, New York, January 17, 1958.

> It is unhealthy, they say, that one group in a craft unit should be able to treat a minority as wards; that it is undemocratic that one group should be franchised and another group disenfranchised. They urge that all beneficiaries of collective bargaining should bear their share of the cost incurred in their behalf; that the greater the misbehavior of the union, the more important it is to society that critics having the courage and independence should make themselves heard in the union halls, and should become leaders in the cause of reform or decertification. Laws which encourage such democratic participation, they contend, are good, while laws which discourage such participation are bad.[34]

As Mr. Merritt further observes, the ban on the union shop affected through a "right-to-work" law, even if it were a federal statute, does not touch this issue of secondary citizenship, since under the law governing collective bargaining employees who refuse to pay dues would still be disenfranchised and ruled by the union they refuse to support.[35]

The "right-to-work" law has usually been advanced in terms of strengthening individual freedom by permitting employees to stay out of unions if they choose. Complete freedom in setting terms of employment, however, would mean a return to individual bargaining and the end of collective bargaining. It is for this reason, more than any other, that the defense of the free rider has created such deep resentment within organized labor. Hostility toward free riders is not restricted to union leaders. It is part and parcel of the ordinary member's mentality. He looks upon the free rider as a "chiseler," an "ingrate," the man who rides the train without paying his fare. He sees the free rider in the same light as the worker who continues at his job during a strike and gets the same benefits as those who went out if the strike is won but suffers none of the losses. The unions say management faces no such problem, for if it found any lower executive siding with the union during a strike, it would promptly fire him, regardless of his right to work.[36] But if employees

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[34] Ibid.

[35] Ibid.

[36] Cf. Alfred Kuhn, Labor Institutions and Economics (New York: Rinehart & Co., 1956), p. 115.

refuse to support the union, there is nothing the union can legally do about it, despite the jeopardy to the union.

The free-rider issue is closely related to the measure of acceptance an employer shows toward the union.[37] There are few free riders where industrial relations are harmonious. Where relations are acrimonious, the unions will almost certainly continue to view the non-joiner as a threat to its survival, however much other citizens may deplore this seeming intolerance. In the union's view the free riders weaken the union's bargaining power, add to the complications where employee turnover is high, and reinforce the attitudes of an

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[37] Since management or its representatives are usually thought to be wholly opposed to the union concept of the free rider, it is of interest to note the remarks of the vice president and general counsel of the Pittsburgh Plate Glass Company. He expresses his opposition to the closed or union shop because of the requirement that a member be in "good standing" to hold his job (which is not true under the Taft-Hartley Act). He then says, however, "But it is quite another matter to require an employee to pay reasonable and limited sums to the union as initiation fees and monthly dues, if he is a member; or, if he is not a member, to require him to pay equal amounts as a fee by virtue of the fact that the union is his legal representative in collective bargaining. Employers have all kinds of necessary rules which govern the employee's access to a job. Some of the rules do cost the employee money." The management spokesman continues:

"I saw no difference in 1940, nor do I see any difference now, between such rules and one requiring an employee to keep peace in the shop by paying to an organization, empowered by law to represent him, certain sums of money bearing a reasonable relationship to his pay. . . .

"Is this a violation of individual rights? It depends on your viewpoint. Conceivably nudists might claim the right to come to work unclothed, or food-processing girls might object to maintaining washed and manicured hands, or stenographers might insist on wearing evening gowns to the office---all, and many others for many reasons, might scream to high heaven about invaded liberties and denial of their right to work. No one would feel obligated to pay any serious attention to such complaints, even though a case could be made for each of them---a case as doctrinaire as the right-to-work case.

"There is such a thing as overinterpretation. When a concept like the 'right-to-work' is meticulously applied to all levels of thought and behavior, its original meaning is perverted. In one sense, requiring a worker to pay dues to a union which he does not belong to is unfair. In another, more practical sense, it is fair. It is simply one of those workaday compromises that we ask him to make so that we can run the organization as smoothly as possible." Leland Hazard, "Unionism: Past and Future," Harvard Business Review, XXXVI (March-April, 1958), 63.

unsympathetic employer toward the union. There is little hope that this union attitude will moderate if nonmembers persist, as they often do, in asking why, as long as they are getting the same benefits at no cost to themselves, they should be "suckers," too, and pay union dues and assessments out of their hard-earned wages for no greater benefits, except the nebulous satisfaction of contributing to the common good.[38] A study of the packinghouse workers in a Chicago firm clearly revealed that the free rider is a constant source of irritation to union workers, who will never be at peace with the former because of the disloyalty to his fellow workers they think his attitude betrays.[39] The presence of free riders can therefore be expected to erupt from time to time into conflict or even violence, and interfere with production, industrial and community peace, and the collective bargaining arrangement.

At the same time, however, it is clear that unions stand to benefit greatly if they can win the union shop which eases their problem of recruitment and strengthens their hand in negotiations with employers. The union shop may also permit abuses of individual freedom. The often bitter controversy over the free rider shows that many people feel very strongly against forcing a man to join an association when he does not want to join. The controversy has been detrimental to industrial relations, to say the least.

Unions: Public or Private Agencies?

Closely related to the free-rider discussion is the question whether

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[38] The unions have long insisted on this point. Cf. Clinton S. Golden and Harold J. Ruttenberg, The Dynamics of Industrial Democracy (New York: Harper & Brothers, 1942), p. 213; Jerome L. Toner, The Closed Shop (Washington: The American Council on Public Affairs, 1942), pp. 168-69.

[39] Theodore V. Purcell, The Worker Speaks His Mind on Company and Union (Cambridge: Harvard University Press, 1953), p. 277.

unions are private voluntary organizations or organizations vested with a public character that confers special privileges and responsibilities, especially with respect to involuntary membership. It was noted above that a union can hardly be identified as a private club inasmuch as a union is compelled by law to represent and serve fully and fairly all the employees in the bargaining unit whose statutory agent it is.

The spokesmen for "right-to-work" laws have generally adhered to the widely held view that unions are private voluntary associations which render services similar to those of other private groups or clubs. According to this view, membership should be always and completely voluntary.[40] Nevertheless these spokesmen have shown some awareness that differences do exist between unions and private groups. For example, J. C. Gibson says:

> Labor relations are so regulated by law today that compulsory union membership is possible only by governmental permission, and it is usually imposed by union leaders using as a weapon the great complex of powers placed in their hands by modern labor law. To suppose that agreements for compulsory union membership made under these conditions represent purely private action is to substitute fiction for reality.[41]

Some union leaders, too, have preferred to think of their organizations as private clubs whose activities have no direct bearing on the public interest. To hold otherwise, they fear, would perhaps open the door to more public regulation of internal union affairs. Yet they also have had to acknowledge that unions are different from private clubs in some respects, again because they are statutory agents which must represent members and nonmembers alike.[42]

Courts of law have stumbled over the same problem. Generally they have held to the traditional private-club concept, particularly as to whether a union has to admit a particular employee. One case which demonstrates this view

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[40] Cf. Gibson, p. 25.

[41] Ibid., p. 11.

[42] Cf. Goldfinger, p. 125.

involved the refusal of a railroad union to admit Negro employees to equal status with others so that they might acquire seniority and be eligible for promotion by the railroad. In stating its opinion, the United States Supreme Court commented on the role of the union and its power as bargaining representative in these words:

> For the representative is clothed with power not unlike that of a legislature which is subject to constitutional limitations in its power to deny, restrict, destroy or discriminate against the rights of those for whom it legislates and which is also under an affirmative constitutional duty equally to protect those rights.[43]

The Court declared that both the employer and the union had disregarded the seniority rights of Negro employees, and the union had not represented all employees, including nonmembers, without discrimination. The Court only hinted that arbitrary discrimination in admitting members might be an unconstitutional use of the power given to unions by Congress. Thus the private-club concept was permitted to continue, although the Supreme Court a little later intimated again that unions must be judged like public organizations, not like fraternal associations and social clubs which do not exist by virtue of federal or state laws that confer special rights and privileges.[44]

Other court decisions have also looked upon unions as private organizations, but with special powers and rights granted by law.[45] The Supreme Court

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[43] Steele v. Louisville & Nashville RR. Co., 323 U.S. 192, 198 (1944).

[44] Railway Mail Association v. Corsi, 326 U.S. 88 (1945). Cf. Charles O. Gregory, Labor and the Law (2d rev. ed.; W. W. Norton & Co., 1958), pp. 330-34.

[45] Cf. Terminal Railway Association v. Brotherhood of Railroad Trainmen, 318 U.S. 1 (1943), National Federation of Ry. Workers v. National Mediation Board, 110 F. 2d 529 (1940), cert. denied, 310 U.S. 628 (1940); Otten v. Baltimore & Ohio RR., 205 F.2d 58 (2d Cir. 1953); Ross v. Ebert, 275 Wis. 523, 82 N.W. 2d 315 (1957); Oliphant v. Brotherhood of Locomotive Firemen & Enginemen, 156 F. Supp. 89 (1957), cert. denied, 355 U.S. 893 (1957).

has continued to emphasize union responsibility to all those it represents, stating that when the union's authority "derives in part from Government's thumb on the scales, the exercise of that power by private persons becomes closely akin, in some respects, to its exercise by Government itself." Nevertheless, the court went on to say:

> We do not suggest that labor unions which utilize the facilities of the National Labor Relations Board become Government agencies or may be regulated as such. But it is plain that when Congress clothes the bargaining representative "with powers comparable to those whom it represents," the public interest in the good faith exercise of that power is very great.[46]

A noteworthy exception to court emphasis on unions as private organizations was handed down by the Kansas Supreme Court, but this opinion has up to the present had little influence. The state court said:

> In the light of the history and purpose of the /Railway Labor/ Act, as construed in many decisions, the trial court's view that the acts complained of are solely those of "a private association of individuals" is wholly untenable. The acts complained of are those of an organization acting as an agency created and functioning under provisions of Federal law. . . . While claiming and exercising rights incident to its designation as bargaining agent, the defendant union cannot at the same time avoid responsibilities that attach to such statutory status.[47]

There is a considerable body of opinion today that believes this last ruling is the one that will eventually prevail. It may be going too far to say that the unions were "created" by federal law, but their present size and strength are to some extent the result of public policy which encouraged their growth as a means of making collective bargaining effective.[48] Certification of a union

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[46] American Communications Assoc. v. Douds, 339 U.S. 382, 402 (1950).

[47] Betts v. Easley, 161 Kan. 459, 169 P.2d 831, 838 (1946).

[48] Cf. Dallas L. Jones, "The Implications of the 'Right-to-Work' Laws," Michigan Business Review, IX (November, 1957), 4. Cf. also an excellent article by Homer H. Hewitt, "The Right to Membership in a Labor Union," University of Pennsylvania Law Review, IC (May, 1951), 919-48.

gives it a unique status in the United States. The employer is compelled by law to bargain and share with the union the power of making any decision affecting the conditions of employment.[49]

According to this latter view, unions must be identified as at least quasi-public administrative agencies because they are endowed with their great powers by statute. The theory holds unions can no longer be considered as strictly voluntary organizations, free to accept or reject members.[50] In one authority's opinion they are really involuntary associations which, he says, "obtain a substantial measure of their compulsory jurisdiction over individuals from the law itself."[51] To assign unions such a status gives government wide scope for supervision.

Since the passage of the Taft-Hartley Act it is evident that the federal government has been increasingly involved in the internal affairs of unions. Some see real danger in this evolution of government policy, in that too much interference can eventually make the unions nothing other than wards of the state. On the other hand no government supervision at all would give the unions extraordinary license that could eventually be their undoing.[52]

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[49] Cf. Clyde W. Summers, "Union Powers and Workers Rights," Michigan Law Review, XLIX (April, 1951), 809-11; Killingsworth, pp. 257-58.

[50] Cf. Gregory, p. 336.

[51] Clyde W. Summers, "Union Democracy and Union Discipline," in Proceedings of the New York University Fifth Annual Conference on Labor (1952), pp. 459-60. Peter F. Drucker also holds that the assumption is no longer tenable that unions are purely voluntary and private associations. He says: "No society can give to a purely private and voluntary association the powers over the civic and political rights and the economic opportunities of the individual citizen which the unions enjoy today." This situation, however, does not dissuade Drucker from his opinion that union security is both necessary and desirable. "Labor in Industrial Society," The Annals, CCLXXIV (March, 1951), 140.

[52] Cf. Killingsworth, p. 258.

The view taken of this problem will have considerable bearing on the attitude that one takes toward the free rider. For it seems perfectly reasonable to maintain that no man should be forced to join and support some particular private organization, even if it provides him with benefits.[53] Whether unions can be accurately identified as such is the question. Thus one writer objects: "A union is not, by any stretch of the imagination, a private organization in the sense that a lodge or club may be. The union is an institution clothed with a public interest, and recognized and sanctioned by law."[54]

Perhaps it is best to consider unions as private associations with public functions and thereby avoid all the consequences attendance upon the view that they are public agencies. The important role that unions legally take in determining employment conditions is reason enough for maintaining that the functions of unions are public and not private. As for internal union activities, these, too, may then be reasonably subjected to government supervision where they clash with essential individual rights to employment or seriously impinge upon the collective bargaining function of a union.

Labor Mobility and Union Security

The rapid changes in the American economy and its structure have time and again threatened union organizations. The large influx of foreign workers into the coal and copper mines and the steel industry, the great migration of workers from the farm to the city and from the South to the North, bringing with them highly diverse backgrounds, goals, and attitudes, have at times nearly smothered what had been well-established unions. Often the new workers have not easily

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[53] Cf. J. M. Jackson, "The Right to Work," Christus Rex, XIII (July, 1959), 205-206.

[54] Glenn W. Miller, "The Right-to-Work Debate," Current Economic Comment (Urbana: University of Illinois), XIX (February, 1957), 42.

adapted to unionism. The economic barriers and class traditions of many other countries have not confined the American worker and his descendants to generations of working-class life. The rapid expansion of industry and the shortage of labor on the frontier, and the availability of land to farm have opened numerous avenues of upward occupational mobility.[55] The unions have therefore often had to face an attitude and outlook from substantial numbers of workers that have not been solidly conducive to stable organization.

Employee turnover has serious implications for union stability and security, just as it has for an employer trying to keep control over his costs of production. A high rate of employee turnover has continued to characterize employment in most industries and trades in the United States, although there has been a downward trend in more recent years. However, this historical fact of a high degree of labor mobility has had its impact on the demand for the union shop which the "right-to-work" laws seek to banish forever.

The rate of employee turnover varies greatly from industry to industry and between firms within an industry. The rate is much higher in wholesale and retail trade than it is in manufacturing. In a tabulation made of quit rates in the month of June, 1954, based upon data for 7,000 firms gathered by the Bureau of Labor Statistics of the U. S. Department of Labor, 5 per cent of the establishments were found to have had as high as 18 per cent of the work force quitting in one month. On the other hand, one-third of them had no quits in

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[55] Cf. Earl F. Cheit, "Union Security and the Right to Work," Labor Law Journal, VI (June, 1955), 360; Lloyd Ulman, The Rise of the National Trade Union (Cambridge: Harvard University Press, 1955), pp. 23-67.

the month surveyed, and another 50 per cent had quit rates of less than 2 per cent.[56]

Other examples of employee turnover can be drawn from the experience of two unions in the softgoods industries. The International Ladies' Garment Workers Union reported a membership in 1956 of 445,000, an increase of 14,000 in three years. But to net that increase, more than 200,000 workers were initiated or reinstated to membership. The Textile Workers Union of America claimed 200,000 members in 1956, a decrease of 40,000 from 1954, during which time 186 plants employing 25,000 workers were brought under contract by the union.[57]

According to the Bureau of Labor Statistics, employee accessions in manufacturing from 1948 to 1956 averaged 3.73 per 100 employees per month. Total employee separations (quit, discharged, retired, etc.) in the same period averaged 3.88 per 100 employees per month.[58] If only accessions are considered, the data reveal that of every 100 workers engaged in manufacturing an average of almost 45 have been newly hired within the year. These figures need to be qualified, however, for they do not indicate what percentage of employees is stable. One study, assembled from data from the Bureau of Old Age and Survivors Insurance, Social Security Administration, for the years 1950-1952, shows that

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[56] Sidney Goldstein, "An Economic Appraisal of Aggregate Labor Turnover in Manufacturing" (unpublished Ph.D dissertation, Dept. of Economics, American University, 1957), p. 255. A survey of studies on employee mobility is found in Herbert S. Parnes, Research on Labor Mobility (New York: Social Science Research Council, 1954). Cf. E. Wight Bakke et al. (eds.), Labor Mobility and Economic Opportunity (New York: John Wiley & Sons, 1954), passim; Howard D. Marshall, "Unions and Labor Mobility," Labor Law Journal, VII (February, 1956), 83-97. Marshall argues rather convincingly that the influence of unions on mobility has been much less than popularly believed.

[57] Cf. "Stuck in a Rut," Business Week, June 2, 1956, p. 50. Other examples are cited in Philip Taft, The Structure and Government of Labor Unions (Cambridge: Harvard University Press, 1954), pp. 119-23.

[58] These statistics appear monthly in Table B-1, Monthly Labor Review.

stable employees average about 60 per cent of total employees in manufacturing industries.[59]

The organization problem faced by a union can be illustrated from the above data. Assume that a union succeeds in organizing 70 per cent of a manufacturing firm's employees, no mean accomplishment at the start.[60] If it is further assumed that union membership is spread proportionately between stable and less stable employees, the 1952 data suggest that 60 per cent of these union members will still be working for the firm after one year. If the union enrolled no new members, however, its membership will have dropped from 70 to 42 per cent of all employees within the year. According to data from the Bureau of Labor Statistics, the average firm in 1952 had 52.8 new employees out of every 100 (or 4.4 accessions per month per 100 employees). Since 60 employees out of every 100 were stable, the firm hired 52.8 new employees for the 40 vacated jobs, or 1.3 new employees per vacated job during the year.

Therefore, during this one year, if the union fails to recruit more members from among the stable workers, in order merely to keep up its membership to 70 per cent of all employees, it must enroll, not an additional 28 of the less stable employees out of every 100 employees in the firm, but 36 out of approximately every 33 new employees. The percentage is still higher in employment categories other than the relatively stable one of manufacturing.

Many firms, of course, do not experience this high rate of turnover. Others have much more than the average. It is in the latter group that unions will find effective organization difficult to maintain and their security most threatened. It is generally acknowledged that the greatest turnover occurs among the youngest workers who are still looking for the right niche to find

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[59] Leo C. Brown, "'Right-to-Work' Legislation," Social Order, V (March, 1955), 101.

[60] The example is based on one given in ibid., pp. 101-102.

their fortune or are seeking satisfaction that the work process will never offer.[61] These same workers are frequently the most difficult to organize because of their dreams of promotion to jobs above the union level, their intention to seek a better job elsewhere, their greater concern for their own ambition than for the work group, or their greater instability in general because of immaturity. They have not had time to develop a spirit of loyalty either to their fellow employees and the union or to the company which currently employs them.

Despite the legal safeguards the unions have and their increased strength, there is little doubt that employee turnover and the mobility of the labor force characteristic of the United States, regardless of the forces working against it, can cause the unions considerable insecurity and compel them to continue constant organizing programs. From their point of view under these conditions, some form of security provision in the contract seems vitally important. The effects of a law forbidding that provision will naturally vary with the rate of employee mobility in each industry and firm. A serious student of the problem, the Reverend Leo C. Brown, S.J., makes this comment: "In large areas of American industry effective and stable union organization is practically impossible without some form of union security or without a sustained organizing campaign at prohibitive costs and, I might add, with continuing turmoil."[62] More specifically, he sees a ban on union security for unions which face constant employee turnover as having these effects:

> I will venture the opinion that in those areas of industry characterized by highly stable employment, such as railroads, the larger electrical utilities and many types of manufacturing, a "right-to-work" law would work little detriment to union stability except as it affected union finances by increasing the problem of dues collection. But even in

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[61] Cf. Goldstein, p. 120; Neil W. Chamberlain, Labor (New York: McGraw-Hill Book Co., 1958), p. 274.

[62] Brown, p. 103.

> this matter I would expect the adverse effects to be transitory, because the unions in these industries, after study of the law, would gradually evolve substitute arrangements, and the employers, because they are confronted by strong unions, would cooperate. In these areas the important result of such legislation in many instances would be disruption of mutually satisfactory arrangements which had been painfully worked out over years.
>
> In many service industries, in wholesale and retail trade, in those areas of manufacturing characterized by semi-skilled employment, seasonality and high turnover, I would expect "right-to-work" laws to create organizing problems which many unions could not surmount. I would expect unions to disappear in many establishments and to be rendered almost wholly ineffectual in others. Briefly, I would expect the effects of this legislation to be most severe where the unskilled and semi-skilled are employed and perhaps where unions are most needed.[63]

As long as employee mobility continues to be an important characteristic of the American labor force, the unions appear to have no alternative to aggressive organizing in the absence of a union shop or similar security provision, if they are to maintain their size or grow with expanding population. Mobility will continue to be an issue even though it appears to be in a declining secular trend. Contributing to the trend, especially in respect to voluntary separations, is management's awareness of the increasing size of its investment in employee-training, plus a growing tendency to retrain employees displaced by technological advances. The decline is accentuated by union emphasis on seniority and the rapid development of employee pension plans in private industry, which encourage and reward stability, although these benefits are of least value to the youngest and most mobile employees. Their mobility is a factor to be reckoned with by the unions. If the only choice given to organized labor to protect its security is aggressive organizing, people must prepare to accept a fact recognized long ago by many employers, that the choice often blocks the development of more stable and mature collective bargaining relationships.

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[63] Ibid., pp. 103-104.

Community Resistance to Unionism

Allegedly designed to protect individual employee liberty, the "right-to-work" laws have, as a rule, found their most favorable climate in areas where, somewhat paradoxically, unions are weakest and with little staying power. The American labor movement is strongest in urban centers, where industry is highly developed. In smaller cities and rural communities, the movement is typically feeble and often non-existent and, nevertheless, finds there its most determined opposition. What is unknown is often the most feared. This truism probably offers a partial explanation for the insecure position of unions in the less industrialized states. So much unfavorable publicity has attended unionism from the beginning that many people have become convinced that unions can only be a threat to a community's peace and well-being. As in so many human affairs, when accusations are made often enough without an opportunity to verify them, they are eventually accepted by people and acted on accordingly. Away from the large cities, the unions are often not well known except by newspaper items, sensational reports of investigation committees, and hearsay evidence. People do not have relatives and neighbors who are union members. They may never have met one. The entry of union organizers into such a community may actually seem to the inhabitants to be an invasion by the underworld or communism or anarchy. Opposition to the invaders will also be strengthened by what this may mean in terms of dividing up business profits or of restricting a man's rights to do with his private property as he pleases.

Moreover, a town that is trying to attract new industry, and most towns seem to be trying, likes to point to its surplus labor supply and a lower wage scale than prevails in other communities. Union organization then poses a threat where it hurts most.

Probably the experiences of the textile workers' unions best illustrate

the disastrous effects that can follow upon employer and community resistance to employee organization. These unions have indeed been hurt in several of their old strongholds in the New England area by company mergers, the closing of many plants, and the decline in basic textile employment because of technological advances. But in the newer textile manufacturing areas of the South the unions have made little headway. Expensive organizing drives have failed time and again. Even where enough workers signed union cards to call for an election by the NLRB, the unions have usually been defeated.

The losses have been due, in the words of a businessmen's magazine, to "massive anti-union community sentiment." The communities feared the loss of mills if the unions were successful. They could point to a mill at Darlington, South Carolina, that was closed by Deering, Milliken & Co. in 1956 after the Textile Workers Union won a representation election, and 500 employees lost their jobs. Local papers had warned that a union victory would mean disaster, and merchants talked of shutting off credit. This community hostility has been the textile companies' trump card. The same publication states: "With their plants widely dispersed through the South, these firms, if they lose one mill to the union, can simply shut it down and trasfer its operations to another mill."[64]

Another device used to obstruct union organization in the South is a law, usually a local ordinance, that requires registration or licensing of union organizers. The laws do not have uniform provisions. Some examples, however, as summarized by Business Week magazine, include an Arkansas law that requires organizers to file a surety bond with the secretary of state, and a Florida law that requires organizers to obtain licenses granted by a board headed by the governor. They must first prove United States citizenship and good moral

[64] "The End of Textile Unionism," Fortune, LVI (December, 1957), 232.

character. Some towns in Florida also have their own laws. In Texas a union agent must receive an organizer's card from the secretary of state after presenting proper credentials. Towns with local laws are also found in Alabama, Georgia, South Carolina, Tennessee, and Virginia. The local ordinances in Georgia have been particularly rigorous. One required registration under an oath declaring no criminal record, a license fee of $1000, and a deposit of $100 at the beginning of each day's operations. At least two other towns required a license fee of $2500 from each organizer and an oath that he favored the state's segregation laws. Also demanded were a non-Communist oath and local residence over a period of several years.[65]

Ordinances of this type have been harshly dealt with by the Supreme Court. As early as 1945 the Court struck down as unconstitutional a Texas statute which required a labor union organizer to register and procure an organizer's card from a designated state official before addressing assemblies or soliciting members.[66] The United States District Court for Western Kentucky also has declared a Russellville, Kentucky, ordinance requiring union organizers to register and obtain licenses to be unconstitutional and contrary to the laws of the federal government. The courts have also knocked down a Guin, Alabama, ordinance requiring registration, a license fee of $1000 and a $25 tax on each member signed up by a union organizer.[67] Still more recently, the United States Supreme Court struck down a Baxley, Georgia, ordinance as unconstitutional. It required persons to apply to the mayor and council for a permit and license before soliciting "membership for any organization, union or society of any sort which requires from its members the payment of membership fees, dues

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[65] Cf. "Tax on Organizing," Business Week, January 26, 1957, p. 103.

[66] Thomas v. Collins, 323 U.S. 516 (1945).

[67] Cf. Business Week, July 20, 1957, p. 153.

or is entitled to make assessments against its members." If the license was granted, the fee was $2000, and $500 for each member signed up. The court found that the local ordinance imposed an "unconstitutional prior restraint upon the enjoyment of First Amendment freedoms" because it "makes enjoyment of speech contingent upon the will of the mayor and council of the city."[68]

The situation in rural areas is somewhat different from that found in anti-union urban communities, but it merits attention because some of the most influential farm organizations have been in the vanguard of support for "right-to-work" legislation.[69] The reasons for this rural opposition to the labor movement do not appear to have changed much since they were summarized some years ago by Dr. Charles Killingsworth. He pointed out that farmers, like many of their small-town neighbors, are, as a group, conservative, individualistic, property-conscious, and anti-monopolistic, and unions appear to them to stand for the opposite on each count. But more important, perhaps, farmers have come to believe that the economic gains of organized labor represent losses to them. The price-parity issue is partly based on these alleged losses. Shorter hours and higher wages for industrial and craft workers may mean that the farmer has to pay more for what he buys, while farm prices do not rise in the same proportion. The farmers also complain that less and less of the consumer's food dollar comes back to them (although this complaint ignores the increasing demands of consumers for more preparation and better packaging of food). In general, farmers resent their relatively low income as compared to that of the average workingman, and they express their resentment in hostility toward the unions.

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[68] Staub v. City of Baxley, 355 U.S. 313 (1958).

[69] The National Farmers Union is an exception. Some other farm leaders have also opposed the "right-to-work" laws. Cf. Is the So-called "Right-to-Work" Law a Threat to Farmers? (Washington: National Council for Industrial Peace, 1959).

Equally important, Killingsworth remarks, is the farmer's fear of union organization of his hired help. He has already had some contact with union organization of employees of farmers' cooperatives. But he himself is accustomed to paying or receiving the market price and has had little experience with bargaining over wage-rates. He also feels himself peculiarly vulnerable to strikes, since many of his products, like fresh produce and milk, are highly perishable.[70]

Other motives for farm-organization opposition to unions are probably similar to those that influence various non-farm employer organizations. This would be particularly true in cases where large-scale farm operations control the policy decisions of farm organizations. The owners of these "factories in the field" seem no more willing to surrender to their employees some voice in setting the terms of employment than did their earlier counterparts in manufacturing industries. It is impossible to say how much credit the farm groups can take for keeping agricultural workers out of unions, but their support of "right-to-work" laws could not have been seriously motivated by their desire to promote the freedom of employees so much as to keep the unions weak or out altogether.

The opposition of farmers' associations to unions is apparent in the following measure approved at the 1955 annual convention of the National Grange:

> Because it is as necessary to preserve freedom of labor from destruction by labor monopolies as to preserve the freedom of business from business monopolies, we recommend the expansion of "right-to-work" laws to all other states in the Federal union.[71]

In testimony before a Senate Labor Subcommittee, the president of the Louisiana Farm Bureau Federation stated:

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[70] Killingsworth, pp. 18-19.

[71] The Washington Post and Times Herald, November 22, 1955, p. 17.

> The picture of labor unions as relatively weak organizations, requiring special privilege to enable them to effectively further their members' interests, must give way today to a more realistic view of labor unions as extremely powerful concentrations of economic and political power.

He therefore recommended, among other things, that Congress enact legislation prohibiting compulsory union membership.[72]

There is no reason to believe that unionization in the foreseeable future will embrace the single hired-hand on the farm. Large-scale farming is something much different, however. According to the 1954 census of agriculture, 55,574 farms had ten or more hired workers. The census did not report the total number of workers on these farms, but did reveal that there were 2,064,537 hired workers on 229,014 farms which employed three or more hired workers.[73]

What further degree of concentration there is in farm employment can be little more than guesswork, although it has been estimated that at least 400,000 workers earn wages on a regular basis on large corporation farms. Many of these are found on the big truck farms in New Jersey and California, on the citrus plantations in Florida, on the sugar cane plantations in Louisiana and on the cotton and tobacco fields of the South. Their lot is similar to that of mass-industry workers before the Wagner Act: no legal recognition of their right to organize, no protection from arbitrary or discriminatory lay-off, no seniority or over-time pay, no minimum-wage or maximum-hour standards, and no system to process grievances. The attempts to organize some of the immense farms in California employing as many as two thousand or more workers have been easily overcome in the past by hiring surplus farm labor as strikebreakers.[74] The

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[72] U.S., Congress, Senate, Subcommittee on Labor of the Committee on Labor and Public Welfare, Hearings, Union Financial and Administrative Practices and Procedures, 85th Cong., 2d Sess., 1958, p. 710.

[73] U.S., Bureau of the Census, U.S. Census of Agriculture: 1954, II, General Report, 239.

[74] Cf. John C. Cort, "Frustration on the Farm," The Commonweal, July 12, 1957, p. 395.

influx of migrant workers, particularly from Mexico and Puerto Rico, has also been a barrier to serious organizing efforts among agricultural workers. The failure of most legislative bodies to enact any social legislation to cover these workers makes their working conditions one of the most ignored social problems of the country.

Progress toward union organization of multi-employee farms is so insignificant that little protest was voiced when the Louisiana "right-to-work" law covering all workers was repealed and one that included only cotton, rice, sugar and general agriculturalworkers was substituted in its place.[75] It is generally acknowledged that the compromise was the only one possible of passage in the state legislature. The example serves to illustrate how weak some national unions are and how probable it is that labor legislation aimed at the million-member unions may completely crush the smallest ones, if the diversity of unions and occupational conditions is not thoroughly understood by lawmakers.

In view of the vehement opposition to unions expressed by many employers, by employer associations, smaller communities, and rural groups, the impression that unions are accepted in the American society demands a considerable degree of qualification. Spokesmen of the opposition have sometimes said that they favor the principle of unionism but not the kind of unions found today in the United States. Since there is no other kind visible on the horizon, the statement does not leave much doubt concerning its real meaning.

This unfavorable view of unions agrees with the position taken by the late economist, Professor Henry C. Simons, who frankly stated: "For my part,

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[75] Cf. Bernard D. Nossiter, "Farm Hands Cry 'Foul' in Louisiana," The Washington Post and Times Herald, July 8, 1956, p. A8. Cf. also Victor Bussie, "Louisiana Progress," AFL-CIO American Federationist, LXII (September, 1956), 24-25, and "This Is How We Repealed 'Wreck' Law," Ibid., LXIII (October, 1956), 26-27.

I simply cannot conceive of any tolerable or enduring order in which there exists widespread organization of workers along occupational, industrial, functional lines." He left no doubt of his position when he said: "Trade-unionism may be attacked as a threat to order under any system."[76] Other economists have sided with Simons' views, usually in a more moderate fashion, however. Their arguments have mostly stressed the alleged dangers to the economy from union monopoly, as discussed in an earlier chapter.[77]

Other writers have pointed to union corruption as evidence that unions, especially large ones, must be checked, reduced in size, or broken up if the nation is to survive. The charges made by Professor Sylvester Petro typify the complaints made against big unions when he remarks:

> The leaders of the big unions produce nothing, they contribute nothing to society, and a society left free rewards generously only those who produce and contribute generously. In order to gain their ends, of big power, of big money, or of both, the union bosses must therefore extort; for extortion is the sole means of extracting that which will not be given voluntarily.[78]

In common with many other critics of organized labor, Petro expresses an acceptance of unions, if they will conform to his concept of what they should do. Thus he writes:

> The truth about the big unions is that they have done great social harm in the past and that they constitute at present a threat to our survival as a good and strong nation. Unions have a function to perform, a decidedly useful one; and some unions, especially small unions which have been formed voluntarily by employees, are doing this job ably and well. But the big affiliated unions are not doing the job which there is for unions to do in an enterprise economy. They are not doing that job because their leaders have been intent on other things.[79]

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[76] Henry C. Simons, Economic Policy for a Free Society (Chicago: The University of Chicago Press, 1948), pp. 121-22, 123.

[77] Cf. supra, pp. 39-57.

[78] Petro, Power Unlimited--The Corruption of Union Leadership, pp. 253-54.

[79] Ibid., p. 266.

Dr. Petro also believes that the industry-wide trade unions are the greatest threat to security and well-being that the nation has ever know.[80]

The evidence presented in a preceding chapter shows that Petro's views are not held by the majority of Americans at the present time.[81] He does represent, however, a school of thought that is influential in business and economic circles, in some areas of the South, and in many smaller urban and rural communities. At the popular level this outlook is publicized by the National Right to Work Committee and the DeMille Foundation for Political Freedom, and it represents the opinions of many local chambers of commerce and manufacturers' associations. If this view is ever accepted by the majority of Congress, it will completely alter unionism as it now exists. Whether this view will prevail cannot be foreseen, but that uncertainty is enough to make even the largest unions unsure of their security and permanence in the United States.

Alternatives to the Union Shop

In view of the heated protests against the union shop as incompatible with individual liberty, some suggestions have been advanced for a substitute arrangement that might provide reasonable security for a union, more freedom for the employee, and still not interfere with orderly industrial relations. Most of these proposals are in the nature of a compromise between extreme positions which neither side seems prepared to surrender at present. The alternatives are advocated by some in place of an all-inclusive "right-to-work" law.

If a union has finally achieved recognition from an employer and has acquired some bargaining power, it can ordinarily be expected to insist on some form of security clause in the collective bargaining contract, for this is the

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[80] Ibid., p. 272.

[81] Cf. supra, pp. 11-37.

surest means of protecting its own existence--a normal objective of most organizations. In actual practice, a union may know itself to be so secure as to have no need for a written guarantee from management of its security. This situation is typical of several European countries and explains, in part, why the security clause is of no significant importance there. On the other hand, a union demand for security may actually at times be an admission of weakness by the union which finds its survival seriously threatened by management, a rival union, or even the loss of its own membership. Still at other times a union may continue to press its demand simply because the security clause in a contract symbolizes the power it already possesses, with or without the clause. In sum, a union-security clause appears to be a contract goal of most American unions. At the very least, it is a symbol of success to any union.

Of course, unions often face strong resistance to this goal. Often, too, they have had to settle for much less than the full union shop. Thus many varieties of a modified union shop are to be found in contracts where firms successfully held off the demand for full security. After the second World War, for example, both General Motors and U. S. Steel resisted for years the union shop and agreed only to a modified type, the former allowing employee withdrawal from the union after one year, the latter requiring that application for union membership be made when an employee was hired but permitting him the option of withdrawing by a written statement after a few weeks. However, both these companies later accepted a full union-shop contract.

Another type of union-security provision, fairly common in Canada but much less so in the United States, that bridges the sometimes enormous gap between the employer who refuses to sign any agreement which might strengthen the union's hand and the union which demands security, is a device usually called an agency shop. This compromise form of union security was first used at the direction of the War Labor Board as early as 1942 to settle disputes

over compulsory union membership.[82] However, the agency shop did not attract public attention until it was decreed in an arbitration award handed down by Justice Ivan C. Rand of Canada's Supreme Court, following a long strike by the United Automobile Workers (C.I.O.) against the Ford Motor Company of Canada. The principal point of dispute was the union's demand for a union shop. When this could not be resolved, both parties agreed to be bound by an arbitration award. After surveying the development of labor relations in mass-production industries and the particular troubles of Ford of Canada with its employees' union, Justice Rand in his decision declined to order a union shop, believing it would put too much restraint on the firm and, under the circumstances, give too much authority to the union over its members. The Justice then declared:

> On the other hand, the employees as a whole become the beneficiaries of union action, and I doubt if any circumstance provokes more resentment in a plant than this sharing of the fruits of unionist work and courage by the non-member. It is irrelevant to try to measure benefits in a particular case; the protection of organized labour is premised as a necessary security to the body of employees. But the Company in this case admits that substantial benefits for the employees have been obtained by the union, some in negotiation and some over the opposition of the Company. It would not then as a general proposition be inequitable to require of all employees a contribution towards the expense of maintaining the administration of employee interests, of administering the law of their employment.[83]

The Canadian jurist also noted that employment in a mass-production industry does not develop in employees an understanding and appreciation of the necessity of employee organization that is found among craftsmen. Nor, as a matter of fact, can an industrial union offer as many social and economic benefits. Its chief and essential contribution is the plant law which it negotiates. Because organization is necessary to the primary protection of the interests of industrial employees, Justice Rand said: "I consider it entirely

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[82] Cf. Norman E. Jones, "The Agency Shop," Labor Law Journal, X (November, 1959), 781.

[83] "Award on Issue of Union Security in Ford Dispute," The Labour Gazette (Ottawa), XLVI (January, 1946), 127.

equitable then that all employees should be required to shoulder their portion of the burden of expense for administering the law of their employment, the union contract; that they must take the burden along with the benefit.[84]

This decision of the arbitrator imposed, therefore, a compulsory check-off of union dues from the wages of all employees represented by the union. No initiation fees or special assessments that would benefit only union members could be included. Other conditions were also laid down, such as secret balloting before a strike could begin and open membership in the union. The wage deductions collected by the company were to be turned over to the union each month.

This so-called "Rand formula," or the agency shop, enables a worker to stay out of a union if he chooses but takes away from him the financial incentive for not joining. The same end would be achieved if the dues of nonmembers were turned over to nonunion charitable purposes, for the income ordinarily would not add much to union revenue where the great majority of workers are members of the union.

Contracts similar to this formula have been adopted by a few companies and unions in the United States. One such example is contained in the memorandum agreement between the Atlantic Coast Line Railroad and seventeen unions representing its non-operating employees. The agreement provides that any employee not a member of the union representing his craft or class, who would otherwise be required to join the union, can meet the union-shop requirement by paying to the union the periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required of all members of the

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[84] Ibid., p. 128.

union within the limits provided for in the contract.[85] Similar agreements have been signed by the Santa Fe Railroad and its fifteen non-operating employees' unions,[86] and by Corn Products Company and the Oil, Chemical and Atomic Workers International Union, with the exception of company plants in "right-to-work" states.[87]

The agency shop was introduced into the greater part of the steel industry in the agreement signed in January, 1960, between the companies and the United Steelworkers of America. As in the earlier contract between the parties, the union shop prevails wherever it is lawful. In states with a "right-to-work" law the 1960 agreement provides that, to the extent it is lawful, each employee is to pay to the union each month a service charge as a contribution toward the administration of the agreement and the representation of such employees. For the first month of employment, the agreement memorandum reads, the service charge "shall be an amount equal to the Union's regular and usual initiation fee and monthly dues and any general and uniform assessment, and for each month thereafter in an amount equal to the regular and usual monthly dues and any general and uniform assessment."[88]

A difficulty that some see in the agency-shop type of union security is the problem of determining whether the fees and dues uniformly required are

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[85] Cf. Agreements Dated March 28, 1957, between the Atlantic Coast Line Railroad Company and its Non-Operating Employees (Washington: The National Right to Work Committee, 1957), p. 2.

[86] Cf. "Readers Report," Business Week, January 4, 1958, p. 5.

[87] Cf. The Wall Street Journal, February 6, 1958, p. 22. Cf. also a letter to the editor by John H. Clifton, Jr., Director of Industrial Relations, Corn Products Refining Co., explaining his firm's position on the agency-shop contract, ibid., February 19, 1958, p. 12.

[88] Labor Law Journal, XI (January, 1960), 91-92.

commensurate with the costs of collective bargaining and the benefits attached to it. The line is obviously difficult to draw, for some of the union's effectiveness in collective bargaining depends not only on the local officers but on the help provided by its officials at the national headquarters, as well as on the quality of its legal counsel and research staff, its public relations and publicity expenditures, the size of the union's strike fund and numerous other items, all of which contribute to the costs of collective bargaining.

The differences between the agency shop and the Taft-Hartley union shop as now construed by the NLRB and the courts appear to be negligible in respect to the requirements placed upon union members. Senator Taft himself thought the two were substantially the same.[89] The union can demand no more than reasonable fees and dues uniformly required of all members. Fines and penalties do not have to be paid under the law, and the union cannot enforce its discipline by depriving a man of his job. What differences exist would seem to lie in the privileges or benefits that union membership can confer, which include the opportunity to participate in various educational and social activities, but particularly in union business and elections.

Another proposal, which differs somewhat from the agency shop, suggests that only a bargaining fee be paid by all nonunion employees represented by a union. Again there is the difficulty of measuring the value of the bargaining service, although it would be an amount less than regular fees and dues which also cover the cost of activities other than collective bargaining. The chief advantages cited in support of this procedure are the elimination of so-called compulsory membership and any suggestion of paying a tax or tribute to hold a job, since the fee would be commensurate to the services rendered. It would

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[89] Cf. U.S., Congressional Record, 80th Cong., 1st Sess., 1947, XCIII, Part 4, 4987. Cf. Norman E. Jones, pp. 787-90, who stresses the distinctions that ought to be made between the union shop and agency shop.

also end the union's problem of free riders. Another advantage attributed to the adoption of the bargaining-fee system is that it would put the "right-to-work" campaign out of business because compulsory membership in a union would disappear.[90]

Almost identical with the bargaining-fee arrangement is a legal provision existing in Switzerland. The compromise there was evolved as a means of protecting the worker from having to join a union which he opposed on ideological or religious grounds. Under the law, enacted in 1956, employees who do not want to join the union representing them may be required to pay "contributions of solidarity" to the union as their share of the costs of collective bargaining. The size of the payments required by the collective bargaining contract must be reasonable, ordinarily much less than union dues which also cover benefit plans, and the money must be used exclusively for collective bargaining purposes or for welfare benefits enjoyed by all employees in the bargaining unit, regardless of union membership.[91]

All of these alternatives, including the Taft-Hartley union shop, place some limits on the compulsory features of the older forms of closed and union shops. Another alternative of some interest would restore the union-shop polls that were eliminated in 1951 by an amendment to the Taft-Hartley Act. While they seemed to show strong support for the union shop by employees, they may have been a truer test of the loyalty of union members. There is also reason to believe that some employees did not understand the precise meaning of the polls. Since then, the concept of union security has become much more widely known, and so has the dissatisfaction of members with some of their unions.

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[90] Cf. John V. Spielmans, "Bargaining Fee versus Union Shop," Industrial and Labor Relations Review, X (July, 1957), 614-18.

[91] Cf. Michael Dudra, "The Swiss System of Union Security," Labor Law Journal, X (March, 1959), 165-74.

With the elimination of the polling provision, however, there remains no satisfactory way of learning how many employees really oppose the union shop or their unions.

It is therefore argued that the return of the union-shop polls would give this evidence, and probably in a clearer way than they did between 1947 and 1951. They might show real opposition to the union shop in some instances, perhaps in many. On the other hand, if the polls disclosed only a small minority of workers in some unions who resented compulsory membership, the union shop might be more palatable to the supporters of "right-to-work" laws. At least the polls would then show the inaccuracy of some appraisals of employee attitudes. Most of all, it has been remarked, the proposed procedure would bring the extent of opposition by employees to the union shop into general public knowledge and thereby provide an empirical foundation for the arguments advanced in the "right-to-work" debate. This would indeed represent considerable improvement over present methods of informing the public concerning the attitudes of workers toward their unions.[92]

Some people believe that one of the above compromises may eventually have to be adopted to bridge the vast chasm between the extreme positions of the most ardent "right-to-work" advocates and the union spokesmen who believe that unions in general can survive only with a union or closed shop. It has also been observed that collective bargaining itself involves the art of compromise to a fine degree and the history of labor disputes proves that a solution involving compromise must be found before peace can prevail.[93]

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[92] Cf. Sanford Cohen, "Union Shop Polls: A Solution to the Right-to-Work Issue," Industrial and Labor Relations Review, XII (January, 1959), 252-55. This proposal resembles one made by Paul H. Douglas, "A Possible Solution for the Closed Shop," in Joseph Shister (ed.), Readings in Labor Economics and Industrial Relations (Chicago: J. B. Lippincott Co., 1951), pp. 295-301.

[93] Cf. Dale D. McConkey, "Was the Agency Shop Prematurely Scrapped?" Labor Law Journal, IX (February, 1958), 151.

Conclusion

Whether any of the above substitutes for the union shop would be generally acceptable to the proponents of the "right-to-work" laws seems doubtful. Those who argue so strongly for the freedom of the individual employee not only detest the existence of any form of compulsory union membership but also oppose with equal vigor any suggestion that the employee be compelled to contribute some financial assistance to his bargaining agent. This view objects to unionism in virtually every form it now takes and, moreover, it usually hopes that individual bargaining will be restored to its former privileged status and that collective bargaining will be rejected as the national labor policy. This view is widespread in many smaller communities and rural areas and also finds support among some business and academic spokesmen.

The unions, on their side, are troubled by the insecurity that this attitude creates. They are also disturbed by the erosion of their membership that employee mobility causes, and they are deeply resentful of the free riders who work in their midst when there is no union shop. The unions seek a clear-cut provision that will guarantee their security once the collective bargaining relationship has been established.

By virtue of modern labor law the unions assume a role that makes them essentially different from most other private organizations. While this role has already been referred to in many ways, it appears in its true importance within the area of industrial relations which characterizes the labor-management relationship in the modern business firm. It is to this area that the discussion turns in the following chapter.

CHAPTER V

SECURE UNIONS AND INDUSTRIAL RELATIONS

While organized labor cannot afford to ignore attacks made on its flanks by non-labor groups and unorganized workers, its more immediate concern is with its own members and the employers with whom unions negotiate. If unions were only business organizations, their behavior, especially with reference to union security, might be judged by business standards alone. But they have always acted out a much broader role in the United States where they are also political institutions. The impact of the "right-to-work" laws, therefore, must also be viewed in this wider context, especially as regards the relationship between the members and their union.

The greater the solidarity of union members, the more effective will the union be in its negotiations with an employer. Some aspects of the employer-employee relationship by way of the union comprise another section of this chapter and illuminate further the problem of union security. Some of the evidence requires that additional qualifications be made concerning the acceptance given to unions in America.

One of the most troublesome issues of union security has developed within industries that have special hiring problems, that is, those trades that are typically associated with short-term employment under a succession of different employers. This type of casual labor has perhaps

felt the strongest weight of the Taft-Hartley Act and could be the most affected by a rigid enforcement of the "right-to-work" laws. Employment in the craft trades raises an entirely different set of questions in labor-management relations from those found in manufacturing employment.

The Needs of the Union

The case for individual employee freedom as pleaded by the proponents of "right-to-work" laws was shown to lay stress on the rights of employees and to say little or nothing about the needs or rights of their union as an organization distinct, though not separate, from its members. To be an effective organization, however, a union must pay some attention to the means best calculated to give it bargaining power.

Although a labor union is conceived of as properly operating in the economic environment, it is as much a political institution as an economic one. Like a political party which exists to benefit individuals, the union must have maximum support, both financial and moral, from its members whom it assists, or it risks failure in its purpose. As a political organization the union will survive only as long as it produces results for its membership, since its formal purpose is, in general, the promoting of the welfare of its members.[1] Some of its

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[1] Cf. V. L. Allen, Power in Trade Unions (London: Longmans, Green & Co., 1954), p. 60; Arthur M. Ross, Trade Union Wage Policy (Berkeley: Institute of Industrial Relations, University of California Press, 1948), p. 43.

activities may seem at times rather far removed from that purpose, but as long as a union can convince the membership that some nexus exists with the formal purpose, it can usually hold internal criticism in check. Since the purpose covers so much ground, including wages, hours, working conditions, health and welfare, it is not very difficult to establish the nexus.[2]

The weight of internal criticism, however, cannot be ignored. In most unions, both local and national, dissident and rival splinter factions are constantly developing or threatening. Regardless of the way in which disputes or contracts are settled, the dissidents say they could have done better. Any concession to management may be cited as betrayal or a sell-out. A benefit gained for older workers with greater seniority may be opposed by younger employees. Workers in different plants or crafts may quarrel with the contract agreement. Union officers must also be aware of possible trouble between the employed and unemployed members of the union. A delicate balance must also be kept between reasonable and unreasonable complaints and grievances of members who often demand the impossible and threaten trouble if their demands are not handled at once. Such trouble may imply leaving the union and increasing the size of the unorganized workers on the job or giving aid to a rival union which seeks to invade the incumbent's jurisdiction.[3] A "right-to-work" law, therefore, strengthens the hand of the dissidents at the expense of the union.

As a consequence of these conditions, the union is easily placed on the defensive even in regard to its own members. Like most institutions

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[2]Cf. Ernest M. DiCicco, "Employers, Unions and the 'Right to Work,'" The New Leader, April 15, 1957, p. 11.

[3]Cf. Robert N. McMurry, "War and Peace in Labor Relations," Harvard Business Review, XXXIII (November-December, 1955), 51.

the union gradually develops its own ends, which, at times, may be quite distinct from the goals of individual members. One aim of the union, unquestionably, is its own preservation and strength. Thus there are three parties involved in every collective bargaining contract, the employer, the employees, and the union. Most contract provisions deal with the employees, on the matters of hours, wages and working conditions. The union will try to gain for them as much as possible to prove that its services justify the fees, dues, and assessments levied on the members. Unless it makes fresh gains with a minimum of concessions to the employer, the officers face serious criticism or replacement or the challenge of a rival union. The employer, on his part, will often insist on a clause in the contract delineating his own prerogatives which are held to be beyond the range of bargaining, and thus protect his own rights and security. The union, in turn, will want to secure its position and will seek provisions guaranteeing a union shop or the nearest possible substitute, also preferential seniority for its officers, the checkoff of union dues, and the right to conduct some of its business on company property. These conditions involve a basic power settlement and are worth a few cents in hourly wages either way to both company and union.[4] Regardless of how many benefits the employer is willing to grant the employees and of how much legal protection the union has as certified bargaining agent, if the union wants some specific measure for its own security which the employer will not concede, the union's officers find it easy to conclude that the employer is not giving the union full acceptance because he fears it or is hostile to it.

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[4]Cf. DiCicco, p. 11; Ross, pp.22-24.

Although persuasion may be more desirable than compulsory membership to ensure their existence, the unions have usually found the latter to be more effective. They cannot forget that their greatest problem in the past was staying organized. While the chief use of the union shop has been against management, a strong contributing factor to this union goal, too, has been the individualism of American workers, which often made organizing and maintaining unions a very difficult task. This has been as true in time of prosperity as in depression. At any time there will be workers who think that access to a job or to a promotion and higher income will be more readily given them if they are not identified with the union cause.[5] The union shop has unquestionably been a goal which the unions seek for their own benefit. They have not sought it primarily to control their members.

The apathy of a great majority of union members is well known. This fact has also led unions to seek some kind of security clause to protect the organization, and there is no evidence that most members have objected to this device. When the union is producing results, most members are content to play a passive role. Most American workers are not ardent unionists, even though they may want a union and strongly support it when it is under attack. Where industrial relations are peaceful for long periods of time, the deadening weight of apathy can create a serious survival problem for a union.

The problem of apathy is complemented by the inclination of

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[5]Cf. Selig Perlman and Philip Taft, Labor Movements, 1896-1932, Vol. IV; John R. Commons et al., History of Labor in the United States (New York: The Macmillan Co., 1936), p. 7; Kurt Braun, The Right To Organize and Its Limits (Washington: The Brookings Institution, 1950), pp. 147-48; Mark Perlman, Labor Union Theories in America (Evanston, Ill.; Row, Peterson & Co., 1958), p. 240.

many workers to rely on their own abilities to get ahead without becoming involved in a labor organization. Dr. Orme W. Phelps surmises that the reason for this attitude is that the American worker is not accustomed to think of himself as a member of a fixed class. At the very least he plans more advantages for his children. For the typical worker, Phelps says, unionism is a temporary expedient, judged very pragmatically in terms of costs versus gains, and not as a life-long affiliation on the basis of principle. His attitude is partially explained by his life in a competitive yet relatively tolerant and classless environment that knows rapid change and great social fluidity.[6]

The passivity of many union members has also threatened a union's security from another quarter, namely, rival unions. While the problem of rival unionism has been considerably eased by the signing of no-raiding agreements and the subsequent AFL-CIO merger, the old rivalry between some unions still thrives, especially around the question of jurisdiction over unorganized sectors of employment. Moreover, as long as large unions like those of the mine workers and teamsters remain unaffiliated with the AFL-CIO, aggressive rivalry cannot be easily checked.

While some unions are so well organized as to have no need to fear rivals on a nation-wide scale, the same may not be true of their locals. Few unions today confine their jurisdiction to the narrow limits of one craft or industry. The diverse membership within unions of machinists, automobile workers, mine workers, and teamsters is evidence

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[6] Orme W. Phelps, Union Security (Los Angeles: Institute of Industrial Relations, University of California, 1953), p. 5. Cf. Braun, p. 148.

of this point. A good many workers are not so bound by ties of traditional loyalty and brotherhood to their union that they would feel traitorous if they joined another when they had a grievance against the first. Nor do they feel any great loyalty to their trade or occupation. Either by education or good fortune they hope to quit the workers' class.[7] Some employers have not been reluctant to take advantage of this lack of loyalty and play one union against another where circumstances are favorable, in the hope that the rivals will then be too weak or too dependent on company good-will to bargain from the strength of employee support.

Rivalry between unions can be a seriously disruptive factor in industrial relations as well as in production. Because of the peculiar trait of American unions to be so competitive and to raid one another without compunction, multiple representation of employees at one job-site doing the same type of work has never been feasible in the United States, as it has in many other countries. For the minority to have a separate union would probably prevent the negotiation of any uniform conditions of employment. Proportional representation by several unions with each representing some separate portion of the workers was tried in the automobile industry under the National Industrial Recovery Act and has not been seriously tried since. The individualism of American unions and their leaders simply does not allow for their working together harmoniously in collective bargaining negotiations.[8] Experience has shown that the principle of exclusive

[7] Cf. Joel Seidman et al., The Worker Views His Union (Chicago: University of Chicago Press, 1958), p. 256.

[8] Cf. Neil W. Chamberlain, "The Problem of Union Security," in Proceedings of the Academy of Political Science: The Right to Work (New York: The Academy of Political Science, Columbia University, 1954), p. 5.

majority representation by the bargaining agent is the only practicable method of collective bargaining at the present time in the United States and is so recognized in the Taft-Hartley Act. To guarantee that it can fill that role, each union strives to protect itself by a union-security contract.

A further aspect of insecurity springs out of the nature of unions in the United States. Their effectiveness, even their existence, in a sense, depends to a considerable degree upon the circumstances found in the employer-employee relationship. Since unions often rely on conflicts with management to build up their membership, in places where good wages and working conditions, job security, and fair treatment are traditional business policy, unions will often find greatest difficulty in organizing employees. Thus one detailed study of several unions reaches the following conclusion:

> The union, therefore, has little control over the factors determining the need for its existence. Membership loyalty, crucial to the union's survival as an effective bargaining agency, is likely to vary with the contribution made by the union to the members' welfare; but this will depend to a great extent on conditions that are initiated by management. All of this means that the union is basically an insecure institution likely to be troubled by the problem of membership morale.[9]

A union's success in the eyes of the employees, by and large, is still measured in terms of what it achieves for its members from the employer. It is not difficult to understand why employees who have organized for their mutual benefit seek to present as strongly united a front as possible when bargaining with their employer. The more united and fully representative of the working community the union is, the more successful it can hope to be in its collective action. Under these

[9] Seidman et al., p. 255.

circumstances whatever impairment of individual freedom may occur appears to many workers to be a small price in return for the gains they think can be achieved through organized effort.[10]

Nevertheless, a union may face a truly grave survival problem if it embarks on a too aggressive program. Every employer has a point of resistance, and when that point is passed, a strike will be the result. Now a strike typically involves a crucial decision by the union, for no sensible officers are going to lead members out without reasonable assurance of strong majority support that will ensure the cohesion and solidarity of the workers during the period of idleness. Otherwise the risks for the union are too great. A lost strike is the greatest blow a union's prestige can suffer, and the union's future is always uncertain after such a disaster.

But under current federal law the strike offers another special risk to the union's security that most students seem to overlook. When the union is the certified sole bargaining agent for all employees within the bargaining unit, individual employees are precluded from making separate terms with their employer. The employer is also under legal obligation to bargain with that union even when a strike occurs and as long as it continues. Ordinarily there is little reason to doubt that a strike represents a majority opinion among the union members. Yet, curiously, once a strike has begun, the employees are no longer bound by the majority decision that approved the strike. According to court interpretation of the law, the employees can ignore the majority

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[10] Cf. DiGioia, p. 12.

decision, accept the employer's terms, cross the picket line, go back to work, and thereby completely disregard the principle of exclusive representation by the union, which otherwise is the foundation stone of American collective bargaining procedure.[11]

If this principle binding the employees to the majority decision on all other occasions were adhered to during a strike, Professor Neil W. Chamberlain points out, there would be no back-to-work movement during a strike, no accepting work on the employer's terms, and the employees would strike and return to work as a body. "And," he remarks, "the fact that certain individuals would be injured by the majority's action would be no more controlling than it is in the negotiation of a collective agreement, when the securing of any individual advantage is regarded as secondary to the serving of the welfare of the group."[12] The provision of the law allowing this deviation cannot be explained by saying that a strike means collective bargaining has broken down, for then a strike would be forbidden as an instrument within the scope of collective bargaining. Many rulings of the NLRB hold the contrary. What has broken down is the principle of exclusive representation.[13]

Here, then, is a powerful incentive for the union to seek to enroll all the employees in a bargaining unit as the only means of keeping disciplinary control over those who might go back to work

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[11] Chamberlain, "The Problem of Union Security," in Proceedings of the Academy of Political Science (1954), pp. 7-8.

[12] Ibid., p. 8.

[13] Ibid.

because of need or lack of sympathy toward a strike. Moreover, the strike problem shows why unions favor a contract clause that make employment conditional on union membership, so that loss of membership means loss of employment. While the Wagner Act did weaken the case for the closed or union shop by introducing majority rule, it did so only to the point of a strike. When a strike occurs, the individual employee can act as he pleases.[14]

Under these circumstances it is logical for unions to keep striving for the union-shop clause. Even though strikes may be relatively rare, they are still the ultimate weapon for a union, without which the union's bargaining power is materially reduced. Strikes do occur often enough to remind all unions of their weakness if the employer can continue to operate in the face of one. Strikebreakers thus represent a vital threat not only to an important property right of union members but to the survival of the union itself.

Union Security and Employers

Quite possibly some union leaders are still thinking of the 1930's and perhaps even living in them, as it were, when they argue that the labor movement is insecure because of employer hostility. They may be impelled to make the charge to arouse an apathetic membership or to sway public opinion. Certainly a majority of management, especially in basic industries and in more important manufacturing and construction corporations, has attested to its acceptance

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[14] Ibid.

of unions and collective bargaining and has acknowledged that unions cannot be ignored or destroyed. On the other hand, management may have been too reluctant to come out publicly and say once and for all that unions are legitimate, desirable, and even necessary. At the same time, there is some evidence that union leaders may not always be wide of the mark when they talk about union insecurity in the face of continuing employer hostility.

Management's approach to unions varies widely in modern industry. While many employers have demonstrated wholehearted acceptance of the principles of unionism, others have qualified their acceptance in ways that have caused much consternation among some competent observers of the industrial scene. One type of management philosophy toward unions that displays considerable hostility has been called "Crawfordism" by one author, after Frederick Crawford, former president of Thompson Products Company. Crawford was cited as a living example of the dynamic industrial leader who feels that the best way to handle a union is to do such a good and realistic job of holding employees' loyalties that they see no real need for a union.[15] Another type of management philosophy has been called "Boulwareism" after Lemuel R. Boulware, a former vice-president of General Electric Company. This latter approach calls for a firm policy in dealing with unions, does not hesitate to by-pass the unions to communicate the company's offers and policies directly to its employees and the public, and seeks to win employees' allegiance in competition with the unions.[16]

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[15] McMurry, p. 48.

[16] Ibid.

Perhaps because General Electric believes many benefits have accrued to the corporation by adhering to this policy of "Boulwareism," it appears to be attracting highly important disciples in steel and other industries.[17] One commentator regards this managerial strategy as an outstanding example of cynicism intensified by fear, which can be used to discredit and, if possible, even destroy a union.[18] When negotiating a contract with a union, the strategy relies on these principles:

> Management knows best what should be done for its employees. It should therefore make up its mind prior to any negotiation what should be the maximum offer.
>
> It should refuse to recede from or alter this offer, in any substantial way.
>
> It should take a strike, if necessary, and hold out until the union capitulates.[19]

To the extent that this policy becomes a controlling feature in dealing with unions, it introduces a significant change into the concept of collective bargaining and the role of unions in the economy.

Other evidence revealing more direct employer opposition to any acceptance of unionism is unfortunately available in some quantity. In a scholarly study of management and employee attitudes in one large firm, considerable management distrust of the union was

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[17] Cf. "A New Era in Labor Bargaining," Business Week, July 4, 1959, p. 16; A. H. Raskin, "Labor: A New 'Era of Bad Feeling'?" The New York Times Magazine, July 5, 1959, p. 18.

[18] Benjamin M. Selekman, "Cynicism and Managerial Morality," Harvard Business Review, XXXVI (September-October, 1958), 64.

[19] Ibid. The company maintains, however, that it is willing to modify its offer if the union presents sufficient proof that the company has erred in its estimate of what it is able to offer. For a company statement in support of this type of strategy, see General Electric Employee Relations Newsletter, December 31, 1954, in Neil W. Chamberlain, Sourcebook on Labor (New York: McGraw-Hill Book Co., 1958), pp. 252-78.

revealed. One executive of the firm expressed concern that its excellent personnel policy seemed to have been a failure because it had not kept the union away.[20] Such thinking gives credence to the widespread union opinion that management's interest in human-relations programs has been in reality a change of tactics rather than of basic philosophy, still geared exclusively to greater efficiency and higher profits.[21] Another explicit program of total resistance to union organization was publicly proposed at a convention of the National Automobile Dealers Association.[22] In the face of such threats, as one writer remarks, every labor leader feels he must keep his guard up because "these elements in industry which, although apparently accepting the permanence of unionism, seem constantly poised for attack, as is made manifest by speeches, interviews, and widely distributed pamphlets."[23] A more extreme example of outspoken antagonism to organized labor is demonstrated in the persons of Herman and George Brown, controlling owners of the highly successful construction firm of Brown and Root, Inc., of Houston, Texas. None of their 25,000 employees is under a union contract and none ever will be, according to these employers.[24]

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[20] Theodore V. Purcell, The Worker Speaks His Mind on Company and Union (Cambridge: Harvard University Press, 1953), p. 255.

[21] Cf. Solomon Barkin, "A Trade Unionist Appraises Management Personnel Philosophy," Harvard Business Review, XXVIII (September-October, 1950), 59.

[22] Cf. The Wall Street Journal, January 15, 1957, p. 15.

[23] John A. Fitch, Social Responsibilities of Organized Labor (New York: Harper & Brothers, 1957), p. 203.

[24] Cf. "Roadbuilders with a Flair for Other Jobs," Business Week, May 25, 1957, pp. 105-106. Cf. Hart Stillwell, "Will He Boss Texas?" The Nation, November 10, 1951, pp. 398-400.

Organized labor also cites the example of the Kohler Company (as others do to prove the union penchant for violence) to show that an employer determined to operate without a union can successfully do so even when confronted by one of the most powerful unions in the country. This plumbing manufacturing firm has a long record of opposition to the unionization of its employees, and the legal protection of the right to organize and bargain collectively has not been enough to save the union from an employer dedicated to its riddance. This case is an extreme type of those that come before the NLRB, whose annual reports reveal that discrimination against employees for union activity remains the most frequently filed charge against employers for violations of the rights of union members. Many of these charges are for trivial or abstruse technical reasons, but the tenor of other complaints indicates the extent of conflict that still exists.

The Kohler-type case lends support to the opinion of Sumner Slichter that labor law today gives protection to the union when the employer is large and wants good public relations, or when he is small and cannot afford the costs of obstructing and delaying organization of his employees. Slichter says:

> But the employer who is willing to violate the law in order to fight the attempts of a union to organize his people and who uses every device of delay and obstruction has a good chance of postponing effective action against him under the law long enough so that the interest of his people in the union may well have died out. This was true under the Wagner Act and it remains true under the Taft-Hartley Act. Unfortunately the effectiveness of the law is least when the need for its protection is greatest--when community hostility to unionism is strong, when the union is weak, and when the employer is tough and un-

scrupulous.[25]

Unionism has likewise run into general administrative opposition in the organization of the more than seven million government employees. While the organization of federal employees has proceeded more rapidly than it has in organization in local governments, their unions have not been granted the formal recognition accorded unions by private industry. Progress has been made among local government employees in some few areas, but the formal recognition of state employees' unions is rare.[26]

Some of the clearest evidence of employer hostility to unions, however, came unexpectedly from the United States Senate investigation of union abuses which uncovered the operations of an organization styled Labor Relations Associates of Chicago, Inc., headed by Nathan W. Shefferman. The Association specialized in preventing union organization or in promoting unions agreeable to management, if not to employees, in negotiating "sweetheart" contracts, and in bribing workers and union officials to engage in illegal acts.[27] The names of the 475 clients of this organization included very distinguished and respect-

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[25] Sumner H. Slichter, "Revision of the Taft-Hartley Act," Quarterly Journal of Economics, LXVII (May, 1953), 157-58.

[26] Cf. Joseph Krislov, "The Union Quest for Recognition in Government Service," Labor Law Journal, IX (June, 1958), 421-24, 461; Arnold S. Zander, "Government Attitudes and Policies toward the Organization of Public Employees," in Industrial Relations Research Association, Proceedings of the Fifth Annual Meeting (Madison, Wis., 1953), pp. 110-16; "Labor", Fortune, LI (April, 1955), 76, 79; ibid., (May 1955), pp. 60, 62.

[27] Cf. U. S., Congress, Senate, Select Committee on Improper Activities in the Labor or Management Field, Interim Report, 85th Cong., 2d Sess., 1958, pp. 255-300.

able firms in some thirty states, mostly retail and mail order businesses.[28] Other organizations similar to Shefferman's have not attracted public attention; nevertheless, they are a threat to organization and security that unions must undoubtedly reckon with throughout the country.

Carefully conceived plans by management can still be highly effective barriers to union organization. The provision of the Taft-Hartley Act, Section 8 (c), giving employers the right to express to workers their views on unionism as long as there is no threat of reprisal or force or promise of benefit, can find reasonable justification, although it is a tricky clause to evaluate accurately and fairly. It has provided management with an important tool to deal with a union's attempts to organize.[29] Organized labor has been outspokenly dissatisfied with the effects of the provision, believing that appeal to the Labor Board for violations of it is virtually useless, for required proof of employer abuse is more exacting than private parties can normally obtain, and no restrain has been put upon the services of outside organizations to defeat the union, except the provision in the 1959 federal labor law that requires employers to re-

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[28] The complete list of Shefferman's clients, many of whom are important newspaper advertisers, was printed in The New York Times, October 27, 1957, p. 68. A partial listing appeared in "Shefferman's 400 Clients," Business Week, November 2, 1957, p. 41.

[29] This right of employers has come frequently before the NLRB and the courts. For discussion and cases and some interesting decisions, see D. Tynor Brown, "Employer Free Speech and the No-Solicitation Rule," Labor Law Journal, VI (October, 1955), 710-20; Norman J. Wood, "Employer Free Speech and Representation Elections," Labor Law Journal, IX (January, 1958), 9-13.

port expenditures for such services.[30]

Employer attempts to stave off unionization of employees are found particularly in the non-organized areas of the country and where unions are weakest, notably in the South, where "right-to-work" laws have made most progress and where, especially away from the larger cities, any device that may stir up feeling against unions has been freely resorted to.[31] Racial conflict is one such instrument. A hosiery manufacturer in North Carolina, for example, sent employees a nine-page letter during an organizing campaign in the fall of 1956. Excerpts from the letter reveal the tactics employed to keep out the union:

> All over the South today there is deep concern on the question of racial segregation versus integration. . . This company does not consider that it is appropriate for the company to influence you one way or another in this deep and vital issue. But the unions have taken and are taking a very extreme position on this matter.
>
> You are entitled to know, and you should understand, that the organizers are misleading you and deceiving you when they pretend that the unions are neutral on this matter. The actual truth is that the unions are working day and night, and pouring out the money which they collect in dues, in an effort to eliminate segregation and to bring about integration in the schools and elsewhere between the white people and the colored

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[30] Cf. Solomon Barkin, "Organization of the Unorganized," in Industrial Relations Research Association, Proceedings of the Ninth Annual Meeting (Madison, Wis., 1957), pp. 232-37. A representation election defeat that particularly shocked the United Automobile Workers was one to enroll the engineering and technical employees of the Minneapolis-Honeywell Regulator Company. One publication attributed the defeat partly to the hesitation of white-collar workers to join an industrial union, but chiefly to a carefully planned company campaign. Cf. "Engineers Hand UAW a Rebuff," Business Week, May 18, 1957, pp. 159-60.

[31] A portrayal of some anti-union techniques encountered by a native southern organizer of distinguished family background is graphically presented in Lucy R. Mason, To Win These Rights (New York: Harper & Bros., 1952), passim.

people as rapidly and completely as possible.[32]

Where union elections have been approaching, wide circulation in newspapers has also been given a picture of a national union president dancing with a colored woman. Though the picture was taken in Switzerland at an International Labor Conference and the woman in question was a Nigerian delegate, the intended effect was accomplished.[33] Other techniques have been equally effective.[34]

In the prosperous post-war years unions have not found enough workers enthusiastic or desperate enough for organization to fight for unionism and thereby risk violence and community discord. With the added factor of a surplus labor supply in many southern areas, various unions, especially in the textile, furniture, and paper industries, have fallen far short of their potential growth.[35]

Perhaps the most significant indictment of employer conduct toward unions has been expressed by a public official who has more than once been charged by labor spokesman with being too favorable to business firms and biased against unions. The gentleman in question is Boyd Leedom, chairman of the NLRB, whose office brings him into contact with the widest possible range of management, union, and employee practices. Excerpts of his forceful comments in a speech

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[32] Quoted in The Wall Street Journal, February 6, 1957, p. 11. Another employer's letter, quoted in the same source, also reminds employees of the unions' position in favor of integration.

[33] Cf. The Wall Street Journal, December 2, 1957, p. 12.

[34] Cf. Barkin, "Organization of the Unorganized," in Industrial Relations Research Association, Proceedings of the Ninth Annual Meeting (1957), pp. 232-37.

[35] Cf. ibid., p. 236.

before the Florida Bar follow:

> While it is the official position of management to support the concept of collective bargaining by employees, great segments of employers, as evidenced by case after case coming before us involving union elections in the business and industrial plants of the country, take every legal step possible--and many employers overreach legality--to thwart a respectable, decent union. And some employers harbor the thought, I am sure, that there is no such thing as a decent union unless it might be one dominated by their own companies.
> I am troubled by the philosophy still present among some employers . . . of avoiding dealing with a union even at the expense of going out of business. The extent to which it has manifested itself, especially among smaller business establishments, has made me ponder this problem.

The chairman of the NLRB acknowledged that many business men have been sorely provoked by unions, through violence, vandalism, and corruption. But he wondered if unions might not behave otherwise if some of management's attitudes were different. Leedom continued:

> I raise the question as to whether responsible management should in good faith accept by word and deed the principle of collective bargaining and by wholehearted cooperation with employees and the representatives of their choice, take the initiative in turning the dog-eat-dog philosophy that prevails in many places between organized labor and employers into a relationship of real teamwork. . .I am not suggesting that all employers should accept all unions, or any union for that matter, with open arms. It is not to be denied that some employers maintain such favorable working conditions that employees may not need or desire concerted action. Also, some unions have proven utter lack of capacity fairly and honestly to represent employees.
> Few employers in this enlightened age openly admit that they would, even if they could, completely thwart unionism. Today, however, I want to look behind this facade of general acceptance of our national labor concept and to reach a behind-the-scenes, illusive, undeclared warfare that I believe involves an actual rejection by much of management of these basic principles. Since hostility is likely to beget hostility, I raise the question as to whether this attitude may in turn be at least partly responsible for union conduct that many people regard as quite unreasonable even though lawful. It is quibbling to embrace the abstract principle of collective bargaining and then fight tooth and nail to deny it to one's own employees. When our businesses and

> industries of common characteristics seem to find it good and necessary to join together to solve their common problems and advance their common purposes, and delegate all sorts of specialized functions to agents of their choice, it seems difficult to find a valid objection to workers' concerted action through agents of their choice.
>
> In an effort to let you see the picture I am trying to sketch, I should say that the National Labor Relations Board was not created to assist unions in their organizational efforts. . . . .We act as an umpire to see that the rules are followed. But there seem to be some lawyers who do not disabuse their client's concept of the Labor Board as an integral part of a devilish scheme to put some union in charge of his business. Our main purpose, encompassed in our enforcement of all the provisions of the National Labor Management Relations Act, is to see to it, on charges duly filed, that the heart of the Act, Section 7, is made effective. This section guarantees an employee the right to join or not to join a union free of coercion from both his employer and the unions. But many employers, and apparently some of their attorneys, seem to feel it is still their God-given right to determine unilaterally what is best for their particular employees, and that unions and the Board are usurpers of that right, which usurpation can be met only by keeping the union out at all costs.[36]

These words certainly call into question the extent of management acceptance of unionism. The areas of intense anti-unionism around the country are undoubtedly on the wane and are a relic of an earlier day's business and political philosophy. While they last, however, and while other large segments of management resist or continually circumvent their employees' organizations, the union movement has some grounds on which to base its feeling of insecurity, even though in many industrial areas and among many crafts it is so immovably entrenched that the greater danger may be a lack of interest in the lot of the unorganized. The representatives of that social philosophy which lags far behind the social progress of the nation have often in all

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[36] Boyd Leedom, "The Challenge of Industrial Progress to Florida Lawyers," Address before the Florida Bar, Miami Beach, Fla., May 23, 1959, pp. 4-7.

the subject of union security all too often could be labeled as nothing more than extremely one-sided propaganda. Some of this probably has an effect on public opinion, but it does not seem to reflect the attitudes found in the majority of examples of labor-management relationship.

It has been pointed out by Neil W. Chamberlain, for example, that the tone of industrial relations in the United States is set by the management of large corporations, not by employers' associations. With its current interest in public relations, the corporation usually cannot afford to crush a union and thus lose its own social position.[38] An interesting study by the AFL-CIO emphasized this fact by revealing that of 171 companies represented in 1955 on the Board of Directors of the N.A.M., which has totally opposed any form of union-security provision, 120 had bargaining agreements with unions. Of these, 93 had contracts with AFL-CIO affiliates; of the 71 in states permitting union-security clauses, 59 had such clauses in their collective bargaining contracts.[39] Another example that the unions have used to illustrate the conflict of policy between the N.A.M. and its members is the protest made by the late Henry R. Rite, III, then president of the N.A.M., to Secretary of Labor James P. Mitchell when the latter expressed his opposition to the "right-to-work" laws. Riter said: "There is no other aspect of American life where an individual is denied such freedom of choice and when you deny him the right to work

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[38] Cf. "Discussion," in Industrial Relations Research Association, Proceedings of the Ninth Annual Meeting (1957), pp. 112-13.

[39] Cf. AFL-CIO Collective Bargaining Report, I (June, 1956), 42.

you deny him a fundamental right -- the right to earn a living."[40] Yet the same Mr. Riter was chairman of the board of directors of Copperweld Steel Company when it signed its first union-shop contract with the United Steelworkers, a contract negotiated, according to the words of the contract, "to secure the increased production which will result from greater harmony between workers and employers, and in the interest of increased cooperation between union and management, which cannot exist without a stable and responsible union."[41]

In commenting on the virtually intransigent position of the N.A.M. for more than fifty years on the subject of unions, two writers have remarked:

> Perhaps the institutional needs of an organization like the N.A.M. can be met only by maintaining an immutable philosophical position on such issues as unionism, where the identity of the adversary is clear. On other issues, such as approaches to personnel policies, the N.A.M. has shown much greater flexibility.[42]

The aggressive leadership of the N.A.M. and the national Chamber of Commerce in promoting and financing "right-to-work" campaigns has further widened the chasm between them and organized labor, as did the similar "open-shop" and "American Plan" campaigns of earlier decades. There can be little doubt, too, that the strong support of "right-to-work" laws by the executives of important manu-

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[40] Quoted in Work for Rights (Pittsburgh: United Steelworkers of America, 1958), p. 99.

[41] "The 'Right to Work' Controversy," AFL-CIO American Federationist, LXIII (March, 1956), 30. Cf. Clinton S. Golden and Harold J. Ruttenberg, The Dynamics of Industrial Democracy (New York: Harper & Brothers, 1942), p. 218.

[42] Douglas V. Brown and Charles A. Myers, "The Changing Industrial Relations Philosophy of American Management," in Industrial Relations Research Association, Proceedings of the Ninth Annual Meeting (1957), p. 95.

facturing firms like General Electric, Timken Roller Bearing, Boeing Aircraft, and Kohler has hardened attitudes. The selection of the president of Kohler by the N.A.M. as its 1958 "Man of the Year" dramatized the conflict that continues to divide the two sides. The emotional frenzy characterizing some of the charges and rebuttals in the "right-to-work" debate was bound to leave an aftermath of ill-will and distrust. In many instances the result has been to make management all the more suspicious of union power and purpose and the unions more determined to establish their security.

It is probably safe to say that most employers oppose union-security clauses in contracts with unions. One obvious reason is that small employers far outnumber large ones and the former are clearly in a stronger position without a union-security contract. For one thing, having fewer employees they can more easily fill their employment requirements with nonunion workers if there should be a strike of union employees. The larger employer of thousands of workers cannot hope to recruit and adequate nonunion work force during a strike, and so he usually shuts down until the conflict is settled by negotiation.

The fact cannot be ignored, however, that there are employers who have accepted various forms of union security freely and deliberately, not because they were forced to do it. Their motives may vary greatly, some, for example, negotiating a contract to prevent inter-union rivalry, but others doing it because they are convinced that a strong, responsible, and secure union is a necessary prerequisite for successful labor-management relations. They believe that a union needs to be accepted sincerely before it will mature in its attitudes toward

bargaining. It has been noted that every one of the firms with exceptionally good labor relations included in the National Planning Association studies held to a business philosophy that endorsed strong, responsible, and secure unions. The union shop was not a vital issue for them because the unions were secure with or without that provision.[43]

The number of employers who have publicly expressed themselves in favor of the union shop is not large. They are but a small proportion of those who have signed union-shop contracts, but they include important figures in the business world.[44] Most of the larger employers in the

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[43] Cf. Supra, pp. 22-33.

[44] While the Taft-Hartley hearings in Congress were under way, Business Week magazine conducted a survey of fifty businessmen and found a surprising 43 per cent in favor of union-security clauses. "The Closed Shop Off the Record," Business Week, March 8, 1947, p. 84. Other examples are cited in Union Security (Washington: AFL-CIO, 1958), pp. 17-19, 113. Time magazine reported on the appearance of business opposition to the Indiana "right-to-work" bill in these words: "It was predictable that organized labor in industrialized Indiana . . . would oppose a bill that bans the union shop. . . . More significant as a sign of how U. S.-style enlightened capitalism looks at labor-management relations was the unpublicized opposition, while the measure was in the legislative mill, of several Indiana big businessmen. Among them: executives of Radio Corp. of America, Seagrams (liquor), the Allison Division (turbojet-engines) of General Motors, and Cummins Engines, which manufactures half the diesel engines that propel U. S. Trucks.

"Sturdiest big-business foe of the bill was Cummins' Board Chairman, J. Irwin Miller, 47. 'The classic argument against the union shop,' Miller told a gathering of Dartmouth College students last year, 'is the right-to-work argument. The average American manager feels that there is a character known as the "loyal employee," and this is a fellow who is supposed to figure that joining the union is a fate worse than death. Well, this man is in the same category, in my opinion, as the Easter Bunny and Santa Claus. I've never found him.'" "New Right-to-Work Law," Time, March 11, 1957, p. 20.

Most daily newspapers reflect a business point of view of labor relations and they have generally come out strongly for "right-to-work" laws. A typical example was the Cleveland Plain Dealer. Other examples are given in Work for Rights, pp. 107-13. Curiously, many of the larger newspapers which strongly editorialize in behalf of the laws are partners to union-shop contracts with their own employees.

country, many of them parties to such contracts, have made no statements at all on the matter. One of the strongest statements on record by an employer is that of John I. Snyder, Jr., president of U. S. Industries, with 8,000 employees. He emphasized his belief that the union shop had converted strife into stability in the production process. Snyder also remarked: "All things considered, my company has been well served by a sensible, human and profit-conscious approach to helping job and union security." He observed that millions of workers have cast their lot with organized labor rather than carry on an unequal struggle alone. He concluded: "Once we accept in principle this historical verdict on bargaining we can begin to contract for labor as we contract for capital and management. With such a concept, the union shop becomes a straight-forward business proposition."[45]

An equally strong statement has been made by Bernard Schub, manager of the Connecticut Dress Manufacturers Association. He points out that the collective bargaining process, coupled with recognition of the proper role of organized labor in bargaining, has brought stability and industrial peace to the ladies' garment industry which previously was wracked with constant strife and cut-throat competition. This management representative asserts that the union shop and collective bargaining have made it possible to raise wages, bring about job security for the worker, increase profits, and end ruinous competition while the industry remains highly competitive. Schub declares: "Our industry is certainly an outstanding example of management's desire to

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[45] Union Shop and the Public Welfare: Proceedings of the Second Annual Industrial Relations Conference (Washington: Industrial Union Department, AFL-CIO, 1958,) pp. 45-46.

have complete unionization as an essential stabilizing factor."[46]

Probably no employer deceives himself by thinking that accepting a strong union or granting a union shop guarantees successful labor-management relations. Those who regard acceptance as a necessary step, however, appear to uphold the validity of a view expressed by Sumner Slichter in these words:

> An assured status for the union is not a guarantee of successful union-employer relations but it is a pre-requisite, and the closed shop or its equivalent is one way of assuring the status of the union. The employer is likely to have more freedom in shops where the status of the union is established than in one where its position is more or less precarious. Where the union is not secure, it is compelled to attempt to restrict the employer's discretion at every point where he may discriminate against union-members in favor of non-members.[47]

The opposition of many larger employers to the union shop appears to have dissolved with the compromise made by Congress in the Taft-Hartley Act between the closed and open shops. The major part of the labor movement also seems to have adjusted itself to the compromise, even if reluctantly. Particularly in the mass-production industries the union shop has been more acceptable to management, chiefly because of the protection given to the management perogative of hiring and keeping employees regardless of their union status as long as they continue to contribute to the cost of collective bargaining.[48]

Those sectors of the business community which have enjoyed relatively peaceful and mature relationships with organized labor generally

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[46] Barnard Schub, "'Right to Work'--A Colossal Fraud," AF.-CIO American Federationist, LXVII (January, 1960), 15-17.

[47] Sumner H. Slichter, Union Policies and Industrial Management (Washington: The Brookings Institution, 1941), p. 95.

[48] Cf. Nathan P. Feinsinger, "Lights and Shadows in Labor-Management Relations," Labor Law Journal, IX (September, 1958), 622.

adhere to the proposition that management and its employees' legal representatives, the unions, should be left free by government to negotiate a mutually satisfactory contract that solves for them the problem of a union's security. They find it extremely difficult to believe that decisions of a legislature or the voters on this matter, as expressed in a "right-to-work" law, will conform to the needs of particular companies, industries, unions, or employees, as seen by those most intimately affected and best acquainted with local problems. Government interference, they believe, is contrary to the spirit of collective bargaining which upholds the principle that all aspects of negotiations and contract-making should be voluntary and free of legal compulsion.[49]

This point of view held by a number of business leaders does not deny specific laws and regulations are necessary to combat particular abuses and problems nor does it deny that the government has a supervisory role and a responsibility to safeguard rights and protect individuals and groups from arbitary action. Instead the position stresses opposition to what is viewed as an unwise enactment of a general prohibition that goes counter to the needs of many groups and individuals, that encourages a large-scale political battle, increases labor-management tensions, and takes away from management, employees, and unions the right to work out for themselves their own labor relations.

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[49] An exemple of this view is found in "Report to Governor Robert B. Meyner by the Governor's Committee on Legislation Relating to Public Utility Disputes," Industrial and Labor Relations Review, VIII (April, 1955), 416. This committee, composed of three public representatives and three each from industry and labor, included among its recommendations the following statement: "It is incompatible with our tradition and with our basic philosophy to undertake to regulate wages and working conditions by government directive rather than by agreement of the parties." Ibid., p.422.

The advocates of this view believe that peaceful industrial relations are the result of union-management cooperation and that conflict ultimately is injurious not only to both parties but to individual employees and the national welfare as well.

The Hiring Problems of Special Industries

The remark is often heard that industries and unions are so diverse in their structure and operation that universal judgments about them usually need to be rigorously qualified. In practice, the deeper implications of this observation are often ignored or forgotten, perhaps nowhere more than in the efforts of Congress and state legislatures to apply certain provisions of labor legislation to all types of industry and employment. In particular, little heed has been paid to the special problems of those industries where employment is short-term, intermittent, and seasonal, and where employees must constantly move from one employer to another at locations that are often widely scattered. In these so-called casual-labor industries, the union-shop authorization of the Taft-Hartley Act has had an impact totally different from that in other industries. Likewise, the state "right-to-work" laws affect casual labor in a manner different from labor in other industries.

Proponents of the ban on the union shop, as well as those who effected the outlawing of the closed shop in the Taft-Hartley Act, have been especially anxious to get control over hiring out of the hands of unions in order to give the worker more freedom in acquiring a job and to eradicate all-too-common abuses. In moving toward these reasonable goals, however, they have not only outlawed traditional union-security clauses, but they have at the same time struck at tradi-

tional provisions for individual job security of the majority of casual laborers in several important industries.

The reasons why this is so cannot be readily understood without some knowledge of employment conditions and practices in casual-labor industries. The details that follow attempt to clarify some of the factors that made the closed shop a common practice in those trades and to explain the impact of the Taft-Hartley union shop and the "right-to-work" laws on those employees.

The closed shop was never a serious issue in the mass-production manufacturing industries. On the other hand, before Taft-Hartley it was a relatively non-controversial issue within several industries where it was an accepted tradition. These included the building and construction industries and the printing trades. The closed shop had later spread into maritime and longshore work and into some areas of entertainment and amusement. All of these occupations are characterized by considerable short-term employment, horizontal movement from one job to another of the same kind, and from one employer to another, rather than by vertical movement and change of job-type under the same employer typically found in most employment. The employee of the former type is ordinarily identified as belonging to a particular job or craft and to a particular union, and is not identified with a particular employer.[50]

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[50] Cf. Clark Kerr, who says: "The [craft] worker gets his security not from the individual employer but from his skill, the competitive supply of which is controlled by his union; and he is known as a carpenter and not as an employee of a certain company." "The Balkanization of Labor Markets," in E. Wight Bakke et al. (eds.), Labor Mobility and Economic Opportunity (New York: John Wiley & Sons, 1954), p. 96. Cf. also Orme W. Phelps, "A Structural Model of the U. S. Labor Market," Industrial and Labor Relations Review, X (April, 1957), 420.

In these trades seniority rules for job security are generally impracticable and can do more harm to employee freedom of movement than job security is worth, whereas the reverse is true in long-term factory employment. The casual worker has no equity in his job and does not expect it. Neither he nor the union can exercise much control over lay-offs except to compel non-discrimination because of union membership. The attention of this kind of worker and his union is therefore more naturally directed to the question of hiring practices.[51] Since ordinarily seniority is security with one employer, which does not apply in the kind of employment under discussion, the closed shop was a means of extending security to all the employees in the trade and a means of protecting both the union and its members, especially in periods of a contracting labor market. The closed shop was thus a substitute for the seniority rules that prevail in other industries.[52]

A closer look at the building and construction trades will illustrate these observations. The industry itself is very unstable. It leads all other major industries in the rate of entrance of firms into business and it is generally among the three highest in the rate of firm closures. The residential housing industry is particularly disorganized, compounded by testy relationships between the various groups connected with the industry.[53]

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[51] Cf. Slichter, Union Policies and Industrial Management, pp. 101-103.

[52] Cf. Stephen C. Vladeck, "Open and Closed Shop Unions," in Proceedings of the New York University Fifth Annual Conference on Labor (Albany: Matthew Bender & Co., 1952), p. 484.

[53] Cf. William Haber and Harold M. Levinson, Labor Relations and Productivity in the Building Trades (Ann Arbor: Bureau of Industrial Relations, University of Michigan, 1956), pp. 16-29; Dennis Clark, "Badlands of Free Enterprise," The Commonweal, November 28, 1958, pp. 223-25.

The functions and skills required of employees in construction vary widely from one job to the next. The smaller operator, therefore, cannot afford to keep a diversified labor force under continuous contract to himself to supply his changing needs. When the contractor needs employees with specialized skills, he must have assurance that he can find them at some employment center, or he may turn to subcontractors who specialize in particular skills and therefore usually offer steadier employment to their journeymen. Not only must the contractor bidding for a job know that the right amount of labor supply is available, he wants to know that it is competent and what its price is. Whether he is a stranger in the area or not, he ordinarily cannot supply his needs by approaching individual workmen.[54]

On the other hand, the construction employee is also handicapped in seeking employment, for the industry has no regularly established employment center. Job-sites are always changing, often to remote areas, and information about them is neither easily nor regularly available. His proficiency in his trade provides him with no guarantee of continued employment. His employment is ordinarily going to be short-term regardless of his skill.[55]

One of the most unique features of the construction industry is the number of employers on one job. Their portion of the project often requires only a few men one day and many more the next. An interval of time may then elapse while other phases of the project are completed under other employers before the earlier ones can complete the

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[54] Cf. Haber and Levinson, pp. 19-23, 29.

[55] Cf. Jerome D. Fenton, "Union Hiring Halls under the Taft-Hartley Act," Labor Law Journal, IX (July, 1958), 507-508.

work they contracted for. Each of these contractors obviously needs a steady supply of labor that can quickly increase or decrease as the project progresses.[56]

Under these circumstances it becomes clear why the union serves as an employment agency, for its hiring hall is a place where the contractor can find a pool of skilled and competent labor, and a place where the skilled worker can find employment. Moreover, because of its relatively strict jurisdictional lines, the craft union can usually be relied on by the employer to maintain some standards of competency among its members, and the employer finds this advantageous to himself. Because he usually approaches the hiring hall to obtain employees, a prehire agreement with the union has been customary in the industry whereby wages and working conditions are agreed upon before a full complement of workers is hired. The contractor can thus bid on the job confident that these factors will not change during the contract period. He then has a fairly accurate norm by which to determine labor costs. Otherwise, a wage increase before a job-contract was completed could wipe out his profit. A prehire contract, however, was illegal under the Taft-Hartley Act.[57] It has been restored by the Labor-Management Reporting and Disclosure Act of 1959, Section 705 (a).

In industries that tend to be very unstable a strong union can therefore bring stability and minimum standards. Excessive and ruthless competition that threatens every operator in such industries

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[56] Cf. Harry H. Rains, "Construction Trades Hiring Halls," Labor Law Journal, X (June, 1959), 366-67.

[57] Fenton, p. 508. Cf. Paul B. Richards, "The Building and Construction Industry and the Taft-Hartley Act," ILR Research, II (June, 1956), 13.

can be controlled. Through the closed shop the union was able to control entrance to jobs so that men making the craft their life's work would have more regular employment. As Professor Sumner Slichter has remarked, the closed shop "has protected the men who are permanently attached to the trade from having their employment opportunities seriously limited by more or less transient workers who seek only a few weeks' employment."[58]

The union with the closed shop, therefore, can offer desirable social advantages to employers, employees, and the public. At the same time it provides more opportunity for abuses.[59] It might have been more difficult to abolish the abuses than the closed shop, but in choosing to concentrate on the latter, Congress removed one of the few stabilizing influences in the building and construction industries.

The offshore maritime industry affords another special example of how the union-security provisions of Taft-Hartley caused much confusion. The struggle for union organization and survival in this industry has been particularly difficult and often harsh for employees who man ships. Labor-management relations therein have often befuddled the public because of a maze of complex factors in the industry. A thorough study of these factors has been made by Joseph P. Goldberg. Only a few of his observations need be noted here to the extent that they affect the question of union security.[60]

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[58] Slichter, Quarterly Journal of Economics, LXVII, 162.

[59] Cf. Haber and Levinson, pp. 46, 63-65, 245.

[60] Joseph P. Goldberg, The Maritime Story: A Study in Labor-Management Relations (Cambridge: Harvard University Press, 1958), passim.

The maritime unions, while concentrating their attention upon improving the formerly wretched conditions of sailors, have also directed strong efforts toward breaking the exclusive job control of shipowners, exercised especially through the use of continuous discharge books which had to be carried by seamen. The books usually listed the seaman's employment record, the employer's evaluation of the quality of his service, and a rating of his personal character. While not primarily intended as such, it was an effective device for blacklisting union members.[61]

The maritime unions have also aimed constantly toward the goal of establishing union hiring halls to protect job-seeking seamen from graft, kickbacks, favoritism, and the indignity of waiting for hours on the dock in the hope of picking up a job. For seamen job security in the ordinary sense is impossible because of the custom, still in general use, of employing men on a single round-trip basis, so that labor costs can be held to a minimum between trips.[62]

With employment thus on a casual, short-term basis, the union shop and certified union election provisions of the Taft-Hartley Act have had singularly little applicability. But the use of an exclusive union hiring hall with its system of rotary shipping and preferential union employment, which stabilized the chaotic hiring patterns of the maritime industry and protected those who were making the sea their lifetime vocation, was declared to be illegal under the

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[61] Ibid., pp. 80, 107-108, 123, 185-87, 278.

[62] Ibid., p. 268.

provisions of Taft-Hartley.[63]

Because the employers, too, have found the hiring hall advantageous, since it provides them with an adequate labor pool maintained at the unions' expense, agreements have gradually been worked out that circumscribe the most objectionable features of the national labor law so that priority of employment is guaranteed to veteran seamen. The agreements try to stay within the law by doing away with discrimination between union and nonunion members, while allowing employers some choice in the selection of capable personnel.[64]

Since there is no control over discharge, it is understandable why the maritime unions have constantly tried to protect their organization through some type of security provision that regulates hiring. Otherwise, union-gained benefits and standards could be ever threatened by the influx of nonunion workers. Goldberg makes the following observation:

> The hiring halls have provided an assured source of qualified labor to the maritime industry at a minimum cost. They have contributed much to restoring to seamen the dignity and self-respect which were lacking under other systems of employment. It is no wonder, therefore, that the maritime unions have made every effort to circumscribe the effects of the Taft-Hartley Act on the hiring halls.[65]

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[63] Ibid., pp. 277-80.

[64] Ibid., pp. 280-82. The employment service offered by the unions to nonmembers through the hiring hall can be a considerable financial burden to the unions. Goldberg cites an example that proves this. By court order the Pacific Maritime Association, not the unions, operated for three years a central registration office for the recruitment of west-coast stewards. The total cost of operations for the period was $350,000. Ibid., p. 280.

[65] Ibid., p. 282.

One further industry well serves to exemplify the peculiar problems that were ignored by the Taft-Hartley Act which could be even more aggravated by the strict enforcement of the "right-to-work" laws. The longshoreing industry, which is concerned with loading and unloading ships, provides one of the best examples of a casual-labor market where the need for workers varies frequently and drastically at many widely different places within the same labor market. Indeed, workers may be needed for only a few hours for a particular job and then must seek a new job.

The industry has a relatively small number of regular workers, but there are always many newcomers competing for those jobs. Much of the work is unskilled, and therefore previous experience is frequently not required. Because of the ease with which one can qualify for a job, the industry attracts many workers unable or unwilling to hold regular employment. Competition for jobs has often been fierce.[66] This situation was a basic cause of the rise of one of the most notorious labor scandals of modern times. Few Americans have not heard of the waterfront violence and racketeering that rocked the Port of New York for years.

As in other casual-labor industries, the important key to control lies in the hiring practices for longshoremen. On the east coast, particularly in New York, the shape-up evolved as the system of hiring whereby men lined up on a dock at appointed times during the day

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[66] Cf. Charles P. Larrowe, Shape-Up and Hiring Hall: A Comparison of Hiring Methods on the New York and Seattle Waterfronts (Berkeley: University of California Press, 1955), pp. 49-50.

and were selected for employment by the hiring agent. As remarked by Charles Larrowe, a specialist in the industrial relations of this industry, the labor movement has long recognized the strategic importance of the hiring agent and the danger that he will put his own interests first. Thus the first step a union normally takes when it organizes casual workers is to set up a hiring system in which the shape-up is replaced by a system that restricts the entry of new workers and permits a fair and impersonal distribution of jobs among the regular workers. However, in New York the International Longshoremen's Association made no attempt to do this.[67]

As Larrowe points out, the union is supposed to be an instrument to achieve its members' objectives. But it also has its own objective of survival. These two goals may come into conflict, but in industries characterized by stable employment, the union can easily assure its own survival by controlling the jobs within its jurisdiction, through a union shop, for example. Then it is free to concentrate on its members' interests. But in the casual-labor market other obstacles intervene. The union has two alternatives: either it can control the job market by restricting the entry of newcomers, which will also protect its own survival, or it can maintain its existence by controlling the workers themselves. By following the latter course, the union is no longer serving as an instrument to achieve its members' objectives, for its interests become identified with those of its officials. Again, this is what happened in the I.L.A.[68]

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[67] Ibid., p. 54.

[68] Ibid., p. 74.

The evolution of hiring practices in the longshore industry on the west coast was so different from that on the east coast that an observer might have been excused for thinking that two distinct industries were involved, according to Larrowe. On the west coast the hiring hall came into general use in place of the shape-up, but it was not easily achieved, for employers wanted to have complete control of it. This led to a series of strikes, the last of which occurred soon after the enactment of the Taft-Hartley law. Employers in the industry considered the new law a means of regaining control of the hiring hall. The critical losses incurred in that last strike by every sector of the economy dependent on waterborne shipping led to the establishment of a compromise hiring-hall system that has seemingly won the approval of both employers and labor.[69]

The compromise has proved to be one that gives the longshoremen a remarkable feeling of self-sufficiency, dignity, and self-respect. Dr. Larrowe comments on this hiring method in the following words:

> Three aspects of the hiring hall particularly strike the observer-- the rational solution it provides to the complex problems of a casual-labor market, the foolproof system which has been devised the prevent abuses in the dispatching process, and, most important, the power vested in the hands of whoever runs the hall.[70]

Under this system of hiring the union has achieved great security, and being secure, Larrowe observes, its objectives are closely identified with those of the members. The union is as satisfied with

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[69] Ibid., pp. 83, 120-21.

[70] Ibid., p. 139.

the hiring hall as are the longshoremen. Once again, however, there have been difficulties with the NLRB because of union preferential hiring, which the Taft-Hartley Act prohibits.[71] According to Larrowe, all the parties concerned have moved toward full compliance with the law. Moreover, the union contract, which covers virtually all west-coast longshoreing, prohibits any discrimination "because of union membership or activities, race, creed, color, national origin, or religious or political belief." Larrowe found this clause to be scrupulously observed in the Seattle hiring hall, the scene of his west-coast study.[72]

These observacions on selected casual-labor industries have been made to bring out the significance of the union's role in hiring and also the problem of union security if the needs of the regular full-time workers in those fields are to be satisfied. Their needs are not typical of those of all employees by any means. To remove their union from its hiring role, however, does create a vacuum which may be filled by employers alone, by assignment through a government agency, which is unacceptable in a private enterprise system, or by employer-union cooperation and control. The last alternative is impossible if the majority of employees are discouraged from joining the union. Experience shows that difficulties and conflicts are certain to appear whenever some workers do not join the union. Both the Taft-Hartley union shop and the complete denial of any form of union security under

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[71] Cf. Infra, pp. 216-20, where leading court cases in point and NLRB criteria are discussed.

[72] Larrowe, pp. 180, 172.

the "right-to-work" laws have added to the immensely complex problems of job security and stable industrial relations in the casual-labor trades.

These examples demonstrate how carefully laws must be formulated which purport to eliminate abuses in some sectors of employment and still not hinder collective bargaining in others. The Taft-Hartley union-shop elections, for example, proved to be an almost impossible burden to administer in the casual-labor industries.[73] After these elections were amended out of the Act, the problem of union certification became paramount. Seldom are employees on one job long enough to have a union certified or decertified under the provisions of Taft-Hartley. As a consequence, these workers are deprived of the protection accorded by the very heart of the law. The NLRB rarely certifies a union in the construction trades because hardly would it do so before the job would be at an end, the employees would be seeking work elsewhere, and the certified union would be no longer in business. The thirty-day waiting period before an employee can be required to join a union may offer advantages in long-term employment, but in the industries under discussion many jobs do not last that long. As a result the trades unions may be prevented from establishing any but the minimum standards.[74] The difficulty was partially recognized in the

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[73] For a discussion of the problems which the NLRB tried in vain to surmount, cf. J. E. Covington, "Union Security Elections in the Building and Construction Industry under the Taft-Hartley Act," Industrial and Labor Relations Review, IV (July, 1951), 548-51.

[74] Cf. George F. Jansen, "The Closed Shop Is Not a Closed Issue," Industrial and Labor Relations Review, II (July, 1949), 555.

Labor-Management Reporting and Disclosure Act of 1959, Section 705(a), which corrects it to the extent of reducing the waiting period from thirty to seven days before a worker must join the union under a union-shop contract in the building and construction industry.

The 1959 legislation, however, does not meet the principal problem of the casual-labor force. The union shop and milder forms of union security do not fit the traditional craft practices of hiring through the union and of working only with union members. Most craft workers know only the closed shop or no union at all. Despite the ban on the closed shop, the practice has simply refused to die because it provides a security device that has satisfied a deeply felt need of certain types of workers, and even employers have found it very useful and many, indeed, find it almost necessary. In industries of casual, intermittent, and short-lived work assignments, the closed shop, or its near relatives, the hiring hall and the closed union, have eliminated many evils, such as the indignities of constant job hunting, the shape-up, underemployment, bribery, and favoritism, and has served as a workable substitute for the security found in the seniority provision in manufacturing and other industries and trades that provide long-term employment.[75]

In other words, this illegal practice of the closed shop has found favor because it gives workers a sense of both freedom and security where seniority structures are impossible. The desperate need for job priority for workers with one skill and no other source of income is not

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[75] Cf. Fred Witney, "Union Security," Labor Law Journal, IV (February, 1953), 111-12.

wiped out just by words of law. The employer's need for competent labor on short notice has been nearly as compelling.[76] Thus Clyde Summers can remark:

> The Taft-Hartley Act gave no recognition to these stubborn economic facts. Where there were genuine economic needs of the parties, it attempted to create a vacuum. It blandly assumed that, if the union were prohibited from having a closed shop, the employers would protect the individuals. The signal lesson of the Taft-Hartley Act is that when the union's needs are acute, and when the employer's needs or desires for cooperation are strong, legal measures must be carefully constructed to permit the creating of new institutions to meet the genuine needs.[77]

Fear of overwhelming union power has often been alleged to be the chief reason for opposing the closed shop despite its general acceptance in certain industries using casual labor. Yet even when the closed shop was legal, the construction unions did not have enough power to achieve anything like nation-wide organization. As two authorities on the subject have pointed out, it is difficult to determine accurately how many building tradesmen are organized because of the fluidity of the labor force and the mobility of both workers and employers. They also note that the strength of organization varies greatly between cities, types of markets, and various trades. Some are almost completely organized, others hardly at all. Where well organized, the building trades are said to be probably strong enough to organize the non-union workers, but the results are not worth the effort.[78] The relatively

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[76] Cf. Clyde Summers, "A Summary Evaluation of the Taft-Hartley Act," Industrial and Labor Relations Review, XI (April, 1958), 409.

[77] Ibid., pp. 409-10.

[78] Cf. Haber and Levinson, p. 34.

few building and construction workers in those areas, therefore, who would avoid membership on principle or for some other reason, have still found it possible to do so, especially because unions in the industry by their nature are predominantly localized.

It has been observed by many that the closed-shop ban and the restricted union shop under Taft-Hartley do not seem to have wrecked unions in casual-labor trades. It is doubtful that any labor law capable of enactment today could have that total effect. What does seem clear, however, is that the ban on the closed shop has been widely ignored in those industries where it has served a specific need, so that the actual relationship between the parties remains much the same as before 1947, despite contract changes to comply with the law externally. One study after another has concluded that the closed shop continues to function in many areas where it had been the basis of long established relationships. In some instances it is adhered to by informal agreements or has been replaced by practices which have virtually the same effect.[79] Clyde Summers bluntly states that the real failure of Taft-Hartley is that it has not been obeyed. He writes:

> The closed shop and hiring hall are still standard practice in the construction industry and only thinly disguised in printing, longshore, and maritime. In the building trades, the established principle of the unions and employers is to ignore the law, pay the claims filed, and keep away from the courts. The very industries in which the abuses were most severe have not changed their ways.[80]

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[79] Cf. Horace E. Sheldon, Union Security and the Taft-Hartley Law in the Buffalo Area (Ithaca: Cornell University, 1949), p. 41; Thomas J. Luck, "Effects of the Taft-Hartley Act on Labor Agreements," Southern Economic Journal, XX (October, 1953), 147-48; Haber and Levinson, p. 71; Philip Taft, "Internal Affairs of Unions under the Taft-Hartley Act," Industrial and Labor Relations Review, XI (April, 1958,), 354.

[80] Summers, Industrial and Labor Relations Review, XI, 409.

While the NLRB is empowered to enforce the closed-shop ban of the Taft-Hartley Act, it cannot initiate cases but must await the filing of a complaint. Where violation of the ban was proved, the Board consistently awarded the victim of discrimination back pay to be paid equally by the union and the employer if both were guilty, and to date back from the time of the discriminatory action. This remedy, however, did little to stop the practice. Thus it must be acknowledged that the Board did not move strongly against the closed shop for ten years after Taft-Hartley, perhaps because it could not see how the ban could be fairly and practically applied in the construction industry and similar trades.[81] It should be recalled that the construction and building trades unions are not given the certification protection granted by Taft-Hartley.

More recently, however, the NLRB has attacked the closed shop in earnest, particularly as it exists, for all practical purposes, in the form of exclusive union hiring halls. To accomplish its end the Board has resorted to a much more stringent remedy first applied in its Brown-Olds decision of 1956. The Board in that case not only ordered back pay to a worker denied employment because he was not a member of the local union, but, in addition, ordered the union to refund to all of the firm's employees the dues and assessments collected from them as far back as six months before the charge was filed.[82] Later, in another case,

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[81] Cf. Harry H. Craig, "Hiring Hall Arrangements and Practices," Labor Law Journal, IX (December, 1958), 959.

[82] J. S. Brown-E. F. Olds Plumbing & Heating Corp., 115 N.L.R.B. 594 (1956.),

the Board ruled that where the employer was equally guilty with the union in agreeing to an illegal union-security contract or hiring arrangements, both may be subject to the remedy.[83]

On the basis of these decisions the General Counsel of the NLRB in early 1958 warned employers and unions in the construction industry to take private action to correct all illegal union-security contracts and hiring practices.[84] All complaints on such matters filed before the Board after September 1, 1958, became subject to the full application of the Brown-Olds remedy.[85]

The NLRB has taken the position that all union-security contracts are illegal which provide that the recruitment of employees is the sole responsibility of a union, where, in other words, the employer has surrendered his hiring prerogative to the union. The Board has said that it agrees with the late Senator Robert Taft that not all hiring halls are outlawed but only those which amount to a virtual closed shop. The principal standard, according to the Board is to be one whereby selection of employees is not discriminatory in any way because of membership or nonmembership in a union.[86]

The Board's new approach to the problem was outlined in a landmark decision in 1958 in the case of Mountain Pacific Chapter of Associated General Contractors.[87] The union contract at issue provided

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[83] Broderick Wood Products Co., 118 N.L.R.B. 38 (1957).

[84] Cf. The Wall Street Journal, February 26, 1958, pp. 1, 19.

[85] Cf. Jerome D. Fenton, "NLRB's 'Brown-Olds' Remedy for Illegal Hiring Arrangements," Monthly Labor Review, LXXXII (February, 1959), 159.

[86] Cf. Fenton, Labor Law Journal, IX, 505.

[87] Mountain Pacific Chapter of Associated General Contractors, Inc., 119 N.L.R.B. 883 (1958).

that all employees were to be hired through the union, but if the union could not fill a job the employer could hire such workers elsewhere. The Board said this type of contract violated Taft-Hartley even if no discrimination against nonunion workers had actually occurred. On an appeal of the decision a federal court ruled that a contract providing an exclusive union hiring hall, if it is not explicitly discriminatory, does not violate Taft-Hartley just because it does not contain the provisions drawn up by the NLRB to prohibit discrimination in hiring. The court said that there must be evidence of discrimination, in which case the Board may apply remedies against both the union and the employer, if both are guilty of discrimination.[88]

In other decisions, however, the Board has continued to move against union hiring agreements that do not contain the safeguards against discrimination set forth in its Mountain Pacific decision.[89] Each contract must explicitly provide the following:

(1) Selection of applicants for referral to jobs shall be on nondiscriminatory basis and shall not be based on, or in any way affected by, union membership, bylaws,

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[88] N.L.R.B. v. Mountain Pacific Chapter of Associated General Contractors, Inc., 270 F. 2d425 (9th Cir. 1959). The Brown-Olds remedy has been challenged in other cases. E.g., in Morrison-Knudsen, Inc. v. N.L.R.B., 275 F. 2d 914 (2d Cir. 1960), the court, while enforcing a Board order to cease discrimination in employment because of nonmembership in a union, denied enforcement of the Brown-Olds remedy because it is "unduly harsh and penal in nature," among other things. A similar ruling was made in Morrison-Knudsen, Inc. v. N.L.R.B., 276 F. 2d 63 (9th Cir. 1960). This decision includes a lengthy summary of many aspects of the hiring-hall problem. For other cases overruling a Board grant of dues restitution made along the lines of the Brown-Olds remedy, cf. Teamster, Local 357 v. N.L.R.B., 275 F. 2d 646 (D.C. Cir. 1960), and N.L.R.B. v. I.L.A., Local 1566, 278 F. 2d 883 (3d Cir. 1960).

[89] E.g., Local 138, Operating Engineers, 123 N.L.R.B. 1693 (1959); Boilermakers, Local 363, 123 N.L.R.B. 1877 (1959); Pacific American Fisheries, Inc., 124 N.L.R.B. 9 (1959).

rules, regulations, constitutional provisions, or any other aspect or obligation of union membership, policies, or requirements.

(2) The employer retains the right to reject any job applicant referred by the union.

(3) The parties to the agreement post in places where notices to employees and applicants for employment are customarily posted, all provisions relating to the functioning of the hiring arrangement, including the safeguards that we deem essential to the legality of an exclusive hiring agreement.[90]

The basis on which the NLRB determines whether the union alone, the employer alone, or both jointly must reimburse to employees all sums paid by them under the illegal union-security contract was laid down in its decision in the case of Local 138, Operating Engineers, AFL-CIO.[91]

There is no question that this policy of the NLRB as enforced by the Brown-Olds remedy has caused utter dismay among the unions in the casual-labor industries. The cost of the remedy to the employer if he is found guilty of discrimination can be of such size as to bankrupt him. The return of dues to employees would probably not hurt the union as much since most of the money was probably paid voluntarily and would be turned back to the union on most occasions. With the amount of pressure placed on the employer by this remedy, however, the unions must face the loss of their traditional control of hiring. The principle of equal opportunity for jobs is, of course, a valid one. But given the nature of casual-labor insecurity and the peculiar conditions of employment in these

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[90] 119 N.L.R.B. 883, 897 (1956). Cf. Walter L. Daykin, "Legality of Hiring," Labor Law Journal, X (November, 1959), 772-75.

[91] 123 N.L.R.B. 1393 (1959). The Board has applied the Brown-Olds remedy in such decisions as Los Angeles-Seattle Motor Express, Inc., 121 N.L.R.B. 1629 (1958); Carpenters' District Council of Rochester, 122 N.L.R.B. 269 (1958); Crawford Clothes, Inc., 123 N.L.R.B. 471 (1959).

special industries, the enforcement of the principle must overturn widespread patterns of employer-union relationships that have brought at least a measure of stability to these industries.

Having no control over hiring, unwilling and unable to exercise any control over layoffs, with workers on the job too short a time for any serious organizing campaign to take effect, the unions in these trades, many authorities believe, may find their existence seriously threatened if the federal law and the "right-to-work" laws of the states are effectively enforced. In both instances the lawmakers have chosen to prohibit completely a widely accepted practice in preference to designing safeguards against the abuses the practice can lead to. The Taft-Hartley union shop grants no real security to the unions in these special types of employment. The "right-to-work" laws go further andassume that these unions do not need any type of security clause or that their members do not need any voice in hiring arrangements which can give them more regular and stable employment conditions.

Various proposals have been made in Congress to amend the Taft-Hartley Act to make it more equitable for casual workers.[92] These would generally permit the hiring hall and other forms of the closed shop that provide preferential employment for union members or others who are skilled in their trades and work full-time at their occupation. The amendments, of course, would move in a direction opposite to that of the "right-to-work" laws. Perhaps on this account, because so many Congressmen hail from "right-to-work" states, it has seemed politically

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[92] Cf. Benjamin Aaron, "Amending the Taft-Hartley Act: A Decade of Frustration," Industrial and Labor Relations Review, XI (April, 1958), 331-32.

impossible to propose that some form of closed-shop contract might have real value in the casual-labor industries, if the unions were made open to all who apply, subject to reasonable standards of skill, the needs of the industry, and other fair criteria and safeguards that would protect individual rights.

Conclusion

It is the goal of industrial relations to ameliorate employer-employee-union relationships, not merely to increase production and profit, but, more importantly, to impart a sense of dignity, self- respect, and reasonable security to all who participate in the work process. When the union representing an employer's workers is kept off balance and, especially, if it fears its ability to survive, the harmony and peace essential for smooth-running relationships on the job will be erratic if not altogether lacking.

The union is a political institution as well as an organization seeking benefits for its members. As such it has its own goals and needs which must be recognized if the problem of union security is to seem at all realistic in view of the many privileges and rights given the unions by law. The labor movement is still subject to pressures that make it feel insecure, coming to some extent from its own members, but more importantly from the continuing hostility of a substantial segment of employers. The conflict of new laws and new interpretations of law with traditional practices in casual-labor industries has thrown some of the oldest and most secure unions in the United States into turmoil.

To a considerable degree this pressure on the unions has been generated by public reaction to union practices that seem, on their face, to be at odds with ideal standards of political democracy and morality. Since these practices have been widely discussed in connection with the "right-to-work" issue, some attention must now be given them.

CHAPTER VI

SECURITY AND DEMOCRACY IN UNIONS

From its beginning the "right-to-work" debate has been interwoven with arguments about democracy in unions. This subject is a much more complex and thorny one than many of the arguments imply. On the one hand, some confusion inevitably results from the habit of equating economic democracy with political democracy. Moreover, since so many arguments strongly favor one side or the other exclusively, a characteristic of debating procedure, the impression is created that union members must have unlimited rights in order to be free, or they will have no rights or freedom at all. On the other hand, ample evidence of tyranny within unions is available, and it seriously disturbs many people both in and outside of unions. The problem is again one of trying to assemble enough facts to make an intelligent judgment which will avoid, the error of generalizing when essential distinctions and differences exist.

This chapter is limited to a survey of a few issues that have attracted the most attention. It begins with a consideration of the admission and expulsion practices of unions and then investigates the central question of democractic practices within unions. Reference is also made to the appeals procedures through which unions exercise their judicial functions. A final section is concerned with employee choice of bargaining agent and legal provisions for changing or getting rid of the agent.

Admission Practices

The question of gaining admission to a union so that a person can get a job or continue to hold it is today mostly a matter of law enforcement. Under Section 8 (b) (2) of the Taft-Hartley Act an employer cannot be prevented from hiring and retaining an employee who is not admitted to the local union under the same conditions that apply to all other workers. The law, if enforced, is sufficient to guarantee, even under a union-shop contract, that any qualified worker can get a job and keep it at the employer's discretion, provided the worker meets the financial obligation that obtains under a union shop. Union discrimination in refusing to admit an employee may deprive him of certain benefits that accrue to membership, but he is still allowed to work.

While "right-to-work" laws are defended as the means of preventing forced membership, the arguments that the unions use to oppose the laws are seriously weakened if qualified workers are unable to gain admittance. Particularly if union discrimination rests on arbitrary reasons, proponents of "right-to-work" laws can argue that union-security clauses are contrary to the public interest, and have so argued in support of some state campaigns for the laws.[1]

Exclusion from union membership, however, is not a major problem. An analysis of all important union constitutions revealed that the great majority of unions freely admitted all workers within their jurisdiction who desired to join. This was especially true of industrial unions, and many craft unions as well, in which the feasibility of

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[1] Cf. "Labor," Fortune, LIX (March, 1959), 192.

excluding workers would be limited by economic factors.[2]

Most unions have more to gain by admitting workers than excluding them. The unwillingness to expand membership in some craft unions as urban population and the labor force increase has been a factor in the decline of their influence in some cities. The result has been an increase in unorganized craftsmen rather than a shortage of workers. As a rule, exclusion is even less widespread in periods of full employment. In some areas various local craft unions have for years held almost absolute control over their trades, including admission to the trade and job standards. The reasons underlying these closed shops were mentioned in the preceding chapter. There are also unions, especially in the building and construction trades, which persist in issuing work permits in lieu of admission to protect themselves when the labor market contracts. Some locals prefer that locals of the same union elsewhere use the permit system so that the former may keep up their membership roles when members are drawn to a temporary construction project in another district.

Where union membership is completely open, unions may face security problems unrelated to compulsory membership. The union with no control over hiring may find itself admitting as members people whom it regards as undesirable. It is a fairly common union practice, therefore, to place some restrictions on the admission of communists, known agitators, and people serving as spies for rival unions or hostile employers. The union's security is also endangered where an oversupply

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2 Cf. Clyde W. Summers, "Admission Policies of Labor Unions," Quarterly Journal of Economics, LXI (November, 1946), 91.

of labor threatens unemployment for its members. This situation is not unusual in some casual-labor industries where commonly the labor force is largely immobile and persistently underemployed. Conditions on the New York waterfront, for example, have been aggravated by this problem, for, as one survey showed, full-time work in a given period was available for about 20,000 men, while in the same period more than 36,000 drew paychecks for longshoreing work.[3] Such conditions nurture grave disorders and much individual suffering. Because of circumstances like this, the affected unions insist that they have a right to use their influence in allocating jobs and setting standards.

In most places the craft unions have tried to protect themselves by maintaining a reputation for providing contractors with the most competent labor available. This has been achieved through enforcing apprenticeship-training rules, which may also be used as a form of exclusion. While the system can and does lead to abuses, consumers, employers, and workers can benefit by the establishment of craft standards through training. Abolishing the system could wreck many local unions as well as the standards they impose. However, in deciding cases where unions have tried to restrict an oversupply of labor, the courts have tended to protect the rights of the man who seeks a job regardless of his skill or lack of it and to ignore the economic realities of the labor market, rather than limiting

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[3] Cf. "New York's Waterfront," Fortune, XL (December, 1949), 210-13.

themselves to dealing with union abuses of exclusion.[4]

Exclusion for clearly arbitrary reasons is a different problem. Examples of this would include bars because of sex, race, national origin, or creed. Racial restrictions have attracted the most attention, and the problem is not at all peculiar to the South. While the courts have been very vigorous in protecting the right to work in those instances where employment was denied because unions would not admit certain individuals, they have done virtually nothing to break down racial bars to admission so that non-whites may participate in the unions that legally represent them. As was noted earlier, the courts generally act on the assumption that unions are private clubs free to choose their members and keep out unwelcome intruders. Clyde Summers makes the following comment on this legal assumption:

> Thus the absurd result that unions which have the power to govern are free to deny the franchise to those governed. The right of an individual to join the union which acts as his bargaining representative is the right to participate in his government, and should be protected as

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[4] Cf. Clyde Summers, "Union Powers and Workers' Rights," Michigan Law Review, IL (April, 1951), 822-23. It should not be overlooked that unions are not alone in restricting admission to their line of work. Numerous tests and licenses are required by law in many occupations. The following comment is indicative: "Codes which profess to protect the public against incompetence, have been instrumented by the requirement of a license for the practioner. To this end, boards are set up composed of persons skilled in the craft, and examinations are required of initiates. The net effect of it all is that the would-be-tonsorial artist, beautician, mortician, or realtor must win entrance to the profession from an official body whose personal interests lie in his exclusion. The array of trades which have been able--through invocation of state control--to close their ranks against those who would break in is large." Walton Hamilton, The Politics of Industry (New York: Alfred A Knopf, Inc., 1957), pp. 55-56.

such.[5]

Most courts, however, have continued to rule that racial exclusion from a union certified by a government agency as exclusive bargaining agent does not violate any law or any provision of the Constitution. According to a 1957 decision of a federal district court in Ohio, racial exclusion by an agency of the federal government would be an unconstitutional deprivation of liberty and property without due process of law, but a labor union is not such an agency, the court said, and the affected employees have no relief except in new legislation.[6]

Union discrimination because of race has been particularly evident in some of the railroad brotherhoods and in several of the older, well-entrenched skilled-craft unions. Mostly at the insistence of the C.I.O., the AFL-CIO merger convention adopted a civil rights clause in the federation's constitution. This policy has received strong backing from the leaders of the federation, but it has not filtered down to the local level in many areas where segregation has been the traditional practice. The railroad brotherhoods, meanwhile, have proceeded, for the most part, to delete the segregation clause from their constitutions, under threat of penalty by states such as

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[5] "Union Powers and Workers' Rights," Michigan Law Review, IL (April, 1951), 823. For a discussion of legal cases of racial discrimination in unions, cf. Charles O. Gregory, Labor and the Law (2d rev.ed.; New York: W. W. Norton & Co., 1958), pp. 329-40; Paul Sultan, Right-to-Work Laws: A Study in Conflict (Los Angeles: Institute of Industrial Relations, University of California, 1958), pp. 98-103; Ernest T. Kaufman, "Labor Law: Union Membership Denied on the Basis of Racial Discrimination," Wisconsin Law Review, MCMLVIII (March, 1958) 294-311; Sylvia B. Fresser and Burton L. Fundler, "Discrimination in Union Membership: Denial of Due Process under Federal Collective Bargaining Legislation," Rutgers Law Review, XII (Summer, 1958), 543-58.

[6] Oliphant v. Brotherhood of Locomotive Firemen and Enginemen, 156 F. Supp. 69 (N.D. Ohio, 1957); cert. denied, 355 U.S. 893 (1957).

New York which have Fair Employment Practices laws.

American unions, in particular, the industrial unions, have done much to break down the barriers to working together on the same job by people of different races, creeds, and national origins, even in areas where considerable efforts are otherwise exerted to maintain strict boundary lines.[7] The nondiscrimination policy has been adhered to by many unions even under threats of serious membership loss and hindrance to further organization, especially in the rapidly industrializing South where racial tension has developed into a formidable obstacle to the unions.[8] Nevertheless, the fact remains that if the union's voice in hiring was lost, Negro workers would benefit more than any other group to the extent of gaining entrance to some skilled trades and other occupations previously almost completely closed to them.[9]

Expulsion Practices

Union practices in respect to the expulsion of members have been drawn into the "right-to-work" controversy just as have admission practices. While the rejected applicant may be denied a hoped-for benefit, the expelled worker may lose a property interest attached to

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[7] Cf. Leonard R. Sayles and George Strauss, The Local Union: Its Place in the Industrial Plant (New York: Harper & Br s., 1953), p. 221; Emmet John Hughes, "The Negro's New Economic Life," Fortune, LIV (September, 1956), 256, 258.

[8] Cf. The Wall Street Journal, February 6, 1957, pp. 1, 14; ibid., December 2, 1957, pp. 1, 12; "South's Tension Seizes Labor," Business Week, April 14, 1956, pp. 47-50.

[9] Cf. "Labor," Fortune, LIX (March, 1959), 192.

membership, such as insurance or a pension. The expelled member may seek redress in the courts, but he will find them reluctant to intervene, and when they do, they often base their judgment on the union's conformity to its own constitution and by-laws. Furthermore, recourse to the courts is always expensive.

Under the Taft-Hartley Act, expulsion from a union except for nonpayment of dues and fees cannot be a cause for discharge from employment under a union shop. A skilled worker in a highly organized trade, however, may find that the loss of his union card actually deprives him of his opportunity to earn a decent living. Not only does he face a downgrading of status and the loss of welfare benefits if these are determined in the contract to apply only to members in good standing; he may also suffer social ostracism. He is also deprived of a voice in formulating the policies and actions of his bargaining agent should he stay on the job. To turn over to the expelled member the cash surrender value of his insurance fund will not be an adequate recompense, Clyde Summers notes, if the man is too old or unhealthy to obtain other insurance.[10] His age may also hinder him from finding another job, if he feels constrained to look elsewhere, even if no union exists there.

Examples of union expulsion have often been cited as a reason why unions must be denied the right to bargain for union-security clauses in their contracts. The legislative history of the Taft-Hartley provision limited discharge from employment for nonmembership is copiously

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[10] Summers, Michigan Law Review, IL (April, 1951), 837.

filled with incidents of discriminatory expulsion.[11] Loose and vague wording in union constitutions and by-laws can be interpreted by unscrupulous officers to authorize fines, rebukes, or expulsion for recalcitrance, disloyalty, abuse, or conduct unbecoming a member. Such charges can be triggered by trivial misbehavior or political opposition to leaders.

However, it is silly to believe unquestioningly that the individual member is always right and his union always wrong in such matters. Like any organization, the union must consider its security. Like other organizations that have little choice in determining who joins, the average union has its share of difficult members. It can have sound reasons for wanting to be rid of constant trouble-makers, rabid agitators, obviously disloyal members who attack the union or perpetually promote the interests of a rival union, or grossly careless workers who endanger the lives and safety of their fellows. No organization can justly be denied the right to rid itself of those few whose chief aim in life appears to be to undermine the organization and disrupt reasonable union procedures, or who show no concern for the rights of others.

One of the more frequent reasons alleged as grounds for expulsion centers around support of a rival union or some other action that would undermine the incumbent bargaining agent. American unions have always been sensitive to the threat of dual unionism, and it is not difficult to believe that opposition to union policy on this point

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[11] Legislative History of the Labor Management Relations Act, 1947 (Washington: Government Printing office, 1948), pp. 352-53, 1010, 1062, 1199, 1508.

would be a leading cause of expulsion. Some of the agitation for greater freedom of choice by the employee is often only an argument for individual bargaining in place of collective bargaining. On the other hand, some alarm stems from a fairly common union practice of tolerating no noisome opposition to union officials lest it prove to be devisive.

Many controls over opposition can be established in unions, especially where the wording of constitutions is vague. Examples include some phrases as "malicious injury to a member," "behavior inconsistent with sound union principles," and "behavior opposed to the best interests of the union." One survey of national union constitutions revealed that seventy-four limit criticism of officers and fellow members, fifteen forbid the issuance and circulation of any literature among members without the consent of the national officers, and nine prohibit the organization of groups within the union if they are intended to shape union policy or influence the choice of union officers.[12]

Since expulsion would be a serious blow for many union members, the threat of that penalty can be highly effective in keeping them in line, even though federal law has greatly lessened the effects of loss of membership by preventing discharge from employment. Where expulsion deprives the worker of property interests, however, the power to expel still calls for discretion on the part of union officers to prevent abuses. Although unions today seldom use their authority to expel, they ought to limit it to serious violations of trust and not

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[12] Clyde W. Summers, "Union Democracy and Union Discipline," in Proceedings of the New York University Fifth Annual Conference on Labor (Albany: Matthew Bender & Co., 1952), pp. 443-46.

simply to compel adherence to union policy as was too frequently done in the past.

Problems of this nature are closely related to the practice of union democracy and they will stand out more clearly in the light of the following discussion.

Union Democracy

While union admission and expulsion practices are directly related to the question of union security, much more attention in the "right-to-work" controversy has centered about the freedom of workers who are here and now living and working as union members. Many proponents of the open shop argue, or at least imply, that millions of union members are virtually enslaved, deprived of basic rights, and subjected to the dictates and whims of union leaders over whom they have no control. Many proponents of the union shop, on the contrary, contend that while abuses are clearly evident in some unions, there is generally no essential conflict with the freedom of union members, and if some freedom is lost through individual restraint, it is more than repaid by the gains attainable through cooperative action.

Both sides appeal to union democracy in support of their arguments, one denying that it exists, the other maintaining that the labor movement is founded on democractic principles. Despite the opposition of these two sides on almost all other grounds, they agree, as would be expected in the United States, that democracy is essential for good unionism. Almost everyone holds that democracy in unions establishes a system of government under which the dignity and freedom of the individual person is best safeguarded, for it provides the means

of participating through voice and vote in the decisions that affect the worker's life and livelihood. It is also agreed that through the exercise of democractic rights the worker lays the foundation on which to develop his self-respect and promote his own interests and destiny. Though he grants powers to elected officials, they are accountable to him, since he holds the ultimate power through his vote. While it is recognized that the system at times may not be as efficient as a dictatorship, it does guarantee his survival as a free man.

Given these ideals, it can be expected that people inside and outside the labor movement will measure the performance of unions by democractic standards. Thus one authority remarks:

> In its origin and function the labor union purports to be an instrument of democracy. It usually comes into being as a protest against managerial decisions in an authoritarian industrial structure where power is concentrated at the top and employees either follow orders or are dismissed. The union, by introducing collective bargaining brings an element of democracy into industry. In a society in which democratic values are widely accepted and stressed, this appeal is an important one; should the union prove to be undemocractic, its moral position is weakened, just as its claim to represent the interests of its members is suspect.[13]

People expect to find under democractic practice not only majority rule but the protection of minority and individual rights as well.

Of course some basic differences between political democracy and industrial democracy have to be faced. Under American political philosophy each person has one vote and can exercise equal influence

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[13] Joel Seidman et al., The Worker Views His Union (Chicago: The University of Chicago Press, 1958), p. 185. This is substantially the same reasoning offered by Clyde W. Summers in a report and statement of policy he prepared for the American Civil Liberties Union. Cf. Democracy in Labor Unions (New York: American Civil Liberties Union, 1952), p. 4.

on the policies of government. Such equality does not exist in the economic environment, where influence is not determined by votes but by wealth and income. To equalize economic influence would mean a radical transformation of the economic order. Democracy still has a place in the economic system and in union practice, but these differences account, in part at least, for the problems encountered in measuring industrial democracy by the standards of political democracy.[14]

The difficulties that have troubled the labor movement in applying democratic principles cannot all be attacked as if they were solely the product of evil men's minds, nor can they be easily corrected by the enactment of more laws. Legislation can admittedly help. Of particular moment here, however, is whether a "right-to-work" law can restore democracy or correct the abuses where democractic norms have not been observed, and whether that law satisfies the needs of employees who may be deprived of their rights. To answer these questions the following discussion surveys the practice of democracy in unions, its failures, and the causes of those failures.

The democratic standards which should prevail in unions are clearly set forth in one of the ethical codes recommended for all affiliates by the AFL-CIO's committee on ethical practices.[15] The code declares that each member should have the right to full and free participation in union self-government and the right to fair treatment in the application of union rules and law. Moreover, each member

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[14] Cf. Sultan, pp. 110-11.

[15] AFL-CIO Codes of Ethical Practices (Washington: AFL-CIO, 1957), pp. 41-45. Cf. Arthur Goldberg, "The Rights and Responsibilities of Union Members," AFL-CIO American Federationist, LXV (February, 1958), 15-18.

has the responsibility (a) fully to exercise his rights of union citizenship and (b) loyally to support his union. There should be regular conventions, open to the public, not less than every four years. Officers of the Federation and each affiliate should be elected, by referendum vote or by vote of delegate bodies, in free, fair, and honest elections with adequate internal safeguards.

In the local unions, the code continues, membership meetings should be held periodically with proper notice of time and place. Election of officers should be democratic, and their terms should be of reasonable length, not to exceed four years.[16]

The final section of the code deals with disciplinary matters. The Federation and its affiliates should have power to initiate disciplinary and corrective proceedings with respect to local unions, to ensure democratic, responsible, and honest administration, including the power to establish trusteeships where necessary. Such power should be used sparingly, and in accordance with the constitution, and autonomy should be restored promptly upon correction of the abuses requiring trusteeship. Where union constitutions do not agree with these provisions, the code says, they should be changed to comply with them.

The code necessarily presents a minimum standard applicable to all types of unions and yet provides a norm for evaluating the degree of democracy within a union. Perhaps it leaves many things unsaid, which may be due to a realization that democracy must come basically from within the organization as determined by the members

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[16] The Labor-Management Reporting and Disclosure Act of 1959, Section 401 (a) and (b), provides that officers of national unions shall be elected for terms of not more than five years, and officers of local unions for terms of not more than three years.

and cannot be successfully imposed from without. Thus the code does not go into detail regarding the determination of union policy.

Where the deprivation of individual rights of members is alleged to have occurred and a complaint is filed before a court, it has usually been court practice to assay the complaint in the light of the union's constitution and laws, on the theory that union membership involves a contract between union and member. This norm sometimes introduces an aura of unreality into the proceedings, for, rightly or wrongly, internal union practices are often determined as much by traditions, customs, and practical considerations as by constitutions. In many unions the members have willingly yielded unconstitutional powers and privileges to their leaders rather than be burdened with the responsibilities of self-government.[17] In many local unions, on the other hand, elections are conducted, for example, before strikes, and other democratic procedures are followed by custom or instinct even though the union constitution is silent on the matter.[18]

The formal structure of unions as delineated in their constitutions is, for the most part, democratic. However, the loose and vague wording of many of these documents allows for broad interpretation, and many contain clauses which can be severely restrictive of

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[17] Cf. Joseph Kovner, "Union Democracy," in George W. Brooks et al. (eds.), Interpreting the Labor Movement (Madison, Wis.,: Industrial Relations Research Association, 1952), pp. 87-88.

[18] Cf. George Strauss and Don Willner, "Government Regulation of Local Union Democracy," Labor Law Journal, IV (August, 1953), 53.

individual rights.[19]

The right of members to participate in their union's policies is particularly clear-cut if the union is recognized as a form of government of employees. This view, however, strikes some proponents of "right-to-work" legislation as very dangerous nonsense.[20] Nevertheless, employees are members of a community which has its own rules, regulations, and customs. The organization is allowed to exist and is given wide authority by the civil government. Some kind of ruling authority and orderly procedure must rest in the organization if it is to function effectively. Accordingly, one authority on the labor movement describes the union's role as follows:

> A union, in bargaining, acts as the representative of all workers within an industrial area. It weighs alternatives and determines policies which vitally affect all those whom it represents. It negotiates a contract which becomes the basic law of that industrial community. In making these laws, the union acts as the workers' economic legislature. After the laws have been made, the union is charged with their enforcement, and through its grievance procedure helps judge their interpretation and application. It is the worker's policeman and judge. The union is, in short, the employee's economic government. The union's power is the power to govern. Only if we fully appreciate this cardinal fact and keep it clearly in mind can we critically evaluate the rights which an individual should have within the union.[21]

From the very nature of unions great differences of opinion

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[19] For an analysis of the main provisions of the constitutions of 194 American labor unions, see the Handbook of Union Government, Structure and Procedures (New York: National Industrial Conference Board, Inc., 1955). Each of the constitutions is summarized in a companion study, Sourcebook of Union Government, Structure and Procedures (New York: National Industrial Conference Board, Inc., 1956).

[20] Cf. James R. Morris, "Compulsory Union Membership and Public Policy," Southern Economic Journal, XVIII (July, 1951), 73; George Ross, "The Right to Work," Labor Law Journal, I (January 1950), 295.

[21] Summers, Michigan Law Review, IL, 815-16.

are certain to be found among the members as to objectives, policie the handling of union affairs.[22] Some of these matters, wage polic example, call for experience, considerable ability, and take more time and effort than most rank-and-file union members can be expected to have or want to give. Other matters, and even some wage matters, often involve value judgments, as Clyde Summers notes, such as whether to strike or settle for less, or how to divide wage increases among different groups. These decisions are amenable to the democratic process for reconciliation of conflicting interests and values.[23] There will be disagreements, of course, no matter what action is taken, but democracy has never meant that a unanimous vote must be had on a question before the organization can act.[24]

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[22]For a description of the many possible areas of disagreement, cf. Summer H. Slichter, The Challenge of Industrial Relations (Ithaca: Cornell University Press, 1947), pp. 100-101.

[23]Clyde W. Summers, "Democracy in Trade Unions," The New Leader, February 10, 1958, p. 8.

[24]Even when unions are concentrating on their primary function of collective bargaining, one can expect to hear of disagreements within a union on the choice of contract goals. Some members may violently disagree with the proposed size of the negotiated wage increase. To give each member his own way would place both the union and collective bargaining in a state of chaos and anarchy. The necessity of avoiding this threat ought to be recognized by those supporters of individual bargaining or individual rights who decry the union's decision to accept a ten cent increase in a pension fund instead of adding directly ten cents to the hourly wage, even if it is viewed as a compulsory participation in a private insurance organization. Again, reliance must be placed on the democratic nature of most unions whereby negotiators bargain for things they know are acceptable to the majority of members. If most members believe they are better off with "fringe benefits" than direct wage payments, the minority who disagree and outsiders ought at least to be pleased that democracy is working. Of course, fringe benefits were partly a result of the wage-stabilization conditions of wartime. But more than that, many workers saw that they could not save enough money to provide for health and pension plans. One writer emphasizes this when he says it was obvious to the workers "that by pooling a little money for each worker into one big common fund you could finance all kinds of things that would have been impossible by simply giving a little more money to each employee on an individual basis. This relies on the basic principle of all insurance, or the basic fact, that at any one time only a relatively few people are sick and even fewer die from their sickness. Given these simple truisms, it was inevitable that the labor movement should move onward and upward from wages and hours to paid vacations, holidays, sick leaves, maternity benefits, hospitalization, surgical benefits, pensions, and life insurance." John C. Cort, "Creeping Capitalism," The Commonweal, February 14, 1958, pp. 507-508.

Many students of the labor movement, however, agree that the unions could make democracy more effective if the legitmacy of opposition within unions was more clearly recognized and provision made for opposition groups to address the membership. One study makes the following comment:

> It is generally recognized that, if a society is to be democratic, citizens sharing a similar point of view of social issues must be free to unite into political parties, propagandise for their ideas, and present and support candidates in elections. Though the process often seems to involve more shouting than wisdom, more mudslinging and abuse than reasoned argument, no better way has yet been devised to make democracy work. We believe that similar considerations hold for the union, and that a faction in opposition to the union administration is no more disloyal to the union than a minority political party is to the state. Democracy is as important to a union as efficient administration or effectiveness in striking or bargaining, and ways must be found to reconcile these objectives.[25]

By far the most notable example of the functioning of opposition groups within a union has been that of the International Typographical Union. Its successful functioning under a two-party system has been virtually unique among American trade unions. The authors of an exhaustive study of this particular union note that union leaders generally justify the suppression of opposition on the grounds that unions are organized for political or industrial conflicts, that their membership is more homogeneous in background and interests than is possible in civil society, and that internal conflict only aids the enemy. As an aside, the authors remark that these arguments bear a similarity to the Russian defense of dictatorship, which says that no

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[25] Seidman et al., p. 271. For a valuable survey of the literature on union government, see Daisy L. Tagliacozzo, "Trade-Union Government, Its Nature and Its Problems: A Bibliographical Review, 1945-55," The American Journal of Sociology, LXI (May, 1956), 554-61.

basic conflict should exist within the organization because all the members are workers with common interests and objectives.[26]

Many think that members' interests are not that similar, and some provision should be made to express opposition in an organized way, either through delegates or by direct voice. This result is accomplished to some extent through membership voting on whether to accept the negotiated contract and on other issues, and negative votes are not at all rare. In fact, many union leaders complain that it is more difficult to put over to the rank and file what the leaders believe to be an acceptable contract, or the best obtainable, than it is to get strike authorization when a satisfactory contract is not obtained.[27] Secret votes on these matters, however, do not necessarily imply the full freedom of dissent, criticism, and opposition that are to be found within a democracy.

Because the two-party system is so rare in trade unionism, some authorities have wondered if this standard should be sought, since democracy has flourished in some unions without it. Dr. Philip Taft, for example, stresses that unions, unlike civil governments, are so essentially one-purpose organizations that disagreements will not run deeply enough to create serious divisions.[28] Dr. Clark Kerr has observed

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[26]Seymour Martin Lipset, Martin A. Trow, and James S. Coleman, Union Democracy (Glencoe, Ill.: The Free Press, 1956), pp. 11-12. A summary article of two-party democratic procedures in the I.T.U. can be found in Seymour M. Lipset, "Democracy in Private Government: A Case Study of the Industrial Typographical Union," British Journal of Sociology, III (March, 1952), 47-63. Cf. Philip Taft, The Structure and Government of Labor Unions (Cambridge: Harvard University Press, 1954), pp. 52-64.

[27]Cf. Herbert S. Parnes, Union Strike Votes (Princeton: Industrial Relations Section, Princeton University, 1956), p. 62.

[28]"Internal Characteristics of American Unionism," The Annals CCLXXIV (March, 1951), 38.

that most organizations are actually ruled by one-party governments, be they corporations, political parties, fraternal orders, religious denominations, farm organizations, welfare groups, student governments, or labor unions. Unions tend to be this way with very few exceptions, Kerr thinks, partly because of the need of unity in the face of external resistance, partly because of the control the leaders exercise, but perhaps mostly because the conflicts within unions do not last long enough to lead members to line up in parties for an extended period of time. The conflicts that arise over the handling of grievances or contract negotiations are usually temporary and lead to no more than the rise of factions or leadership rivalry, but not to a two-party system. The only serious exception, Kerr remarks, is that caused by differing ideologies, which tend to split unions rather than to create parties within the union. American unions which were infiltrated by Communists and many European unions give evidence of this tendency to split over ideological differences.[29]

While Americans are accustomed to think of two-party government as necessary for democracy, it has been observed that democracy can be just as effective under one-party government where sufficient protection exists to offset its inherent dangers. It is Kerr's opinion that union officers are commonly regarded by members as men hired to represent them. The officers' accomplishments are constantly open to review, and if a sufficiently large faction of the membership becomes dissatisfied, the officers, in effect, are fired by means of a competitive election. Under a two-party system, according to Dr. Kerr, an election

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[29] Clark Kerr, Unions and Union Leaders of Their Own Choosing (New York: The Fund for the Republic, 1957), pp. 12-13.

would involve a choice of the better person. As the situation now exists in many unions, the election determines whether or not the incumbents should be fired. If they lose the election, they usually feel they have been discharged and seldom seek election again.[30] Thus Kerr concludes:

> If trade-union democracy is defined as a system of government where the supreme power is largely retained by the members and can be exercised by them in an emergency at any and all levels, then the effective right of competitive discharge, by itself, is a sufficient basis for trade-union democracy. The essential feature of a trade-union constitution is whether it guarantees this right of competitive discharge. This is the most we can reasonably expect, and it is also probably enough.[31]

By this standard many unions, both national and local, might be judged to be relatively democratic. Officials of unions are certainly responsive to the pressures and influence of the rank and file, although influence is not the same thing as participation.[32] Philip Taft makes this comment:

> Many members may not regard the normal business as of great importance, but as soon as issues affecting their interest arise, the membership has the means, in most instances, to impose its will upon its officers. Anyone who has observed negotiations with employers or acted as an arbitrator knows that union officers are highly sensitive to the wishes of their members, and frequently show genuine fear of thwarting their will.[33]

There is another feature of union practice to which members attached great weight in evaluating the union's interest in protecting individual rights. The rank-and-file member is most concerned about

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[30] Ibid., pp. 17-18.

[31] Ibid., pp. 18-19.

[32] For corroboration of this opinion, cf. Slichter, pp. 111-113; Seidman et al., p. 185; Sayles and Strauss, p. 189.

[33] Taft, p. 100.

his rights in his own day-by-day work. The way in which the union handles his grievances is to him the best measure of the union's effectiveness and interest in his rights. It is generally agreed that processing worker-grievances is the union's most important function once the contract is signed, and it is a function with which the employee is in constant contact and the public is not.[34] The grievance procedure is a job which the union's national headquarters ordinarily cannot handle, but which most local union leaders work at assiduously, if they wish to stay in office. The importance of this aspect of union democracy ought not to be underestimated, although it is one with which people outside unions are little acquainted.

The low attendance of members at union meetings has also been cited as evidence that many members do not like their unions and are members only because of compulsion. Studies of this problem do not support the thesis that poor attendance is correlated with dictatorial control and the absence of democracy. Poor attendance, of course, can indicate that members know that issues brought before meetings have been decided beforehand by an inside clique. It can just as well be a sign that members are in close touch with each other about union affairs in the shop society through which they receive adequate information the next day from an informal representative or steward who has attended the union meeting. Small attendance can point to satisfaction with the union's functions and accomplishments, rather than the opposite. If important issues are to be decided at a meeting,

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[34] Cf. Neil W. Chamberlain, Collective Bargaining (New York: McGraw-Hill Book Co., 1951), pp. 96-119; Barbash, pp. 191-204.

attendance often increases greatly, though even then the matter may have been discussed so thoroughly on the job that members know how the vote will go, whether they are present or not.[35]

The importance of the shop society for democratic participation should not be discounted. Union matters are a common subject of conversation there. Those who do take an active interest in the union often serve as representatives of the whole section or department of the shop.[36] For factory workers the shop or departmental meeting is more important for their interests than the union meeting.[37] However, if the leadership of the local union begins to fail in its responsibility or the members learn of corrupt or shady dealings, it is not unusual for them to become aroused and elect new officers. Outside of these circumstances the lack of democracy seldom causes much excitement, either among the membership, or among the employers if the union is reasonable in its negotiations, or among the general public if strikes are not called too frequently. The unions, in fact, often seem to reflect rather well the prevailing attitudes of citizens in general toward social and political participation.[38] There is little reason to believe that some appropriate means can be devised or laws enacted to

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[35]Cf. Joseph Kovner and Herbert J. Lahne, "Shop Society and the Union," Industrial and Labor Relations Review, VII (October, 1953), 4-11; Philip Taft, "Internal Characteristics of American Unions," The Annals, CCLXXIV (March, 1951), 99; John R. Coleman, "The Compulsive Pressures of Democracy in Unionism," The American Journal of Sociology, LXI (May, 1956), 524-25; Arnold S. Tannenbaum and Robert L. Kahn, Participation in Union Locals (Evanston, Ill.: Row, Peterson & Co., 1958), pp. 53-54.

[36]Cf. Kovner and Lahne, p. 4; Tannenbaum and Kahn, pp. 67-68.

[37]Cf. Kovner and Lahne, p. 8; Seidman et al., p. 191

[38]Cf. Lipset, Trow and Coleman, pp. 230-231; Coleman, p. 523; Strauss and Willner, pp. 521-22.

bring about mass participation in organizational affairs.

Nonetheless, the almost total absence of democratic procedures in some unions, as clearly exposed in the hearings conducted by the Senate Select Committee under Senator John L. McClellan, stirred up enormous public alarm. There is no doubt that the worst abuses are confined to very few, although important, unions. Some questionable practices, however, are more general.

While the AFL-CIO code on democratic processes calls for full and free participation by members, scarcely any satisfactory provision has ever been worked out to guarantee effective opposition within a union, especially at the national level. This is a wider problem than those blatant examples of denying great numbers the right to vote or of fraudulent counting of votes. Even some clean, respected unions have tolerated no opposition in the election of major officers. Where opposition candidates do appear, they are handicapped by lack of political experience and by the need of large sums of money to get their names and platforms before a nation-wide membership, since they are seldom given opportunities to use the union newspaper and in some unions are not even permitted to circulate literature without the permission of the incumbent president. The incumbents have also had the opportunity to build a loyal political machine through the many favors and patronage at their disposal. Some unions have also given their presidents tremendous power to crush dissent. There is little doubt, too, that Clyde Summers is quite correct in his observation that the cult of personality has been fostered in some unions, so that the union and its leader become identical. He takes on the appearance of the indispensable man,

so that to attack him is to attack the union itself.[39]

The convention is the highest body in unions and is supposed to provide the surest opportunity for membership control. Many union constitutions have precise rules for assuring fair selection of delegates. Others have unexacting procedures which permit the possibility of minority control or undemocratic manipulation. For many unions more than two years elapse between conventions.[40]

Between conventions the executive boards are ordinarily the ruling body of unions. In some national unions these boards have extensive powers, as has been noted in the following excerpt from a Labor Committee Report of the National Planning Association:

> In some cases, but by no means all, the executive board not only controls strike action, collective bargaining, and charters, but also has authority over the constitution and the hiring and firing of local officers. The executive board may even direct the affairs of a local when that seems desirable, including the hearing of appeals on claims and grievances from locals and other subordinate bodies. Finally, the executive board chooses auditors for the preparation of a financial report to the convention, supervises the publication of the official journal, and levies assessments in conformity with the constitution.[41]

In actual practice, however, the president of the national union usually has the supreme power. He usually controls the executive board and can dominate the convention by appointing the convention committees; he or the board usually appoints the national representatives to each local; he has control of the union communication system;

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[39]Summers, The New Leader, February 10, 1958, p. 10. Cf. Aovner, pp. 84-86.

[40]Cf. Leo Bromwich, Union Constitutions (New York: The Fund for the Republic, 1959), pp. 9-10.

[41]James S. Carey, et al., Trade Unions and Democracy (Washington: National Planning Association, 1957), pp. 17, 18.

and he has a staff dedicated to his interests.

Thus opportunities are present for national union leaders to insulate themselves from loss of power if they wish. They may do so because they like the prestige and status of their office with its material and psychological benefits. To lose the office would probably mean a return to much lower status and a type of work for which the leaders are often no longer fit. Although very dependent on their followers' loyalty, the leaders may well find that the more democratic the union, the less secure are their positions.

The fact cannot be ignored that many union leaders have risen to the top because of remarkable competence and sheer ability, which is great enough to maintain them in office for long periods. But the power of the top officers also aids them in holding their jobs for life or until retirement, despite the formality of an election every few years. Their role has certain similarities to that of corporation heads who, as hired executives, are fairly secure in their jobs unless grave charges of mismanagement are brought against them--charges of such a nature that widespread dissatisfaction stirs a revolt. Otherwise, attempts to unseat such union officers by dissident groups who do not have control of the organization machinery, newspaper, or assets seem to have about as much hope of success as do proxy fights to unseat corporation officers. Care must be taken to avoid generalizing, however, for even at the national level numerous unions have experienced a frequent turnover of their top officials, a fact that is often overlooked because of the dictatorial practices of some of the best known

unions and leaders.[42]

Laws and union constitutions do not guarantee democratic procedures. The deprivation of individual rights, the fear imposed upon members, the looting of union funds, the crass dealings and conniving of union leaders with management representatives, the domination by national unions of their locals--all brought out in hearings before the McClellan committee--have been practices of some unions with constitutions setting forth democratic standards. Even so vehement a critic of union power as Sylvester Petro does not believe that the answer to these practices lies in statutory insistence upon democratic forms. Pointing out that some unions are well run and that detailed regulation of internal union practices would be impossible to enforce, he says that the well-run unions probably would be hurt more than the bad unions would be corrected. Petro sees the root of the evil to be clearly in the compulsory features of union membership. Consequently, he believes the only way to make unions clean is to give members the right to refuse to pay dues to those who abuse them.[43]

While compulsory membership has been used by those who have something to gain by restricting the practice of democracy, other forces and circumstances may be present which hinder democracy in unions, even when employees are free to accept or reject union membership. Some of these problems need to be noted.

It has been pointed out, for example, that unions have not

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[42]For a careful study of union election patterns, cf. Taft, The Structure and Government of Labor Unions, pp. 35-64.

[43]Sylvester Petro, Power Unlimited--The Corruption of Union Leadership (New York: The Ronald Press Co., 1959), pp. 288-89.

come from a democratic environment. They appeared as a response to a hard-headed, profit-seeking business environment where stress was on efficiency, low costs, productivity, and obedience to management directives, not on democracy, freedom of protest, or individual participation.[44] Speaking of unions in England, V. L. Allen says bluntly: "The end of trade-union activity is to protect and improve the general living standards of its members and not to provide workers with an exercise in self-government."[45]

It has been further observed that the business climate in which unions arose was usually hostile to organization. Successful organization and survival, therefore, have often required tight discipline. There remains the ever-present possibility that collective bargaining will lead to a deadlock and a resort to economic force. When rival unions also stand nearby to take advantage of any division or schism within a union, internal conflict seems to pose a real threat. The fact that strikes have not infrequently been broken by importing strikebreakers and enticing union members to break ranks is of paramount significance in explaining why many unions have tended to restrict internal opposition even when they were alone in their jurisdiction and feared no threat from a rival union. A report of the American Civil Liberties Union surveyed these conditions and said: "The state of siege, the cold war, and the strike do not provide a

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[44] Cf. Summers, Michigan Law Review, IL, 817.

[45] Power in Trade Unions (London: Longmans, Green & Co., 1945), p. 15. The author is speaking of unions where members are free to come and go. Where membership is compulsory, he states that the government has to take an active interest to ensure democracy. Ibid., p. 59.

healthy climate for the growth of democratic processes."[46] It is possible that the growth of union power has been a too recent phenomenon for leaders and the rank and file to realize how secure their unions actually are in some industries. It is also possible that a strong, secure union is more apt to establish a climate conducive to internal democracy than is a weak and badly divided union. But where a union is still in a state of siege with an employer, "right-to-work" lawsmay appear to hit at the heart of the union's efforts to establish solidarity and maintain its lines. At that critical period the union is likely to regard democracy as a secondary importance.

Considerable pressure for more union democracy has come from management sources, and certainly some of it has been motivated by a sincere interest in employees' rights. But conflicting interests are not unknown. John R. Coleman has said that the plea for democracy has often been strongest when an employer believed he could gain more conciliatory terms from the local union than from the national union. At other times the employer has found the national union to be more reasonable in its demands than the local leaders. Then, according to Coleman, the plea has been for the national to exercise more control over the unreasonable local union in the interests of responsible unionism. He further remarks that democracy has also been stressed by management during strikes and sometimes ignored when corruption was most pronounced, as an example of which he cites the conditions that once prevailed on the New York waterfront.[47]

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[46] Democracy in Trade Unions, p. 4.

[47] John R. Coleman, "The Compulsive Pressures of Democracy in Unionism," The American Journal of Sociology LXI (May, 1956), 520-21.

Management's part in promoting union democracy has also been viewed from another angle. To prevent unjust and arbitrary discrimination against employees by a union, the Taft-Hartley Act included in Section 9 (a) a provision making it possible for the individual employees to present his own grievances directly to management and bypass his bargaining representative. The right has been infrequently used, perhaps largely because the safeguard has not worked well when tried and loopholes found in the law have further lessened whatever value it was supposed to have. Both unions and management have disliked the provision and have tended to get around it by prohibiting it in the contract. This experience suggests to one author the following conclusion:

> Employers are not always vigilant protectors of individual rights. The employer seeks trouble-free production, not unnecessary disputes. It further suggests that the protection of individual or minority rights is extremely difficult if these rights conflict with the mutual interests of the employer and the union.[48]

The employer likewise has an interest in the ability of the union to maintain discipline on the job. Regardless of how much control management retains, certain controls do pass into union hands. In the matter of grievances, for instance, management rightly insists that employees make use of the grievance system and that the union prevent such tactics as slow-downs or sabotage or unauthorized strikes by its members as a substitute for orderly procedures. Management argues that

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[48]Clyde W. Summers, "A Summary Evaluation of the Taft-Hartley Act," Industrial and Labor Relations Review, XI (April, 1958), 408. Cf. "Report of Committee on Improvement of Administration of Union-Management Agreements, 1954," Northwestern University Law Review, L (May-June, 1955), 187-188.

when a contract is signed the union takes on some obligations to implement its provisions. It is also to management's advantage that the union leadership be centralized and authoritative. This fact leads one commentator to say:

> The keeping of commitments at the work level is a matter of life and death to management. It must price its commodity and be able to make deliveries. If the successive steps in reaching compromises had to go back to the union hall for debate and ratification, one would run the inevitable risk inherent in political hustings--the delays and interruptions that arise from political oppositions and factions.
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> Indeed the intrinsic logic both of union administration and corporate economics makes the practice of "grass roots" democracy within unions almost impossible. Once the management of a corporation and union officials begin to appreciate each other's needs in this respect, there arises some understanding of the range of bargaining limits in a practical world, even though the astute union official will always try to stretch the limit to the utmost, while the prudent company executive will try to stay well within the limits of adding to his costs.[49]

Within the union itself there is the constant necessity of some discipline, which in itself is not incompatible with democracy but which can encourage autocracy. There is a danger, on the other hand, that too much democracy uncontrolled by any authority may undermine the union's position.[50] Some opponents of the union shop insist that the security measure is only a cover for the union to control its members and take away their freedom. Nevertheless, it must be acknowledged that the typical employee is already surrounded by a network of employer discipline through prescribed practices and rules. The union adds more, while at the same time preventing the former from being

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[49] Benjamin M. Selekman, "Trade-Unions--Romance and Reality," Harvard Business Review, XXXVI (May--June, 1958), 81-82.

[50] Some local union leaders whom the author interviewed had strong feelings on this point. They had seen their unions almost paralyzed by members' irresponsibility toward the contract and the conduct of union business.

applied unilaterally. If the contract is breached by union members, the confidence the union enjoys and the whole collective bargaining structure so tediously erected are jeopardized.[51] Union leaders are in no position to discipline those members who, for example, promote wild-cat strikes or slow-downs if management attitudes are hostile to the union. Similarly, the leaders of the union cannot risk separating legitimate from unreasonable grievances if they must always satisfy every member to keep him from quitting. They simply cannot afford to make any concession to a management that encourages employees to leave the union. The emphasis then should not be on whether unions exercise discipline, which they must do, as many employers will agree, but whether democratic procedures are sufficiently guaranteed to make discipline, control, and loss of freedom no more restrictive than necessary or reasonable under the conditions of modern industrial society.[52]

Judging the legitimacy of discipline within unions is rendered more difficult by the remarkable diversity of unions and employment. What appears to be strict disciplinary action in the factory may appear mild when compared to some aspects of unionized nonfactory employment. While nonfactory workers usually have much more freedom to set their own pace or to decide how to do the job, their business agents have

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[51] Cf. Selekman, p. 81.

[52] Cf. Kerr, p. 9. For a brief and helpful discussion of why unions need disciplinary authority, see Taft, The Structure and Government of Labor Unions, pp. 123-25. Taft says: "Not only must unions prevent surreptitious evasion of standards set by the general members, but they must compel obedience to commitments undertaken with the employer. Without rules and the power of enforcement, unions could neither defend their own standards from erosion, nor could they compel the acceptance of terms agreed upon with the employer whenever obedience was unpalatable to a minority of the membership." Ibid., p. 123.

considerably more authority than is customary with their counterparts in the factory. It is the agent's job to enforce the work rules over scattered locations. One student of this type of union organization, which embraces perhaps forty per cent of all union workers in the United States, remarks that in these nonfactory industries contract violations are more common than in the factory. Both employers and employees are apt to ignore or try to evade contract provisions. Because such industries are often highly competitive, the writer continues, business agents are expected by both employers and employees to maintain the standards agreed upon.[53] While a high degree of union democracy is found throughout these industries, they have also been the most susceptible to autocratic union leadership. A nonparticipating membership has advantages for the business agent who likes his job and its authority.[54]

One should not overlook the contradictory demands that are made of unions by the public, demands which, if adhered to, would reduce the organization to a state of schizophrenia. The national union is called upon to be more responsible and business-like in its awareness of management's problems and at the same time to be more democratic, giving the rank and file more freedom by exercising less control at the top. In order to do both, Professor John Dunlop has observed, the unions have had to make "a compromise between the needs

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[53]Van Dusen Kennedy, Nonfactory Unionism and Labor Relations (Berkeley: Institute of Industrial Relations, University of California, 1956), pp. 21-22.

[54]Cf. Ibid., pp. 28-29; Seidman, pp. 224-25; George Strauss, "Control by the Membership in Building Trades Unions," The American Journal of Sociology, LXI (May, 1956), 527-36.

of internal democracy and responsiveness to the membership on the one hand and the needs for effectively confronting employers and responding to their interests in business-like responsibility on the other." A choice has to be made between responsibility to the membership and to the business system. "You cannot have a maximum of both," Dunlop says. There are so many diverse groups to please and deal with in the membership and in industry that "it is sheer demogogery to hold that we can have unions which . . . are highly responsive to the rank and file and at the same time highly responsible and businesslike."[55]

Some of this difficulty in reconciling democracy with union practices follows from the various roles that a union occupies. As an economic institution it is interested in driving a hard bargain for which it needs solid organization. It is also a political institution which needs funds and wants to survive, like all similar institutions. The union also acts as an army, engaged in fighting hostile employers, the public, legislatures, courts, and political officials. Finally, the union plays the role of a social reform movement, attempting, as Paul Sultan says, "to inculcate into its membership recognition of the need for various reforms, ranging all the way from reduced racial discrimination to foreign aid."[56] Democracy may be appropriate for one or another of these roles. It does not fit all of them equally well.

Another force that has worked against union democracy is the trend toward centralization of union authority. This is not so evident

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[55] John T. Dunlop, "The Public Interest in Internal Affairs of Unions," An address before the Section of Labor Relations Law of the American Bar Association, New York, July 12, 1957, pp. 7, 8.

[56] Sultan, pp. 114, 115.

in the nonfactory trades, which are the stronghold of the local union. In these trades the product market and the nature of the work give the local unions their strength.[57] But the development of nationwide markets and corporations in many industries has reduced the influence of the rank-and-file workers in determining what the bargaining terms will be. This trend will be most difficult to counteract. The increasing complexities of the more technical aspects of contracts call for increasingly skilled and experienced specialists. In the final stages of negotiations, only a few participants are present on each side, so that matters may be concluded without too much delaying debate. Both sides must make decisions that they are reasonably sure can be enforced. Appealing to the rank and file is not feasible in many instances.[58] Arthur M. Ross remarks: "To expect a rank-file determination of bargaining strategy is about as plausible as to expect the Government of the United States to conduct its foreign policy through a monthly plebiscite of registered voters."[59]

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[57] Cf. Kennedy, pp. 12-13; Taft, The Structure and Government of Labor Unions, pp. 133-34. Seidman et al., p. 216, discuss the same contrast: "The local leaders are in the strongest position with respect to the national head where they possess economic power in their industries and within the union, measured in terms of functions and finances. Industries that are decentralized in an economic sense, such as construction, retailing, and the service trades, are most favorable to local leaders from this point of view. In such industries, where collective bargaining usually remains a local function, the national office is likely to have only a small percentage of the members' dues and a correspondingly small headquarters staff. In industries where economic conditions foster national collective bargaining or pattern-following, however, the essential bargaining power may be transferred to the national officers, leaving local officers only the less significant functions of applying the contract to local conditions and operating the grievance machinery. Where this happens a larger percentage of the funds goes to the national office, which correspondingly increases the size of its staff."

[58] Cf. Selekman, p. 81.

[59] Ross, p. 39.

Centralization of authority has also become more evident with the merger of the A. F. of L. and the C.I.O. Before the merger, particularly in the A. F. of L., the affiliated unions adamantly resisted any encroachments on their traditional autonomy. But failure to check serious abuses in some unions, an aroused public opinion, and strong resistance to sustained union growth have put pressure upon the national unions to seek greater unity by agreeing to more regulation of internal affairs by the federation in the form of no-raiding agreements, codes of ethical practices, and expulsion of corrupt leadership and corrupt unions. Actually these steps may, under the circumstances, strengthen democracy within the affiliated unions, although the opposite result is also a possibility as supervision moves farther away from the individual members.

An unexpected result of the Taft-Hartley Act may also have been greater centralization. In the opinion of two qualified commentators, the Act, while having some beneficial effects on democratic unionism, has hastened the trend to more control at the top because of the uncertainties and hazards to collective bargaining imbedded in the law, as well as the potential increase in litigation if the national does not protect itself by restricting local control over strikes and contract provisions. As they observe, the centralized control may be necessary to promote the ends of the Act, but it weakens rank-and-file interest which is the real base for democratic activity at the local level.[60]

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[60] Harry A. Millis and Emily C. Brown, From the Wagner Act to Taft-Hartley (Chicago: University of Chicago Press, 1950), pp. 651-52. Cf. Horace B. David, "Receivership in American Unions," Quarterly Journal of Economics, LXVII (May, 1953), 233. For a study of company attitudes, cf. Helen Baker and Robert R. France, Centralization and Decentralization in Industrial Relations (Princeton: Industrial Relations Section, Princeton University, 1954), especially p. 34.

Perhaps the most basic problem in promoting democracy and the protection of individual rights lies in the persistent apathy of the membership itself. Once a union is organized and relatively secure, meeting attendance almost invariably drops sharply. Some local meetings have as high as ten per cent or more of the membership present, but the general average is far less.[61] In some crafts, however, attendance is relatively higher, for the meeting serves the members as a social function as well as a means of learning about new materials and techniques and the economic trends of the trade.[62]

Many factors are at work to produce an unsatisfactory degree of participation. It does not appear to be directly related to the existence of compulsory membership, for the problem is almost universal once the union has stabilized itself, whether or not there is a union-shop contract. It may be due in part to the restraints put on an opposing faction within the union, although various studies make this argument appear to be at least questionable. The decision-making powers in the hands of officers as well as the large size of some unions may be contributory factors. Also to be considered is the fact that despite their esteem for democracy, a great many Americans accept no more than a very passive role in civic life. Active participation, even in presidential elections, is not a notable national trait. It has been pointed out by one author that there is no serious reason for believing that labor organizations will rise significantly above the level of other

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[61] Cf. Sayles and Strauss, pp. 172-78.

[62] Cf. Seidman et al., pp. 186-89.

institutions in the country, either in intelligent participation or democratic control.[63]

One must grant that a man's work-life is essentially more important to him then many of his other interests. But once he is away from the job-scene, other values intervene: family and home responsibilities, for example, and preference for recreation and relaxation, as against getting a late start for home because of a meeting or a long trip back to the union hall. Members generally report that meetings are dull and very long, especially when everyone is encouraged by the presiding officer to speak his piece, and then the meetings seem to consist to a large degree of wrangling and arguments, or of individuals pleading special interests which are of no importance to members in other departments or shops, or in different shifts, age-groups, or skills.

The failure of the majority of members to attend meetings and to participate in union business can be advantageous to an unscrupulous minority or leader. Yet most union officials seems honestly to want a better attendance, for their own satisfaction, perhaps, and also to answer the jibes that poor attendance shows the membership's indifferent attitude toward unions. Certainly the number of extra attractions at many meetings point to an effort to swell attendance. A great variety of good and bad entertainment, door prizes, gifts, free beer, and countless stunts have been tried and generally proved unavailing, to the point of disgust by the leaders, who think that a meeting ought to be for business and not a substitute for television or a circus.

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[63] Joel Seidman, "Democracy in Labor Unions," Journal of Political Economy, LXI (June, 1953), 221.

The problem of membership apathy also explains partially why unions in larger factories request the checkoff of union dues, whereby the employer deducts from an employee's paycheck the amount of dues owed, just as he deducts social security and personal income taxes. As Dr. Orme W. Phelps explains, money is no substitute for morale and loyalty in a union or for the willingness to perform unpleasant union duties, but money is still necessary for the successful functioning of the union. Because of his passivity, and human nature being what it is, the average employee does not look upon payment of his union dues as one of his primary financial duties. In many of the craft trades the unions want their members to come to the business office to pay dues because other contacts with the union are rare. In the large industrial plants, however, dues collection is a major and troublesome burden, since the majority of members do not attend meetings. If collected at the plant, dues payments may cause delays and disputes. Workers say they have not brought extra money with them, or special assessments duly voted at the last meeting have to be explained at great length. In the large metropolitan center, collecting dues at workers' homes is virtually impossible, scattered as they are all over the city and the suburbs. Therefore, a system like the checkoff offers enormous advantages to the union.[64] The Taft-Hartley Act permits it when it has the employee's written approval.[65] Thus both compulsory membership and the checkoff benefit the union insofar as they prevent backsliding and loss of mem-

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[64] Orme W. Phelps, Union Security (Los Angeles: Institute of Industrial Relations, University of California, 1953), pp. 21-24.

[65] Section 302 (c) (4).

bership through nonpayment of dues that could break up the organization.[66]

Management has often been willing to provide the checkoff service. Many companies, too, realize that they have something to gain from it, since the union can request the dismissal of a worker for nonpayment of dues. Good workers from management's point of view are as apt to be delinquent in their dues as anyone else. Consequently, a number of firms believe that the checkoff saves them as much money as it costs them. They also find this procedure preferable to collection by union representatives in the plant which may interfere with production or violate company rules.[67]

In view of all the legislation that has been proposed to make unions more democratic and the signal lack of success of most of it where tried, and especially in view of the widespread belief that more effective democracy will result from a "right-to-work" law, more attention should perhaps be paid to a phenomenon that is said to characterize all American democratic and voluntary associations. Sometimes known as the "iron law of oligarchy," the trait was formalized by a German sociologist, Robert Michels.[68] It is described by Seymour Lipset thus:

> At the head of most private organizations stands a small group of men most of whom have held high office in the organization's government for a long time, and whose tenure and control is rarely threatened by a serious organized internal opposition. In such organizations, regardless of whether the membership has a nominal right to control

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[66]Phelps, p. 6.

[67]Cf. Kurt Braun, The Right to Organize and its Limits (Washington: The Brookings Institution, 1950), pp. 192-98.

[68]Robert Michels, Political Parties: A Sociological Study of the Oligarchical Tendencies of Modern Democracy, trans. Eden and Cedar Paul (Glencoe, Ill.: The Free Press, 1949).

> through regular elections or conventions, the real and often permanent power rests with men who hold the highest positions.[69]

This leadership characteristic is said to appear usually in an active minority of an association as contrasted with the mass apathy of the majority. Regardless of the purpose of a particular association, an active minority is found to be in control. This is true of such open groups as service clubs, consumer cooperatives, or the American Legion, and also of groups where voluntary membership is defined in a more restricted sense, such as labor unions and the American Medical Association.[70]

The problem is probably more easily recognized in the labor movement, for more than any other organization it has been under almost constant surveillance or attack by the public, management, and Congressional committees for its alleged lack of democracy, while union leaders have felt constrained to emphasize their adherence to democracy and the democratic structure of unions. Bernard Barber writes:

> Neither party to the conflict, nor yet the general public, has seen that it is dealing with some general problems of the democratic association. Such understanding might at least mitigate the conflict and might also lead to fuller implementation of democratic values in the trade union.[71]

The techniques of control and the roles of leaders are the same in unions as in other democratic associations. They may be complicated by the large size of unions and the special status problems

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[69] Lipset, Trow, and Coleman, pp. 4-5.

[70] Cf. Bernard Barber, "Participation and Mass Apathy in Associations," in Alvin W. Gouldner (ed.), Studies in Leadership (New York: Harper & Brothers, 1950), pp. 484-86, 496-99.

[71] Ibid., p. 496.

of union officials, as well as by their traditional emphasis on economic democracy.[72] But the tendency toward oligarchic control is no more pronounced in unions than in other associations. Though some regard this as a cynical way to look at unions, the remarkable uniformity of this tendency might well be kept in mind by both legislators and union leaders when trying to preserve and safeguard the undeniable value of democratic procedures and to prevent unions from coming under the control of tyrannical leaders and violating individual rights. If one accepts the validity of the iron law of oligarchy, it would seem virtually hopeless to succeed in getting the inactive majority of unionists to become active, for it would be contrary to all previous experience. Nevertheless, some members might become more active if the restraints on opposition were eased.

It is perhaps true, too, as some writers have stressed, that the union movement today does not bring out a crusading spirit in most members. It is said that the average union member views his union as a business organization and has the same detachment toward it that the average citizen has toward his civil government. He grudgingly pays his taxes or dues but is not interested in politics. If there is a war, he will do his patriotic duty and fight or strike. If there is an election, he will vote, if the issues are dramatically presented, and if it is not too much trouble. Otherwise, he prefers to be left alone.[73]

Some people have argued that another obstacle to active partici-

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[72]Cf. Ibid., pp. 500-502.

[73]Cf. Sayles and Strauss, pp. 236-37.

pation is the size of unions. This is certainly true of a few. Thus the suggestion has been raised that the larger unions be encouraged to consider the possibility of abandoning the alleged ideals of the mass meeting and town-hall style of democracy as being wholly unsuited to the carrying on of business, and that they should turn instead to some kind of representative government. The following excerpt presents one proposal:

> Democracy should best be achieved if workers met for the discussion of issues in relatively small and homogeneous units such as departments, but if the local took action only through a body of representatives, each of whom was chosen by and responsible to a constituency of fellow workers. Those who attend routine meetings, indeed, are usually the stewards and other active members, who legislate with the interest and views of the workers in their departments in mind. It would be a gain if this were recognized and the formal structure of the meeting changed accordingly. Since the functions and authority of the stewards have declined as unions have matured and union-management relations grown more stable and routinized, perhaps the positions might become more attractive and the stewards revitalized if they were given an important place in the legislative structure of the large local. An additional gain would be the safe-guarding of the local against legislation enacted by a special-interest group that packed the meeting or domination by an organized minority that attended meetings regularly.[74]

Some large locals of the Newspaper Guild have successfully tried a system of formal representation.[75] At present most union members seem disinclined toward this system because they want to know there is an open meeting if they should choose to go when some special crisis arises or some special interest of their own is being discussed.[76]

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[74]Seidman et al., pp. 272-73.

[75]Cf. Ben D. Segal, "Some Efforts at Democratic Union Participation," American Economic Review, XLVIII (May, 1958), 55-57.

[76]Cf. Kovner and Lahne, pp. 11-12.

Some opposition would probably arise outside the unions, too, because the program might seem further to entrench union "bosses" in power. Some would say that the plan is cleverly designed to deprive the enslaved worker of the last opportunity left to him to protest, even though for some industrial locals the only place large enough to hold a meeting if all the members turned out would be a major league ball park.

This inconsistency on the part of many who plead for more union democracy while proposing barriers to it is mentioned by Dr. John Dunlop when he points to the Taft-Hartley policy of limiting a union's control over its members to financial matters. This may be a very wise policy, he remarks, but how then can people become excited over the lack of fraternal spirit and membership participation in the union? Dunlop declares:

> The community cannot have it both ways; if we confine the enforceable relationship between the union and its members to periodic dues and the initiation fee uniformly required, then we are not likely to have in very many members a strong fraternal tie nor widespread emotional involvement and participation in union affairs.[77]

Union-democracy problems also include the role of the union leader. It is from among the more active members that union leaders naturally come. Even when they reach the top positions, they must continue to run for re-election, unlike top corporation executives. Political implications are inherent in this procedure. Even the top union leader, despite the appearance of secure and long tenure, has to produce benefits if he wants to continue to hold his office. He must also

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[77] Dunlop, p. 8.

establish a loyal political following. It has been observed that the closer his office is to the rank and file the more intense are the politics.[78]

While outsiders may protest the strength of union officials, the political process and composition of unions allow only the strong to reach the top. One authority on the labor movement makes the following comment about union leaders:

> The process by which union leaders become leaders and rise in the scale of leadership is combative both in relation to management and within the union. Only the rugged people can survive and get ahead. The short of it is that a union leader has to be toughminded about what he wants and how to get it. He has to have a will to leadership, and to organize for it. And in the process of organizing for leadership no detail is so small that it cannot have political implications for the union leader.[79]

These qualities do not mean that democracy is necessarily lacking, any more than the long tenure of officers and the one-party system do. Particularly at the local level many of the elements of democracy prevail in the labor movement. Exceptions, of course, are well known, especially where corruption has been rampant. In the craft unions, where democracy on the national level often seems to flourish, the locals are more apt to be dictatorially run. Their business agents are in an advantageous position to build little political machines and dispense jobs and favors to their followers if they so choose.[80]

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[78] Jack Barbash, The Practice of Unionism (New York: Harper & Brothers, 1956), pp. 368-69.

[79] Ibid., p. 371.

[80] Cf. Seidman et al., pp. 216-17; Kennedy, pp. 12-14.

The typical local labor leader, however, has to have some dedication to the movement. While he may enjoy his role, it often demands considerable sacrifice of family and social interests. The financial compensation is little if any at all for many local leaders, and not infrequently they tire of the conflicts and headaches associated with the job and resign or urge others to run for office.[81] As an elected official, the labor leader needs the continued support of his fellow leaders and the membership. If he does not promote their interests and produce results, he can and does lose power. Not infrequently he finds that the members are demanding more wages and benefits than he believes are feasible. If he fails to press their demands, he stands to lose his job to a nominee who favors a "get tough" policy with management. If he cannot keep the membership in line and adhere to a contract, the union may split or disintegrate. If he is too aggressive and has too much influence, he is accused of being a threat to democracy. Still he has to have power and authority if he is to educate and form opinion and develop responsibility on the part of the members; otherwise, he is not a leader.[82]

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[81] Cf. Kli Chinoy, "Local Union Leadership," in Gouldner (ed.), Studies in Leadership, pp. 159-62. The entire article, pp. 157-83, is an interesting study of union leadership. A study of conflict in one local leader is contained in the same book: John H. Alexander and Monroe Berger, "Grass Roots Labor Leader," pp. 174-85. Cf. a chapter on local leaders in Sayles and Strauss, pp. 99-131; Charles A. Madison, American Labor Leaders: Personalities and Forces in the Labor Movement (New York: Harper & Brothers, 1950); Orme W. Phelps, "Community Recognition of Union Leaders," Industrial and Labor Relations Review, VII (April, 1954), 419-33; George Strauss, "Business Agents in the Building Trades: A Case Study in a Community," Industrial and Labor Relations Review, X (June, 1957), 237-51; Barbash, pp. 367-402.

[82] Cf. Slichter, The Challenge of Industrial Relations, pp. 134-35; C. Wright Mills, "The Labor Leader and the Power Elite," in Arthur Kornhauser, Robert Dubin, and Arthur M. Ross (eds.), Industrial Conflict (New York: McGraw-Hill Book Co., 1954), p. 148.

The labor leader finds himself in other conflict situations as well. He must contend with the unhappy, unwilling, or disgruntled minorities, for some of whom no program will be satisfactory. He may have to satisfy a vocal and active minority at the expense of the inactive majority. He must also placate an indigenous hostility to authority that is commonly found in American life. While most workers do not want to be or lack the ability to be union leaders, they do not surrender their right to criticize or take a stand "against the government." Officials are often suspect just because they are officials, and it is frequently assumed that they have taken the job because of hidden inducements. Resentment of authority is a typical attitude in contemporary life, and it is also found in unions. As Sayles and Strauss have observed, if the union leaders appear to side with the employer or enforce rules agreed to in the contract, the members are disappointed and often suspect a payoff. Some employees will always be offended however the union decides disputes over job evaluation or seniority. Many workers also detest the formality of the grievance procedure, a system with many benefits, not the least of which is the protection it gives officials from charges of favoritism.[83]

In the face of these ambivalent relationships union leaders are sometimes hard pressed to maintain the troublesome forms of democracy, even though they generally recognize the necessity of doing so. However, as one writer expresses it, the leader's position is made tenable by two realities of union life:

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[83]Sayles and Strauss, pp. 231-34.

> (1) Bureaucratic decision-making can apparently be carried on within the framework of a formally democratic organization and
> (2) the pressures for democratic control of the union are so counterbalanced by members' apathy and members' interest in efficiency in decision-making that a minimal degree of democracy will ordinarily satisfy the members.[84]

Because of their own alarm at the bad reputation given to the labor movement by the behavior of some union leaders, officials of the AFL-CIO adopted an ethical practices code which contains norms for leaders that probably conform rather closely to the standard demanded of them by the general public. The leader's role is compared in the code to that of a public servant which calls for a high standard of ethical conduct. While such a standard is certainly desirable, the question arises whether it can be put into practice by tens of thousands of officers at all union levels. Government officials and personnel, as public servants, are expected to live by high ethical standards, both publicly and privately, especially in their dealings with anyone who might gain by compromising a public servant. The same standards are not expected of business leaders, and union leaders are very much more a part of the business community than of the civil government. Even when these standards were not demanded of union leaders in earlier days, most of them did not countenance the outrageous abuses of some leaders disclosed in later Senate investigations. In discussing this question, John Dunlop notes:

> It must be recognized that to adopt the standards of the public official for union officers now is to change in a fairly substantial degree the standards of the older labor organizations. To separate our labor officers and to apply the standards of the public official, or even more stringent standards, to his personal and official life

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[84] Coleman, p. 526.

> involves an ideological uprooting of the union officer from his place as a part of the larger business system.[85]

Probably every other group in society would find it equally difficult to recruit thousands of officials of unblemished character and incorruptible principles who could withstand the most penetrating Congressional investigation. The failure of some cannot be an excuse for indicting the whole labor movement, for to do so would be as unjust as blaming the entire business community, the government, or the church for the failings of some of their leaders.

It is beyond cavil, nevertheless, that numerous union leaders have assumed extremely authoritarian and even ruthless controls over their organization. Since even more common is the practice of stifling formal or informal attempts to establish opposition groups within unions, the question is frequently raised about the kind of protection an individual member has if he is unjustly treated or accused by his officers or fellow-members. The preceding discussion reveals that numerous hindrances to democratic procedures are inherent in union functions which are not typical of democratic governmental units. If a union shop exists in such a situation, does the individual member have no avenue of relief short of a "right-to-work" law, as some contend? Some of the attempts to safeguard individual rights even in the presence of a union shop are worth consideration.

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[85] Dunlop, pp. 10-11. The AFL-CIO Ethical Practices Code IV reads: "In a sense, the trade union official holds a position comparable to that of a public servant." Thus he must accept certain limitations upon his private activities which result from the nature of his services. The Code calls for the strictest standards on any conflict of interest. AFL-CIO Codes of Ethical Practices, p. 28.

Appeal Procedures

Every union provides for some kind of trial and appeal procedure within the organization. A number of unions have detailed provisions in their constitutions to safeguard due process in union trials. Many, however, do not, although this does not mean that they resort to unfair procedures. In either case, however, there is danger of long delay since the accused member is expected to make use of the union's entire appeal system before he can go before a court of law--and the courts have usually upheld this procedure. The last step of appeal is usually to the convention, a meeting that may not occur once in two, four, or more years.

A more common objection to union judicial practices is that prosecutors and judges are selected from and by the same majority power in the union. Either the local or national executive board in many unions has jurisdiction over the trials of members. Where the charge is criticism of officers or disloyalty to the union and its policies, biased judgment is always possible.[86]

Where leadership is corrupt and tyrannical, constitutional provisions, regardless of their content, will probably be of little aid to the accused or aggrieved member. To assert categorically, however, that a union will not handle its own affairs or treat its own members justly and fairly is to dismiss the need a union has of the loyalty of its own members. A provision for exclusively internal union review of charges obviously permits the rise of abuses, but it is unreasonable to

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[86] Cf. Bromwich, pp. 33, 34.

maintain that such abuses necessarily or even commonly prevail.

A serious study of this question has been made by Professor Philip Taft in eight unions embracing over three and one-half million members. The study is worth reading in full.[87] His conclusions, however, sufficiently illustrate the tenor of his report. Taft writes:

> On the basis of the material on appeals, several conclusions can now be drawn. The first is that disciplinary penalties are usually imposed for the violation of trade rules and rather infrequently over issues such as free speech or publication of unauthorized materials. It is difficult for outsiders to evaluate the reasonableness of penalties, but the information does indicate that they are seldom severe or unwarranted. It is obvious that the appellate machinery offers real protection in most unions, and that central organizations do not freely allow unreasonable penalties or unwarranted convictions.
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> The appellate cases also reveal that differences exist within local unions, and that oppositions not only can but frequently do make themselves heard. The number of times elections are questioned or the conduct or decisions of an officer or a local are challenged are signs that the unions not only allow for the existence and expression of differences of opinion, but that members are protected in the exercise of such rights. Initially, a defendant is tried by his own colleagues who work with him on the job and who are often reluctant to penalize by a fine, let alone drive a man out of the union. If convicted and either fined or expelled a member has several appeals, and those who review his case usually are concerned not only with the defendant receiving proper trial, but with the appropriateness of the penalty. Unions have sometimes found that there is a tendency for local members to be too lenient rather than too severe, although the latter is not unknown.
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> On the whole, there is no evidence that the appellate machinery does not function effectively, that it is vain or useless, or that it would be improved by government supervision. Given the special and frequently difficult problems dealt with by unions, the available information shows that their disciplinary machinery functions, on the whole, justly and effectively.[88]

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[87] The Structure and Government of Labor Unions, pp. 117-80.

[88] Ibid., p. 180.

It can be deduced from Taft's study that many unions are quite capable of taking care of their own internal problems in honest and adequate fashion. Some commentators, however, do not share the optimism of Dr. Taft, who is inclined to stress abuses of union disciplinary power and union bargaining strength as constituting more serious problems than violations of internal democracy, which he thinks can usually be handled by existing safeguards.[89]

To meet the objections that union members may be denied an impartial hearing, two unions, the Upholsterers International Union of North America and the United Automobile Workers, have established appeals boards outside the unions to review cases. It has been proposed that this method be adopted by all unions, or that a board be set up jointly by union and employer to hear and decide appeals against arbitrary exclusions and expulsions from unions or jobs and against other allegedly unjust practices. If not done voluntarily, it has been suggested that the NLRB be empowered to handle these appeals cases, provided its staff is enlarged sufficiently to process them with dispatch.[90] An alternative suggestion advanced by some to protect in-

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[89] For statements disagreeing with Taft, cf. Seidman et al., p. 212; Clyde W. Summers, "The Usefulness of Law in Achieving Union Democracy," American Economic Review, XLVIII (May, 1958), 45-46; Bromwich, pp. 30-34. For further discussion of the union judicial system and appeal to the courts, cf. Oscar Ornati, "Union Discipline, Minority Rights and Public Policy," Labor Law Journal, V (July, 1954), 471-79, 528.

[90] Cf. Emily C. Brown, "Needed: A New Start on National Labor Relations Law," Labor Law Journal, IV (February, 1953), 74-75. Some question the wisdom of relying on public review boards, as the two unions mentioned above have done. E.g., J.B.S. Hardman writes: "Ultimately, it is illusory to depend on public spirited citizens to engage en masse in laundering union conflicts. When hundreds of unions turn to that expedient, the business will be professionalized and things will fall in pretty much the same fold." "Legislating Union Democracy," The New Leader, December 2, 1957, p. 7.

dividual rights while safeguarding union leadership and authority is a special labor court that would handle only conflicts that develop within a union between members and officers, or cases where internal union laws have been violated. Since conflicts between the use of power and the exercise of individual rights are bound to occur, this type of recourse might be a better universal safeguard of justice than a hearing and final judgment by the very ones accused of abusing their power.[91]

Other avenues of protection for the individual employee are available under the law if the worker believes his union's judicial system is discriminating against him in his job rights. One of these is his right of appeal to the NLRB. While the number of charges filed by individuals against employers still greatly exceeds those against unions, the number of charges against unions has been steadily increasing in recent years. An NLRB report discloses that in the year ending June 30, 1959, a total of 3,973 cases were filed charging unfair labor practices against unions. Most of these were brought under Sections 8 (b) (1) (A) and 8 (b) (2) of the Taft-Hartley Act. Under the former, covering cases where unions allegedly coerced or restrained employees in the exercise of their right to engage in or refrain from concerted activities directed toward self-organization and collective bargaining, 2,849 charges were filed; under the latter, covering cases where unions were alleged to have caused or attempted to cause illegal discrimination by employers against

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[91] Cf. Hardman, pp. 3-7. One possible difficulty with the labor court is the determination of the limits of appeal. The unions could be harassed constantly by anti-unionists and by every crank who felt he had a grievance against the union. Cf. Jack Barbash, "Some Thoughts on Union Democracy," The New Leader, December 23, 1957, p. 16.

employees, 2454 charges were filed.[92] A number of these cases arose in connection with the signing, maintenance, or enforcement of union-security agreements. Appeal to the Board, consequently, is available to the worker who chooses to use its facilities.

Certain defects may be found in this safeguard provided by law, which cannot be easily remedied by further laws. The possibility exists that a union may engage in discriminatory action on the assumption that the worker will not take the trouble of appealing to the Board. It is also possible that he will be under social pressure from his fellow-workers to refrain from doing so. The chief defect, however, has been the length of time it takes to process a charge to its conclusion. The remedy for this type of problem is adequate funds to staff a government agency charged with the protection of individual rights. Too long delays are, at times, as unjust as no right of appeal at all. Both unions and employers, as well as workers, have sometimes suffered grave injury because of tardy decisions by the NLRB.[93]

Besides appeal to the NLRB, protection of workers' rights also is available through recourse to courts of law. This road, however, has been beset with complications. In the first place, while the Board has

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[92] U. S., National Labor Relations Board, Twenty-fourth Annual Report, 1960, p. 163. A single case may include allegations of violations of more than one section of the Act. Therefore, the total of the various allegations is more than the total cases.

[93] Sylvester Petro also points out the difficulty a worker will meet if the General Counsel of the NLRB refuses to accept his case. He also discusses the almost indescribable confusion that exists in the courts in regard to labor matters. The Labor Policy of the Free Society (New York: The Ronald Press Co., 1957), pp. 265-69. For other opinions, cf. Archibald Cox, "Federalism in the Law of Labor Relations," Harvard Law Review, LXVII (June, 1954), 1297-1348; William J. Isaacson, "Federal Pre-emption under the Taft-Hartley Act," Industrial and Labor Relations Review, XI (April, 1958), 391-404; Gerard D. Reilly, States Rights and the Law of Labor Relations (Washington: American Enterprise Association, Inc., 1958), passim.

refused to take jurisdiction in cases where the impact on interstate commerce has not been significant, state courts were not able to exercise jurisdiction since Congress had pre-empted the field of labor relations in interstate commerce, thus depriving the states of jurisdiction. According to the Supreme Court, a vast "no-man's land" had been created, subject to regulation by no agency or court.[94] The Labor-Management Reporting and Disclosure Act of 1959 ended the "no-man's land" problem by permitting state labor agencies and courts to handle cases rejected by the NLRB as being too inconsequential to affect interstate commerce materially. The same law also permits a union member who claims interference with his rights to sue in the federal courts to recover damages or to get an injunction against the union. Unions are prohibited from interfering with the member's right to sue either the union or its officers or from barring a member from appearing as a witness in court proceedings.[95]

The 1959 law also establishes safeguards for members who believe they have not received a fair hearing from the union. They still may be required to exhaust reasonable hearing procedures established by the union, which now, however, cannot extend over a period of more than four months. Having done so, they may then institute legal or administrative proceedings in any court against the union or any of its officers. The law further provides that no member may be disciplined in any way, except for nonpayment of dues, unless he has been "(A) served with written

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[94] Guss v. Utah Labor Relations Board, 353 U.S. 1 (1957), or, Garner v. Teamsters Local Union 776, 346 U.S. 485 (1953).

[95] Labor-Management Reporting and Disclosure Act of 1959, § 701.

specific charges; (B) given a reasonable time to prepare his defense; (C) afforded a full and fair hearing."[96]

In the past workers have resorted to the courts only infrequently. Unions have generally discouraged their members from appealing to the courts. In fact, some union constitutions have been so worded as virtually to have prohibited such appeal under penalty of loss of good standing. The workers themselves have traditionally distrusted the courts, and those who have gone to court generally risked an uncertain outcome. Furthermore, the costs of litigation have been impossibly high for most workers. They have also met the problem of unending delays and further appeals, so that the remedy of law has often been inadequate or too late to be of value.[97]

Both courts and lawyers have been heretofore rather reluctant to accept such cases. When cases were admitted, the courts tended to decide them as they would contracts, on the theory that a man by joining a union enters into a contract, the terms of which are stated in the union constitution and by-laws. The court then determined whether those terms were complied with, including the use of all the procedures for appeal set up by the union. Though some courts have used a broader base for their decisions, the theory meant, in Clyde Summers' words, "that the law provides no protection of democratic rights within the union

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[96] Ibid., § 101(a)(4), (5).

[97] Cf. Summers, American Economic Review, XLVIII, 47-49.

other than those which the union itself is willing to permit."[98] Note should be taken, however, of a number of cases where courts intervened when a too long delay had occurred in union judicial procedure or when recourse to it was obviously futile. Even so, litigation can take years and is always expensive.[99]

At other times the courts have resorted to devious means to circumvent the contract theory. However, Summers comments thus:

> The law need not be so obtuse. These basic democratic rights are capable of explicit recognition and statement as legal principles. They are the rights of a union member as a citizen in his industrial government and can be broadly stated as a bill of rights for union members. Like any bill of rights they are not self-defining absolutes but are qualified by the union's right to survive. Their application to specific fact situations is exceedingly difficult and the wavering boundary lines must be pricked out case by case. Simplicity and certainty cannot be achieved, but explicit declaration of these rights will clear away clouds of doubt and confusion. Problems can be faced squarely and legal remedies made more effective.[100]

The 1959 labor law enacted by Congress approached these problems of individual rights by relying on extensive government intervention in internal union affairs. Some authorities had hoped that more support would be given to improving safeguards established within unions. One suggestion would have given explicit legal recognition to

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[98] Summers, Michigan Law Review, IL, 826. For a favorable discussion of court protection of workers' rights, cf. Vincent C. DeMaio "Expulsion, Unions and the Courts," in Proceedings of the New York University Fourth Annual Conference on Labor (Albany: Matthew Bender & Co., 1951), pp. 377-407; also cf. Philip M. Hammett, "The Power of Trade Unions to Discipline Their Members," University of Pennsylvania Law Review, XCVI (March, 1948), 537-49.

[99] Summers, "Union Democracy and Union Discipline," in Proceedings of the New York University Fifth Annual Conference on Labor (1952), pp. 474-75, 476.

[100] Summers, American Economic Review, XLVIII, 47.

the basic rights set forth in the AFL-CIO code on democratic processes. It was believed that this action would establish a climate favoring the exercise of democratic rights, the legitimacy of opposition within unions, and the discrediting of leaders who denied those rights.[101] Such an approach through the unions would have commanded the respect and allegiance of the majority of unions affiliated with the AFL-CIO and might have hastened the development of union democracy, which, to be truly effective, must come from within the union movement.

The above methods of protecting the rights of individual workers are alternatives to "right-to-work" laws. If developed and perfected, the alternatives would have an advantage over these laws in as much as the former provide a direct approach to the failures of union democracy. The proponents of "right-to-work" laws insist on the necessity of freedom to withdraw from membership for ultimate protection of individual rights. Others deny the importance of this remedy, on the grounds that these laws can never be more than an indirect corrective of a breakdown of democracy. They observe that under a "right-to-work" law the member can indeed reject membership, but by so acting he deprives himself of any voice in determining the actions of his legal representative. If enough members withdraw, the officers may possibly be moved to correct abuses to save the union. Experience under "right-to-work" laws, however, shows that most workers retain their membership, probably because they see more advantages in union representation than in approaching employers as individuals. Therefore, those who remain

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[101] Ibid., pp. 49-50.

members, it is asserted, have benefited in no way whatsoever from the "right-to-work" law, for their rights are still denied if the union is not run democratically.[102]

The prevalence of membership apathy remains a key to the existence of undemocratic procedures, even in some unions where democracy has been destroyed by corruption and racketeering. While some unions have become so large as to make active participation by all members impossible under any circumstances, many authorities are convinced that the leaders do and must remain sensitive to the wishes of the rank-and-file members. When the latter apply pressure for changes in union policy or contract terms, the leaders must respond. One writer discerningly observes:

> The very role of union leaders as politicans makes response to these pressures inevitable. Like all politicians, even though they may build good and sturdy machines, they have to keep their ears to the ground. No politician, no matter how powerful his machine, can long survive unless he articulates the basic sentiments and desires of his electorate.[103]

Even this amount of influence is lost if the workers or members wash their hands of responsibility for union conduct or refuse to share in the job of protecting workers' rights.

It must be recognized that the Taft-Hartley Act was chiefly concerned with protecting employment rights regardless of the employee's union status. The Act did offer some protection to the rights of individuals, but it generally permitted unions to make their own rules for members as long as these did not affect employment. The "right-to-work"

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[102] Cf. Dallas L. Jones, "The Implications of the 'Right-to-Work' Laws," Michigan Business Review, IX (November 1957), 5.

[103] Selekman, p. 63. Cf. Sultan, pp. 123-24.

laws have done little more than prohibit union membership as a condition of employment and have not touched the matter of individual rights within unions.[104] The labor reform law enacted by Congress in 1959, however, did address itself to the problem of individual rights of union members. In this respect, its basic philosophy is notably different from that of the Taft-Hartley Act or the "right-to-work" laws, though many think its motivation was hostile to unions.

A still different approach is found in a Massachusetts law.[105] Its underlying premise is that union-security provisions promote better labor-management relations. The law allows unions and management to negotiate for all forms of union security, including the closed shop. Unions also retain the right to discipline for cause. Protection for individual rights, however, is established through the right of appeal to the state industrial commission by workers who have suffered injustices. This unique effort to preserve union security while protecting the rights of the individual is much more far-reaching in its effects on membership rights than the simple prohibition of union-security provisions under "right-to-work" laws.[106]

Free Choice of Union Representative

When the federal government adopted a labor policy that encouraged collective bargaining. It also established democratic safeguards

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[104] Cf. Jones, p. 4.

[105] Mass. Ann. Laws c.149A, §§ 20c; c. 150D, § 8A (1949).

[106] Cf. Maurice C. Benewitz, "Nature and Effect of State Right-to-Work Laws," Wayne Law Review, I (Summer, 1955), 155-56; Jones, p. 5.

to provide that workers would be represented by a union of their own choice. This procedure is another means of protecting individual rights. Cases still appear before the NLRB and in the courts where such protection has been denied, despite the outlawing long ago of such practices as union pressure on an employer until he grants recognition or a union shop without seeking or obtaining the consent of his employees. The Labor-Management Reporting and Disclosure Act, Section 704(c), attempts to implement employee free choice of bargaining againt. It restricts union picketing as a device to force union recognition when another union is already certified, or where a representation election has occurred within the preceding year, or where picketing has been conducted without a petition for a representation election within a reasonable time not to exceed thirty days. Nevertheless, the abuses which have from time to time prevented employees from expressing their free choice are not necessarily adequate reasons for outlawing either unions or the union shop, unless one is prepared to admit that the federal law protecting free choice cannot be enforced, a point of view that does not spell success for a "right-to-work" law which is also supposed to protect free choice.

Many proponents of "right-to-work" laws stress the right to change unions as an important facet of democracy and freedom for employees. Most industrial relations experts agree that this freedom must be reasonably safeguarded, despite the complex problems that can thereby develop for management, the union, employees, and the public. One aspect of this situation is seen in the applause by opponents of big unions whenever groups of skilled workers attempt to sever their units from large

industrial unions. Both management and the large unions know, however, that small unions composed of skilled workers are in a strategic position to bargain and to disrupt production in a plant. "We would rather have the U.A.W. any day than to have to bargain with different craft unions," says one automobile-plant official.[107] On the other hand, many groups of skilled workers feel they are losing their identity and bargaining power within the large union, and this has spurred the growth of small skilled-craft unions such as the American Federation of Skilled Crafts and the International Society of Skilled Trades.[108] They are impeded, however, by a decision of the NLRB which held that skilled-craft units in an integrated industrial operation cannot be severed from other workers for bargaining purposes.[109] Nevertheless, the attempt to spread dual unionism within plants has alerted industrial union leaders to seek new ways of satisfying the [illegible] skilled workers.

The appeal that workers should have more freedom of choice to change unions, if successful, must also face the disadvantage that it may aggravate the familiar problem of jurisdictional disputes between unions, which has been an annoyance of long standing that injures labor, business, and the public alike. The problem has deep roots in job insecurity, which cannot easily be overcome by legislation. Nor will a "right-to-work" law ease the problem by authorizing workers to swing their allegiance back and forth between rival unions as expediency dictates or for no reason at all.

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[107] The Wall Street Journal, April 18, 1958, p. 1.

[108] Ibid., p. 15.

[109] National Tube Company, 76 N.L.R.B. 1199 (1948).

Contrary to the opinion of some skeptics, considerable progress has been made in reducing the number of jurisdictional disputes. The approach used by the Taft-Hartley Act has been a help in giving the unions a period of time to work out means for settling interunion disputes. Progress has also been due to the greater authority put into the hands of officers of the merged AFL-CIO. The path to the merger, in fact, was smoothed when the A. F. of L. and the C.I.O. signed a "no-raiding agreement." Since the merger, agreements have been worked out between various unions and with some trade associations that offer a promise of relief from costly disputes. The problem is by no means solved, as the AFL-CIO itself is well aware, but the steps taken point in the right direction. Because of the harm done to industrial peace by interunion rivalry, employers at times have been as anxious as unions to agree to a union-shop contract.[110]

Outsiders who favor the splitting up of unions or encouraging interunion competition in the interest of more individual freedom often fail to appreciate the historical antagonism of union members toward attempts to establish rival unions and thereby weaken the movement in its relations with employers. Too often such attempts have not been due to the absence of individual freedom or the failure to organize an industry, but have been political moves to gain more power, as they often were when tried by Communist-dominated unions in their heyday.[111]

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[110] Cf. Barbash, The Practice of Unionism, pp. 67-121; Seymour H. Lehrer, "The CIO Jurisdictional Dispute Experience," Industrial and Labor Relations Review, XI (January, 1958), 247-61; Joseph Krislov, "The No-Raiding Agreement after Five Years," Labor Law Journal, X (December, 1959), 861-66, 894.

[111] Cf. Barbash, pp. 25, 326-31.

On the other hand, occasions do arise when employees have substantial reasons for wanting to change their bargaining agents. If expulsion from the union was the only and that employees could foresee as a result of opposing their union's activities, freedom would be seriously jeopardized. The NLRB has made it clear, however, that winning a representation election does not assure a union its status forever. At the same time, some stability has to be maintained in industrial relations. To achieve that end while safeguarding the right of employees to be represented by a union of their free choice, the Board ruled that a rival union may petition for a representation election to replace another union not more than 150 days and not less than sixty days before the terminal date of a contract. If the contract expires, the rival union may again petition for an election in the period before a new contract is signed. Furthermore, an existing contract cannot be a bar to a representation election petioned by another union for more than two years, regardless of the terminal date contained in the contract.[112]

Another NLRB decision that prevents unions from freezing out other unions held that the results of a representation election supersede any no-raiding agreement between unions. In the case before the Board the employees had chosen a new union to replace the one that had served as their bargaining agent for many years. The latter complained to the AFL-CIO, which agreed that the new union had improperly raided outside its jurisdiction and ordered it to withdraw from the election or be expelled. The new union tried to comply with the AFL-CIO demands, but

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[112] Cf. Deluxe Metal Furniture Co., 121 N.L.R.B. 995 (1958); Pacific Coast Assoc. of Pulp & Paper Manufacturers, 121 N.L.R.B. 990 (1958).

the NLRB would not permit it to comply, on the grounds that this would deny free choice of unions to the workers.[113]

The NLRB has also ruled that an existing contract does not bar a representation election when there has been an authentic split within a local union and at the international level following expulsion of an affiliate by the AFL-CIO. In this case a union had been expelled by the federation for corruption. The federation then chartered a new union whose request for representation elections was opposed before the Board by the expelled union. The Board held that the schism in the union had unsettled the bargaining relationship and ordered elections to be held. A federal court upheld the Board's order, and the Supreme Court refused to review the decision.[114] These cases represent only a few of the many rulings of the NLRB which have protected the free and democratic choice of a bargaining agent by employees.

Year after year the Board continues to conduct thousands of representation elections by secret ballot to provide a democratic choice. The results indicate that workers still exercise considerable freedom in accepting or rejecting union representation. For example, during the 1958 fiscal year, the Board conducted 4,490 elections and in 1959, 5,428. In the latter year, collective bargaining agents were selected in 3,410, or 63 per cent of the elections held, as compared with 60 per cent in 1958 and 61 per cent in 1957. In the 1959 elections, unions were chosen to represent units comprising 257,028 employees, or 60 per cent of those eligible to vote. Of the 385,794 employees actually casting valid ballots, 247,867, or 64 per cent, cast ballots in favor of representation.

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[113] Cadmium & Nickel Plating, 124 N.L.R.B. No. 50 (1959).

[114] National Biscuit Division, B.C.W.R. v. Leedom, 265 F.2d 101 (D.C. Cir. 1959); cert. denied, 359 U.S. 1011 (1959).

In 1958, bargaining agents were chosen to represent 80 per cent of the workers eligible to vote, and in 1957, 84 per cent.[115] It may be noted that more than 10 per cent of those eligible to vote have not bothered to do so, although some probably had reasonable cause.

These figures demonstrate that a sizable number of employees do not favor union representation. Where the elections have resulted in a "no-union" vote, the minority favoring the union has had to accept the will of the majority in accordance with democratic procedures. It has had to relinquish what it considered to be advantages in union representation and collective bargaining or seek employment elsewhere if representation was desired. The losers may continue in their efforts to spread favorable opinion of the union, but no other provision in law is available to them except the right to try in another election after the lapse of a year.

On the other hand, the law has provided means, when the election favors a union, for the minority to register its protest if opposition to the union spreads. Having permitted unions to bargain only for a sharply restricted form of union shop. Congress then adopted a procedure in the Taft-Hartley Act whereby workers could rid themselves of a union shop when the majority of workers opposed it. This has to be done democratically through a deauthorization election. Under this procedure, if 30 per cent of the members of a bargaining unit petition the NLRB to the effect that they no longer wish their bargaining agent to have the privi-

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115 U. S., National Labor Relations Board, Twenty-fourth Annual Report, 1960, p. 172; Twenty-third Annual Report, 1958, p. 154; Twenty-second Annual Report, 1958, p. 171.

lege of a union-shop contract, the Board must conduct a deauthorization poll. If a majority is shown to oppose the union shop, the union and the employer are barred from enforcing one.

The results of these polls since their inception prove almost nothing, except that employees opposed to a union shop apparently cannot stir up much support for their point of view. Since, however, some "right-to-work" campaign-literature has made much of the unfavorable results to the union shop as a proof of employee dissatisfaction with it, the statistics for the fiscal years 1956-1959 are produced in Table. 1.

About 64 per cent of the deauthorization polls have resulted in the loss of the union shop. From 1947 to 1959, however, only 139 polls were conducted, and involved a total of only 12,466 eligible employees.[116] These figures reveal that the poll has been used mostly by employees of small firms, since the average number of eligible employees per poll in 1956 was 105, in 1957, 72, in 1958, 68, and in 1959, 67. Furthermore, in the larger of these small firms, the employees tended to continue authorization of the union shop, while employees of the smaller were more apt to favor deauthorization. The number of polls and employees covered embraced only a minute fraction of employees under union-shop contracts.

Because this procedure seems to offer a ready-made device for disgruntled employees to get rid of the union shop, several other items may be of interest. The NLRB has ruled, for example, that a current contract is no bar to a deauthorization poll, and, if the results oppose the union shop, they take effect at once.[117] The Board has also establish-

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[116] These figures are taken from the annual reports of the NLRB.

[117] Great A. & P. Tea Co., 100 N.L.R.B. 261 (1952).

TABLE 1

RESULTS OF UNION-SHOP DEAUTHORIZATION POLLS, FISCAL YEARS 1956-1959[a]

Affiliation of union with union-shop contract	Fiscal Year	Number of polls			Employees involved (number eligible to vote)			Valid votes cast			
		Total	Resulting in deauthorization		Total eligible	Resulting in deauthorization		Total	% of total eligible	Cast for deauthorization	
			Number	% of total		Number	% of total			Number	% of total eligible[d]
TOTAL	1956	19	13	68.4	2,000	831	41.6	1,652	82.6	848	42.4
	1957	14	9	64.3	1,004	695	69.2	769	76.6	521	51.9
	1958	34	20	58.8	2,331	812	34.8	1,804	77.4	1050	45.0
	1959	16	10	62.5	1,068	323	30.2	971	90.9	296	27.7
AFL[b]	1956	5	4	80.0	412	279	67.7	360	87.4	257	62.4
CIO[b]	1956	4	2	50.0	450	87	19.3	343	71.2	127	28.2
AFL-CIO[c]	1956	7	5	71.4	741	165	22.3	617	83.3	264	35.6
	1957	11	7	63.6	960	684	71.3	741	77.2	497	51.8
	1958	27	16	59.3	2,057	754	36.7	1,605	78.0	930	45.2
	1959	12	8	66.7	853	260	30.5	792	92.8	241	28.3
Unaffiliated	1956	3	2	66.7	397	300	75.6	332	83.6	200	50.4
	1957	3	2	66.7	44	11	25.0	28	63.6	24	54.5
	1958	7	4	57.1	274	58	21.2	199	72.6	120	43.8
	1959	4	2	50.0	215	64	29.3	179	83.3	65	25.6

[a] Source: U.S., National Labor Relations Board, Twenty-First Annual Report, 1957, p. 174; Twenty-Second Annual Report, 1958, p. 171; Twenty-Third Annual Report, 1959, p. 154; Twenty-Fourth Annual Report, 1960, p. 172.

[b] Includes cases filed prior to AFL-CIO merger of December 5, 1955.

[c] Includes cases filed since AFL-CIO merger.

[d] Sec. 8(a)(3) of the Taft-Hartley Act requires that, to revoke a union-shop provision, a majority of the employees eligible to vote must vote in favor of deauthorization.

ed that all members of the bargaining unit, not just union members, may vote on the union-shop question.[118] This is of particular importance where modified union-shop contracts are in force and where union members have been expelled for reasons other than nonpayment of dues and have therefore been permitted to keep their jobs. This provision is somewhat counterbalanced by the law's provision that a majority of all workers employed in the unit must vote for deauthorization before the union shop will be banned.

Another NLRB decision makes it possible for a rival union to encourage a deauthorization poll as soon as a union-shop contract is signed, if a poll has not been taken in the preceding year.[119] The decision seems to be in conflict with other portions of the law which assure the representative union its status for a period of one year before it can be challenged.

These rulings have tended to strengthen the value of the deauthorization poll, and yet it has been used very infrequently and never by employees of large firms. The only significant explanation for this seems to be that the overwhelming majority of employees under union-shop contracts are reasonably satisfied with this limited form of union security. Even so, the polls have been useful as a democratic safeguard for employees who have lost confidence in their union officers.[120]

A second democratic procedure was introduced by the Taft-

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[118] F. W. Woolworth Co., 107 N.L.R.B. 146 (1953).

[119] Accurate Molding Co., 107 N.L.R.B. 229 (1953).

[120] The above information is based, in part, on Chester A. Morgan, "The Union Shop Deauthorization Poll," Industrial and Labor Relations Review, XII (October, 1958), 79-85.

Hartley Act, called a decertification election, which makes it possible for employees to rid themselves altogether of their union representative and its sole-bargaining agent status. Again by petition of 30 per cent of the members of the bargaining unit, the NLRB will conduct a decertification election. It was apparently felt by Congress that many employees who had been caught in unions during the second World War under union-security contracts would welcome an opportunity to be released from a union that did not represent a majority of the employees. Providing these elections was the method devised to remove a union's certification as bargaining agent if it had lost the allegiance of the employees it represented. At times, however, the elections served to stimulate a union to revive its efforts on behalf of the members.[121]

Decertification elections have never become as important as they would have if employees were seriously disenchanted with their unions. In recent years the number of decertification elections and workers involved has been only about three per cent of the number of representation elections and workers involved. From 1948 to 1959 the total number of workers eligible to vote in decertification elections reached only 132,000, and decertification occurred in units embracing only about 63,200 employees, or 47 per cent. The number of petitions to the NLRB has always greatly exceeded the number of elections, since about 70 per cent of the petitions are dismissed or withdrawn each year. In the early years after the 1947 amendments to the National Labor Relations Act, the elections resulted in decertification about three out

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[121] Cf. Millis and Brown, pp. 532-33, 650.

of four times. More recently the ratio has been closer to two out of three. Table 2 summarizes the data for three years.

TABLE 2

RESULTS OF DECERTIFICATION ELECTIONS
FISCAL YEARS 1956-1959[a]

	Fiscal Year			
	1956	1957	1958	1959
Total elections	129	140	152	216
Elections resulting in decertification	89	99	94	142
Employees eligible to vote	11,289	11,018	10,124	16,231
Voters in units decertified	5,598	6,888	4,499	7,705
Percentage of voters in units decertified	49.6	62.5	44.4	47.5

[a] Source: U.S., National Labor Relations Board, Twenty-First Annual Report, 1957, p. 177; Twenty-Second Annual Report, 1958, p. 174; Twenty-Third Annual Report, 1959, p. 156; Twenty-Fourth Annual Report, 1960, p. 174.

The units decertified generally tend to be small and recently organized. It has been suggested that lack of service and attention to small, newly organized units by national unions is an important explanation, while employer opposition also appears as a factor.[122]

The fact that two out of three elections result in union decertification indicates that they have served some worthwhile function. On the other hand, it does not indicate that the degree of dissatisfaction among employees is sufficiently serious to cause many workers to oust

[122] Joseph Krislov, "Union Decertification," Industrial and Labor Relations Review, IX (July, 1956), 591-92, 594. This study thoroughly covers the statistical aspects of decertification elections. Table 2 above simply adds more recent data to that gathered by Krislov.

their unions, nor does it seem to pose much threat to unions in the future. The relative infrequency of decertification elections does not support the charge made by "right-to-work" proponents that union officers seek the union shop or sole bargaining rights chiefly to protect themselves against their members.

Conclusion

The "right-to-work" law is often advocated as an essential instrument for promoting union democracy. The facts presented in this chapter do not support that view. It is true that when employees have their rights unscrupulously denied and when they are terrorized by union officials, they desparately need some means of regaining their freedom. Abuses are not often so extreme, although there is room for much improvement in democratic procedures in many sectors of the labor movement. The point is, however, that laws already exist that provide employees with the means to obtain relief and to get rid of both the union shop and the union. The use and results of these means seem to indicate that most workers are not overly alarmed about their union officers.

It is generally agreed by those who understand the nature of unions that union democracy will be improved largely from within the organization, rather than from legislation or from other outside sources. The complex character of democracy in unions clearly shows the difficulty of correcting abuses or inadequacies by the relatively simple step of passing a law which, in its essence, is not at all directed toward promoting democracy within unions. Many of the proposals that have been suggested to enhance union democracy also reveal how many-sided the

problem is and how difficult it is to change traditional practices and environmental factors that encourage authoritarian rule and discipline.

The problems that are introduced in the following chapter add to the complexities that the "right-to-work" laws are intended to meet. Some of those union practices bear a close relationship to the problem of democracy in unions.

CHAPTER VII

UNION PRACTICES AND UNION SECURITY

In support of the "right-to-work" laws serious questions have been raised about the reasonableness or wisdom of permitting unions, even granting the legitimacy of their functions, to engage in practices that jeopardize or restrict employee freedom to work, or to resort to practices that injure employers and consumers. The right to strike is particularly challenged, especially when picket lines are established to discourage the entrance of employees who want to continue working.

Other union practices which are questioned cover a broad range of union activities, so many, in fact, that only the more widely discussed ones, including strikes, are introduced for analysis in the following pages. One of the most hotly debated issues is union political action. Much less important is the question of trusteeships which only more recently has attracted much attention.

Hanging like a cloud over all union activities, however, are corrupt practices which have stirred up a storm of indignation everywhere. Closely related is the familiar communist issue which is introduced into almost every campaign to restrict unions.

While some of these practices will be seen to have virtually no bearing on an evaluation of "right-to-work" laws, they have all been the subject of lively controversy in "right-to-work" campaigns. The de-

bate may be lifted to more reasonable levels if the irrelevancy of some arguments can be clearly demonstrated.

Union Strike Practices

Every time a major strike occurs in the United States, especially when it is prolonged beyond a few days, public opinion seems to begin shifting toward any proposal that calls for further restraints on union power. One such proposal is almost certain to be a "right-to-work" law to make it possible for workers to be free of union control. It is said that the power of unions over their members and the threat of violence keep the workers in line during a long strike. One ardent opponent of union power makes the following comment about strikes:

> It is highly questionable whether any long strike could be won by labor without the use of lawless methods of preventing a replacement of strikers or a steady drift of strikers back to work. Nowadays, there is sure to be so much reasonableness in a large employer's efforts to prevent a strike, so much unreason in the ultimate labor demands, and so much individual hardship in striking, that a long strike would seldom be won if employees and would-be employees could peacefully accept offers of employment.[1]

Other writers maintain that scarcely any employer would enter into a union-shop arrangement except to avoid a strike or to secure some special advantage by dealing with a corrupt union.[2] The "right-to-work" law is therefore viewed as a means to benefit the employer and the employee and to reduce the number of strikes and promote industrial peace.

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[1] Donald R. Richberg, Labor Union Monopoly (Chicago: Henry Regnery Co., 1957), p. 94.

[2] Cf. William Ingles, The Right-to-Work Handbook (Washington: Labor Policy Association, 1958), p. 82.

Indeed, no union practice begets more public criticism than strikes. Inasmuch as they are a power conflict, they can cause considerable tension and even violence, besides public inconvenience and hardship. Despite words of apology to the community, unions and employers at times do seem far more interested in personal victory without concessions than in the effects of a strike on the general welfare. Since strikes are given wide and often impassioned publicity while the vastly greater number of peaceful settlements of labor disputes are seldom newsworthy, community ill-will develops easily. Especially to people who are inconvenienced, strikes are often viewed as another evidence of excessive union power and coercion. Although remarkable unanimity among strikers is often manifest, not infrequently a labor dispute is condemned as an example of leadership flaunting of the members, who prefer to work, but who, as virtual pawns deprived of their freedom of choice, have no alternative to striking.

Up to the present time no satisfactory substitute for the strike has been devised to settle unresolved disagreements in contract negotiations. The strike is an essential ingredient of the collective bargaining process for both labor and management. Without the risk of economic loss neither side would ordinarily budge from the position it has assumed. The plea for government settlement of all disputes or prohibition of primary economic strikes is a serious threat to both collective bargaining and a free labor movement. Dictation of terms by an outside agency or the government is unacceptable to both employers and employees. Of course, exceptions must be made where public health or safety is directly at stake. Otherwise, however, even though faced with the possi-

bility of coercion being applied through strikes, lockouts, primary boycotts, and picketing, most people will probably agree that collective bargaining remains the most reasonable means of dealing with labor-management conflicts. This agreement does not overrule the fervent hope that more mature relationships between the parties and improving methods of government intervention, as through mediation services, will lower the relative incidence of failures to solve disagreements in bargaining sessions before a strike deadline.

The question of employee freedom in connection with strikes must be viewed from several angles. The first concerns those employees who do not want to strike and will continue to work if their employer encourages them. This situation is often tantamount to lighting matches near dry powder. Strikers are easily aroused by an apparent threat to their jobs. While mass picketing and other threats of violence to prevent workers from entering a struck plant have been prescribed by law, a firm that continues or resumes operations during a strike is usually giving notice to strikers that it intends to win the strike by economic power rather than by negotiations. Hence it is doubtful whether any union representative would subscribe to an opinion expressed by Sylvester Petro in these words: "It must . . .be borne in mind that neither reason nor legal authority holds that a decision to operate during a strike means that the company is attempting to break the striking union."[3] Petro's premise is that a company has a duty "to resist what it considers unreasonable union demands," and to that everyone can agree. The fact re-

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[3] Power Unlimited--The Corruption of Union Leadership (New York: The Ronald Press Co., 1959), P. 71.

mains, however, that if a striking union cannot impose an economic loss on the firm comparable to the loss suffered by its members, and cannot persuade the firm to reach a settlement through collective bargaining, the strike will probably be lost. Accompanying that defeat will be an immense loss of union prestige and possible extinction.

A strike is a union's ultimate weapon in negotiations. Its use, therefore, does not necessarily signify a breakdown in collective bargaining, whereas a refusal to negotiate does. When a firm decides to continue operations either to break a strike or to force a union to negotiate only on company terms, the union is faced with the grave danger of losing whatever value its ultimate weapon may have had. Many employers therefore recognize that resumed operations may provoke a desperate union to violence. A leading business journal reflects this general opinion in the following comment:

> In their very nature, unions are unyielding when there is a threat that their strike may be broken. Violence is predictable whenever an employer decides to exercise his right to operate in the teeth of a strike. The unions believe--and live by the belief--that unless the employer is effectively resisted in such a case, the union will perish.[4]

Most large firms have sufficient staying power to survive a shut-down; consequently, most of them seem to prefer closing to risking violence, and then waiting until the union becomes more conciliatory. Smaller firms are less apt to have enough resources to hold out against strong unions. But being smaller, they can more easily hire replacements for strikers, at least enough to resume operations, which may then appear to them as the simplest, perhaps the only, way to overcome union demands

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[4] "Labor Violence and Corruption," Business Week, August 31, 1957, p. 88.

that seem unreasonable.

Violence which hinders employee free choice in labor disputes has decreased remarkably with the advance of legal procedures in labor matters. Despite the great number of strikes in the first post-war years, 1945-1947, and the thousands of strikes since then, there has been relatively little violence comparable to that of 1937-1938 and earlier. Well publicized exceptions have occurred in more recent years, involving such diverse firms as Ohio Consolidated Telephone Company, Louisville and Nashville Railroad, Indiana's Perfect Circle Corporation, Wisconsin's Kohler Company, and North Carolina's Harriet-Henderson Cotton Mills. In each instance violence typical of an earlier period of industrial relations erupted as the company decided or felt obligated to continue or resume operations. The decision seems to have led inevitably to a situation of extreme tension when the employer felt strong enough to disregard the union and the union strong enough to defend its position.

The resort to force and other illegal tactics to prevent workers from entering a struck plant, while not to be condoned, is frequently a symptom of poor labor-management relations which have not progressed beyond the first stage where both parties still distrust and resent each other and put little confidence in collective bargaining. Some ingredients of industrial peace are missing, but it is difficult, and frequently impossible, for the outsider to know whether labor or management is more responsible for a particular failure. The history of labor relations, however, gives strong proof that, in the absence of collective bargaining, both parties tend to support their claims by resorting to force, strife, or terror-tactics, in which compulsion against employees'

freedom is an almost inevitable by-product.

Disputes over union-shop contracts have been involved in some situations which led to strike violence. Other examples of violence, however, evince no casual connection with a specific demand for union security. More commonly the roots of violence seem to lie in job insecurity, arbitrary discrimination or termination of employment, and frustration. Violence has occurred among nonorganized as well as organized employees. It used to appear often during attempts to organize a union and has appeared during strikes of solidly organized workers. In its most sordid forms it has even flourished in a "right-to-work" state.[5]

Strikes, insofar as they affect employee freedom, may have an entirely different character from the type just described. Such would be strikes or strike-threats that have no reasonable, just, or excusing cause and are resorted to only incidentally, if at all, for employee benefits. This kind of strike, cited frequently in the McClellan hearings, is primarily directed toward whipping an employer into submission on some matter unrelated to collective bargaining issues, or is aimed at feathering the nests of some union officers through money exacted from new members illegally forced into a union or through extortion of the employer as a price for labor peace and the right to do business. When used in this fashion, the strike is not a collective bargaining weapon. It is a form of racketeering often implemented by violence.

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[5] Cf. the findings of the McClellan committee hearings on teamster union violence in Tennessee, U. S., Congress, Senate, Select Committee on Improper Activities in the Labor or Management Field, Interim Report, 86th Cong., 2d Sess., 1958, pp. 330-71.

The violence that has occurred when firms resumed operations during a strike is not to be identified with racketeering. The former is temporary and usually dissolves when the conflicting parties realize they have more to gain by friendly relations and collective bargaining. Racketeering is not a temporary expedient, and racketeering strikes are not reached by labor law that is directed toward improving collective bargaining. Leaders of racketeering strikes are no more interested in employee rights than they are in the welfare of the labor movement. They are violating already existing laws and will violate new ones in the absence of more effective law enforcement. A "right-to-work" law does not offer much hope of relief when the problem is largely one of lax law-enforcement.

A more immediate question concerns the role of individual union members in reaching a decision to strike. Examples are well known in which the decision has been dictated by national union headquarters without membership consultation. Perhaps the coal-mine strikes when John L. Lewis was in his prime best reflect this practice. On the other hand, the local union business agent in the building and construction industry has the authority and is solely responsible for many strikes, often resulting from contract violations, the employment of nonunion men, or jurisdictional disputes. In these instances the leaders usually have enjoyed the confidence of a large majority of their members.

The majority of union constitutions establish some specific procedure for polling membership approval for a strike. A survey conducted by the National Industrial Conference Board found that 110 of 194 major unions constitutionally require authorization at both local

and national levels before a group of workers can strike.[6] Even where no specific provision is made for elections, many unions seem to follow the practice. In fact, one study of the question concluded that most unions do have strike votes and usually by secret ballot.[7]

Although the existence of a union shop usually implies a strong union, strikes are not initiated only by strong unions. History clearly shows that strikes have been a common occurrence among unorganized workers, albeit frequently for the purpose of trying to achieve union recognition, a cause that has been virtually eliminated by the provision for representation elections in the Wagner Act and subsequent legislation.[8] The so-called wildcat strike often occurs in direct opposition to and sometimes in repudiation of leaders' wishes.[9]

As in the determination of other major policies in most unions, the leaders, regardless of the power they hold, must sound out membership opinion before committing the union to a strike. If one is called against the popular will, the leaders place themselves and the union in an almost indefensible position. A careful student of union strike votes, Herbert S. Parnes, comments:

> Indeed, the penalties for unpopular policies or courses of conduct are so severe that it is little wonder that trade union leaders are both bewildered and annoyed at repeated

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[6] Handbook of Union Government, Structure and Procedures (New York: National Industrial Conference Board, Inc., 1955), pp. 46-48.

[7] Herbert S. Parnes, Union Strike Votes (Princeton: Industrial Relations Section, Princeton University, 1956), p. 20.

[8] Cf. Arthur M. Ross, "The Natural History of the Strike," in Arthur Kornhauser, Robert Dubin, and Arthur M. Ross (eds.), Industrial Conflict (New York: McGraw-Hill Book Co., 1954), pp. 23-26.

[9] Cf. Leonard R. Sayles, "Wildcat Strikes," Harvard Business Review, XXXII (November-December, 1954), 42-52.

> implications that strikes typically occur because an unwilling membership are dictatorially controlled by their officers. So contrary is this to their experience that they are inclined to suspect the wisdom, if not the motives, of those who suggest it.[10]

Nevertheless, legislation is regularly proposed that would require secret balloting of union members on strike decisions. It was included in the legislative recommendations to Congress by President Eisenhower in 1954.[11] The presumption appears to be that the secret strike ballot will reduce the number of strikes and simultaneously promote democracy. These goals of a secret ballot are logically unobjectionable, Parnes remarks, although logic also requires that democratic measures be provided so that the rank and file will be aided in going out on strike against the advice or even in defiance of the orders of union leaders. Parnes says:

> There is no democratic principle which requires differences of opinion between union members and leaders on the strike question to be resolved in favor of the former only in those instances in which the rank and file oppose, and the leaders favor, strike action. Such an arrangement may be defensible on other grounds, but to argue that it is dictated by the precepts of democracy, while studiously ignoring the other side of the coin, is apt to be somewhat confusing.[12]

The same writer also comments on the opinion that a voice vote instead of a secret ballot on a strike issue appears to be a suppression of individual freedom. He notes that a voice vote compels a man to

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[10] Parnes, p. 20.

[11] Cf. the text of the President's labor message to Congress, January 11, 1954, The New York Times, January 12, 1954, p. 9. For a history of the proposal and a discussion of its various aspects, see Samuel Harris Cohen, "The Strike Ballot and Other Compulsory Union Balloting," in Proceedings of the Seventh Annual New York University Conference on Labor (Albany: Matthew Bender & Co., 1954), pp. 331-60.

[12] Parnes, pp. 17-18.

register his attitude toward group responsibility which he may be ashamed to deny publicly, while in the secret ballot he can register a completely selfish reaction divorced from such considerations. Barnes adds:

> In the absence of formal intimidation or fear of official reprisal, neither of these is any "truer" a measure of attitudes than the other. The fact is that the individual *is* a part of a group, and the question becomes one of the relative desirability of permitting him to act as though he were not.[13]

American experience with the secret strike ballot has been limited and unencouraging. It was authorized under the War Labor Disputes Act and in the national emergency provision of the Taft-Hartley Act. Loyalty to the union seems to have taken first place by overwhelming majorities in most applications of both laws. The difficulty with this type of legislation seems to be the same as that which occurred under the Taft-Hartley union-shop referendum, that is, the vote amounts to an expression of loyalty or disloyalty to the union, rather than an opinion on the issue that is polled. The polling of individual sentiment on whether to strike or accept the employer's final offer in a contract dispute will usually take on the appearance of inviting repudiation of the union or breaking union solidarity. The whole procedure seems to reflect an implicit rejection of the national labor policy that establishes the union as the employees' representative for purposes of collective bargaining.

Strike votes do measure the will of the union members. While important instances have occurred of members favoring settlement against their leaders' wishes, most experiences run the other way and thus apply strong pressure against management. Barnes explains this rather con-

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[13] *Ibid.*, p. 20.

sistent pattern as follows:

> In the first place, because of the strategic importance of the vote, workers can ill afford to deny their leaders the vote of confidence which is requested. Moreover, the leaders would be very unlikely to conduct a vote unless they were fairly confident of a favorable outcome, for an unfavorable vote bares the weakness of the union. Finally, rank-and-file union members are not nearly so reluctant to threaten strike action as is frequently assumed. Indeed, many union leaders find it less difficult to "whip up" sentiment for a necessary strike than to restrain unwarranted militancy on the part of the rank and file.[14]

The question of conducting votes on intra-union matters under the supervision of an outside agency poses a real problem for national labor policy. That employees must have safeguards for their rights stands uncontested, except in the opinion of a few union leaders. Those safeguards may well need further implementation from time to time in particular instances. On the other hand, it is equally evident that under democratic procedures the individual decisions of workers will often have to be subordinated to majority decision. No organization can act as the representative of its members if the individual member has absolute freedom to accept or reject the representative decision, to go his own way, or to have as much weight attached to his wish as to the majority's. To stipulate such freedom by a "right-to-work" law will mean a return to the practices of individual bargaining and the abandonment of collective bargaining, for an organization under those circumstances can no longer effectively represent its members.

Union Political Practices

Union financial support of political doctrines and candidates

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[14] Ibid., p. 68.

favorable to union goals but opposed by at least some members is set forth as another reason why the union shop ought to be banned. The principal political goal of organized labor, according to one writer, "is the extension and perpetuation of compulsory universal unionism, without which political unionism cannot flourish." Prodigal use of dues money and a promise to deliver the labor vote are alleged to be union methods for keeping political candidates in line. Therefore, the above author concludes: "Right-to-work laws will deprive union leaders of much of their political power."[15]

There is no question that organized labor has channeled large sums into political action. In a case tried before a Georgia court in 1958, all parties concerned, including representatives of fifteen railroad unions and six employees challenging the legality of union-shop contracts, signed a stipulation of facts presented to the court, in which it was agreed that a substantial part of the dues money received by the unions is used to support candidates and ideological and political doctrines which some members are not willing to support, that dues money is also used to publish union magazines and newspapers designed to influence readers to support political issues opposed by some members, and that these political activities do not involve and are unnecessary to the negotiation or administration of collective bargaining agreements.[16]

The unions have not denied their interest in political action. In testimony before a Senate subcommittee union representatives expressed their conviction that unions are permitted within the law to use general

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[15] Ingles, pp. 26, 28.

[16] Cf. The Wall Street Journal, November 24, 1958, p. 20. The case was Looper v. Georgia Southern & Florida Ry. Co., 43 L.R.R.M. 2155 (Bibb Super. Ct., Ga., Nov. 21, 1958).

union funds for these ends:

> (1) Systematically organize drives for registration of voters;
> (2) Carry out a systematic program of political education, including organization of schools where political questions are discussed, and the compilation and distribution of voting records; and
> (3) Exercise the right of free speech by expressing their views on political questions in print and by means of television and radio and otherwise.[17]

The railroad unions have made particularly effective use of their resources in influencing legislation pertaining to their interests.[18] More widely known, however, is the work of the AFL-CIO's Committee on Political Education which spends money on voter registration programs, organization of local publicity units, and especially on the preparation and distribution of informational literature.[19]

The prohibition on corporations and unions from making contributions or expenditures in connection with any federal election, set forth in the Federal Corrupt Practices Act as amended by the Taft-Hartley Act, has been interpreted by the courts to mean that only funds voluntarily donated by members can be used to support the candidacy of any person seeking federal office. Thus the AFL-CIO's Committee on Political Education has sought voluntary donations of one dollar a year from each member of unions affiliated with the federation to support its work, but it has never come close to achieving that goal.[20] The

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[17] U. S., Congress, Senate, Report of the Subcommittee on Privileges and Elections: 1956, General Election Campaigns, 85th Cong., 1st Sess., 1957, p. 24.

[18] Cf. Jack Barbash, The Practice of Unionism (New York: Harper & Brothers, 1956), p. 260.

[19] Cf. Francis X. Quinn, "Labor at the Polls," Social Order, VIII (November, 1958), 413-17; James B. Carey, "Organized Labor in Politics," The Annals, CCCXIX (September, 1958), 55-63.

[20] Cf. Quinn, p. 415.

courts have also ruled, however, that the law does not ban the use of general union funds to educate members in matters pertaining to union interests. These funds come from union dues, presently at the rate of five cents a month per member from each affiliate of the AFL-CIO. They are sometimes contributed unwillingly. In fact, some studies of union members' attitudes show considerable opposition to union political activity.[21]

While unions from the beginning had periodically engaged in political activity, even to the extent of supporting new parties, not until the rise of the C.I.O. did labor become a factor to be seriously reckoned with in national political campaigns. The A.F. of L. had generally preferred to rely on its own efforts to improve social conditions. This voluntarist policy only slowly yielded to changing circumstances.[22] Active political participation, however, became almost inevitable as the federal government became increasingly involved in economic matters because of wars, defense needs, depression, and support of social welfare programs, such as social security and the maintenance of full employment. Equally important was the change from government's lassez-faire policy toward unions to one of encouragement of collective bargaining and more regulation of labor-management relations. Detachment from these developments would have left organized labor unable to apply counter pressure to the special interests of business, agriculture, and other institutions.

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[21] For a comparison of some of these studies, see Joel Seidman et al., The Worker Views His Union (Chicago: The University of Chicago Press, 1958), pp. 230-32.

[22] Cf. George G. Higgins, Voluntarism in Organized Labor in the United States, 1930-1940 (Washington: Catholic University of America Press, 1944), passim.

At one time unions also felt they had little to gain by government legislation. It eventually became clear, however, that labor could lose by legislation what it gained at the bargaining table. Furthermore, gains made as a result of government action could be taken away by government action. The enactment of the Taft-Hartley Act and restrictive state legislation in the 1940's and 1950's gave further impetus to union political activity.[23] With matters like the "right-to-work" laws becoming stormy political issues decided in legislatures or at the polls, when many voters are unfamiliar with the intricate problems of labor-management relations and have to seek information to guide them, worried unions have multiplied their efforts.

There is no reason to believe that labor's interest in politics can or will be confined to lobbying, education, and serving in government agencies. When laws are being enacted, defeated, or pigeonholed, no substitute exists for friendly legislators in Washington or in state capitals, an axiom that is as clearly perceived by labor organizations as by organizations representing farmers, business management, oil and gas interests, and the railroads. A republican form of government almost inevitably leads to this type of political activity.[24]

In the face of growing business interest in personal action in political campaigns, which interest has developed in response to labor activity, the unions will certainly continue to support friendly

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[23]Cf. Harry A. Millis and Emily C. Brown, From the Wagner Act to Taft-Hartley (Chicago: The University of Chicago Press, 1950), p. 653.

[24]Cf. Emanuel Celler, "Pressure Groups in Congress," The Annals, CCCXIX (September, 1958), 2-9. For analyses and reviews of labor political action, cf. Barbash, pp. 246-47; Max M. Kampelman, "Labor in Politics," in George W. Brooks et al. (eds.), Interpreting the Labor Movement (Madison, Wis.: Industrial Relations Research Association, 1952), pp. 171-91.

candidates, get out the vote, and use their resources to block legislation they consider to be inimical to their welfare. On the other hand, the use by business of corporation funds, personnel, and influence in politics is not to be assayed as necessarily directly related to labor participation or even as something of recent origin. Business, like labor, acknowledges its active concern with political decisions. Before a Senate subcommittee in 1956, business representatives testified that they believed they were acting within the law when they engaged in the following practices:

> (1) Pay salaries and wages of officers and regular employees while engaged in political activities; (2) Publish opinions and arguments of a political nature, expressed as the views of the corporation, in any house organ or other printed document circulated at the expense of the corporation; (3) Purchase radio and television time or newspaper space for the presentation of the corporation's political views; (4) Use any other means of expressing the political views of the corporate management, publicly or privately; (5) Encourage people to register and vote, and disseminate information and opinions concerning issues without regard to parties and candidates.[25]

In view of the manifold impact of government legislation and decisions on economic activity and industrial relations, it appears certain that neither trade associations, corporations, nor unions will decrease their political activity unless uniform and equally effective restrictions could be placed on each group.

The labor vote does not have access to personal fortunes to the degree that the business vote does. The general funds of unions have therefore been an important source of money. The extent to which unions can use their general funds drawn from dues money to engage in politics

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[25] U. S., Congress, Senate, Report of the Subcommittee on Privileges and Elections: 1956, General Election Campaigns, 85th Cong., 1st Sess., 1957, p. 24. Cf. Robert F. Lennard and Karl Schriftgiesser, "Management in Politics," The Annals, CCCXIX (September, 1958), 33-40.

has not been settled by the courts. One famous case in California arose over the suspension in 1944 of the late Cecil B. DeMille from a union because of his refusal to pay a union assessment of one dollar to a fund to defeat a proposed "right-to-work" constitutional amendment.[26] Because of his loss of union membership the movie producer had to quit his radio program. The Supreme Court of California ruled that the union's objective in this instance was not outside the purpose of the organization and denied that the member was deprived of his political freedom, since the union and the member are not the same and action of the union does not imply endorsement by all the members. This excuse for expulsion, incidentally, was later outlawed by the Taft-Hartley Act. In considering the fact that not all members will agree with a union's political position, the California court said:

> Other organizations, such as Medical Associations, Bar Associations, and the like, have used their funds to support favorable legislation or defeat measures considered in the opinion of the majority or its duly authorized representatives to be inimical to the public interest or to its own welfare. It has never been considered that a difference of opinion within the association as to the use of association funds for such purposes, where otherwise lawful, was a matter for judicial interference.[27]

The question of political use of dues money was later brought into the United States Supreme Court as one aspect of the Hanson case which originated in Nebraska. The Court did not rule directly on the point, but declared: "If the exaction of dues, initiation fees, or assessments is used as a cover for forcing ideological conformity or

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[26] DeMille v. American Federation of Radio Artists, 31 Cal. 2d 139 187 P. 2d 769 (1947); cert. denied, 333 U.S. 876 (1948).

[27] Ibid., 187 P. 2d 769, 776-77.

other action in contravention of the First Amendment, this judgment will not prejudice the decision in that case."[28] The Court, according to some judges, left the matter wide open when it also said: "If assessments are in fact imposed for purposes not germane to collective bargaining a different problem would be presented."[29]

This apparent opening has been seized upon by some employees as a means of limiting their obligations under a union shop. Court decisions, however, have not been in agreement. The Supreme Court of North Carolina, for example, reversed a lower court's ruling that unions could not collect dues money beyond the amount they could prove was reasonably necessary and related to collective bargaining.[30] In this instance the employees objected to the use of some of their dues money not only for political purposes but also for union-financed insurance and death benefit programs, all of which they opposed. The court held that these issues had been settled in the United States Supreme Court's Hanson ruling. No evidence was presented of any special assessments by the unions for political purposes, the North Carolina court observed, or of unlawful political expenditures, or of expenditures not in accordance with the wishes and the will of the majority of their members. The court declared:

> If our interpretation is correct, it would seem that, in the discharge of its obligations, the collective bargaining agency would be expected to keep in touch with and make known its findings in respect of legislation tending to promote or to

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[28] Railway Employees' Department, A.F. of L. v. Hanson, 351 U.S. 225, 238 (1956).

[29] Ibid., at 236.

[30] Allen v. Southern Railway Co., 248 N.C. 491, 107 S.E. 2d 125 (1959).

> impair its collective bargaining position or tending to enhance or defeat the interests of those whom it represents. In so doing, they would do neither more or less than the representatives of carriers with whom they negotiate collective bargaining agreements.[31]

The court further remarked:

> All that defendant Unions demand of plaintiffs is that they pay the ordinary periodic dues and initiation fees uniformly required of all members. In all other respects, plaintiffs are free to speak and to act according to their own desires even if by so doing they speak and act at cross-purposes with defendant Unions.[32]

In concluding its decision, the state supreme court stated that the employees' basic grievance was against the union shop, not the inconsequential sums which they have to pay for the support of their collective bargaining representative. It noted also that the railroad employer shared the views of the aggrieved employees. The court itself expressed no opinion on the merits or demerits of the union-shop policy of the Railway Labor Act.[33]

The North Carolina court acknowledged that it was making an interpretation of the law and of a higher court's decision which disagreed with that made by the Georgia Supreme Court in Looper v. Georgia

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[31] Ibid., 107 S.E. 2d 125, 133. In a similar case the Texas Supreme Court pointed out that the United States Supreme Court was surely aware that the union was engaged in political activity and needed funds for that purpose. Thus some political expenditures might be permissible. Sandsberry v. International Association of Machinists, 156 Tex. 340, 295 S. W. 2d 412 (1956), cert. denied, 353 U.S. 918 (1957). On one occasion the United States Supreme Court actually stated that support of favorable candidates and government policies affecting labor's interests was normal organizational activity. United States v. C.I.O., 335 U.S. 106, 123 (1948).

[32] 107 S.E.2d 125, 134.

[33] Ibid., at 135.

Southern and Florida Railway Company.[34] The Georgia case also involved railroad employees objecting to the political use of their dues money under a union shop permitted by the Railway Labor Act in a state where it is otherwise outlawed. A superior court judge dismissed the case on the basis of the decision of the United States Supreme Court in the Hanson case, but he was overruled by the state supreme court which said a new issue had been raised. Furthermore, the latter court declared: "We do not believe that one can constitutionally be compelled to contribute money to support ideas, politics, and candidates which he opposes," because "his right to immunity from such exactions is superior to any claim the union can make upon him."[35]

This conclusion of the court followed upon an expression of complete disagreement with the decision of the United States Supreme Court that a union-shop contract is not unconstitutional. The state court said it was required by law to follow that decision but did so with "deep distress." Its own decision would have read thus: "We believe that a single person armed with right--the right to work, should in all courts of justice be able to defeat the selfish demands of multitudes though they be members of a labor union who seek to deprive him of that right."[36]

On the grounds that a new issue had been raised, that of compelling ideological conformity, the case was remanded to a lower court. After a rehearing the latter enjoined the unions and the railroads they

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[34] 213 Ga. 270, 98 S.E. 2d 101 (1957).

[35] Ibid., 98 S.E. 2d 101, 105.

[36] Ibid., at 104.

bargain with from forcing employees to pay union dues that are not used for collective bargaining purposes. In addition, the court ruled that the portion of the Railway Labor Act which permits such agreements for this purpose is unconstitutional.[37] The United States Supreme Court has not ruled on the appeal.

Several problems are inherent in the court order that union funds be categorized according to purpose. The bookkeeping problem is itself an immense burden, and the ruling is open to various interpretations. So many current political issues directly or indirectly affect industrial relations, collective bargaining, business income, and wage levels that it is a moot question as to what portion of a union's costs are related in some degree to its collective bargaining function. This difficulty was admitted by the North Carolina court in the case mentioned above. A further difficulty is associated with the increasingly costly business of presenting issues to the voting public. Few costs have risen so rapidly and put so much pressure on unions for financial assistance to candidates and issues. As an example, the "right-to-work" campaigns, which the unions look upon as a struggle for the survival of the fittest, have called forth huge expenditures by both business and labor organizations. Independently of campaigns, many people, including most Congressmen, believe it essential to the democratic process that all interested parties be given an equal chance to present their case in behalf of proposed legislation. But preparation of materials and the marshalling of data are often costly enterprises. It is not unreasonable to suppose that large sums of money were spent in lobbying and presentation of

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[37] 48 L.R.R.M. 2155 (Bibb Super. Ct., Ga., Nov. 21, 1958).

evidence before the enactment of the 1959 federal labor law, in which both management and labor had a vital interest. Such legislation obviously affects collective bargaining and the power of unions and has a direct bearing on the growth or decline of union organization. Whether such expenditures can be met from general union funds will be finally decided by the United States Supreme Court, which has already ruled that employees can be reasonably required to pay for the collective bargaining services of their representative.

Labor's support of political candidates and issues, however, has been no guarantee that union members will follow their leaders. Union officers are not sure they can deliver the vote when their members use the secret ballot on election day. They can only try to influence candidates and members and stir up interest in issues. In practice, most leaders, if they value their jobs, have not dared to flout the views of the majority when they commit unions to stands on political matters or other major policies. Experience has also proved that organized labor does not possess a vote-commanding potential of thirty or forty millions, or even a major fraction of that, once it gets away from immediate collective bargaining issues. Ample evidence in favor of this conclusion is found in both national and state elections, as unions and management well know from several disastrous political experiences of labor in the highly organized state of Ohio.[38] The AFL-CIO has also found that it cannot dissuade some of its own affiliates from supporting candidates opposed by its Committee on Political Education. And some unions have

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[38] Cf. Unions and Political Action: The Ohio Story (Washington: Chamber of Commerce of the United States, 1958), passim.

not been able to persuade their own locals to stay in line on political issues.

The fact remains, however, that some union members are in a position where they must contribute money, however little, that will be used to support candidates whom they do not wish to support. They may also oppose their union's political objectives which, at times, have gone so far as to seek control of state governments or of judicial officers.[39]

Although many problems will result, the courts may attempt to settle the controversy, at least in part, by forcing separation of dues money according to purpose. On the other hand, it is thought by some that the requirement of detailed financial reports by unions to the Secretary of Labor, which reports are open to public inspection, will encourage members to exert more control over the expenditure of union funds. Some advocate a more carefully drawn law to regulate political contributions by any organization. Some think that the only answer is a "right-to-work" law whereby a person could withdraw from the union rather than make contributions.

A "right-to-work" law cannot keep unions out of politics, but, by banning involuntary membership, it does eliminate involuntary political contributions. This law, of course, will not protect other members of society who likewise contribute unwillingly to political candidates and lobbying expenses, for example, minor management executives who, to keep their jobs, will accept an assignment, imposed by their corporations, to support candidates and issues which they may secretly oppose. Nor

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[39] Such objectives were exposed in the Senate's McClellan hearings. Cf. U.S., Congress, Senate, Select Committee on Improper Activities, Hearings, 85th Cong., 1st, 2d Sess., 1957, 1958, pp. 218-85, 7464-96, 9101-103, 9134-56.

will the law protect minority members of state medical and bar associations which require membership as a condition of legal practice, but which, like unions, engage in political activity opposed by some members. The "right-to-work" law as it is now conceived does not specifically aim at the abuse of involuntary political contributions, but only at this abuse when practiced by unions. Because the law is applied only to one institution and not uniformly to all, some favorable support has been accorded an opinion of a Virginia judge who, on a related issue, said: "Such abuses, it appears to the Court, should be reached or remedied by legislation specifically directed against such abuses without resorting to the extreme of complete prohibition."[40] On the other hand, to Sylvester Petro, an ardent critic of union privilege, only the "right-to-work" law can put a stop to abuses. Believing the union shop to be so pernicious that virtually every union member has been reduced to serfdom, Petro considers an ironic evil the use of union funds to fight "right-to-work" laws. Thus he writes: "The evil spirits must surely chortle at such a play: serfs compelled to contribute to the spreading of serfdom."[41]

Trusteeships

Most unions place in the hands of their top national officers the power to place locals under receivership or trusteeship, whereby a trustee is appointed to run the local when it has lost control of its own affairs. When abused, this power of the national union can seriously

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[40] Hawkins v. Finney, 22 L.R.R.M. 2178, 2176 (Cir. Ct. Va. 1948).

[41] Power Unlimited-The Corruption of Union Leadership, p. 150.

impair democratic processes and infringe upon individual rights and freedom. Until recently, the abuse had not attracted much attention although it has existed for many years in a few unions, notably among the mine workers. The problem caught the public eye when the McClellan hearings exposed the use of the trusteeships in several unions to silence opposition and to protect the jobs of national officers.[42]

The right to impose trusteeship is a necessary power at times. To outlaw the right would inflict irreparable harm on union organization. Instances are almost certain to occur when a local union falls into a bad state of disorganization from which it cannot extricate itself by its own efforts. The difficulty may be due to a bitter internal struggle for leadership, the infiltration of the union by racketeers or communists, the failure to maintain ethical standards, or other reasons. In such situations the only solution may be a period of control by the parent union until stability is restored.

It was recognized by the AFL-CIO, however, that trusteeships were being abused, and, as a consequence, its Ethical Practices Committee adopted a code as a standard to which union members could appeal to eliminate the abuse. The Labor-Management Reporting and Disclosure Act of 1959 provided its own regulations of the practice in Title III, which, among other things, requires reports of trusteeships to the Secretary of Labor, limits the practice to eighteen months except for adequate reasons sustained by court decision, and restricts the purposes for which trusteeship may be invoked. It is thought that these provisions will safeguard

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[42] Cf. U. S., Congress, Senate, Select Committee on Improper Activities, Interim Report, pp. 130, 253, 438, 447-48.

individual rights without having recourse to a "right-to-work" law as proposed by some to meet the abuse of trusteeship.

Corrupt Practices

Abuses have occurred in all the union practices heretofore described. To correct and prevent them most unions have cooperated in drawing up and enforcing codes of ethical practices. Laws have also been enacted to promote and maintain standards of union conduct, as laws have also been passed to regulate other large and influential associations whose actions affect the public interest and general welfare.

The practices that are here introduced, however, are not related to behavior which in itself is lawful but can become unlawful; rather they are practices that the community considers to be essentially immoral, perverse, and anti-social. They have been given great notoriety by Congressional hearings as well as by independent scholars, journalists, and publicists, so they need not be described in detail. Nevertheless, the nature of the abuses should be understood in order to determine what relationship they have to the union shop.

The principal concern here is whether the "right-to-work" laws are the answer to these problems. They are if corruption and racketeering is and through unions arise from the union shop and if the evils can be substantially lessened or abolished if and when employees have complete freedom to enter and leave unions at their pleasure and still retain their jobs without the imposition of any financial obligation by unions.

The most effective force behind the drive for "right-to-work" laws has probably been the unyielding conviction of many people that the

laws are the solution to corrupt practices or an essential step in the right direction. The following remarks of Professor Sylvester Petro express this view:

> The right-to-work laws are today the most striking response of society to the threats posed by big unionism. . . .When one realizes that present-day industry-wide unions have achieved their position through the use of force, economic coercion, and government assistance and connivance, one may reasonably believe that the elimination of those things may help to bring about a healthier state of affairs. A union which is the free and uncoerced choice of its membership is certain to be an organism essentially different from an organization which has compelled unwilling persons to enroll.[43]

A similar view is expressed by the Reverend John J. Coogan, S.J., who maintains that workers have no practical freedom in unions. He writes: "Our argument therefore against obligatory unionism is that the American labor situation being what it obviously is, our legislature may justly and prudently pass right-to-work laws to correct the gross evils that definitely exist to prevent their recurrence."[44] The author of The Right-to-Work Handbook develops the same thought when he asks:

> Why would a worker, interested in improving his circumstances, maintain his membership in a union run by racketeers, ex-convicts, communists, thieves, shady characters of all sorts--if he could get out without losing his job? . . . Of course, not all advocates of compulsory unionism condone thievery, violence and other immoralities; but those who engage in such practices invariably advocate and practice compulsory unionism. Under voluntarism such practices could be resisted; a dwindling membership would dry up the sources of loot.[45]

Seldom has a more forceful statement been made of the allegedly close bond between the union shop and union abuses than that set forth

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[43] "Compulsory Unionism and Responsible Unionism," Labor Law Journal, VIII (December, 1957), 873.

[44] "An End to Forced Unionism," The Priest, XIV (January, 1958), 27.

[45] Ingles, pp. 43-44.

by Dr. Petro in his summary of the findings of the McClellan Committee. He writes:

> The unions in which the Committee found the worst abuses, the most dictatorial policies, the most profligate misuse of membership dues were all what are known as "closed-shop" unions. The butchers, the bakers, the engineers, the carpenters, the teamsters--all work under union control of employment, and in all the Committee found much to concern it. This is not to say that every closed-shop union is guilty of such abuses. . . . Yet . . . the great probability is that very special circumstances prevail in closed-shop unions which do not abuse their members: they are small, their members are highly skilled, there is stability and continuity of employment, or something else of that kind. But the fact remains that there is a perfectly clear, logical, and rational relationship between control over a man's employment and exploitation of that man. He is in a weaker position to react against exploitation than he would be in the absence of such control. To deny that would be, not only to reject compelling logic; it would also be to blind oneself to the plain facts of life.[46]

Indeed, there is no denying the gravity of abuses that have been perpetrated in the name of trade unionism. The public reputation of the labor movement has suffered seriously from the corruption exposed in some members and officers who have used their positions of trust to enrich themselves at the expense of other members, employers, and consumers. Union funds have been rifled for private use and for other purposes concealed from the members and unrelated to union purposes. New sources of personal aggrandizement have been made available by the spectacular growth of pension and welfare funds. Loans have been made secretly to union officers from union funds for private businesses of the officers, often at no interest and with no collateral. Officers have also had a financial interest in companies with which they bargained collectively as union representatives or in companies which

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[46] Power Unlimited--The Corruption of Union Leadership, pp. 142-43.

transacted business with unions. Corruption has even gone to the point where union representatives have exploited their own members by agreeing to sub-standard wages and by otherwise softening union demands in return for some secret and attractive reward from the employer, resulting in a so-called "sweetheart" contract.[47]

Despite the shocking depth of corruption that has been exposed within the ranks of organized labor, many labor and political specialists do not agree with the conclusion quoted above that corruption is virtually intrinsic to present-day unionism. To do so, they think, would amount to saying that strong unions cannot be democratically, honestly, or efficiently governed unless put under severe restrictions or governmental control. Denying this conclusion, the more optimistic authorities point out that while almost every union has been subjected to close investigation at some time in recent years, the number of unions and leaders found guilty of grave abuses have been a relatively small proportion of the total, perhaps a proportion that is little, if any, greater than a similar investigation would bring to light in other occupations, professional, business, or political, even though the abuses might be of a different character. This view does not condone corruption, although it minimizes that casual relationship between corruption and unionism. Corruption, it is said, is found wherever temptation exists. As evidence, a finger is pointed to the conflict-of-interest scandals which have plagued several federal ad-

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[47] Cf. U.S., Congress, Senate, Select Committee on Improper Activities, Interim Report, passim; Petro, Power Unlimited--The Corruption of Union Leadership, passim; Daniel Bell, "The Scandals in Union Welfare Funds," Fortune, XLIV (April, 1954), 140-42, 196-206. The literature on the subject is of almost infinite quantity. Few topics in contemporary history have been so thoroughly reported in the daily press and the newsmagazines.

ministrations. Widespread political corruption has been uncovered in state governments. More significant, perhaps, are the estimates made of the loss in money and property embezzled from businesses, ranging from one-half to three billion dollars every year.[48]

It is widely acknowledged that the AFL-CIO, when it became aware of the serious extent of union corruption, moved with dispatch and unusual courage in developing codes of ethical practices and adopting them as binding rules, which led to the suspension of a number of international unions and the expulsion of three, including its largest affiliate. In approaching the same problem, it is pointed out, the majority of the members of Congress did not believe it necessary to ban the union shop in the 1959 labor legislation in order to check union corruption. Congress placed the strongest emphasis on the importance of requiring public disclosure of adequate financial reports as the means of removing the opportunity to loot union funds. This remedy was similar to that recommended by a committee of experts appointed by the governor of New York to propose legislation to root out corrupt practices in labor-management relations. Making no mention of the union shop, this committee recommended a statute that would expressly declare the fiduciary responsibility of union officers in administering funds, define activities that constitute a conflict of interest, require adequate financial reports to members and minimum standards of accounting

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[48] Cf. "Embezzlers, the Trusted Thieves," Fortune, LVI (November, 1957), 142. For an account of corruption in governments, typified by the misuse of a huge sum of state funds in Georgia, see The Wall Street Journal, June 4, 1959, pp. 1, 17.

and record keeping. New enforcement measures were also proposed.[49]

It is significant that the governor's committee established as one of its principles that corrupt practices should be attacked directly and not by indirect devices, and that sanctions should be directed against corrupt individual officers and not against unions and their ability to represent their members in collective bargaining. Emphasis was also placed on the need of encouraging and strengthening the various segments of the labor movement in their own efforts to get rid of corruption and oppression. The principle to be applied, it was said, consists in promoting self-regulations, not supplanting it.[50]

While compulsory disclosure of union financial transactions may help and encourage members to rid themselves of corrupt leaders, more stringent measures are deemed necessary by many to meet the most notorious form of corruption, which undoubtedly is racketeering. The essential characteristic in this practice is extortion of money or advantages through fraud or threats of violence. It usually involves also an unlawful interference with business. The practice is not peculiar to unions, but it has flourished for a long time within some of them which have taken advantage of labor's strategic position and power and has fattened on the protection and privileges bestowed on unions by government. To achieve their ends, the rackets have relied on fear, terror, gangster methods, and sheer hoodlumism. They have continued even in

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[49] Cf. "Interim Report of the Governor's Committee on Improper Labor and Management Practices," Industrial and Labor Relations Review, XII (January, 1959), 264-66.

[50] Ibid., pp. 267-64.

the face of publicity, moral indignation of the community, and sporadic legal attacks.

Law enforcement agencies at all levels of government have found it extremely difficult to cope with racketeering. People experienced in fighting the rackets believe that the public and many legislators have no idea of how solidly entrenched racketeers can become and how formidable is the task of routing them. Years ago a student of the labor movement made a comment about the persistence of racketeers that seems as valid today as when it first appeared:

> Once rackets have become established they have proved exceedingly difficult to oust. The indifference and ignorance of many union members simplifies the task of the union racketeer to preserve his power. Other members are frightened or bribed into submission, and still others have no complaint so long as they are employed at wages they consider reasonable. Experience has shown that members will often suffer many abuses before they are sufficiently aroused and united to risk expulsion and physical violence in a battle for honest unionism.[51]

Under racketeering leaders of unions the individual rights of workers, employers, or anyone else who interferes receive no hearing at all. For this reason it is necessary to examine carefully whether an employee's rights can be significantly protected by a ban on the union shop.

Racketeering unions rely on effective compulsion in whatever form necessary. They make use of all available instruments, some of which on other occasions may be entirely lawful. Thus they have been associated with strikes, boycotts, and picketing, or threats thereof. Racketeers have beaten, starved, and terrorized employers into unwilling

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[51] Joel Seidman, Union Rights and Union Duties (New York: Harcourt, Brace & Co., 1943), pp. 116-17.

cooperation. At the same time there are employers who support the rackets through bribery to gain competitive advantages, especially in highly competitive small-business industries where, as one government official noted, any savings in wages or shipping costs can mean the difference between business success and failure. Further, he says:

> You can readily see how the unscrupulous find ample opportunities to infiltrate this system. Not only on the unions' side have hoodlums existed. For every racketeer union, there is a manufacturer who is willing to connive with it to exploit and, in some cases, physically oppress his employees.[52]

Some of the worst racketeering has thrived with the cooperation of business and political leaders. The waterfront labor scandal in New York was a notable example, one which prompted The New York Times to say: "There emerged a sinister picture of high ranking city officials consorting with mobsters, protecting the rackets and getting in return a share of the take."[53]

On the other hand, Sylvester Petro correctly notes that it is false semantics to accuse employers of bribery when it is really extortion that is being practiced, when money is being taken from an unwilling person through duress because of some improper or unlawful exercise of power.[54] Thoroughly reputable firms have submitted to extortion as the only means of maintaining labor peace. Many firms have submitted because it seemed

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[52] Paul W. Williams, "Statutuory and Fiduciary Standards and the Administration of Property," Labor Law Journal, VIII (December, 1957), 867. At the time of writing the author was United States Attorney for the Southern District of New York.

[53] Quoted in Barbash, p. 310. Cf. Daniel Bell, "Some Aspects of the New York Longshore Situation," in Industrial Relations Research Association, Proceedings of the Seventh Annual Meeting (Madison, Wis., 1955), pp. 298-304.

[54] Power Unlimited--The Corruption of Union Leadership, pp. 159-60.

the only way to stay in business.

For the purpose at hand it is especially important to note where racketeering does and does not appear. The New York waterfront has been cited as an example. Yet on the Pacific coast, the longshoremen's and the maritime unions, while beset with other problems, had no problem of racketeering, even though a virtual closed shop prevailed among workers on both coasts. Union organization has also been particularly strong in such industries as steel, automobiles, rubber, electrical equipment, and mining, in which large firms with multiple units predominate and operate under conditions of imperfect competition. These industries, despite union power and the union shop, have had virtually no trouble with racketeering, either labor or other types.[55]

The picture is remarkably different in businesses which consist of smaller and intensely competitive units. While many firms have not been affected, labor racketeering has for years been widespread in the building and construction industry, in retail and service trades, including truck transportation, and also in larger firms that depend heavily on trucking or sell directly to retailers or consumers. More meaningful, however, is the fact that these industries which seem most susceptible to labor racketeering are also characterized by racketeering at every level, extending to employers, middlemen, and other connected with the industries. As one writer observes, racketeering therefore seems to be more than a labor problem; it is more properly termed a social problem.[56]

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[55] Cf. David J. Saposs, "Labor Racketeering: Evolution and Solutions," Social Research, XXV (Autumn, 1958), 256.

[56] Ibid.

Another anomaly of the racketeering problem is the occasional presence of infection at the top level of a union when some of its locals bear no trace of it. On the other hand, some locals become dominated by gangsters and hoodlums while the top of the union is clean. Corruption is seldom found from top to bottom of a union, even among the officers.[57] Nor does the age of the union seem to be correlated with racketeering. Once the sorriest example of the abuse as a result of an invasion of some of the most vicious gangsters in American history, the long-established Amalgamated Clothing Workers of America has since emerged as one of the most highly respected unions in the country. The underworld control of this particular union was broken by the shrewd resourcefulness, not always simon-pure, to be sure, of an opposition group led by Sidney Hillman.[58] The union shop was not a basic factor in the violent struggle that had the garment industry in turmoil for years. Still operating under union-shop conditions, the garment unions, among the oldest unions in the country, are recognized today as the most stabilizing influence in a fiercely competitive industry.

The corrective remedies for labor racketeering must take into account the above contradictions. Some forms of union extortion and personal aggrandizement have relied on the existence of union-shop conditions, and others have not. Some forms have made use of pressure from non-existent unions, so-called "paper locals," which established picket-lines or threatened strikes and violence. On the other hand, the rackets

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[57] Ibid., pp. 256-57.

[58] Cf. "Labor Violence and Corruption," Business Week, August 31, 1957, pp. 79-85.

are scarcely known in wide sectors of highly unionized businesses. With more than three out of four workers under collective bargaining contracts having some form of union-security provision, racketeering still seems to thrive only in certain industries and trades, and then sometimes only within segments of some unions.

One of the principles on which the AFL-CIO merger was founded was that enough authority be placed in the hands of the federation's leaders to exorcise corruption and racketeering.[59] The federation's subsequent attack on these abuses, however, was not a brilliant success. The reasons are clearly not explained by laxity among its leaders. One difficulty has been that the ultimate penalty of expulsion from the federation cannot correct the evil when the expelled union is strong enough to stand alone. The federation hesitates to establish a rival union because this step is so contrary to the traditions and philosophy of American unionism that it stands little chance of success outside of some special circumstances that thoroughly discredit the old union. Even then, success is not assured. Attempts to establish a new union sponsored by the A.F. of L. after the International Longshoremen's Association was expelled for outrageous corruption were dismal failures. Only strong governmental intervention finally produced some improvements on the New York waterfront after every other alternative proved to be

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[59] Cf. Arthur J. Goldberg, AFL-CIO Labor United (New York: McGraw-Hill Book Co., 1956), pp. 85-86, 192-94.

ineffective.[60]

Although some centralization of authority has developed in the AFL-CIO since the merger, the federation's attempts to eliminate racketeering are handicapped by the traditional principle of local autonomy which leaves each affiliated union largely responsible for its own affairs. The appeal that stronger action be taken by federation officials has sometimes been made by the very people who have decried union power and monopoly. The principle of local autonomy has the very important advantage of preventing excessive concentration of power in the hands of national leaders. A decentralized labor movement is common to all democratic countries. A strongly centralized movement, which has never existed in the United States, would represent a serious threat to the independence of any government which did not exercise absolute control over it. Local autonomy, however, has the disadvantage of making intervention in the affairs of affiliated unions extremely difficult. Moreover, from a practical point of view, the top federation officials cannot possibly be well enough informed to direct the activities of millions of members in every kind of industry and trade.[61]

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[60] Efforts to clean up the New York dock situation finally began to yield hopeful results after a Waterfront Commission was established as authorized in the New York-New Jersey Bi-State Compact. Through this means the shape-up system of hiring was abolished and a new system set up under the direct supervision of the Commission, although the actual hiring is done by agents of the employers. The hiring agent can no longer be a member of the union and the union can have no part in his selection. Nor can the union have any function in the hiring process, although collective bargaining can provide for any procedures or practices not in conflict with the law. The excess number of longshoremen who work only occasionally has been reduced substantially through a decasualization program introduced by the Commission. Cf. Vernon H. Jensen, "Hiring Practices and Employment Experience of Longshoremen in the Port of New York," International Labor Review, LXXVII (April, 1958), 342-59.

[61] Cf. Saposs, pp. 263-64.

Lacking the power of subpoena, investigation, and enforcement proper to government, the federation has found itself incapable of ferreting out the racketeers, accumulating sufficient evidence of guilt, or providing adequate penalties.

Government action, therefore, seems absolutely necessary to correct this evil. Some success has attended the application of the Hobbs Act, enacted by Congress in 1946, although it has been used infrequently.[62] The government has also turned to the anti-trust laws to deal with some racketeers. The 1959 labor law also tries to meet the problem, especially by giving the states jurisdiction in businesses too small to be supervised by the NLRB. Since racketeering is much more extensive than union activity, however, involving as it often does the complicity of employers, politicians, lawyers, and labor consultants, who also profit by the practice, any law solely designed to regulate union practices appears to be inadequate to correct this grave social malady.

Proposed legislation must be further evaluated from the point of view of law enforcement. Much of the racketeering exposed by the McClellan Committee of the Senate and by other governmental investigations occurred in direct violation of already existing laws, both state and federal. Racketeers operate outside the law, and they profit by successfully defying the law, at times, indeed, through complicity with law-enforcement agencies. New laws may be as ineffective as the old unless

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[62] Cf. Peter Magargee Brown and Richard S. Peer, "The Anti-Racketeering Act; Labor and Management Weapon against Labor Racketeering," New York University Law Review, XXXII (May, 1957), 538-79. For a contrary opinion of the law's value, cf. Benjamin Aaron, "Governmental Restraints on Featherbedding," Stanford Law Review, V (July, 1953), 604-27.

they reach with equal force everyone who profits by racketeering. Whether a "right-to-work" law can achieve this goal, even partially, by eliminating compulsory union membership, will determine its value as an instrument to drive racketeering out of the economy.

Communism

Communist domination of a few unions has added some strong emotional overtones to the "right-to-work" controversy. The new employee or the nonunion worker who finds he must join a communist-dominated union to hold his job may suddenly be faced with a critical threat to his conscience and personal integrity. In more recent years the problem has rarely been of such dimensions as to cause this personal crisis, but where it does exist, it must be faced.

One of the better known tenets of communism holds that labor unions ought to be the principal object of infiltration as a preliminary to revolution. It is not surprising, therefore, that the labor movement in the United States was faced with a serious Marxist problem when the party was also achieving considerable gains elsewhere in the country. The A. F. of L. was never seriously bothered by the problem, for its affiliates were generally the old well-established unions of middle-class skilled workers with experienced leadership that could recognize organized opposition directed from outside the organization and had the prestige and authority to deal with it quickly and effectively. The founding of the C.I.O., however, presented a timely opportunity for the Communist party. The new labor federation was severely handicapped by a short supply of experienced officers, organizers, and publi-

cists to meet the needs of its sudden and rapid growth. The Communist party was able to supply unionists thoroughly trained in organization and administrative techniques.[63]

While communism has continued to increase its world-wide strength, it has virtually disappeared as a vital factor in American unions, with only a few exceptions. That the Communist party was not able to win more workers to its cause is one of its greatest failures and an indication of the labor movement's persistently strong support of the American capitalist system.[64] Aided by Americans' disenchantment with the post-war policies of the Soviet Union, but more so by the evident and fundamental contradictions between communist and labor-union goals, the C.I.O. in 1949 and 1950 finally expelled from its fold the flagrantly communist unions.[65]

In those instances where a union has succumbed to communist or other ideological or political control that suppresses the rights of individual members, or, for that matter, where a union has become primarily a vehicle for racketeering or corruption of any kind, it may well have given up whatever moral claim it had on the loyalty and support of employees. It has turned aside from its avowed purpose of

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[63] Cf. Philip Taft, The Structure and Government of Labor Unions (Cambridge. Harvard University Press, 1954), pp. 14-16.

[64] Cf. William Pasehell and Rose Theodore, "Anti-Communist Provisions in Union Constitutions," Monthly Labor Review, LXXVII (October, 1954), 1097-1100.

[65] The main outlines of the rise and decline of communist influence in unions are told in Max M. Kampelman, "The Communist Party vs. the C.I.O.: The Study in Power Politics" (New York: Frederick A. Praeger, Inc., 1957); and David J. Saposs, Communism in American Unions (New York: McGraw-Hill Book Co., 1959).

representing its members in collective bargaining, for which purpose it is protected by the government. Under these conditions most people will likely find it impossible to support any requirement that compels a worker to join an organization directed toward the overthrow of his civil government or toward the personal aggrandizement of a few leaders by unlawful means. In union organizations with such ends leaders clearly have no case to support a demand for required membership or financial payments by employees.

In a situation of this kind several alternatives to a "right-to-work" law may be open to the employees who still want a union to represent them. The guarantee of democratic elections and the right to sue where violations occur, as provided in the Labor-Management Reporting and Disclosure Act, may help to correct abuses that have led to tyrannical and ideological control. The deauthorization election provides another method. If these fail, legislation may be necessary to provide a stricter definition of the legitimate purposes of unions or to deny original certification by the government to unions judged by lawful authority to be corrupt, subservient to a foreign government, or otherwise not performing the functions of a bona fide labor union.

From a wider point of view the question should be raised whether the "right-to-work" law is needed to eliminate a communist problem within unions. An opinion has been expressed that workers will not stay in unions which are under communist or corrupt control, unless they must do so in virtue of a union-shop contract.[86] However, some evidence to the contrary

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[86] Cf. Ingles, pp. 43-44.

is found in certain communist-dominated unions which have maintained the unswerving loyalty of their members despite the attacks made on them from every quarter and the opportunity to join another union. Loyalty seems to have persisted because the unions in question fulfilled the functions that their members expected of them, not because they were led by communists. For this reason no one successfully challenged the Mine, Mill, and Smelter Workers Union after it was expelled by the C.I.O. On the other hand, the principal reason the International Union of Electrical Workers succeeded in largely supplanting the communist-dominated United Electrical Workers--perhaps the only really successful instance of communism being overcome from outside the union--was apparently the greater interest of the latter's leaders in promoting the party line than in achieving union goals. There is no evidence that the union shop was the cause of communist control, and there is no likelihood that a ban on the union shop would have been sufficient to eliminate the communists or weaken their hold.

The logic in this reasoning is upheld when one recalls the main causes of the communist problem. It was earlier indicated that part of the labor movement was willing to play along with the leftists in the belief that ideology was secondary to the needs of organization. The communists were usually effective unionists and leaders. Even after the expulsion of the communist unions from the C.I.O. the members of several preferred to keep their officers because of the latter's devoted service and pioneering efforts which had demanded rare courage and sacrifice in a harsh struggle.[67]

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[67] Cf. Taft, p. 32.

The communists had also gained control in some situations where unions were corrupt or ineffective. They also took advantage of the hostility of some employers. In reference to this point Jack Barbash has remarked:

> Violent opposition by employers invariably evokes a similar action on the part of the unions. Violence begets violence, and the Communists can be immensely effective in solidifying their control against external employer aggression in such situations. The development of Communist-dominated unions on the West Coast is a case in point.[68]

Their hostility toward unions even led some employers to be favorable to communist-controlled unions with the aim of splitting their employees' loyalty between competing unions and weakening their bargaining position. Bargaining from a weak position, it is known, tends to make a union more conciliatory and less demanding.[69]

In relation to the "right-to-work" controversy several conclusions may be drawn concerning the communist problem in unions. The first is that the problem does not exist for most workers who now belong or will join unions. To offer an objection to communism as a reason for opposing the union shop serves mostly to befuddle the basic issues. Secondly, there is no inherent relationship between communism and the basic tenets of American unionism. The policy of most unions was never conceived as being directed by and subject to a foreign government. Thirdly, it may be noted that the cleaning-up process against communism was essentially a democratic one, which shows that even in large unions the democratic process can work and be effective. The rout of the communists was largely accomplished from within the unions through the

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[68] Barbash, p. 343.

[69] Cf. Taft, p. 53.

mounting of an effective counter-attack. Because of the nature of the entrenched forces, the battle was often harsh, even brutal and bloody. The victory would not have been achieved had the members who were opposed to the leadership left the diseased unions to demonstrate their support of democracy. Nor in most cases would victory have been possible through the formation of another union to attack the incumbents. The "right-to-work" law supports either of these alternatives as an answer to the lack of democracy or the presence of corruption. Both alternatives mean a weakening of the union, at least temporarily, and most unionists seem unwilling to take that risk, especially since it has seemed to promise so little hope of reward. To them the method that purged most unions of communism appears far more salutary, and they hope it may turn out to be the best method of ridding their unions of other abuses as well.

Conclusion

Like all groups and organizations which have experienced a long and intense struggle to achieve even limited acceptance, labor unions are extremely survival-conscious. While belittling the immense power that some have gained, the unions have tended to structure themselves in a manner that assures internal solidity for protection against business forces, unsympathetic public outcries, or reform legislation. The unions, in other words, reflect a spirit of insecurity.

Incredible as this may seem to labor's critics, it explains, partially at least, the restriction of individual rights, the perpetuation of incumbent officers, and the toleration sometimes granted to gangster, communists, and other undesirables in the movement. Having

placed their sights on the union shop as a means of obtaining security, protecting their gains, and lessening the chances of being undermined by forces considered hostile, the unions have seen their goal whittled down by law and the courts to a point where the union shop means only "fictional" membership, as one court called it, requiring of members no more than a financial obligation. What is left, the "right-to-work" law purposes to take away.

The controversy over the union shop has centered on matters of principle and it has spilled over into labor-management relations. The arguments over dollars and cents, working conditions, and fringe benefits have been sometimes bitter and prolonged, but the bitterest and most prolonged of all controversies in industrial relations are those over principles and ideology. This was and is true in the dispute over management prerogatives. It was and is true in the dispute over the union shop. The unfortunate result may have been to slow down the unions' attempts to establish their own codes of ethical practices and improve their own democratic procedures. If this is so, it is because union leaders are convinced that in the long run freedom for workers will more surely result from effective unions than from worrying about the immediate needs of individual workers who complain of compulsion. The intensity of the "right-to-work" controversy has had a part in the hardening of labor-management relations. How the controversy became a focal point of the argument over principles is described in the following chapter.

CHAPTER VIII

THE "RIGHT-TO-WORK" CAMPAIGN

The national labor policy voiced in the Wagner Act, and supplemented by the enactment of "little Wagner Acts" in a half-dozen states, was one that encouraged workers to organize into unions for the purpose of collective bargaining. The policy was not uniformly applauded by all states and classes. As a matter of fact, attacks on union privileges and protection never ceased altogether. As early as 1939 and during the war years that followed, a good number of states were successful in their attempts to restrict union freedom and activity. Laws were passed which were allegedly intended to equalize the bargaining power of labor and management, to restrain violence, boycotts, and picketing, and to restrict or ban closed and union shops. Many of these efforts were to crystallize and coalesce in the drive to enact "right-to-work" laws.

A look at the background of the "right-to-work" laws shows that their appearance on the national scene was not a sudden reversal of public policy. The way had been prepared by a number of events which influenced the development of the later campaigns. The term "right-to-work" itself was not new, but it was given a new meaning in the 1940's, and it provided additional ground for controversy.

The various state campaigns for the "right-to-work" laws have more or less followed a pattern that was established in the earliest ones.

The proposals to enact these laws have created some of the most intense political battles of the century. Several of these have been studied in detail by other writers, and a summary of their findings concludes this chapter on the "right-to-work" campaign.

Background

The "right-to-work" law has come to represent for many people a relatively simple answer to the frustrating and complicated problem of trying to regulate unions and eliminate all the abuses they are charged with. Thus getting rid of the union shop has been advanced as a means to break union monopoly, to reduce union market-power and its allegedly inflationary pressure, to weaken unions enough to remove the threat of nation-wide strikes, to root out "featherbedding" or "make-work" practices, and to put an end to corruption and racketeering.

The attraction of the "right-to-work" law has probably been enhanced by the failure of other laws to accomplish these ends. At least the effectiveness of other laws has not been sufficient to quiet the fears of the critics of the labor movement, who point, accurately enough, to the aid given the unions by the forms of union security permitted under the Wagner Act. If employees were given complete freedom to enter and leave unions whenever and for whatever reason they choose, the critics of union power have contended, union abuses might be subject to more effective control.

It was back in 1939 that the trend began in state labor legislation away from statutes protecting union activity and fostering collective bargaining and toward laws designed primarily to limit the area of labor's

rights, to protect the worker from his union representative, and to regulate the internal affairs of unions. The move in this direction was initiated by the Wisconsin Employment Peace Act of 1939, which limited the area of labor disputes to the primary parties directly involved, recognized the right of employees to refrain from, as well as to engage in, union activity, and added union unfair labor practices to the employer unfair practices listed in the federal law.[1] Laws similarly modifying or reacting to the policy of the Wagner Act were enacted in the same year in Minnesota, Pennsylvania, and Michigan.

Only a dozen states have enacted comprehensive labor codes. Most others, however, have adopted restrictive provisions of one type or another, together with statements of policy that regulate collective bargaining and guarantee the rights of the public, consumers, and individuals with respect to the conduct and objectives of collective bargaining. In the state statues are found regulations concerning union breech of contract, boycotts, picketing by employees, giving notice and cooling-off periods before strikes, checkoff of union dues, jurisdictional disputes, and political contributions. Stranger-picketing, picketing in the absence of a labor dispute, and mass-picketing have been outlawed in a number of states. A number of other laws have been passed which make strikes illegal unless approved by a majority vote by secret ballot. Strikes in public utilities have also been widely regulated. Several states have also declared coercion of employees by unions to be an unfair labor practice, and "coercion" in some statutes, Nebraska's, for example, is of a sweeping

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[1] Cf. Harold A. Katz, "Two Decades of State Labor Legislation," Labor Law Journal, VIII (November, 1957), 748.

nature. Some states have also required the licensing of union agents, the registration of unions, and the filing of financial reports, constitutions, names of officers, number of members, and so on.[2]

It is obvious, therefore, that state laws regulating union-security clauses were not conceived in a vacuum. They fitted into the trend of other types of regulatory labor legislation. Not only has the union-security provision been outlawed by almost half the states at one time or another, it has been regulated by other states to the extent that it is permitted only where it has been authorized by vote of the employees covered. Thus Colorado permits a union-security agreement only after three-fourths of a firm's employees have voted for it; Wisconsin requires a two-thirds vote provided the number of voters is a majority of the employees in the bargaining unit; Kansas required only a simple majority before it enacted a "right-to-work" law. Hawaii, which formerly required three-fourths of the employees involved in bargaining to vote approval of a union shop, reduced the requirement to one-half by a 1959 statute. In Maryland, a union-security clause has been declared by the legislature to be against public policy and hence unenforceable. In a few states, agreements for the union shop are made contingent on the fulfillment of other conditions, such as unrestricted admission of all applicants to the union.[3]

It was generally recognized, however, that whatever benefits this variety of state legislation might produce were seriously impaired by the

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[2] Cf. Ibid., pp. 750-64.

[3] Ibid., pp. 758-59.

inclination of the courts to yield supremacy to the federal government in labor matters affecting interstate commerce. Before long it became crystal clear from Supreme Court rulings that Congress had indeed occupied much of the field of labor relations and the states were powerless to act except where Congress expressly left a given area open to state regulation. Where Congress did not express its intent with respect to the displacement of state laws, the states were free to act, although they frequently were overruled by court decisions which interpreted Congressional intent differently from the interpretation given by state courts.[4] The Supreme Court itself stated that the "implications" of Congressional intent are "translated into concreteness by the process of litigating elucidation."[5]

The Court leaves no doubt that Congress has wide discretion in delimiting or extending state powers in labor relations. With respect to union security Justice Felix Frankfurter, in delivering a Court opinion, observed that here was one area in which Congress had expressly waived the supremacy of federal law. The Justice said:

> Other provisions of the Taft-Hartley Act make it even clearer than the National Labor Relations Act that the states are left free to pursue their own more restrictive policies in the matter of union-security agreements. Because § 8(a)(3) of the new Act forbids the closed shop and strictly regulates the conditions under which a union-shop agreement may be entered, § 14(b) was included to forestall the inference that federal policy was to be exclusive.[6]

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[4] The tendency was clearly evident in court decisions interpreting the Wagner Act and in the policies of the National War Labor Board. Cf., N.L.R.B. v. Fainblatt, 306 U.S. 601 (1939).

[5] International Assoc. of Machinists v. Gonzales, 356 U.S. 617, 619, (1958).

[6] Algoma Plywood & Veneer Co. v. Wisconsin Employment Relations Board, 336 U.S. 301, 313-14 (1949).

The Court has also specifically pointed out that federal regulation of labor relations does not impair the power of the states to prohibit violence in labor disputes or in anyway interfere with the state police function of maintaining order.[7]

Precisely because the federal law gives the states power to restrict unions in matters pertaining to union security, this issue has occupied the limelight since 1947. In most other areas the states have been unable to act, largely because the Taft-Hartley Act occupies the field. Yet during the Congressional debate before this lawwas enacted, especially in the hearings on union security, the argument to preserve states' rights was raised over and over again. One writer comments: "it is an irony of history that this relative eclipse of the states from the labor relations field has come largely as a result of the Taft-Hartley Act, the leading proponents of which were vigorous exponents of states' rights."[8]

The argument of states' rights has continued to occupy a prominent position in the "right-to-work" controversy. It does not seem to deserve the importance given to it. Support for the argument undoubtedly comes from the fact that individual states have been able to enact more stringent controls on unions than Congress has wished to do. This is a consequence of the weakness of organized labor in many states, especially those having a more agricultural than industrial economic base. In these

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[7] Cf. Allen-Bradley Local No. 1111 v. Wisconsin Employment Relations Board, 315 U.S. 740, 751 (1942); Garner v. Teamsters Union, 346 U.S. 485, 488 (1953); Youngdahl v. Rainfair, Inc., 355 U.S. 131 (1957).

[8] Katz, p. 751.

as well as in a number of additional states, political apportionment has historically permitted rural counties to outvote the more populous urban centers where factory workers and union membership are concentrated. As a general rule, therefore, state legislation more easily follows the social pattern desired by voters of rural and smaller urban areas. These comprise the groups who traditionally have been least sympathetic to union organization. Of like mind have been those employers' associations, like the national Chamber of Commerce, in their support of states' rights and opposition to the accretion of federal power in industrial relations.[9]

In Congress the opponents of the Taft-Hartley Act attempted to insert an affirmative federal prohibition on state laws banning union-security contracts. This provision would have permitted state regulation of the contracts but not state prohibition. The provision was defeated as an "anti-state-rights" clause which was alleged to be an unconstitutional invasion of the rights of sovereign states.[10]

The principle of states' rights has solid roots in sound political philosophy. It has been contended, however, that in relation to the union-security issue the argument for states' rights is less than honest. The right to regulate labor problems and union security in interstate commerce has been clearly established as coming under the commerce clause of the Constitution. Therefore the power to occupy the field belongs to

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[9] Cf. Testimony of Robert G. Kelly for the Chamber of Commerce of the United States before Senate Labor Subcommittee (Washington: Chamber of Commerce of the United States, 1958), pp. 25-27.

[10] Cf. John V. Spielmans, "States' Rights in Union Security Legislation," Review of Social Economy, IX (September, 1951), 115-17.

Congress as far as it sees fit to act, states' rights notwithstanding. Since 1947 Congress has seen fit to leave the regulation of union security to the states, but there is no legal doubt that if Congress decided to reserve the matter to itself, any state law to the contrary would run afoul of the federal law.

It has been further pointed out that the advocates of states' rights in the union-security issue sought a law that permits only state regulation that is more stringent than the federal law, but does not permit states to enact regulations more favorable to the labor movement. Thus a law, such as Massachusetts has, is invalid in businesses in interstate commerce because it permits unions to strike for union-security agreements and employers and unions to negotiate them, while providing direct safeguards against closed unions and other abuses of individual freedom. The state is therefore denied local autonomy to tolerate such activities. On the other hand, rather unreasonably from the point of view of states' rights, the federal law that forbids Massachusetts to apply its law favoring union security in businesses in interstate commerce does permit Virginia, Alabama, Nevada, and others to apply their laws outlawing all union-security agreements.[11]

Whatever doubts may have persisted under the Wagner Act concerning the authority of the states to enact laws prohibiting union security contrary to federal public policy were completely dispelled by the inclusion of Section 14 (b) in the Taft-Hartley Act. While the law clearly

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[11] Cf. Archibald Cox, "Federalism in the Law of Labor Relations," Harvard Law Review, LXVII (June, 1954), 1313; John F. Cronin, "Right-to-Work Laws," The Catholic Lawyer, II (July, 1956), 187.

permits a type of union shop, subject to several conditions, the real boon to proponents of state "right-to-work" laws is Section 14(b), which declares:

> Nothing in this Act shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law.

Under this provision the states are ceded the authority to regulate compulsory union membership, provided their action is not less strict than the federal law.

The Term: "'Right-to-Work' Law"

The contemporary conflict over required union membership as a condition of employment has become firmly identified as the "right-to-work" campaign. Similar struggles in earlier periods received the popular labels of the "open shop" and "American Plan" campaigns. The first successful attempts of the states to restrict the union-security provision of the Wagner Act were achieved under the name of "right to work," and the appellation has stuck. The slogan was brief, simple, appealing.

The term focused attention on the controversy, and it seemed to be a particularly happy choice to the proponents of the laws which would ban closed and union shops. Certainly people could be expected to favor a right to work, as they favor motherhood and patriotism, especially when the denial of the right could be publicized as contributing to an increase in union power or corruption. In several states where the issue has been put to the voters, the proponents of "right-to-work" laws have vigorously protested the decisions of legal authorities that the term

could not be used on petitions and ballots because it was misleading. Perhaps one of the chief advantages of the slogan was that it helped turn public attention away from the fact that the conflict was a continuation of the private economic struggle for market-power between labor and management. The controversy, instead of being an economic conflict, was turned into the political and ethical arena in terms of the rights of employees.

As a slogan, the "right to work" made its appearance in Europe at least as early as 1848.[12] In the United States it was occasionally used during the "open shop" campaign of the early twentieth century. It appeared from time to time thereafter but attracted no significant attention until the 1940's.

It was from usage in legal contexts that the "right to work" apparently evolved into its present popular narrow meaning of the right to work without having to join a union. The Supreme Court of the United States in 1908 spoke about the right from a point of view that has long since been altered by subsequent social legislation. At that time the Court declared:

> The right of a person to sell his labor upon such terms as he deems proper is, in its essence, the same as the right of the purchaser of labor to prescribe the conditions upon which he will accept such labor from the person offering to sell it. So the right of the employee to quit the service of the employer, for whatever reason, is the same as the right of the employer, for whatever reason, to dispense with the service of such employee.[13]

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[12] Cf. C. Wilfred Jenks, "The Five Economic and Social Rights," The Annals, CCXLIII (January, 1946), 41.

[13] Adair v. United States, 208 U.S. 161, 174-75 (1908).

Much later a Supreme Court justice, William O. Douglas, uttered a statement that has been ofter quoted to support the "right-to-work" laws. He declared: "The right to work, I had assumed, was the most precious liberty that man possesses. Man has indeed as much right to work as he has to live, to be free, to own property."[14] Other cases have also been cited to show the Court's devotion to the "right to work."[15]

Two other references to the term may also be noted. In 1946 an international committee appointed by the American Law Institute issued a "Statement of Essential Human Rights." Article 12 reads: "Every one has the right to work. The state has a duty to take such measures as may be necessary to insure that all its residents have an opportunity for useful work."[16] Then in December, 1948, the United Nations General Assembly meeting in Paris issued its "Universal Declaration of Human Rights," Article 23, Section 1 of which states: "Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment."

Armed with these statements the "right-to-work" forces have confidently gone forth to do battle. The quarrels and confusion resulting therefrom have been fierce and frightful.

To one side the "right to work" is no slogan or catchword; rather "its use to describe the present statutes represents about as

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[14] Barsky v. Board of Regents, 347 U.S. 442, 472 (1953).

[15] Among these are: Yick Wo v. Hopkins, 118 U.S. 356 (1886); Smith v. Texas, 233 U. S. 630 (1914); Truax v. Raich, 239 U.S. 33 (1915).

[16] "Statement of Essential Human Rights," The Annals, CCXLIII (January, 1946), 23.

precise an employment of legal terminology as could be imagined," says J. C. Gibson.[17] To the opposition the phrase is a misrepresentation and a fraud, for it is a veiled attack on unions, not providing the right to work but the right to "wreck" unions.[18]

The disagreement over terminology is symptomatic of the emotionalism that has attached itself to almost every phase of the "right-to-work" debate. The opponents of the laws have charged that unions will be weakened or destroyed, collective bargaining undermined, wages and working conditions threatened, consumer purchasing power reduced. The proponents have relied heavily on such phrases as "liberty," "rights," "freedom," "democracy," as opposed to "labor bosses," "goons," "Communists," "corruption," "racketeers." Indeed, this practice is nothing new. Earlier battles also employed slogans with emotional content: "open shop," "American Plan," "union security," "yellow dog."

The dismay of voters who have tried to weigh the arguments of both sides affords considerable proof that the label "right to work" has thoroughly confused the essential question: if an employer and a union agree voluntarily that all employees represented by the union should become members of the union, should such an agreement be permitted by law. Surveys have consistently revealed confusion among respondents when the question was first phrased as the "right to work" and

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[17] The Legal and Moral Basis of Right to Work Laws (Washington: The National Right to Work Committee, 1955), p. 30.

[18] Cf. The Right to Wreck! (Washington: American Federation of Labor, 1954), pp. 3, 6, 13.

then as a labor-management agreement. Among a group of college students of presumably higher average educational achievement than an average cross-section of voters, Paul Sultan found similar evidence of ignorance and confusion.[19] Even more impressive were the results of a questionnaire given 125 law students at a major university. Two-thirds declared themselves in favor of labor-management agreements on the union shop and against governmental action outlawing them. When the same law students were then asked if they favored so-called "right-to-work" laws, two-thirds of them were on the opposite side and favored governmental intervention.[20]

Contributing to the confusion is the failure to distinguish between the narrower and broader meanings of "right to work." How else can one explain the words of Justice Douglas, who once referred to the right to work as "the most precious liberty that man possesses," and then in a later Supreme Court decision, made the following extraordinary qualification:

> It is said that the right to work, which the Court has frequently included in the concept of "liberty" within the meaning of the Due Process Clauses . . . may not be denied by the Congress. The question remains, however, whether the long-range interests of the workers would be better served by one type of union agreement or another. That question is germane to the exercise of power under the Commerce Clause--a power that often has the quality of police regulations. . . . One would have to be blind to history to assert that trade unionism did not enhance and strengthen the right to work. . . . To require, rather than to induce, the beneficiaries of trade unionism to contribute to its costs may not be the wisest course. But Con-

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[19] Cf. Paul Sultan, Right-to-Work Laws: A Study in Conflict (Los Angeles: Institute of Industrial Relations, University of California, 1958), p. 81.

[20] Cf. Work, XV (January, 1958), p. 2.

> gress might well believe that it would ensure the right to work in and along the arteries of interstate commerce. No more has been attempted here.[21]

More surprising still, the Justice was engaged at the time in reversing a lower court which had used his earlier words in support of its decision.

Furthermore, it is clearly evident that the "right to work" as used in the "Statement of Essential Human Liberties" and the United Nations "Declaration" refers particularly to the right to obtain employment, not only to seek and retain it. A member of the drafting committee of the above "Statement" leaves no doubt in his commentary on the "right to work" that the right refers to a man's need of employment which the state must protect because of the industrial revolution that has led to the loss of man's economic self-sufficiency.[22]

A good portion of the "right-to-work" campaign literature has taken pains to make clear that the laws do not guarantee or provide a job to anyone. Nevertheless, the term seems to imply the right to a job, and many people have been misled into thinking that it does. At the same time, it was the contention of the legal experts who drafted the American Law Institute's statement on the "right to work" that, if private industry fails to provide jobs, it is the duty of the state to take means to do so. Thus it can be said that a worker does not have the freedom to work, which implies a choice, unless more than one job is available to him. Consequently, only under full employment conditions is it at all possible for every worker to have the right to work at a job of his

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[21] Railway Employees' Department, A. F. of L. v. Hanson, 351 U.S. 225, 234 (1956).

[22] Cf. John R. Ellingston, "The Right to Work," The Annals, CCXLIII (January, 1946), 27-39.

choice. Otherwise some workers are denied their "right to work" whether unions exist or not.[23]

It is this same broader "right to work" that has confused people about the meaning of court decisions. When the Supreme Court used the term in cases such as Yick Wo v. Hopkins, Truax v. Raich, Smith v. Texas, and Barsky v. Board of Regents, it was confronted with situations in which the "right to work" had been denied by arbitrary discrimination in employment. Qualified persons had been denied by statutes work opportunities upon terms of equality with all others similarly qualified. In the Smith and Truax cases the statutes at issue absolutely prohibited employment of the persons concerned, and no possibility existed of ever overcoming the restrictive barrier. Thus the court ruled that a person cannot be deprived by law of his "right to work" because of his race, creed, color, political affiliation, or any other factor that is arbitrarily and unreasonably discriminatory. A more recent decision of the Supreme Court reaffirmed this point with respect to a man who had been forbidden to practice law in the State of New Mexico because he had once been a member of the Communist party. The Court said:

> A State cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the Due Process or Equal Protection Clauses of the Fourteenth Amendment. . . . A State can require high standards of qualification such as good moral character or proficiency in its law, before it admits an applicant to the bar, but any qualification must have a rational connection with the applicant's fitness or capacity to practice law. . . .[24]

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[23] Cf. Sultan, pp. 75-76.

[24] Schware v. Board of Bar Examiners, 353 U. S. 232 (1957).

The difference between these cases and the Hanson case, in which the Court declared, "one would have to be blind to history to assert that trade unionism did not enhance and strengthen the right to work," appears to lie in the fact that the former are concerned with absolute prohibitions imposed by law on certain groups of persons who cannot alter such disabilities as national origin and color, whereas in the latter both the Taft-Hartley Act and the amended Railway Labor Act permit union-shop agreements, if membership is open to all nonunion employees on the same terms and conditions as are generally applicable to other employees. The Taft-Hartley Act, for example, is clear on this point. Section 8(a)(3) provides that after a stated period of time an employee may be discharged if he has not joined the union, unless he was denied membership for some reason other than his failure to pay dues and initiation fees "uniformly required as a condition of acquiring or retaining membership."[25]

Whether the requirement that an employee must join the union to retain his job is an arbitrary and capricious limitation on his "right to work" is a question over which sincere and honest men have sharply disagreed. Because what is socially desirable is often a matter of opinion or of trial and error, the Supreme Court has consistently maintained that a decision on the question is a legislative function, not a judicial one. The issue of freedom to work is one for the legislators

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[25] Italics added.

and the voters to settle, not the courts.[26] Justice Oliver Wendell Holmes once expressed himself in a similar vein when he thought the Court, in striking down a law that expressed a new social attitude, was overreaching itself in its interpretation of "liberty" in the due process clause of the Fourteenth Amendment. Holmes said he thought the concept of liberty "is perverted when it is held to prevent the natural outcome of a dominant opinion, unless it can be said that a rational and fair man necessarily would admit that the statute proposed would infringe fundamental principles as they have been understood by the traditions of our people and our law."[27]

As confusion over the meaning of "right to work" has spread, even some of the more ardent proponents of the laws have admitted that the term is a misnomer. Particularly after the dismal failure to enact the laws in five out of six states in the 1958 elections, proposals were

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[26] The following statement of Justice Felix Frankfurter clearly reveals the mind of the Court:
"Even when the social undesirability of a law may be convincingly urged, invalidation of the law by a court debilitates popular democratic government. Most laws dealing with economic and social problems are matters of trial and error. That which before trial appears to be demonstrably bad may belie prophecy in actual operation. It may not prove good, but it may prove innocuous. But even if a law is found wanting on trial, it is better that its defects should be demonstrated and removed than that the law should be aborted by judicial fiat. Such an assertion of judicial power reflects responsibility from those on whom in a democratic society it ultimately rests--the people. If the proponents of union-security agreements have confidence in the arguments addressed to the Court in their 'economic brief,' they should address those arguments to the electorate. Its endorsement would be a vindication that the mandate of the Court could never give." Concurring opinion in A. F. of L. v. American Sash & Door Co., 335 U.S. 538, 553 (1949).

[27] Dissenting opinion in Lochner v. State of New York, 198 U.S. 45, 76 (1905).

made that the "right to work" designation should be changed to "voluntary union membership" or "anti-compulsory union membership," or something else that would get away from the charged atmosphere surrounding the other name. Such action would conform to the rulings of the attorneys general of Washington and California that bills purporting to ban the union shop must carry some indication that they are related to employer-employee agreements.[28] Their rulings were in line with a decision of the Supreme Court of Idaho which held that a referendum favoring a "right to work initiative proposal" was defective because the title failed to refer to union membership.[29]

To date, however, no equally successful substitute for arousing public opinion has been advanced for the "right to work." The unions have completely failed to find a satisfactory slogan for the laws that would carry the same opprobrium as the "yellow-dog" contract did. The proponents of the laws are not sure where to turn after the enormous build-up given to what seemed at first such an auspicious title. When history records the great debate in the mid-twentieth century over labor union membership it probably will still be called the "right-to-work" controversy, whether it is confusing or not.

The "Right-to-Work" Laws

Having already made feints in numerous directions against the federal government's policy of encouraging collective bargaining and

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[28] Cf. Sultan, p. 82.

[29] Idaho State Federation of Labor, A. F. of L. v. Smylie, 75 Ida. 367, 272 P. 2d 707 (1954).

strong unions, the advocates of union restriction began to move in the early 1940's to attack the protection given to closed and union shops. This occurred despite the increasing judicial evidence that Congress had occupied most of the field. Since a state constitution offers the most explicit and positive expression of the public policy of a state, even if it is contrary to federal policy, it was in this area that the first efforts were made to express local opposition to union-security contract provisions.

The movement bore its first fruits in 1944 when proposed "right-to-work" amendments to state constitutions appeared on the November ballots of California, Florida, and Arkansas. The proposed amendment to the California constitution read: "Every person has the right to work, and to seek, obtain and hold employment, without interference with or impairment or abridgement of said right because he does or does not belong to or pay money to a labor organization."[30]

While the amendment provided California citizens with their first opportunity to express themselves on the issue, bills of similar intent were familiar to California legislators. Some variety of a ban on union-security provisions had been proposed in the legislature in 1913, 1915, 1929, 1931, 1933, 1941, and 1943, before the initiative measure was submitted to the voters in 1944. After a torrid campaign which established a pattern for other states, the amendment was defeated, thus meeting the same end as all previous bills in the state.

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[30] Proposition No. 12, General Election, November 7, 1944.

Two sections of the California labor code had earlier been thought by some lawyers to fall within the category of a "right-to-work" law, but the state supreme court ruled to the contrary. Therefore, as construed by the supreme court, the California law does not prohibit either the union-shop or closed-shop agreement.[31] "Right-to-work" bills were later introduced without success in the state legislature in 1947, 1949, 1951, and 1953. Once again, in 1958, a "right-to-work" law was submitted to the electorate and was defeated by almost a million votes.[32]

The pattern in 1944 was far different in the southern states, as it has generally continued to be. Efforts in the Florida legislature to ban union-security provisions had begun in 1941 with a bill drafted by the state attorney general which proposed that such provisions be declared unlawful in all contracts financed by public funds. The bill was defeated in the House Labor Committee. In 194[illegible] another bill and a constitutional amendment to outlaw all union-security provisions in the state were submitted, and the bill met with the same fate as its predecessor. The amendment, however, was much more successful, for it was adopted by the constitutional amendment committees of both houses, passed both houses, and was then submitted to the voters in the 1944 general election, where it was accepted by a 55 per cent majority.[33]

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[31] Cf. McKay v. Retail Automobile Salesmen's Local Union No.1067, 16 Cal. 2d 311; cert. denied, 313 U.S. 566 (1940); Shafer v. Registered Pharmacists Union, 16 Cal. 2d 379 (1940.

[32] The writer is indebted to Assemblyman Vincent Jones, San Pedro, Calif., for the information on his state's "right-to-work" measures.

[33] Cf. John G. Shott, How "Right-to-Work" Laws Are Passed: Florida Sets the Pattern (Washington: The Public Affairs Institute, 1956), pp. 18-21, 24, 37.

A vote against the Florida amendment might well have seemed to many voters to endanger their protection from double-jeopardy, self-incrimination, and eminent domain because of the form used on the ballot to present the amendment. It was proposed to the voters that another sentence be added to Section 12 of the Declaration of Rights in the Florida constitution, so that it would read:

> Section 12. Double jeopardy; self-incrimination; eminent domain; the right to work. -- No person shall be subject to be twice put in jeopardy for the same offense, nor compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken without just compensation. The right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization; provided, that this clause shall not be construed to deny or abridge the right of employees by and through a labor organization or labor union to bargain collectively with their employer.

In this form the amendment was accepted by the voters.

Of the states which have enacted "right-to-work" constitutional amendments, Florida and Kansas are the only two which have not enacted enabling statutes to enforce the policy or to punish violators. In Florida, the attorney general, among others, believed the amendment to to be self-enforcing, while many others disagreed. This divergence of opinion was noted in the first state "right-to-work" case to reach the Supreme Court of the United States on a test of its constitutionality. Justice Douglas, speaking for the Court, therefore remanded the case to Florida courts for interpretation of the meaning of the amendment. An earlier decision by a special three-judge federal court, which held that there was no conflict between the federal Constitution and the Florida amendment, was declared to be premature, pending settlement of questions

of local law.[34]

On the same day as the citizens of Florida adopted their amendment, the voters of Arkansas approved a "Freedom to Work" constitutional amendment.[35] More detailed than Florida's, it specifically forbids any contract of employment that compels a worker to join a union as a condition of employment, or any contract that excludes union members or past members from employment. Moreover, it forbids the payment of dues to any labor organization against the person's will as a prerequisite or condition of employment.[36]

Two years later Arizona and Nebraska similarly turned to a constitutional amendment to protect the "right to work without joining a union." Neither says anything about the payment of dues as a condition of employment. The constitutional amendment adopted by Kansas in the general election of November, 1958, after an earlier bill had been vetoed

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[34] A.F. of L. v. Watson, 60 F. Supp. 1010 (1945), 327 U.S. 582 (1946). Cf. Shott, p. 44.

[35] A curious political connection later appeared between the proponents of the "right-to-work" amendments of Florida and Arkansas. Among the promoters of the Arkansas amendment was an organization styled the Veterans Industrial Association, which was headed by James Karam and employed "ex-athletes who can take care of themselves." It was a privately organized and financed open-shop enforcement squad. Attorney General Thomas Watson of Florida invited this organization to establish a branch in Florida to help him enforce the "right-to-work" amendment. However, before a serious attack on Florida unions could be launched, quarrels between Watson and Karam led to various charges and countercharges and finally to dissolution of the Florida branch of the V.I.A. Cf. Shott, pp. 47-52. Karam disappeared from national view until, as head of the Arkansas State Athletic Commission under Governor Orval Faubus, he took a prominent role in leading the violent uproar over integration of students at the Little Rock Central High School in 1957. Cf. Time, October 7, 1957, pp. 22-23. For later activities of Karam, see Time, October 6, 1958, p. 72, and September 28, 1959, p. 42.

[36] Arkansas, Constitution, Amendment 34.

by the governor, is virtually identical with the Arizona amendment, except that the former forbids the denial of the opportunity to obtain or retain employment because of union membership or nonmembership, whereas Arizona mentions only nonmembership.[37] The Nebraska amendment alone expressly states that it is self-executing, though, as a matter of fact, legislation was later enacted to enforce it.[38]

The Arizona and Nebraska amendments, adopted in 1946, were the subject of the United States Supreme Court decisions in 1949 that declared such amendments and related statutes to be within the constitutional power of the states. The only other "right-to-work" constitutional amendments adopted to date are one in South Dakota, which is a model of simplicity,

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[37] Kansas, Constitution, Art. 15 § 12. The Arizona amendment reads: "No person shall be denied the opportunity to obtain or retain employment because of non-membership in a labor organization; nor shall the state or any subdivision thereof, or any corporation, individual or association of any kind enter into any agreement, written or oral, which excludes any persons from employment or continuation of employment because of nonmembership in a labor organization." Arizona, Constitution, Art. 2, § 35.

[38] Nebraska, Constitution, Art. 15 §§ 13-15:

"13. No person shall be denied employment because of membership in or affiliation with, or resignation or expulsion from a labor organization; nor shall any individual or corporation or association of any kind enter into any contract, written or oral, to exclude persons from employment because of membership in or nonmembership in a labor organization.

14. The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

15. This article is self-executing, and shall supersede all provisions in conflict therewith; legislation may be enacted to facilitate its operation, but no law shall limit or restrict the provisions hereof."

approved in 1947,[39] and one in Mississippi, which was adopted by the legislature in 1960 and virtually repeats the state "right-to-work" law.

During this period when five of the seven state constitutional amendments were approved by the voters, the nation was experiencing some of the most widespread labor unrest and disturbances it has known, caused in part by the grave adjustments which industry had to make after the termination of the world war. Though conditions were turbulent, there was a notable decrease in the violence and bitterness characteristic of labor disputes of an earlier day. There is little evidence, moreover, that American industry in general was determined to throw off the yoke of unionism or crush the unions as was often an objective in earlier times. Nevertheless, the reconversion crises gave impetus to a very articulate demand that drastic changes be made in labor legislation. On the strength of this pressure the year 1947 saw the enactment of a greater quantity of restrictive legislation than organized labor has ever had to face at one time. Not only was the Taft-Hartley Act passed on the national level, but ten state legislatures also adopted "right-to work" statutes. Six of these were in the South: Arkansas, Georgia, North Carolina, Tennessee, Texas, and Virginia; four were northern farm states: Iowa, Nebraska, North Dakota, and South Dakota. In the same year Arizona, by a successful initiative petition, adopted an enabling

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[39] South Dakota, Constitution, Art. 6 § 2: "No person shall be deprived of life, liberty or property without due process of law. The right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization."

statute to its constitutional amendment.[40]

What had begun as an effort in some of the states to express through constitutional amendments a public policy on union-security clauses in collective bargaining contracts was developing into forthright statutory condemnations. Some of the 1947 state action was completed before it was clear that the federal policy of occupying the field was going to be changed. After the Taft-Hartley Act had been passed over presidential veto, it was evident that legislative control over union security had shifted to the states by virtue of Section 14(b).

Nevertheless, an interlude occurred in state legislation while the effects of the new federal law were weighed. Besides, the constitutional question whether Congress could cede its commerce power to the states had moved into the courts. When the Supreme Court ruled that Congress could so act, and, furthermore, when it became evident that Congress had no intention of touching Section 14(b) when it enacted the 1951 amendments to the Taft-Hartley Act, more state legislatures took a new interest in "right-to-work" laws.

Beginning in 1952 the campaign moved into a new phase. In that year an initiative petition led to the law's adoption in Nevada, and in

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[40] North Dakota's statute, while passed in 1947, was submitted to a popular referendum, where it was adopted by a two-to-one majority. Arizona, Revised Statutes, Annotated, §§ 23-1301 to -1307 (1956); Arkansas, Statutes, Annotated, §§ 81-202 to -206 (1947); Georgia Code, Annotated, §§ 54-901 to -908 (Supp. 1955); Iowa, Code, Annotated, §§ 736 A.1 -.8 (1950); Nebraska, Revised Statutes, §§ 48-217 to -219 (1952); North Carolina, Code, §§ 95-78 to -84 (1949); North Dakota, Revised Code, §§ 34-0114 (Supp. 1949); South Dakota, Code, §§ 17.1101, 17.9914 (Supp. 1952); Tennessee, Code, Annotated, §§ 50-208 to -212 (1955); Texas, Revised Civil Statutes, Art. 5207(a) (1947); Virginia, Code, §§ 40-69 to -74.5 (1956).

1953 Alabama's legislature enacted its law. Louisiana, Mississippi, and South Carolina followed in 1954, and Utah in 1955. In 1957 Indiana's "right-to-work" law became effective without the governor's signature.[41] These later laws were for the most part closely patterned on some of the earlier ones.

Three other states also adopted similar legislation and later repealed it, Maine repealing in 1948, Delaware and New Hampshire in 1949. Louisiana repealed its comprehensive law in the legislative session of 1956 and later in the same session re-enacted the same law but applied it only to agricultural laborers, defined to include not only farm and plantation workers but also those engaged in ginning and processing farm products.[42]

To date, therefore, twenty-three states have had experience with some form of "right-to-work" legislation. A majority of the others have considered a similar law and rejected it once or several times, either in the legislature or by popular vote. The measure has been defeated at the polls in California, Colorado, Idaho, Maine, Massachusetts, New Mexico, Ohio, and Washington.

Description of Provisions

All the "right-to-work" statutes have as their common objective

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[41] Alabama, Code, tit. 26, § 375 (Supp. 1955); Indiana, Acts 1957, c. 19, Indiana General Assembly; Mississippi, Code, Annotated, § 6994.5 (Supp. 1956); Nevada, Revised Statutes, c. 613.230-300 (1955); South Carolina, Code, §§ 40-46 to -46.11 (Supp. 1956); Utah, Code, Annotated, § 34-10-1 to -18 (Supp. 1955).

[42] Louisana, Acts 1956, No. 397, at 770, Louisiana Regular Session.

the prohibition of employment contracts which require membership in a labor organization as a condition of obtaining or retaining employment. This prohibition not only outlaws the closed shop, already banned by the Taft-Hartley Act covering businesses engaged in interstate commerce, but also union-shop and maintenance-of-membership clauses.

As construed by the National Labor Relations Board, a union-shop contract is authorized by the federal law if it conforms to the model devised by the Board. The model contract reads as follows:

> It shall be a condition of employment that all employees of the Employer covered by this agreement who are members of the Union in good standing on the effective date of this agreement shall remain members in good standing and those who are not members on the effective date of this agreement shall, on the thirtieth day [or such longer period as the parties may specify] following the effective date of this agreement, become and remain members in good standing in the union. It shall also be a condition of employment that all employees covered by this agreement and hired on or after its effective date shall, on the thirtieth day following the beginning of such employment [or such longer period as the parties may specify] become and remain members in good standing in the Union. (Where the effective date of this agreement is made retroactive, the execution date shall be substituted for the effective date.)[43]

This provision is invalid wherever union-security contracts have been proscribed by state law. All these states, except Florida and Kansas which have enacted no enabling legislation to their constitutional amendments, have a specific statutory provision banning the closed and union shop. All but Nevada, North Dakota, and Tennessee have also enacted as part of their body of law a declaration of public policy against the requirement of union membership as a condition of obtaining or re-

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[43] Keystone Coat, Apron & Towel Supply Co., 121 N.L.R.B. No. 125 (1958), as amended, January 23, 1959, 6-RC- 2066. Brackets and parentheses are in the original.

taining employment. This declaration is found either in a constitutional amendment, in a preface to the "right-to-work" law, or in a statement within the law itself.

In a number of "right-to-work" laws, for example, those of Alabama, Georgia, Iowa, Louisiana, and South Dakota, the language is substantially broader in scope than Section 14(b) of the Taft-Hartley Act from which they derive their authority. The Act refers only to the making of agreements and says nothing about outlawing strikes, picketing, lockouts, or payments of dues. The state laws identify these and other activities as coercive activities violating the law when they are judged to be encouraging violation. South Carolina goes so far as to include in the violation of its law violent or insulting language directed against the person or property, or any member of the family of any person, to interfere with such person in the exercise of his right to work.

Many of the statutes bear a close resemblance to each other with only minor differences, while a few have considerable variation in both form and content. The North Dakota law is very brief; South Carolina's is very lengthy and detailed. The Utah law contains almost every type of provision found in all the others, which, in their turn, leave out or modify provisions considered essential by some proponents of the laws. Almost identical in their principal provisions are the seven statutes of Alabama, Louisiana, Mississippi, North Carolina, South Carolina, Utah, and Virginia. Besides outlawing union-security agreements, they all declare such agreements to be illegal combinations or conspiracies, prohibit dues, fees, or other charges of any kind to a labor

union as a condition of employment, and provide for the recovery of damages by persons deprived of employment opportunity by reason of nonmembership or membership in a union or nonpayment of dues, fees, or other charges. A provision is added by Louisiana, South Carolina, Utah, and Virginia that prohibits picketing and other coercive activity the purpose or effect of which is to persuade or induce a violation of any provision of the law.

The laws of Arizona and Nevada are identical, except that the latter does not contain an express declaration of public policy. The major difference between these two and the above seven is that Arizona and Nevada have no provision which prohibits the payment of dues, fees, or other charges. Indiana's law lacks the same provision, but it also differs in not expressly providing for injunctive relief when the law is violated, and it does not refer to combinations and conspiracies as do the others.

The laws of Arkansas, Georgia, Iowa, and Tennessee vary somewhat, but each forbids the payment of dues or other charges as a condition of employment. Of a more limited nature are the statutes of Nebraska, North Dakota, South Dakota, and Texas. They do not contain the extensive provisions and limitations found in most of the other laws. The Texas law, however, is given teeth by other closely related statutes.

A violation of the act is regarded as a misdemeanor in the majority of statutes. Most of these expressly permit the recovery of damages by employees or other persons injured by conduct unlawful under the statutes. The great majority provide for imprisonment or fine, or both

in some instances, although the extent of punishment varies widely. South Carolina, for example, allows a minimum penalty of as little as ten days in prison or a fine of ten dollars. Arkansas permits a fine as high as $5,000, and each day the unlawful contract is given effect is considered a separate offense. In both Florida and North Carolina the courts have ruled that even though the law provides no penalties, violations of the act are misdemeanors and punishable.

The Arizona and Nevada laws differ from all the others in an important respect regarding penalties, as does the Georgia law. The first two, while prohibiting discrimination because of nonmembership in a union, say nothing at all about discrimination because of membership. Both states have other laws which cover this omission, but in neither case are violators liable to damages as are violators of the "right-to-work" laws. The Georgia law, on the other hand, does forbid discrimination because of nonmembership or membership in a union. The law then sets down penalties because of discrimination for nonmembership, which is declared a misdemeanor, and provides for injunctive relief and liability for damages. These penalties, however, do not apply to the section which speaks of discrimination because of membership, and the state supreme court has ruled that an employee discharged for union membership cannot seek an injunction or sue for damages under the law.[44]

More than half the laws contain a severability clause so that in the event some section of the law is held invalid, the remaining portion

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[44] Sandt v. Mason, 208 Ga. 561, 67 S.E. 2d 767 (1951).

retains its force. Arkansas, South Dakota, Texas in a related statute, and Utah provide for enforcement through some officer or court. Iowa and Mississippi exempt from the law these persons who are covered by the Railway Labor Act. Arizona, Louisiana, Texas, and Utah expressly state that the right to bargain collectively through a union is not impaired by their statutes.

These, then, are the chief provisions of the state "right-to-work" laws. Few of them have been tested in the courts, and not until they are will it be known just how restrictive they are, especially in view of the broad language some of them use to prohibit employer-union agreements, arrangements, or understanding, whether oral, implied, written, or suggested. Other provisions peculiar to one or other law are also to be found, but these do not substantially alter the general characteristics of the laws. A summary comparison of the chief provisions in the statutes of twenty states is presented in Table. 3. Louisiana is included because its re-enacted law applies to a wide range of agricultural laborers. Florida and Kansas are also included, even though they have not enacted "right-to-work" statutes in addition to their constitutional amendments.

While "right-to-work" legislation has mostly centered at the state level of government, some activity has also occurred among smaller governmental units, chiefly in California where state legislation has been blocked or defeated several times. Both counties and cities have attempted to enact ordinances independently of state and federal policy. The theory on which they have based their action is that since the Taft-Hartley Act left the states free to regulate union-shop agreements, it

TABLE 3

CHIEF PROVISIONS OF RIGHT-TO-WORK LAWS[1]

Provisions in Statute	State Laws Containing the Provision																			
	Ala.	Ariz.	Ark.	Fla.[3]	Ga.	Ind.	Iowa	Kan.	La.[5]	Miss.	Nebr.	Nev.	N.C.	N.D.	S.C.	S.D.	Tenn.	Tex.	Utah	Va.
Declaration of state public policy	*	*	*	*	*	*	*	*	*	*	*	*	*		*	*		*	*	*
Definition of labor organization		*			*	*					*	*						*		
Definition of employer or person		(2)			*							*							*	
Closed and union shop agreement illegal	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*
Agreement illegal combination or conspiracy	*	*		(4)					*	*		*	*		*			(7)	*	*
Strikes, Lockouts, Layoffs, boycotts, etc., to induce violations are illegal		*							*			*			*	*			*	*
No employer shall require union membership	*		*				*		*	*			*		*				*	*
No employer shall forbid union membership	*	(2)	*	*	*	*	*	*	*	*	*		*	*	*	*	*	*	*	*
Compulsory dues or fees to unions prohibited	*		*		*		*		*	*			*		*		*		*	*
Contracts in violation of law void or illegal						*		*						*				*	*	*
Concract provision requiring membership void		*			*							*						*	*	*
Existing contracts held valid; new, extended, or revised contracts declared invalid.	*		*		*	*			*	*			*		*		*	*	*	
Right to recover damages for violation of law	*	*			*	*			*	*		*	*		*			(7)	*	*
Injunction allowed		*			*		*		*			*			*			(7)	*	*
Fine, imprisonment or both for violation			*	(4)	*	*	*		*		*		(6)		*	*	*	(7)	*	*
Employees under Railway Labor Act exempted							*			*										
Enforcement provision			*													*		(7)	*	
Severability clause	*		*		*	*			*	*					*		*	*	*	*
Right to collective bargaining not impaired			*	(4)					*									*	*	

[1]Source: Labor Law Reporter, IV, (4th ed.; Chicago: Commerce Clearing House, Inc., 1960), Sec. 41,025.

[2]These provisions are not in the Arizona "right-to-work" law but in an earlier "yellow-dog" statute: Arizona, Revised Statutes, Annotated, § 23-1308 (1956).

[3]Florida and Kansas have no "right-to-work" statute. These provisions are contained in an amendment to the state constitution.

(Footnotes continued)

TABLE 3 (footnotes continued)

[4]Although Florida has not enacted an enabling law, the state supreme court ruled that a 1941 law which controls unions and enacts penalties may be used to enforce the "right-to-work" amendment. Local Union No. 519 v. Robertson, 44 So.2d 899 (1950).

[5]Louisiana's law applies only to agricultural laborers.

[6]In State v. Bishop, 228 N.C. 371, 45 S.E.2d 858 (1947), it was held that since the N. Car. law does not expressly provide any penalty, a violation is punishable as a misdemeanor.

[7]These provisions are not in the Texas "right-to-work" law but in closely related statutes, such as the Union Control Law and Restraint of Trade Statute: Texas, Revised Civil Statutes, Art. 5154a, §1-15; 5154g, §1-6; 7428, §1; 7436 (1951).

presumably left the states' subdivisions also free to act.

In California, however, the courts have ruled otherwise. A municipal ordinance prohibiting union-security contracts of any type not prohibited or authorized by state law was struck down as unenforceable and invalid and in conflict with the general laws of the state.[45] The California supreme court has also struck down the "right-to-work" ordinances of two counties as invalid on the grounds that they contravened the state's statutory policy which guarantees employees' freedom to organize and to select representatives for collective bargaining. The court also found that the ordinances duplicated in part the state's policy which prohibits jurisdictional and organizational assaults on valid employer-employee relationships.[46]

General Characteristics of the Campaigns

The characteristic pattern of a "right-to-work" campaign was quickly unfolded in the first efforts to pass the laws. In both California and Florida in 1944 there existed enough union strength to provide opposition to the measure. Where the opposition has been exceptionally weak, the pattern still shows, but not so clearly.

When the "right-to-work" issue rises within a state, the first step always seems to involve a sturdy effort to distill the complex question into a simple framework. Since the issue, unfortunately, is

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[45] Stephenson v. City of Palm Springs, 320 P. 2d 238 (1958).

[46] Chavez v. Sargent, 339 P. 2d 801 (1959); Local 1364, Retail Clerks v. Superior Court of State of California, 339 P. 2d 389 (1959).

not a simple one, the attempt to reduce it to the level of slogans, such as individual liberty, excessive power, social obligation, destruction of unions, and the like, serves more to add confusion to complexity than to enlighten the people who must decide the issue by their vote. Perheps the union shop considered alone is not a particularly involved matter. The attempt to outlaw it, however, can rarely be treated as a single issue, for the goal of the union shop has a bearing on the entire structure of unionism in all its diversity, on collective bargaining procedures, on the relationship of individual and group rights, on market power, and on the role of government in industrial relations.

Until a "right-to-work" campaign gets under way, there is no reason to believe that most people have ever given much thought to the union shop and its meaning, influence, or importance in the lives of those directly concerned. Certainly the more vocal proponents and opponents of the anti-union-shop bill appear to act on the firm presumption that legislators and the voting public are almost totally uninformed about the issue. Therefore, when a vote on the matter is in the offing, both sides make use of all available resources to bombard the voters with the "right" answers.

It is not surprising that the members of the state legislature do not feel equally well versed in the intricacies of union and management practices. Yet most of these legislators have been presented with the "right-to-work" issue one or more times in the past two decades, and they have had to take a stand. However, it is only one of their many concerns. Since most state legislative bodies meet for a long session only in alternate years, they are then confronted with hundreds of bills to be investigated and decided upon with little time for the study of

each. In most states, moreover, particularly in those where "right-to-work" laws have been enacted, rural influence in the legislature is strong and usually controlling. This is an additional reason to suppose that relatively few legislators have genuine familiarity with the problems of industry and of industrial and urban workers. As elected representatives, the members of the assembly must at the same time bear in mind the needs and wishes of their constituents.

It may seem reasonable to suppose that legislators supplement whatever gaps exist in their knowledge about industrial relations through the hearings which precede debate on important measures, as they do with legislation on taxation, poverty, crime, and other matters. However, in the "right-to-work" campaigns discussed below, the hearings have contributed very little guidance for the serious-minded legislator. In Indiana, for example, spokesmen who appeared at the "right-to-work" hearings were, for the most part, vigorously partisan and represented the two traditional positions which find virtually no common meeting point. Scarcely any attempt was made to get the views of more or less neutral or objective parties not identified with business or labor groups urging passage or rejection of the legislation.[47] The result in such situations must often be confusion or no more than the reinforcement of a previously held view. The pressure groups lobbying for or against the law do not leave much room for a moderate or compromise position when a controversy is as intense as this one has been. Loyalty to

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[47] Cf. Fred Witney, "The Indiana Right-to-Work Law," Industrial and Labor Relations Review, XI (July, 1958), 507-508.

sectional interests and to party leaders is also a factor influencing a representative's vote when the people have been caught up in the controversy. Hearings in other states have generally been extremely brief and perfunctory.

Since the general electorate has had a chance to vote on the legislation in a number of states, either through a referendum or initiative petition, the type of education program undertaken to swing votes is widely known. It seems to have been assumed by the labor and business antagonists in this conflict that the people are even less informed about the merits of "right-to-work" laws than their representatives in the legislature. It is not as if people did not have definite opinions about unions, for they do, often based on personal experiences or perhaps most often on general impressions. Their lack of specific knowledge about unions, however, seems to make many voters anxious to learn as much as they can about the unfamiliar details of the union shop.

One real hindrance they face in reaching a sound decision on how to vote on "right-to-work" legislation is the absence of much concrete evidence on its effects elsewhere, a problem that will be discussed in a later chapter. Uncertainty everywhere about the effects of the law opens the door to almost any claim or charge by the protagonists if it seems to contain even a minimum of plausibility.

With the issue itself so clearly joined while the underlying issues are very unclear to many persons, the stage is set for an old-fashioned political campaign accompanied by a massive propaganda endeavor by each party. Those most concerned with the measure are determined to

sell their own position exclusively, giving no ground whatever to the opposition, and certainly throwing no light on the merits of the other side. Thus in every instance where a "right-to-work" measure has advanced as far as a vote in the legislature or the general elections, intense emotional excitement has prevailed.

The excitement is not due simply to the nature of the issue and the charges and countercharges, claims and accusations which it prompts. Equally significant is the identity of the sponsors and the opponents of the legislation. Its sponsors have generally attracted little support from employees, who are alleged to be the primary beneficiaries of the law. Nevertheless, committees of union and nonunion workers have been organized to promote the law, as, for example, in Ohio where an organization was established called the Ohio Labor Committee for Right-to-Work, which argued for the l[illegible] as a means of ending the misuse of union dues.[48] Citizens' committees for the "right-to-work" law have also been organized to gather the names of prominent people, to sponsor meetings and rallies, and to raise funds. One such organization in the 1958 California campaign was the Citizens' Committee for Democracy in Labor Unions. Among the sponsors in various states have been such groups as the National Economic Council, Inc., the Christian Front, the Christian American Association; state groups called, for example, the Industrial Relations Council of Utah; Kansas For the Right-to-Work; in Oklahoma, Jobs, Inc.,; in Washington, Job Research, Inc.;

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[48] The Wall Street Journal, September 12, 1958, p. 41.

often simply a state "right-to-work" committe.[49]

Supporting or associated with these groups have been strong sponsoring organizations which have a more permanent status. These have included state and local chambers of commerce, manufacturers' associations, and state farm bureaus. One or other of these organizations has usually initiated as well as sponsored the movement to outlaw the union shop. Employers in smaller business units have been among the most active supporters of the laws in many states. There is no evidence that a campaign has ever been initiated by a workers' group.

The national parent federations of these state and local bodies have been outspokenly partisan in advocating the "right-to-work" laws. These include the Chamber of Commerce of the United States, the National Association of Manufacturers, and the American Farm Bureau Federation. The Southern States Industrial Council has played an active role in promoting the laws throughout the South. Serving as a coordinating organization and publicity outlet at the national level has been the National Right to Work Committee operating out of a small office in Washington, D. C., under the direction of ardent opponents of the union shop. The DeMille Foundation for Political Freedom, headquartered in Los Angeles, has been active in some campaigns.

Actively opposing the sponsors of the anti-union-shop laws

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[49] Cf. a political memo of Labor's League for Political Education, A. F. of L., February 16, 1955, reproduced in U.S., Congressional Record, 84th Cong., 1st Sess., 1955, CI, Part 2, A1460-61.

has been virtually all of organized labor at the local, regional, and national levels. At the national level the Committee on Political Education of the AFL-CIO has channeled information and publicity to state and local units. Separate political arms have been established in some states to direct the opposition, taking a name like United Organized Labor of Ohio. Also supporting the fight against the laws has been the National Conference for Industrial Peace located in Washington, D. C., and some state affiliates. This organization functions along lines similar to its counterpart, the National Right to Work Committee. In some states, for example, California, Connecticut, Indiana, Ohio, and Washington, the unions have secured some employers support for their position. They have also made use of citizens' committees. A leading role in the State of Washington, for example, was taken by the Citizens' Committee for the Preservation of Payrolls. In [illegible] states major employers have aided the opposition by refusing to give any support to the campaign for the laws or to say anything about the issue.

Political and religious leaders have also been drawn into the controversy. Among the latter, representatives have lined up on both sides. Most Catholic spokesmen have opposed the legislation. Protestant leaders have split, although some state and national federations and assemblies have issued strong statements against the laws. Some important figures, however, have identified themselves with the sponsors' views. Republican leaders have usually supported the laws. In the late stages of the 1958 Ohio campaign the top Republican candidates were solidly in favor of the laws, though earlier they had disagreed on what stand to take. At the same time the Republican candidates in California for governor and United States senator completely split on the issue

and split the party, too. In Washington important Republican candidates for office completely disavowed any connection with the proposed "right-to-work" law. In the southern states, however, the laws have been enacted by Democratic legislatures.

The leading opponents in the campaigns, of course, have been the employers' associations and the labor unions, both with considerable financial resources. Given the long-standing bitter hostility of these groups, it is no wonder that the campaigns have reached extremely high emotional levels and have absorbed huge financial outlays. Every device in Madison Avenue handbooks has been resorted to for the sake of garnering votes. Television and newspapers have been the most popular advertising media, but billboards, comic books, and automobile bumper tags have also been widely used. One commentator on the 1958 California campaign said: "'Right to work' has been merchandised in California this fall like so much soap."[50] The comment is deserving of much wider application. In California a petition-circulating agency was hired to get names at twenty cents each for the "right-to-work" initiative petition. The Ohio Chamber of Commerce paid college students thirty to thirty-five cents (some say fifty cents) for each name obtained on a petition. In Washington the campaign opened with over 800,000 "right-to-work" petitions being mailed together with envelopes having returned postage guaranteed. The mailing was timed to coincide with supporting advertisements in over 200 newspapers. Some of the envelopes were reported to have been returned filled with sand or lead with Job Research, Inc., having

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[50] Steven Marshall, "California: The Union Shop and the Amendment Game," The Reporter, October 30, 1958, p. 14.

to pay the postage for the scrap-iron contributions. Shortly after the mailing of the Washington petitions large advertisements appeared in major newspapers of the state warning householders against the petitions. In oversized letters the message cried out: "Beware of the monster in your mailbox."[51]

It is understandable that people question the true value and significance of the democratic process when such a controversial and complex issue is presented to the electorate in this fashion. An example of the absurdities found in a "right-to-work" campaign is afforded by a survey conducted by motivational researchers to test the value of campaign slogans. The researchers were hired for $20,000 by proponents of the California measure, but they might as easily have been hired by its opponents. The best slogan, it was decided, was one that put forth the "right-to-work" as a measure "to guard or insure workers' civil rights," a choice that was strongly protested by the National Association for the Advancement of Colored People. Ironically, the survey seemed to indicate that it would be a waste of available funds to try to explain the meaning of the law itself.[52]

The fever aroused by the state "right-to-work" campaigns has left a bitter residue whether the measures were enacted or defeated. The bad will generated by both sides takes a long time to dispel. A return to normalcy, however, is usually postponed because the losing

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[51] Cf. The Right to Work: Talking It Over (Seattle: Western Conference of Teamsters, n.d.), pp. 70-71.

[52] Cf. Marshaw, p. 14.

side is unwilling to accept its defeat in the legislature or at the polls as final. Whether the measure becomes law or not, a new attempt to pass or repeal it is frequently under way as soon as the votes are counted. Only a few of the states, including the least and the most industrialized ones, have been spared a series of "right-to-work" campaigns.

Particular Characteristics of the Campaigns

Researchers have surveyed several "right-to-work" campaigns after the roar of battle has subsided. Their description and analysis throw additional light on the events surrounding these campaigns. Four such campaigns are noted here, in all of which the matter was decided in the legislature, although in one a referendum followed the legislature's vote. They took place in Indiana, Virginia, Florida and Maryland.

The Indiana controversy offers special interest because the state is the only highly industrialized one whose legislature has enacted a "right-to-work" law. It was passed in 1957 and became law when the Republican governor did not sign it within the three days required by Indiana law when the legislature is still in session. The legislature was under Republican control with 106 representatives in both houses compared to only 40 Democrats. Thirty-seven farmers comprised the largest single occupational group, twenty-four of whom voted for the law. The next largest group was made up of thirty-two attorneys, twenty-two of whom voted in favor. Only eight members were affiliated

with unions, all of whom voted against the statute.[53]

The proposed measure stirred up enormous controversy and political pressure which made it difficult for legislators to break party lines. The Republicans, however, did so more than the Democrats, and both the Republican majority leader and a former speaker in the house went against their party's support of the bill. Essential factors in the Republican victory were said to be the astute parliamentary maneuvering of the bill's supporters and its solid backing by the president of the senate and the speaker of the house who used the prerogatives of their offices to carry the day. The senate approved the measure by a 27 to 23 vote, and the house by 54 to 42.[54]

Additional factors favored the law's enactment. Its supporters were well organized and efficiently directed both before and during the legislative action. The opposition, mostly from the unions, worked very hard, especially in the last two months before passage, but was handicapped by its uncoordinated efforts deriving from a bad split in the Indiana labor movement. Even the importance of the measure could not repair the sharp division between the A. F. of L. and the C.I.O. leaders.[55]

A considerable, though hardly measurable, influence on the bill's passage was attributed to outbreaks of strike violence which occurred at the Indiana plants of two firms before the legislature voted.

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[53] Cf. Witney, pp. 508-509.

[54] Cf. Ibid., pp. 509-10.

[55] Cf. Ibid., pp. 512-13.

The violence connected with a strike at the Perfect Circle Company had attracted nationwide notoriety in 1955. One of the chief issues in the dispute was the union shop, which provided effective ammunition for the bill's proponents. A second incident occurred at Princeton, Indiana, while the legislature was considering the bill. A shot fired at a trailer hit a baby whose father was working at a struck firm in the town. Although both company and union offered rewards, no one ever learned who fired the gun. The strike had no connection with the union shop, but it was seized upon as having some connection with a "right-to-work" law, and the tragic incident heightened the tension over the bill in the legislature.[56]

An unusual and highly favorable set of circumstances, therefore, came together to aid the law's supporters. The author of this Indiana study, Professor Fred Witney, concluded that some such set of factors must emerge to put over enactment of a "right-to-work" law in industrial states which have a rural and Republican-controlled state government.[57]

The Virginia experience is also an interesting pattern to observe since its law has been advertised as a model and copied by several other states. As in many other social issues, Virginia has been a leader in the South in the "right-to-work" movement. Unlike the example of Indiana, the Virginia legislature adopted the law so quickly that the usual amount of controversy and tension had no opportunity to develop.

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[56] Cf. ibid., pp. 513-14.

[57] Cf. ibid., p. 517.

The most astonishing aspect of the Virginia law was its origin and hasty passage in connection with a special session of the state general assembly in January, 1947. The special session had been announced by the governor on December 10, 1946, for the purpose of considering some problems facing the state educational system. A few days after the announcement, however, the Virginia Advisory Legislative Council was asked to make a study of public utility strikes and the "right-to-work." Two bills concerning these labor subjects were then prepared by the state attorney general, and the Advisory Council held one-day hearings in two cities.[58]

When the legislature assembled in January, the governor made two requests, an appropriation to aid the schools and the passage of the two labor bills, one on public utility strikes, the other a "right-to-work" law. Both bills were introduced in the house on January 7. The "right-to-work" bill was referred to the committee on labor, quickly reported out and passed by the house one week after being introduced. The next day the bill was introduced in the senate, passed the following day, and on the second day was signed by the presiding officers of both houses. On January 17, 1947, Virginia had a "right-to-work" law.[59]

Between 1947 and 1954 numerous violations of the law were reported by the attorney general to have occurred in the state. At his and the governor's suggestion sweeping amendments to the law were drafted

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[58] Cf. John M. Kuhlman, "Right-to-Work Laws: The Virginia Experience," Labor Law Journal, VI (July, 1955), 452.

[59] Cf. ibid.

and introduced into the assembly in 1954, amendments which were so harsh that they might have put an end to union organizing activity in the state. The amendments aroused so much opposition that they had to be toned down before they could be passed. They were particularly aimed at preventing union pressure on general contractors to subcontract their work only to union firms.[60]

Dr. John M. Kuhlman, who made a study of the Virginia law, cited four factors contributing to its enactment. One was the dismay caused by the postwar wave of strikes, although Virginia was hit no harder and perhaps less hard than many other states. A threatened utility strike complicated the situation, however, and the governor put great emphasis on this threat when he addressed the special session of the assembly. He and other supporters of the "right-to-work" bill intimated that its enactment would be necessary to meet the utility strike situation, should it occur.[61]

Two of the four factors were economic. One was the rural economy of Virginia. The state government reflected the rural and conservative spirit, which was not at all in sympathy with the interests of manufacturing industry or labor. Half of the negative votes against the 1947 law were from the only unionized centers in the state, the coal-mining district and the Norfolk-Portsmouth area. The same centers, plus highly urbanized Arlington-Alexandria, cast the only negative votes on the 1954 amendments. At the same time, however, another factor in favor of the law's passage was an interest in attracting more industry to the

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[60] Cf. ibid., p. 455.

[61] Cf. ibid., p. 454.

state, although Kuhlman believes this cause was not of major importance.

Possibly the most important factor, according to Kuhlman, was the traditional southern aversion to unionism. As supporting evidence, he cites the belief of many southerners that organized labor represents an alien philosophy of Yankee or Communist origin that is not acceptable in the South. He also points to the paternalistic attitude of many of the state's economic and social leaders who are offended by the apparent ingratitude and disloyalty of employees who turn to outsiders for help. In other words, Kuhlman says, the whole social climate of the South is opposed to unionism, and the "right-to-work" law is only one manifestation of the profound distrust of unions.[62]

Conspicuous by its absence as a motive for the enactment of the Virginia "right-to-work" law was the desire to protect the "right to work." According to Kuhlman, there were no wage earners in the state who advocated the legislation to protect their jobs from interference by the unions or other workers. As a matter of fact, the only notable opposition to the law came from industrial centers where workers had closer contact with unions.[63]

The third example of a campaign to put across "right-to-work" legislation is the case of Florida. While also a southern state, it presents some exceptions as well as similarities to the Virginia experience. The study made by John G. Shott of this successful campaign

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[62]Cf. ibid.

[63]Cf. ibid., p. 455.

is far more detailed than the previous two.[64] It will be remembered that Florida was one of the first two states to adopt an amendment to its constitution to protect the "right to work". Together with Arkansas, Florida enacted the measure in 1944.

The leading figure in the Florida effort was Attorney General Thomas Watson, who was elected to his office in 1940, with union support, ironically enough. Soon thereafter he declared his opposition to union-security contracts and drafted a bill to outlaw them in all public construction. Although this measure failed of passage in a house committee, it brought the matter to public attention and was kept alive by litigation initiated by Watson against closed shops in Florida firms.[65]

As was remarked previously, a new bill proposed in 1943 to outlaw all union-security agreements again failed to reach the floor of the Florida house.[66] A constitutional amendment to the same end was far more successful in another committee. It was introduced one day in April, 1943, reported out of committee to the house on the same day, and debated for two hours the next day, a Friday. The amendment was adopted the following Monday by a majority vote exceeding the necessary three-fifths.

The proposed amendment was then introduced in the state senate. Among those appearing before the senate hearings in behalf of the meas-

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[64] John C. Shott, How 'Right-to-Work' Laws are Passed: Florida Sets the Pattern (Washington: The Public Affairs Institute, 1956), pp. 18-43, and passim.

[65] Cf. ibid., pp. 18-21.

[66] Cf. supra, p. 361.

ure was the attorney general, who said the amendment was necessary to protect not only organized labor but also the public from adverse court decisions which ignored the right to "enjoy" property, including the "right to work". Others testifying for the bill included Captain Eddie Rickenbacker, a celebrated war-hero, who also condemned the Wagner Act and the closed shop; and the president of the Associated Industries of Florida, an affiliate of the National Association of Manufacturers, who declared the closed shop dominated Florida business. Further support was given by a written request to the senate for passage of the amendment signed by twenty-one "civic and business organizations," twelve of which were associations of growers, food processors, or other industries related to agriculture, plus the Florida Farm Bureau Federation and six employers' associations. Testifying against the amendment were representatives of the railway brotherhoods and other unions, including a delegation of torpedoed seamen from the National Maritime Union, who declared the amendment was anti-union and anti-American.

Before passage, the amendment was amended to declare that it did not impair the right of collective bargaining. After a brief debate of less than two hours, the senate accepted the measure by the precise majority necessary under the state constitution. The house quickly accepted the revised measure, which was then submitted to the electorate in a required referendum.[67]

The campaign which followed preliminary to the popular vote had characteristics which were, for the most part, to become typical of

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[67] Cf. Shotz, pp. 21-24.

every subsequent "right-to-work" campaign. The major role of leadership after the legislative action, however, passed from the attorney general and the employers' associations to the Florida Farm Bureau Federation. Its door-to-door canvass of the agricultural areas of a state where agriculture is the principal factor in the economy, its monthly publication which publicized and strongly supported the amendment, and its joint activities with other industries and organizations had decisive influence.

The arguments used were also to become traditional. The "right-to-work" bill would rid the state of certain labor racketeers, who remained unidentified, would release union members from their state of servitude, and would be a boon to agriculture and other industries of the state. Not only were the farmers said to be in favor of the bill, but so was God, since the right to work without interference was a divine right.[68]

Closely allied with the Farm Bureau through joint officers and members were the Right-to-Work Committee and the Florida Voters for Constitutional Government. Attorney General Watson and the Florida house sponsor of the amendment obtained the state charter for the formation of the Committee, and both served on its legal advisory committee. Both groups also had as members representatives from business, industry, the professions, chambers of commerce, and women's clubs.[69]

The opposition in the campaign was provided by the railway

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[68] Cf. Ibid., pp. 28-30.

[69] Cf. Ibid., pp. 30-32.

brotherhoods and the A. F. of L. functioning through Labor's Educational Committee. It denounced the Associated Industries of Florida as a ruthless group exploiting the resources and working people of the state. The legislators who favored the measure were accused of being "labor haters and baiters," engaged in a program of destroying organized labor. The people were warned that passage of the amendment would lead to lower wage rates, reduced purchasing power, and depression. Many workers, it was said, would probably have to leave the state if the union shop was outlawed. By contrast, it was pointed out that the amendment was drafted at a time when labor was devoting all its efforts to further the course of total victory in the world war. The defeat of the measure was seen as necessary to preserve the free enterprise system.[70]

The controversy attracted much attention and led to a large vote in November, 1944. The "right-to-work" amendment received 55 per cent of the 270,000 votes cast, or a majority of 25,000 votes. The urban vote was almost equally split, with a slight majority opposed to the measure. The rural vote, comprising 29 per cent of the total, was 67 per cent in favor of the amendment. Thus the areas most affected by the legislation defeated it, while those least affected resoundingly supported it.[71]

What were the principal factors that led to the adoption of the "right-to-work" amendment in Florida? Author John G. Shott points out several. One was the smokescreen of charges leveled against union practices which were largely unsubstantiated in Florida during the period

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[70] Cf. ibid., pp. 32-37.

[71] Cf. ibid., pp. 37-38.

of the campaign. Another was the united effort of three major forces in the state: the attorney general backed by the prestige of his office and the use of his political organization, the Associated Industries of Florida, and the Florida Farm Bureau Federation. A third factor was the state's predominantly rural economy which, as in other states, generally is favorable to restrictive labor legislation. Probably a fourth factor was the rural control of the legislature, in which the urban counties were not proportionally represented.

Labor's failure to present effective opposition is attributed by Shott to three factors. One was the narrowness of the measure's jurisdiction. In 1944 the Wagner Act was still the law of the land, so the states had no power to restrict union-security clauses outside intrastate firms. Secondly, organized labor already had its hands full with war production and particularly with trying to cope with the organization of many new workers in the defense industries and the administration of a greatly expanded membership. Most important, according to Shott, was the nature of the union-security issue. While it is relatively easy to spread charges of union abuses, he avers, it takes a prolonged educational effort to explain to voters the meaning of union security, its variations in different industries, and the role of the individual in collective bargaining. Shott believes the unions were unequal to this educational task in the abnormal conditions of wartime.[72]

The final example of a "right-to-work" campaign differs from the previous ones in that it failed in the legislature to achieve the goal of putting a new law on the statute books. Despite the failure, the

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[72] Cf. ibid., pp. 55-61.

story still throws some light on the forces supporting and opposing the law.

This campaign took place in Maryland. Its support came almost entirely from within the state. National associations of businessmen, manufacturers, farmers, or workers did not participate. However, some state affiliates of national bodies did take an active part.

Earlier attempts in Maryland to pass a "right-to-work" law in 1952 and 1953 were complete failures. In the following year, however, the issue stirred a great commotion. The groundwork for a solidly organized campaign was laid in 1954 for the purpose of achieving passage in the state legislature in 1955.[73]

The mainspring of the Maryland activity was a trade association of open-shop employers in the building and construction industry called the Associated Builders and Contractors of Maryland. This group had solidified in opposition to the Associated General Contractors who had union shops with A. F. of L. affiliates. The latter group had tried unsuccessfully to obtain minimum wage legislation to overcome a wage differential of up to 30 per cent which enabled to open-shop group to win an increasing number of construction contracts.

Early in 1954 at a meeting of the open-shop contractors a lawyer addressing the gathering proposed that a law modeled on Virginia's "right-to-work" law would serve the group as an effective means of thwart-

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[73] Cf. John E. Eichelmann, "The 'Right-to-Work' Controversy in Maryland" (unpublished Master's thesis, School of Social Science, The Catholic University of America, 1956), p. 28. This perceptive study is based on personal interviews, legislative documents, and newspaper reports.

ing the strength of the union-shop contractors.[74]

Out of this meeting came a movement which within a few months led to a formal organization and the establishment of the Right to Work Committee of Maryland. Its efforts outside Baltimore, the single metropolitan area in the state, were directed toward acquainting people with the nature of unionism and collective bargaining contracts. Many public gatherings were arranged, literature distributed, and funds collected. The Committee itself was headquartered in Baltimore because the city was the stronghold of unionism in the state and appeared to present the only potentially serious opposition to a "right-to-work" law.[75]

The focus of the Right to Work Committee was naturally centered on the Maryland General Assembly when it convened in Annapolis in January, 1955. Four lobbyists were registered and devoted their efforts to explaining to legislators the issues involved and seeking to win their votes. If a representative seemed to be wavering from his promised support, letter-writing campaigns were promoted among "the folks back home." Since the legislators often returned to their homes over weekends during the three-month session, it was also important to keep the "right-to-work" issue alive among the citizens. The Committee also persuaded a member of each house of the legislature to introduce the "right-to-work" bill, which the Committee had drafted.[76]

Unlike the previous examples of Indiana, Virginia, and Florida the Maryland unions quickly perceived what was afoot and the necessity

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[74] Cf. ibid., pp. 129-33.

[75] Cf. ibid., pp. 33-39.

[76] Cf. ibid., pp. 43-45.

of strong counteraction. Since the "right-to-work" movement originated within the construction industry, it was quite natural that the A. F. of L. unions assumed the leadership of the opposition to which the C.I.O. and independent unions contributed their resources. The leading role was turned over to the state A. F. of L. Political Education League.

While the union forces promoted an education campaign as did the Right to Work Committee of Maryland, the former gave most emphasis to electing a friendly legislature. The June, 1954, primaries received the first attention, but far greater effort was expended on the November general election. Every candidate for the general assembly was invited to appear before an interrogation committee and discuss his views on "right to work." Considerable literature was also mailed to union members. After the elections, interest was kept alive through speeches, meetings, and a television program. Once the general assembly was in session early in 1955, letter-writing campaigns were encouraged, and literature continued to be sent out through the mails. During the hearings at Annapolis large numbers of unionists went to the capitol for a public demonstration.[77]

With the preliminary work accomplished, the A. F. of L. concentrated lobbying activity to counteract the influence of the bill's supporters. Headquarters were established in the same hotel in Annapolis in which most of the legislators resided. A lavish social function was arranged for one night by the union representatives as a token of appreciation to the legislature. It also served to show off the unions' a

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[77] Cf. Ibid., pp. 54-60.

more cultured milieu than is usual. Altogether, the entire situation seemed well in hand. However, the unions wanted to make sure of a resounding defeat for the bill to guard against an early renewal of the campaign.[78]

In both the senate and the house of the Maryland Assembly the "right-to-work" bill was late in being introduced, partly because of difficulties in finding sponsors. Then it was delayed in committees before being forced to the floor. Both labor committees submitted unfavorable reports on the bill after concluding hearings, the senate committee opposing it by a vote of ten to two, the house committee by twelve to one. Both houses then turned down the bill by voting to accept the unfavorable report, the senate by a large majority of twenty-one to seven, the house by a margin of seventy to forty-one.[79]

The decisive defeat of the Maryland "right-to-work" bill left the union-shop-open-shop conflict in the state in the same situation that had previously existed. A minimum wage bill which would have restricted the open-shop firms from underbidding other contractors was not enacted, apparently having been traded off for anti-"right-to-work" support. A "right-to-work" bill introduced in the short session of the assembly in 1950 was not reported out of committee.[80]

The factors that led to the bill's defeat in Maryland seem to be the following. Political activity by the unions before the primaries and general elections assured considerable opposition to the bill even

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[78] Cf. Ibid., pp. 63-67, 70.

[79] Cf. Ibid., pp. 72-76, 83.

[80] Cf. Ibid., pp. 82-85.

before the assembly convened. The unions were also more adroit than the bill's proponents in lobbying and public relations. The assembly was overwhelmingly Democratic. The Republican governor committed himself to veto a bill if it were enacted. One lawyer working against the bill said privately that an important factor was simply that the opponents of the bill spent more money than its proponents. This study made of the campaign also noted the comment of the legal counsel of the state Right-to-Work Committee to the effect that an indigenous movement for the law in Maryland was doomed to failure. He believed that the power of Maryland unions will be overcome only with the help of organizations from outside the state.[81]

Conclusion

The contemporary "right-to-work" campaign has not yet spent its force. Where the unions have some strength, they keep trying to repeal the law when it has been enacted. The defenders of the law have overcome three such attempts in Nevada. Where the proponents of the measure see hope of success in other states, the attempts to enact it still continue, although politicians in general have become much more guarded in their views following the crushing election defeats in 1958 of some of the more ardent political defenders of the "right-to-work" bills. The furious political battles that year in six states ended with the measure's defeat in five. In Ohio the bill suffered the worst defeat of any initiative petition in the history of the state. In California the measure was buried under a million-vote majority against it.

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[81] Cf. Ibid., p. 47.

Substantial losses were also recorded in Colorado and Washington. To the surprise of many, the agricultural state of Idaho overrode the bill by a narrow margin. The voters of Kansas were alone in their acceptance of a "right-to-work" amendment to the state constitution. Yet the votes were barely counted in the other states when the National Right to Work Committee promised new drives to enact these laws.

The 1958 defeats greatly postponed, if they did not completely prevent, any major effort to start a national "right-to-work" campaign. Yet the forces which stimulated the "right-to-work" cause are still very much alive. For example, it is perhaps more widely believed than ever that the market power of labor unions is dangerously strong. The feebleness of unions in many areas does not attract much attention or sympathy. Especially as a result of Congressional investigations, people are more aware of union activities than they have been for years. The revelations of corruption and abuse brought moral indignation to a danger-level for the entire labor movement. The persistent prosperity of most sectors of the economy in the post-war years interrupted by only a few relatively brief recessions is probably another factor working against the union cause. Many workers have come to believe that they can manage quite adequately without union help, and, consequently, are far less hesitant to voice complaints against unions and to resist any kind of pressure put upon them by unions. Small business owners, having seen some evidence of union power, are probably more fearful of it than ever. Management resistance to union demands has also shown a tendency to stiffen. Newspaper and magazine advertising of industry's complaints against union work-rules and "featherbedding" is not

a hopeful sign of peaceful relations or sound collective bargaining. The emphasis on the dangers of inflation has to some extent put pressure on management to slow down price increases and place the blame for any upward movement on organized labor. Finally, the two major associations of business and industry leaders have given no sign of taking a more moderate stand toward the labor movement as it is now constituted.

All the complaints against organized labor have received a generally sympathetic presentation in the press. Yet the complaints have not been able to coalesce around any particular remedy or program of action, with the exception of the "right-to-work" law. More successfully than any other labor issue in years, the "right-to-work" campaign caught the public fancy. It seemed to be a concept easily grasped and advertised. Around it all the unsettled problems of labor-management relations seemed to find a common forum for the people and their political representatives.

What the effects of this conflict will be will unfold only as the meaning of the "right-to-work" laws becomes more clear. To this end the slow process of litigation is presently making its contribution in the courts. The principal trends of judicial review are set forth in the following pages.

CHAPTER IX

THE "RIGHT-TO-WORK" LAWS IN COURT

The strident discord over the "right-to-work" laws did not cease after they were enacted, and, consequently, they were quickly propelled into the courts for interpretation and clarification. The first important question that was raised concerned their constitutionality. Only after that was decided in favor of the legislation did the "right-to-work" campaign assume nation-wide significance. A second major issue soon developed because of the difference between the union-security provisions of the Taft-Hartley Act and the Railway Labor Act. The question was raised whether the states had the power to enforce their "right-to-work" laws which were in conflict with federal law governing the railroad industry. This question, too, has been settled by the courts.

Other issues have also been litigated, including enforcement measures and the extent of coverage of the state laws. Some matters still remain in doubt because many provisions of the laws have not been tested and because conflicts in the labor policies of some states have not been ironed out. Furthermore, doubts still remain concerning the lawful areas of state jurisdiction in the field of labor legislation.

Constitutionality of the Laws

Not long after "right-to-work" legislation was first enacted, its constitutionality was questioned in the courts of Nebraska, North Carolina, and Arizona. The Nebraska and Arizona constitutional amendments were challenged in action for declaratory judgment and equitable relief, and the

North Carolina statute was challenged by appeal from a conviction for executing a contract in violation of its provisions. All three measures were alleged to be invalid as an abridgment of freedom of speech and assembly, an impairment of contracts, and a denial of due process. The Arizona law was further challenged under the equal protection of rights clause of the Constitution of the United States.

In ruling of the cases, the supreme courts of the three states all emphasized that the will of the people had been expressly sought and given in adopting the legislation as a necessary means of safeguarding individual rights. Such legislation, it was said, could not therefore be considered unreasonable, arbitrary, or capricious. The Arizona court commented:

> It is a matter of common knowledge that the arguments for and against the proposed amendment were fully and completely presented to the people in the pre-election campaign. In adopting the amendment by a very substantial majority (61,875 votes cast for and 49,557 cast against the measure) the people have in the most solemn manner evidenced their conviction that the matters prohibited by it were detrimental to the public welfare. We are not called upon here to determine either the wisdom of the people's action or who is right and who is wrong in the opposing arguments here summarized. Possibly only time can give a correct answer to this highly controversial question. Our sole concern is whether the amendment is in violation of the federal organic law. The test one must apply is simply to discover whether the law "has a rational basis" and "could on any reasonable theory contribute to the public welfare." The considered and deliberate opinion of the people of Arizona has determined this in the affirmative: rule by the majority is the essence of democracy. . . .[1]

The North Carolina court contended that the state had the inherent right to decide on the conditions of employment within the state. The court said:

> The General Assembly of North Carolina has attempted to draw upon the residual power of the state in an effort to remedy a situation of economic instability which has alarmed thinking people throughout the country. Those efforts have culminated in a prohibition upon the use of union membership or the absence of union membership as a condition of employment or continued employment. Substantially the same result has been reached in many other state forums which have considered the problem and also to a limited degree by the Congress of the United States.

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[1] A.F. of L. v. American Sash & Door Co., 67 Ariz. 20, 34, 189 P.2d 912, 921 (1948).

The Court furthermore declared:

> If the State may say to the employer, "you cannot deny work to anyone because of his membership in a union," we think it follows, a fortiori, that the State may say to the parties, "you cannot deny work to anyone because he is not a member of a union."[2]

The legislation was upheld in all three state courts and appeal was filed.

The Supreme Court of the United States ruled on January 3, 1949, on all three cases. Since the issues in the Nebraska and North Carolina cases were identical, they were covered in a joint decision.[3] Speaking for a unanimous Court, Justice Hugo L. Black rejected the theory that the constitutional guarantee of freedom of speech and assembly gives a union a constitutional right to pursue a policy of excluding employees unrestricted by state or federal legislation. The Court declared:

> There cannot be wrung from a constitutional right of workers to assemble to discuss improvement of their own working standards a further constitutional right to drive from remunerative employment all other persons who will not or cannot participate in union assemblies. The constitutional right of workers to assemble, to discuss and formulate plans for furthering their own self-interest in jobs cannot be construed as a constitutional guarantee that none shall get and hold jobs except those who will join in the assembly or will agree to abide by the assembly's plans.[4]

While acknowledging that union-security contracts are useful incentives to the growth of union membership, the Court denied the argument that forbidding the contracts by law denies the unions equal protection of the law. It was pointed out that the laws in question forbade employers to discriminate against union members and nonmembers alike; in that way the laws protected

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[2] Whitaker v. State, 228 N.C. 352, 367, 45 S.E.2d 860, 872, 873 (1947).

[3] Lincoln Federal Labor Union v. Northwestern Iron & Metal Co., 335 U.S. 525 (1949); Whitaker v. State of North Carolina, 335 U.S. 525 (1949).

[4] Ibid., at 531.

employment opportunities for organized labor. The Court also denied that the laws unconstitutionally impaired the obligation of contracts made before their enactment, for, it said, the impairment of that obligation is subordinate to the reasonable exercise of the police power of the state.

In considering the cases, the Supreme Court said it believed the crucial question to be: "Does the due process clause forbid a state to pass laws clearly designed to safeguard the opportunity of non-union members to get and hold jobs, free from discrimination against them because they are non-union workers?"[5] The union argument on this question rested largely on earlier decisions of the Court which held legislative attempts unconstitutional which abridged freedom of contract. Typical of these cases were Adair v. United States and Coppage v. Kansas, which declared that due process forbade federal and state governments from interfering with various business practices, including "yellow-dog" contracts (agreements signed by employees that they will not join a union while working for the employer).[6]

More recently, however, the Court pointed out, it had issued a series of conflicting, if not overruling, decisions which did allow for certain government interference, as, for example, in matters of wages, prices, and union contracts. In one of these, Phelps Dodge Corporation v. N.L.R.B., Justice Felix Frankfurter remarked: "The course of decisions in this Court since Adair v. U.S. and Coppage. . . . have completely sapped the cases of their authority."[7] In meeting the union argument about "right-to-work" laws, Justice Black there-

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[5] Ibid., at 534.

[6] Adair v. United States, 208 U.S. 161 (1908); Coppage v. Kansas, 236 U.S. 1 (1915); also Lochner v. State of New York, 198 U.S. 45 (1904); Allgeyer v. State of Louisiana, 165 U.S. 578 (1897).

[7] Phelps Dodge Corp. v. N.L.R.B., 313 U.S. 177, 187 (1941). Similar interpreration of due process was given in N.L.R.B. v. Jones & Laughlin Steel Corp., 301 U.S. 1 (1937); Virginian Railway Co. v. System Federation No. 40 300 U.S. 515 (1937).

fore noted that the due process clause was not meant to put the states into a "strait jacket" when they found need of suppressing industrial practices that were considered to be offensive to public welfare. He said:

> This court, beginning at least as early as 1934, when the Nebbia case was decided, has steadily rejected the due process philosophy enunciated in the Adair-Coppage line of cases. In doing so it has consciously returned closer and closer to the earlier constitutional principle that states have power to legislate against what are found to be injurious practices in their internal commercial and business affairs, so long as their laws do not run afoul of some specific federal constitutional prohibition, or some valid federal law . . . .[8]

The Court concluded, therefore, that "just as the due process clause erects no obstacle to block legislative protection of union members, we now hold that legislative protection can be afforded non-union workers."[9]

The decision left no doubt that the constitutionality of "right-to-work" laws in the areas reserved to the states by Congress. What had earlier appeared to be subject to exclusive federal jurisdiction under the interstate commerce clause of the Constitution was declared to be clearly within states' rights by reason of the jurisdiction ceded to the states by the Taft-Hartley Act. On the basis of this decision the "right-to-work" laws of other states have also been declared constitutional.

This decision reflects the Court's attitude that social legislation of this type is to be left to the judgment of the legislature and is not a matter to be settled by the judiciary. In a concurring opinion Justice Frankfurter made this point clear when he stated:

> The right of association, like any other right carried to its extreme, encounters limiting principles. . . . At the point where the mutual advantage of association demands too much individual disadvantage, a compromise

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[8] 335 U.S. 525, 536 (1949).

[9] Ibid., at 537.

> must be struck. . . . When that point has been reached--where the intersection should fall--is plainly a question within the special province of the legislature. This Court has given effect to such a compromise in sustaining a legislative purpose to protect individual employees against the exclusionary practices of union . . . . The rationale of the Arizona, Nebraska and North Carolina legislation prohibiting union-security agreements is founded on a similar resolution of conflicting interests. Unless we are to treat as unconstitutional what goes against the grain because it offends what we may strongly believe to be socially desirable, that resolution must be given respect.[10]

The case deriving from the Arizona statute, which the Supreme Court decided on the same day as the preceding two cases, involved a question that was not present in the other statutes, and this fact prompted a separate decision.[11] The Arizona statute had been challenged on the grounds that it denies "equal protection of the laws" guaranteed by the Fourteenth Amendment of the United States Constitution. As noted earlier, Arizona's "right-to-work" constitutional amendment and statute prohibit discrimination against non-union employees but do not specify equal protection for union members.[12] The union therefore held that it was being denied equal protection.

The Supreme Court found no merit in this argument, for, while the legislation does not prohibit discimination against union members, Arizona already had a statute that prohibited the "yellow-dog" contract. The Court felt that the state had attempted to strike at what it considered to be evils in a manner that would effectively suppress the evils. It was pointed out by the Court that "legislative authority, exerted within its proper field, need not embrace all the evils within its reach" and that "the existence of evils against which the law should afford protection and the relative need of differ-

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[10] A.F. of L. v. American Sash & Door Co., 335 U.S. 538, 546 (1949).

[11] Ibid., 335 U.S. 538 (1949).

[12] Cf. supra, p. 371.

ent groups 'is a matter for the legislative judgment.'"[13]

Despite the Court's ruling that there is no indication that Arizona's legislation is weighted in favor of nonmembers as against members, it perhaps should be noted again that while the state's "yellow-dog" statute makes it a misdemeanor to coerce a worker to sign a contract not to join a union, it does not provide for discrimination against nonmembers. It seems, therefore, that union members are placed at a disadvantage.

Later in the same year, 1949, the Supreme Court again emphasized the authority of the states to regulate union-security contracts. The state in question, Wisconsin, did not have a "right-to-work" law but a statute that requires a favorable vote of two-thirds of a firm's employees before a union-security contract can be effective. In the case before the Court the company, with great reluctance, and the union had inserted a maintenance-of-membership clause in the contract at the insistence of the National War Labor Board. An employee refused to conform and hence was discharged. He filed an unfair labor practive complaint with the Wisconsin Employment Relations Board, which ordered the clause voided and the employee reinstated with back pay, because a union-security referendum had not been conducted among the employees. Both the company and the union protested, and appeal was eventually made to the Supreme Court, which upheld the state board in its enforcement of the law restricting union-security clauses.[14]

Since the nation's highest court has upheld the constitutionality of the "right-to-work" laws, the lower courts have had no choice but to follow the precedent. Thus the constitutionality of the Virginia statute was upheld

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[13] Ibid., at 541, 542.

[14] Algoma Plywood & Veneer Co. v. Wisconsin Employment Relations Board, 336 U.S. 301 (1949).

in a decision that cited the high court's rulings. In this case a printing firm was given a contract by a customer on the condition that it use union labor. One of its employees would not join the local union and was discharged. Although he later joined the union and was rehired, he subsequently quit and brought suit under the "right-to-work" law. The law was upheld and the employee was awarded damages as compensation for the four weeks he was unemployed as a result of his discharge.[15] Courts have also declared the legislation of Tennessee and Florida to be constitutional.[16]

Conflict with the Railway Labor Act

Proponents of the "right-to-work" laws gained considerable stature through the above court rulings. Their cause appeared to be moving successfully ahead on almost all fronts. The only troublesome barrier was a provision in the Railway Labor Act as amended in 1951 which permitted the negotiation of union-security contracts in the railroad and airline industries. This provision, discussed previously, would have presented no obstacle to the enforcement of state laws except that it declared that union-shop agreements were permitted between a carrier and a union "notwithstanding any other provisions of this chapter, or of any other statute or law of the United States . . . . or of any State." Thus the Railway Labor Act after 1951 stood in direct conflict with the "right-to-work" laws.[17]

It was inevitable that this legislative conflict would have to be re-

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[15] Finney v. Hawkins, 189 Va. 878, 54 S.E.2d 872 (1949).

[16] Mascari v. Local 667, Teamsters Union, A.F. of L. 215 S.W.2d 779 (1948); A.F. of L. v. Watson, 60 F. Supp. 1010 (1945), 327 U.S. 582 (1946).

[17] Cf. supra, pp. 109-12.

solved by the courts. Were employees in a state that had a "right-to-work" law prohibiting union-shpp contracts required to join a union if they were employed in that state by a railroad, or an airline, which had a union-shop contract with the union representing its employees? Only the "right-to-work" laws of Iowa and Mississippi expressly exempted employees covered by the Railway Labor Act. One issue to come before the courts, therefore, was whether state labor law, enacted through authority given the states by Congress, was superior or inferior to conflicting federal law enacted by the same Congress. A second issue directly pertained to constitutionality again, but this time it was whether a union-security contract is constitutional.

Before the matter came to the Supreme Court, lower courts handed down conflicting opinions. The North Carolina supreme court analyzed at length the arguments supporting the "right-to-work" law and concluded that the union-shop provision of the federal railroad law was not an invalid exercise of power by Congress and that it was not nullified by the state law outlawing the union shop.[18] Other courts made similar decisions. In Florida a United States district court held that a federal law regulating interstate commerce has precedence over a conflicting provision in a state constitution, and therefore a Florida railroad could enter into a union-shop agreement. A Virginia court added that the 1951 amendment to the Railway Labor Act was a constitutional exercise of the power of Congress to regulate commerce and did not violate any natural right to work guaranteed by the Constitution.[19]

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[18] Hudson v. Atlantic Coast Line R.R. Co., 242 N.C. 650, 89 S.E.2d 441 (1955), cert. denied, 351 U.S. 949 (1956).

[19] In re Florida East Coast Ry. Co., 32 L.R.R.M. 2533 (not officially reported) (SD Fla., 1953); Moore v. Chesapeake & Ohio Ry. Co., 34 L.R.R.M. 2666 (not officially reported) (Hustings Court of City of Richmond, Va., 1954). Cf. Otten v. Baltimore & Ohio R.R. Co., 205 F.2d 58 (2d Cir. 1953).

On the other hand, a Texas district court granted an injunction restraining several railroad unions from entering into a union-shop contract on the grounds that the union-shop provision was unconstitutional, and therefore the Texas "right-to-work" law also applied to railroad employees.[20] The Nebraska supreme court also declared the provision unconstitutional.

The Nebraska case is of special interest because it was appealed to the United States Supreme Court, whose decision was an important landmark in the "right-to-work" controversy. The case was brought under the Nebraska "right-to-work" law which had also been the subject of the Supreme Court's earlier ruling on the constitutionality of the legislation. Several non-union employees of the Union Pacific Railroad sought to enjoin the company from carrying out the union-shop agreement it had entered into with sixteen labor unions concerned with railroad operations. The unions were later brought into the case as co-defendants. The injunction was granted and was affirmed by the supreme court of Nebraska.[21]

The Nebraska court attacked the union-shop provision on constitutional grounds. The provision, said the court, violates the First Amendment of the United States Constitution by requiring employees to become part of an organization with which they are not in sympathy and of which they do not approve. Such action, the court declared, was a violation of employees' freedom of association guaranteed by the Constitution of the United States. The court therefore stated:

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[20] Sandsberry v. Gulf, Colorado, and Santa Fe Ry. Co., Texas, District Court of Potter County, 108th Judicial District, No. 28031, February 6, 1954.

[21] Hanson v. Union Pacific Railroad Co., 160 Neb. 669, 71 N.W.2d 526 (1955).

> . . . Congress was without authority to impose upon employees of railroads in Nebraska, contrary to our Constitution and statutory provision, the requirement that they must become members of a union representing their craft or class as a condition for their continued employment. It improperly burdens their right to work and infringes upon their freedoms. This is particularly true as to the latter because it is apparent that some of these labor organizations advocate political ideas, support political candidates, and advance national economic concepts which may or may not be of an employee's choice.[22]

In passing, it should be noted that Congress, strictly speaking, did not "impose" a union shop on railroad employees, as the Nebraska court declared, but only permitted one if employees and employer agreed to put it into the collective bargaining contract.

The Nebraska supreme court also ruled that Congress had violated the Fifth Amendment of the Constitution of the United States when it passed a law requiring employees to join a union and thus depriving them of their property without due process by forcing them to pay dues in order to keep their jobs. The court strongly defended the "right-to-work" laws. The right to work, said the court, "is a fundamental human right which the due process clause of the Fifth Amendment protects from improper infringement by the federal government."[23]

In general, the Nebraska court held that Congressional action in this instance had been unreasonable. It declared: "Whether legislative action transcends the freedoms guaranteed by the First and Fifth Amendments depends upon whether it is reasonable, and whether or not the means selected have a real substantial relation to the objects sought to be obtained."[24] The alleged purpose of the Railway Labor Act, said the court, was to promote industrial

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[22] Ibid., 71 N.W.2d 526, 546.

[23] Ibid.

[24] Ibid., at 547.

peace on the railroads, and the deprivation of property rights through compulsory union membership has no rational connection with that purpose.

Since constitutional questions had been so vigorously raised by the Nebraska court, the United States Supreme Court had to take notice of them when the decision was appealed. In a unanimous decision the Nebraska opinion was reversed by the Supreme Court.[25]

In its decision the nation's highest court reaffirmed its earlier opinion, when the "right-to-work" laws were first before it, that the police power of a state permits the prohibition of the union or closed shop, if conflicting federal legislation does not exist. The Supreme Court also noted that Congress certainly has the power to regulate labor relations in interstate commerce. In this matter of the "right-to-work" Congress could well have believed that the union shop would better serve the long-range interests of the workers "along the arteries of interstate commerce," the Court remarked. It did state, however, that requiring employees to contribute to the costs of protecting their rights might perhaps not be the wisest course of action. This policy, nevertheless, was something for Congress to decide. "One would have to be blind to history," declared the Court, "to assert that trade unionism did not enhance and strengthen the right to work."[26]

While the Court warned that it was ruling narrowly on the issue, it did uphold the lawfulness of the railroad union shop and the right of carriers and unions to enter into such an agreement even in states with "right-to-work" laws. How extensive the obligations of union membership would be the Court did not make entirely clear and implied that this question might be decided in future

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[25] Railway Employees' Department, A.F. of L. v. Hanson, 351 U.S. 225 (1956).

[26] Ibid., at 234.

cases. It did note, however, that the only requirements of union membership authorized by the Railway Labor Act "are the payment of periodic dues, initiation fees and assessments." The Court also pointed out that "the prohibition of fines and penalties precludes the imposition of financial burdens for disciplinary purposes."[27]

In its decision the Court also cited the requirement of union membership as analagous to the requirement in many states that a lawyer join the integrated bar before he can engage in the practice of law.[28] By so declaring, the Court appeared to rule out the objection of some advocates of "right-to-work" laws who said no such comparison was legitimate because the bar is a governmental organization charged with the regulation of legal conduct and affairs. The Court probably based the analogy on the established fact that the bar requires the payment of dues and fees which are used not only for the official business of the bar but also for social, educational, welfare, and legislative activities that are not at all related to its regulatory character.

With one aspect of the Nebraska court's decision the United States Supreme Court found itself in agreement. The findings of the state court with respect to the First and Fifth Amendments rested on the conclusion that a union-shop agreement sanctioned by the Railway Labor Act amendment constitutes an affirmative exercise of governmental power, and therefore ruled that such an agreement is not a purely private contract. For, it was said, Congress had not merely repealed a contrary federal law but had overruled the "right-to-work" laws of several states (seventeen at the time). The Supreme Court agreed with this opinion by declaring:

> The Supreme Court of Nebraska said, "Such action on the part of Congress is a necessary part of every union shop contract entered into in the railroads

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[27] Ibid., at 235.

[28] Ibid., at 238.

> so far as those seventeen States are concerned, for without it such contracts could not be enforced therein." 160 Neb., at 698, 71 N.W.2d, at 547. We agree with that view. If private rights are being invaded, it is by force of an agreement made pursuant to federal law which expressly declared that state law is superseded. . . . In other words, the federal statute is the source of the power and authority by which any private rights are lost or sacrificed. . . . The enactment of the federal statute authorizing union shop agreements is the governmental action on which the Constitution operates, though it takes a private agreement to invoke the federal sanction.[29]

Thus the Court acknowledged that the restriction on freedom through a private contract establishing a union shop was lawful because Congress had made it so. According to the Court, Congress acted within the constitutional framework when it passed the disputed section of the Railway Labor Act.

As a result of this decision and earlier rulings by the Supreme Court, the principal lines of constitutionality of the "right-to-work" laws have been made clear. Congress has the power to regulate labor relations in interstate commerce and to permit the union shop in collective bargaining agreements. Reasonable men can and do differ on what regulations are necessary. It is up to Congress to enact legislation for the protection of individual and group rights. The courts hold that they cannot be expected to re-evaluate the judgment of Congress and annul legislation simply on the grounds that it is in their opinion not wise or reasonable. Thus the Supreme Court has not declared that the Wagner or Taft-Hartley forms of union shop were invalid, nor has it said that the railroad union shop is invalid. Following the same principle, the Supreme Court also refused to declare the state "right-to-work" laws invalid.

Since the highest court has so clearly stated the constitutionality of the railroad union shop, there has been little subsequent litigation over the point. The important cases that have risen have focused on the requirements of union membership, chiefly whether union dues can be used for purposes other than

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[29] Ibid., at 232.

collective bargaining, such as political action. A case of this type came before the Texas supreme court but was kept pending until the United States Supreme Court acted on the Nebraska case. The Texas case was an appeal from the decision mentioned earlier which declared the railroad union shop unconstitutional. This decision was reversed by a district appeals court, and, finally, the Texas supreme court upheld the reversal.[30]

The Texas decision was directly based on Railway Employees' Department v. Hanson. Significantly, the state court stressed the literal interpretation of the minimum requirements of union membership. According to the court, nothing more is required than a financial obligation. It went on to say that "the unwilling employee need assume no pledge of conformity nor promise of obedience, nor even make application for membership to retain employment under the union-shop contract."[31] The United States Supreme Court declined to review the decision.

Interpreting the Laws

The impact of "right-to-work" laws depends in considerable measure upon how they are interpreted and enforced by the courts and other legal agencies of the states. Relatively few cases have reached the higher courts. A good number of decisions have halted union or employer action when a contract was contrary to the clear intent of the laws. The examples cited below provide an insight into judicial thinking on some less obvious aspects of the laws.

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30 Sandsberry v. International Association of Machinists, 156 Tex. 340, 295 S.W.2d 412 (1956), cert. denied, 353 U.S. 918 (1957).

31 Ibid., 295 S.W.2d, at 415.

Picketing by unions to coerce employers to hire only union members was enjoined by court action in three Texas cases.[32] Also in Texas under the "right-to-work" statute a union was enjoined from picketing to persuade an employer to require his subcontractors to observe union scales.[33] The enjoined activity is of the type commonly used in the past by craft unions to protect their jobs and rates and to spread organization. Although the cases were brought under the state law, the union demands would have been prohibited under federal law also.[34] A similar ruling was also handed down in Georgia under the state "right-to-work" law. No attempt was made by the union in this instance to obtain a union-security contract or to require that all of another firm's employees become union members. The picketing, however, did involve the refusal of union members to work at a construction site with nonunion workers who did not wish to become members.[35] The injunction restraining the picketing illustrates the impact that the "right-to-work" laws make on unions in the building and construction industry especially. However, the same effect has been produced by the federal labor policy under the Taft-Hartley Act.

Related to the same policy was a state supreme court ruling in Arkansas. It declared a contract unlawful which provided that a refusal of union employees to work with a nonunion employee would not be a violation of the contract. The union contended that it had withdrawn a demand for this provision but was on

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[32] Construction & General Labor Union Local No. 688 v. Stephenson, 148 Tex. 434, 225 S.W.2d 958 (1950); Sheet Metal Workers Local No. 175 v. Walker, 236 S.W.2d 683 (1951); Texas State A.F.of L. v. Brown & Root, 246 S.W.2d 938 (1952).

[33] Cain v. Teamsters, 155 Tex. 304, 285 S.W.2d 942 (1956).

[34] Cf. Frederic Meyers, "Right to Work" in Practice (New York: The Fund for the Republic, 1959), pp. 9-10.

[35] Woodward v. Collier, 210 Ga. 239, 78 S.E.2d 526 (1953).

strike to resist the employer's demand that the state's "Freedom to Work" amendment and enabling statute be incorporated in the collective bargaining agreement. The court considered the employer's demand to be lawful.[36]

The Arkansas supreme court has also handed down another decision interpreting a collective bargaining agreement in relation to the "right-to-work" law. While the court recognized that the termination date of an agreement is not subject to legal control, it nevertheless ruled that an agreement terminable on sixty days' notice was unlawful under the state law. The court felt that the purpose of this provision was to enable the union to terminate the agreement if nonunion workers were hired. The provision was being insisted upon by the union after the company had refused to sign a closed-shop contract. Since the union's constitution prohibited its members from working with nonmembers, the court ruled that the provision would be for an unlawful purpose and enjoined picketing for such a purpose.[37] This ruling seems rather farfetched since the action had not occurred, nor was intent to commit the action evident, nor could it be ascertained that the union would adhere to its constitution if employment conditions were unfavorable.

Regulation of a union-security contract has also been allowed under the Wisconsin Employment Peace Act. The Wisconsin Employment Relations Board ruled that, since this statute prohibited union-security agreements unless approved by a referendum of the employees affected, under Section 14(b) of the Taft-Hartley Act the Board could also set aside such an agreement if it was unreasonably applied, even though the employer was subject to the federal act. In

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[36] International Association of Machinists Local No. 924 v. Goff-McNair Motor Co., 223 Ark. 30, 264 S.W.2d 48 (1954).

[37] Self v. Taylor, 217 Ark. 953, 235 S.W.2d 45 (1950).

this instance a worker was denied employment because he was not a union member, even though he could have qualified as one but had not been allowed to join.[38]

In a reverse situation the North Carolina supreme court ruled that state courts could decide a damage claim resulting from a wrongful discharge for union membership, in violation of the state "right-to-work" statute. A jury had ruled that the employee's discharge was for membership. The court said that states have the authority under the Taft-Hartley Act to enforce the "right-to-work" laws in both interstate and intrastate operations, and that it should not be surrendered without a clear mandate from the United States Supreme Court. In this case the employer had contended that the state court lacked jurisdiction under the Taft-Hartley Act.[39]

Under the "Freedom to Work" constitutional amendment of Arkansas a state law was declared invalid which barred from employment policeman who were union members. The state supreme court found no implication in the amendment which would exempt public employees from its protection against discrimination in employment because of union membership.[40]

Some other court decisions, however, reveal that on occasion "right-to-work" laws have not provided equal protection to union members. In a case previously referred to, the Georgia supreme court refused to grant injunctive relief or damages to three workers discharged for union membership, on the grounds that the Georgia statute specifically exempted from its punitive provisions the clause prohibiting discrimination for union membership. In exercising general equity power, it was said, a Georgia court may not issue an

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[38] Wierchering v. Appleton Photo Engravers Union No. 77, Wis. 1956, Wisconsin Employment Relations Board Decisions, No. 4187-A.

[39] Willard v. Huffman, 109 S.E.2d 233 (1959).

[40] Potts v. Hay, 318 S.W.2d 826 (1958).

injunction to restrain an act already committed (discharge, in this instance) or to require the performance of affirmative acts, except in so far as they are a necessary incident to the carrying out of an order restraining other acts. Re-employment of discharged employees was not considered by the court to be in this category. Damages were also denied because there was no contract of employment terminating beyond the date of discharge. Since employees were employed and paid by the week and had been paid for their final week of employment, they had no grounds for damages.[41] As the law reads, however, if the employees had been discharged for nonmembership in a union, they could have received both injunctive relief and damages.

Union members have experienced the same kind of discrimination under the Texas "right-to-work" law. According to Professor Frederic Meyers, in six recorded cases decided under the Texas statute, unions have failed to obtain enforcement of the law that supposedly protects the right of employees to belong to a union and bargain collectively.[42] In every situation that has been reviewed to date, the courts have interpreted the Taft-Hartley Act to prevent discimination against nonunion employees but to deny the power to restrain discrimination against union employees. Since prior to the enactment by Congress of the Labor-Management Reporting and Disclosure Act of 1959 no state court was sure of its jurisdiction in any area of employment over which the NLRB might exercise jurisdiction, the effect was to deprive union members of protection from discrimination as guaranteed by the Texas statute.[43] By

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[41] Sandt v. Mason, 208 Ga. 541, 67 S.E.2d 767 (1951).

[42] Representative of these cases are: Pruitt v. Lubbock Civil Service Commission, 237 S.W.2d 682 (1950); Electrical Workers v. Upshur Rural Electrical Cooperative, 261 S.W.2d 484 (1953); Leiter v. I.L.G.W.U., 269 S.W.2d 409 (1954).

[43] Cf. Frederic Meyers, "Right-to-Work" in Practice (New York: The Fund for the Republic, 1959), p. 10.

virtue of the 1959 federal law, state courts and agencies may now assert jurisdiction over labor disputes over which the NLRB declines to assert jurisdiction.[44] Thus the states are given freedom to enforce their nondiscrimination laws in cases where the labor dispute does not substantially affect commerce as determined by the NLRB.[45]

This grant of power to the states may or may not be enforced to the advantage of workers discriminated against for union membership. Many states do not have adequate statutes to deal with labor disputes. Judges must then invoke common law or their own predilections. This could mean in many instances a return to the old-time anti-union injunction weapon.

How state judicial action can handicap legal protection of collective bargaining by employees through unions of their choice is evident in a decision rendered by the Louisiana supreme court. Applied under the state "right-to-work" law, since repealed, the ruling would presumably still hold for those employees covered by the newer law. In the case before the court, a firm engaged solely in intrastate commerce refused to recognize a union as exclusive bargaining agent for both union and nonunion employees. Union employees being the majority, a strike and picketing ensued. Subsequently nonunion workers were hired to replace the employees on strike. On petition from the employer, the court ruled that the strike was for an unlawful purpose, and, hence, the picketing was restrained by injunction. The court declared that the right to work includes the right to contract for the terms of employment. Therefore, a

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[44] §701(a), which becomes §14(c)(1), (2) of the Taft-Hartley Act.

[45] For the jurisdictional standards established by the NLRB, cf. the following cases: Siemons Mailing Service, 122 N.L.R.B. 81 (1958); Raritan Valley Broadcasting Co., 122 N.L.R.B. 90 (1958); Carolina Supplies & Cement Co., 122 N.L.R.B. 88 (1958).

contract which recognizes an exclusive bargaining agent prevents bargaining by the individual employees, and this, according to the court, is contrary to the intent of the state "right-to-work" law.[46]

Rulings by two states' attorneys general have been based on similar interpretations of the laws. Neither has been tested in the courts. The attorney general of Texas in an opinion letter stated his view that the "right-to-work" law made unlawful any contract providing for exclusive representation of employees by a single union.[47] More recently, the attorney general of South Dakota, likewise in an opinion letter, ruled that the state law prohibits a union from demanding a contract to be sole bargaining agent for all employees, including unconsenting and unwilling nonunion workers. The ruling was based on the same reasoning used by the Louisiana supreme court in the case referred to above. The South Dakota official pointed out that the state "right-to-work" law forbids any agreement relating to employment which directly or indirectly denies, abridges, interferes with or in any manner curtails the free exercise of the right to work. In his opinion an agreement that provides for a union to be sole bargaining agent interferes not only with the determination of the terms of employment for an employee but also with his bargaining rights after employment. The state attorney general asserted that liberty of contract is the nonunion man's prerogative. As examples of how the worker might want to

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[46] Plegts v. Amalgamated Meat Cutters Union, 228 La. 131, 81 So.2d 835 (1955). For a discussion, see Charles A. Reynard, "Labor Law," Louisiana Law Review, XVI (February, 1956), 301-308. The Arkansas supreme court, ruling in an earlier case, expressed in an obiter dictum a view similar to the Louisiana court decision, stating that the Arkansas statute forbids a contract naming a union as exclusive bargaining agent. International Association of Machinists, Local 924 v. Goff-McNair Motor Co., 223 Ark. 30, 264 S.W.2d 48 (1954).

[47] Texas, Opinion Letter of Attorney General, November 16, 1951. Cf. Meyers, pp. 10-11.

set his own terms, the official cited the right to agree to lower wages or advancement on merit instead of seniority.[48]

Whether these rulings can be upheld as valid interpretations of the law is questionable. They demonstrate the thesis, nevertheless, that the objection to the union shop raised by many proponents of the "right-to-work" laws is less a matter of fear for the rights of union members than it is opposition to the union's right to be the bargaining agent for all employees, a fundamental point of policy in all federal labor legislation since the 1930's. The history of labor-management relations in the United States leaves little doubt in the minds of many experts that one of the principal causes of industrial conflict has been employer discrimination in the terms of employment of workers performing similar jobs. Individual bargaining has also been a handy instrument for undercutting a union's bargaining authority as the employees' representative. In the interests of individual freedom, however, some specialists insist that the principle must be abolished which gives unions the exclusive right to bargain for all employees in the bargaining unit. Not until this is done, they say, can union coercion and monopoly be brought under control and employers given the freedom they need.[49] The above decisions lend support to this contention.

The implications of this opinion, however, may be equally as injurious to an employer as to a union. If workers are given equal freedom to bargain collectively or individually, as the statutes of Arkansas, Louisiana, and Texas provide, it appears that any number of employees, however few, can lawfully demand that their employer bargain with their union representative. Other em-

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[48] South Dakota, Opinion Letter from Attorney General to Brown County State's Attorney, September 3, 1958.

[49] Cf. Sylvester Petro, "Can Antitrust Curb Union Power," Fortune, LX (November, 1959), 259.

ployees can legally select different union representatives whom the employer must recognize, while still others can insist on their legal right to bargain individually. Under these conditions an employer might wonder if the "right-to-work" law was worth the trouble into which it has plunged his employee relations.[50]

A final area of interpretation of the "right-to-work" laws has focused on the financial obligations of employees to their union representative. As was noted earlier, a majority of the laws forbid the payment of dues, fees, or other charges to the union as a condition of employment. Omission of this provision may allow the agency shop to be agreed to as a substitute for the union shop.

Three opinions and a judicial decision have been given on this point. The attorney general of North Carolina has declared the agency shop to be illegal under the "right-to-work" statute, which contains a provision concerning dues and other charges.[51] On the other hand, the Nevada law is silent about the payment of dues and other charges as a condition of employment. Two contradictory opinions have been issued on this question by the state's attorneys general. The first held that the agency-shop clause was not a violation of the law.[52] The second opinion declared the clause illegal. The Nevada attorney general said he considered the agency shop to be equivalent to assessing nonunion employees in the same manner and to the same extent and purpose as union employees, and this requirement was the very thing the law

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[50] Cf. J.R. Dempsey, "The Operation of the Right-to-Work Laws," Labor Law Journal, X (August, 1959), 555-56.

[51] North Carolina, Attorney General Opinion, No. 111, June 13, 1952.

[52] Nevada, Attorney General Opinion, No. 134, July 11, 1952.

was designed to prevent. He added: "To give effect to an 'agency-shop' clause . . . would render the right-to-work nugatory. Furthermore this would be reading something into the law which was not made a part of it upon its enactment by the people."[53]

A different interpretation has been made by two Indiana courts. An employer requested an injunction to restrain a union from bargaining for an agency-shop contract, which the employer asserted was prohibited by the Indiana "right-to-work" law. A lower court denied the injunction and declared that monetary payments to an exclusive bargaining agent are nothing more than an assessment upon nonmembers for a fair share of the costs of service rendered by their agent. A state court of appeals affirmed the decision. It pointed out that at the time the Indiana law was enacted there were two principal types of "right-to-work" law in effect elsewhere, one prohibiting union membership requirements only, the other also prohibiting a requirement of monetary payments. Since the state enacted a law of the former type, it seemed clear to the court that the legislature did not intend to prohibit agency-shop agreements.[54]

The importance of court decisions on the enforcement of "right-to-work" laws is difficult to weigh because of the unsettled state of court jurisdiction in more recent years. The question of jurisdiction has been surrounded with as great confusion as has the "right-to-work" issue itself. The question became somewhat clearer as a result of the Taft-Hartley amendments of 1959, whereby the states are authorized to process cases which fall outside the province of the NLRB.

Some of the cases cited in this chapter in which state courts refused to

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[53] Nevada, Attorney General Opinion, No. 140, September 22, 1958.

[54] Meade Electric Co. v. Hagberg, 159 N.E.2d 408 (1959).

protect union members' rights because they disclaimed jurisdiction would now clearly come under their jurisdiction. In some other cases which upheld the authority of state courts in labor disputes, the question of jurisdiction was never raised. But this rarely happened after 1953 when the Supreme Court declared that Congress had given the NLRB jurisdiction over all labor disputes in interstate commerce.[55]

This point was clarified, at least by implication, in 1957 through a per curiam opinion of the Supreme Court in the case of Local 429, Electrical Workers, A.F. of L. v. Farnsworth & Chambers Co.[56] The court reversed the Tennessee supreme court, which had upheld an injunction against picketing that was found to be for the purpose of compelling a violation of the state "right-to-work" law. By its decision the high court indicated that the states cannot provide injunctive relief from violations of state laws when the alleged wrongs are also subject under federal law to the jurisdiction of the NLRB. In bowing to this precedent, the North Carolina supreme court complained that it did not believe that Congress intended to authorize a state to enact a statute under Section 14(b) of Taft-Hartley and at the same time to prohibit it from enforcing the statute.[57] It has appeared to some that the United States Supreme Court may have erred in the Farnsworth case because it did not cite Section 14(b) in its decision.[58]

The troublesomeness of the problem of jurisdiction can be illustrated

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[55] Garner v. Local 776, Teamsters Union, A.F. of L., 346 U.S. 485 (1953).

[56] 353 U.S. 969 (1957).

[57] Douglas Aircraft Co. v. Local 379, Electrical Workers, A.F. of L., 247 N.C. 620, 628-29, 101 S.E.2d 800, 807 (1958).

[58] Cf. Leroy Jeffers, "The Labor Injunction in Texas Courts Today," Texas Law Review, XXXVI (October, 1958), 948.

through the example of picketing. If the purpose of picketing is solely to gain a union shop, this is clearly in violation of a "right-to-work" law. Where state courts have enjoined picketing, they have usually considered this purpose to be the controlling factor, although sometimes it is not at all controlling. For example, picketing in some of these cases has had as its primary purpose coercion of the employer to compel recognition of a union of his employees, with or without their consent. If this purpose is found to exist, then the federal law is being violated as well as the state law. While picketing for the union shop is lawful under federal law, picketing to compel an employer to recognize a union without the consent of his employees is an unfair labor practice under the same law, and, consequently, the NLRB has jurisdiction, not the states.

In the large areas of interstate commerce which remain under NLRB jurisdiction under the amended Taft-Hartley Act, therefore, the states are quite restricted in the enforcement of their "right-to-work" laws. They cannot enjoin any form of picketing, boycott, or other coercive practice which is covered by federal law and the NLRB even when it is in violation of the state "right-to-work" law. However, the states are not left powerless. They are only deprived of the right to act when the federal remedy is the same as the state remedy for the same violation of the law. Under all the "right-to-work" statutes a union-shop contract is void and unenforceable, and under most of them a violation is a misdemeanor to which criminal penalties apply. When they apply, the states can award damages and inflict other penalties.

The authority of the state courts to recover monetary damages resulting from picketing has been affirmed by the Supreme Court. When an employer has suffered loss through violence, destruction of property, or other wrongful conduct during a strike, he may sue for damages even though the strike was in

connection with an unfair labor practice subject to NLRB jurisdiction. The Court held that to rule otherwise would leave a private individual without adequate remedy in a proceeding before the Board.[59] The Court also permitted a nonunion worker to sue in state courts a union which, through threats of violence from his fellow workers on strike, had prevented him from entering the plant where he worked.[60] In another instance a worker unjustly expelled from his union was awarded damages for his loss of employment and wages because of union breach of contract.[61]

Conclusion

The "right-to-work" controversy has at least served to clarify certain points of law. It has reinforced the claim of federal jurisdiction over matters of employment in interstate commerce. It has led to a wider understanding that a state labor law in conflict with federal law on a matter over which the federal government has jurisdiction must yield to the latter. It has also emphasized that Congress can cede some of its jurisdiction over labor relations to the states, as Congress did again in its 1959 labor law by giving the states jurisdiction over some labor matters in interstate commerce which the NLRB refuses to accept.

The above discussion also clearly reveals how some states have gone far beyond the grant of jurisdiction made in Section 14(b) of the Taft-Hartley Act. A few legal decisions have even declared that the "right-to-work" law destroys the exclusive bargaining status of unions that are parties to lawful collective

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[59] United Construction Workers v. Laburnum Construction Corp., 347 U.S. 656 (1954).

[60] U.A.W., AFL-CIO v. Russell, 356 U.S. 634 (1958).

[61] International Association of Machinists v. Gonzales, 356 U.S. 617 (1958); cf. Jeffers, pp. 948-49.

bargaining contracts. Numerous questions concerning both jurisdiction and interpretation remain unanswered and therefore assure continuing litigation.

Perhaps most of all, a survey of "right-to-work" litigation points up how far the country has departed from uniform legislation concerning employment even in interstate commerce. The wide variations in state labor legislation increase the difficulties of measuring the effects of "right-to-work" laws. But the effects of the laws have often been advanced as an argument for and against the legislation, and therefore some attention will now be directed to the results of the laws.

CHAPTER X

THE LAWS IN OPERATION

Paralleling the mounting acrimony of the "right-to-work" campaign as it spilled over state lines across the nation has been an ever-widening search by both sides for new arguments to bolster their respective positions. With the accumulation of experience under the laws, efforts have been accelerated to turn all available data into an argument that proves the "good" or "bad" effects of the laws.

Hardly any objective studies have been made of the effects, perhaps chiefly because of the inherent difficulty of isolating the effects of one very controversial law from so many other factors which are constantly exerting their influence on both the economy and the state of the labor movement. The effects of the laws are further obscured because organized labor has been relatively feeble, and therefore a relatively unimportant force, in most of the states where the "right-to-work" laws have been enacted.

To probe the effects of these laws, it is necessary to keep in mind the economic background of the states where the laws have been adopted. A brief survey of this background also brings out some reasons why labor unions are weak in those states as well as why too much stress on the economic effects of the laws offers an argument of only dubious value. The more pertinent economic questions comprise the first section of the present chapter.

The announced aim of "right-to-work" legislation, however, is not to achieve economic benefits for industry and workers but to put a rein on unions and protect the rights of individual employees. Accordingly, the impact on the rights of unions and employees must be the principal object of an analysis of

the laws in operation, and the remainder of the chapter is devoted to it. The emphasis is on the degree to which unions have been successfully regulated and controlled and the extent to which employees have regained the freedom which the union shop is said to have denied them. By virtue of certain legal decisions, the laws have also had other specific effects, but these have been previously reviewed.

Economic Background in the "Right-to-Work" States

Economic similarity of the states with "right-to-work" laws is not so readily apparent. The diversity of Nevada, Texas, and South Carolina is easily spotted. When Indiana is added to the list, the picture is still more blurred. With the exception of the latter state, however, all the states with open-shop legislation are among the least or most recently industrialized in the country. Simultaneously, in most of them, agriculture is a more important sector of their economy than is true of the nation as a whole.

How a "right-to-work" law affects the economy of a state is certainly to some extent influenced by the degree of industrialization in the state and the related strength of organized labor. The following considerations, therefore, cast a little more light on the so-called economic effects of the laws. One might expect the effects to be considerable since it has been strongly contended in the "right-to-work" campaigns that the enactment of the law will raise incomes, lift the standard of living, increase productivity, improve the business climate so as to attract new industry, and bring industrial peace and other desirable benefits. On the other hand, it is argued by others that if the "right-to-work" statute is adopted wages will be driven down, skilled labor will avoid the state, economic development will be slowed, and labor strife will increase. Thus it is apparent that the economic arguments have contributed their

share of confusion to the controversy.

The Relative Importance of Manufacturing

The degree of industrialization is a very important criterion for analyzing the economic activity of an area. A high degree of industrialization is closely associated with relatively high levels of income. Many of the world's underdeveloped countries are now as aware of this fact as are the less industrially developed regions of the United States. Diversified and well-balanced manufacturing is recognized as providing job opportunities, affording a market for goods and services, and indirectly creating employment in the service trades and professions.

One measure of the relative importance of manufacturing in an area is the number of manufacturing workers per 1,000 population. The higher the number, the greater is the degree of industrialization. Table 4 lists the states with "right-to-work" laws together with their estimated populations, employees engaged in manufacturing, and the number of manufacturing employees per 1,000 population.

TABLE 4

EMPLOYEES IN MANUFACTURING, POPULATION, AND MANUFACTURING EMPLOYEES PER 1,000 POPULATION BY SELECTED STATES, 1960[a]

State	Employees in Manufacturing (in thousands)	Population (in thousands)	Manufacturing Employees per 1,000 Population
Alabama	238.7	3,266.7	73
Arizona	49.2	1,302.2	38
Arkansas	101.3	1,786.3	57
Florida	207.0	4,951.6	42
Georgia	338.3	3,943.1	86
Indiana	596.8	4,662.5	128
Iowa	174.0	2,757.5	63
Kansas	115.5	2,178.6	53
Louisiana	140.5	3,257.0	43
Mississippi	119.4	2,178.1	55
Nebraska	63.8	1,411.3	45
Nevada	5.1	285.3	18
North Carolina	493.5	4,556.2	108
North Dakota	6.6	632.4	10
South Carolina	239.3	2,382.6	100
South Dakota	12.9	680.5	19
Tennessee	308.8	3,567.1	87
Texas	491.8	9,579.7	51
Utah	45.5	890.6	51
Virginia	273.2	3,967.0	69
United States	16,380.0	179,323.2	91

[a] Source: U. S., Department of Labor, Employment and Earnings, VII (July, 1960), 19; U. S., Bureau of the Census, 1960 Census of Population, Advance Reports: Final Population Counts, November 15, 1960, p. 3. The figures are for April, 1960.

According to estimates, all the twenty states with "right-to-work" laws except Indiana, North Carolina, and South Carolina are below the national average of 91 manufacturing employees per 1,000 population. Fourteen of the twenty states have a ratio of less than 70, far below the national average. These may be classified as rural states where agriculture and related industries

are easily the most important economic activities. It appears, then, that the least industrialized states have an affinity for "right-to-work" laws.

Many of these states, however, especially in the Southeast and Southwest, have enjoyed a rapid increase in industrialization since World War II. Yet most of them are still low in the percentage of persons employed in manufacturing when compared to the highly industrialized areas of the country.

Within each of the states with "right-to-work" legislation the relationship between manufacturing and farming is further clarified by the data presented in Table 5. This table shows the relative distribution, by manufacturing and farming, of civilian income received by persons during two years for participation in current production. This measure is believed to present a more meaningful picture of the industrial structure of the state economies than would total personal income data which include property returns and transfer payments, both of which items distort the picture of income payments in a few states. The statistics in Table 5 embrace the combined totals of wages and salaries, other labor income, and proprietors' income in manufacturing and farming industries.

TABLE 5

PERCENT DISTRIBUTION BY TWO INDUSTRIES OF CIVILIAN INCOME RECEIVED BY PERSONS IN SELECTED STATES FOR PARTICIPATION IN CURRENT PRODUCTION, 1955, 1959[a]

State	Manufacturing		Farming	
	1955	1959	1955	1959
Alabama	27.6	27.8	11.6	7.2
Arizona	11.4	13.0	14.2	9.8
Arkansas	17.6	19.7	26.2	21.4
Florida	10.9	12.5	8.8	7.6
Georgia	26.9	26.9	9.9	6.5
Indiana	44.0	42.8	6.2	4.7
Iowa	21.7	22.4	20.1	18.3
Kansas	22.1	20.1	9.8	11.4
Louisiana	19.6	17.8	7.4	5.8
Mississippi	17.8	20.9	26.6	17.8
Nebraska	14.1	13.7	15.3	18.8
Nevada	5.3	4.9	4.3	4.7
North Carolina	31.9	33.2	15.3	11.1
North Dakota	3.1	3.7	36.5	19.5
South Carolina	35.2	35.1	11.6	8.3
South Dakota	6.8	8.1	25.3	18.0
Tennessee	29.5	30.2	8.9	7.6
Texas	18.3	18.6	8.7	8.4
Utah	14.8	16.8	6.6	4.9
Virginia	24.2	21.0	6.1	4.5
United States	31.3	30.2	5.9	4.8

[a]Calculated from: Charles F. Schwartz and Robert E. Graham, Jr., Personal Income by States since 1929 (Washington: U.S. Government Printing Office, 1956), p. 37; U.S., Department of Commerce, Survey of Current Business, XL (August, 1960), 23.

In terms of personal income from manufacturing, the twenty states present a picture similar to that of Table 4. Only Indiana was substantially above the national average in percentage of income received by persons participating in current manufacturing production in 1955. South Carolina was somewhat above, North Carolina slightly above the national average. In 1959, both North and South Carolina were further above the national average than in 1955, while Tennessee reached it. All the other states were still below it.

It should be noted, furthermore, that in 1955 all the "right-to-work" states except Nevada had a higher relative personal income from farming than the national average. In 1959, only Indiana and Virginia had a smaller relative personal income from farming than the national average. In both Virginia and Nevada, however, industrialization was considerably below the average for the United States.

Income Payments

A fundamental criterion of economic well-being in a state is income payments to individuals. Both total and per capita income payments for three years are given in Table 6. The period chosen begins with the year in which most of the early "right-to-work" laws were enacted. The tremendous relative increase in total income payments above the national average which has occurred in Arizona, Florida, and Nevada must be largely attributed to population growth. Thus the per capita figures in Table 6 are more significant than the aggregates.

TABLE 6

TOTAL AND PER CAPITA PERSONAL INCOME, BY SELECTED STATES, 1947-1959, AND RELATIVE GROWTH[a]

State	Total Income (millions of dollars)			Per Capita Income (dollars)		
	1947	1959	Growth	1947	1959	Growth
Alabama	$2,337	$4,607	97.1%	$ 794	$1,409	77.5%
Arizona	749	2,388	218.8	1,149	1,959	70.5
Arkansas	1,320	2,370	79.5	719	1,322	83.9
Florida	2,903	9,273	219.4	1,143	1,980	73.2
Georgia	2,890	6,081	110.4	884	1,553	75.7
Indiana	4,925	9,712	97.2	1,303	2,102	61.3
Iowa	2,986	5,398	80.8	1,190	1,953	64.1
Kansas	2,385	4,238	77.7	1,288	1,994	54.8
Louisiana	2,272	5,169	127.5	881	1,575	78.8
Mississippi	1,395	2,528	81.2	662	1,162	75.5
Nebraska	1,574	2,797	77.7	1,243	1,981	59.4
Nevada	258	752	191.5	1,732	2,745	58.5
North Carolina	3,372	6,771	100.8	894	1,485	66.1
North Dakota	836	972	16.3	1,446	1,526	5.5
South Carolina	1,554	3,148	102.6	779	1,332	71.0
South Dakota	739	1,020	38.0	1,232	1,476	19.8
Tennessee	2,776	5,362	93.2	876	1,521	73.7
Texas	8,332	18,041	116.5	1,128	1,908	69.1
Utah	749	1,626	117.1	1,178	1,848	56.9
Virginia	3,278	7,058	115.3	1,002	1,816	81.2
United States	189,077	380,664	101.3	1,316	2,166	64.6

[a] Source: Charles F. Schwartz and Robert E. Graham, Jr., Personal Income by States since 1929 (Washington: U.S. Government Printing Office, 1956) pp. 140-43; U.S. Department of Commerce, Survey of Current Business, XL (August, 1960), 17.

An examination of per capita incomes shows that all the states with "right-to-work" laws, except Nevada and North Dakota, had a figure in 1947 that was lower than the national average. In 1959, the only exception was Nevada. Twelve of these states, however, exceeded the national average rate of growth from 1947 to 1959. This is a better record than can be shown by the states whose per capita income payments in 1947 were above the national average. These latter states, none of which has a "right-to-work" law at the present

time, generally had the lowest rates of increase during this period. They still maintained, however, a considerable lead in absolute amounts of per capita income. The states with "right-to-work" laws continued to lag behind the national average in absolute amounts, with the sole exception of Nevada, which has unique sources of income. In 1959, thirteen states with "right-to-work" laws were included among the twenty states with the lowest per capita income payments in the United States.

The best measure of consumer purchasing power available on a geographic basis is the estimates of disposable income by states. These estimates, which are closely related to the measure of per capita incomes, reveal that in 1959 ten of the eleven states with the lowest disposable income per capita were states with "right-to-work" laws.[1]

While many of the "right-to-work" states are among the lowest in personal income, their more rapid rate of economic growth above the national average is related to the tendency for all states to cluster more closely around the average per capita income for the nation. This trend is accurately and comprehensively measured by computing the coefficient of variation of state per capita incomes. This computation, based on per capita income figures for forty-eight states and the District of Columbia, gives the following results: 1929, .3694; 1933, .4246; 1940, .3623; 1944, .2756; 1948, .2139; 1954, .2090; and 1959, .2040.[2] The last figure is almost half that for 1940 and indicates a leveling off of income variations between the states. It also shows that other low-income states which do not have "right-to-work" laws are also moving upward toward the national average, which explains why the "right-to-work" states, despite their steady and

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[1]Cf. Robert E. Graham, Jr., "General Rise in State Income in 1959", Survey of Current Business, XL (August, 1960), 13.

[2]Computations for 1954 and 1959 were made by the author from data in Graham, p. 17. Earlier figures were computed by Calvin B. Hoover and B. U. Ratchford, Economic Resources and Policies of the South (New York: The Macmillan Co., 1951), p. 49.

sometimes rapid advances, still remain among the lowest in per capita income.

This explanation, however, does not account for the low level of per capita income payments in absolute amounts. A partial explanation has already been suggested, namely, that many of these states are predominantly agricultural. In addition, these same states generally have a greater percentage employed in personal services than the national average. Agriculture and personal services are the two most important divisions of the lowest-earnings-per-person employment categories in the economy.

Another important factor is the industrial structure of the states having "right-to-work" laws. Some industries are readily identified as high-wage industries. Durable-goods manufacturing falls into this category, including such industires as primary metals, transportation equipment, and machinery. These are closely associated with industries ranking high in terms of value added by manufacture. An outstanding exception is tobacco manufacturing, which ranks high in value added, while wages are exceptionally low. Nondurable-goods manufacturing tends to include lower wage industries, such as food, textile-mill products, apparel, and leather products. Some nondurable-goods industries, however, pay relatively high wages, such as chemicals, rubber products, and paper and allied products. Some of the "right-to-work" states which have experienced rapid industrialization, for example, Virginia, North Carolina, and South Carolina, show an unusually large concentration of workers in the lower wage industries.[3] The wide range in average hourly earnings of production workers in manufacturing by states is seen in Table 7 where figures are presented for the years 1950 and 1959.

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[3] Comparisons can be made from data found in: U.S., Bureau of the Census, Annual Survey of Manufacturers, 1957, (Washington: U.S. Government Printing Office, 1959), pp. 32-58; U.S., Bureau of Labor Statistics, Employment and Earnings, Annual Supplement Issue, V (May, 1959), pp. 118-35; U.S., Department of Commerce, Survey of Current Business, XL (August, 1960), pp. 18-23.

TABLE 7

AVERAGE HOURLY EARNINGS OF PRODUCTION WORKERS IN MANUFACTURING BY SELECTED STATES, 1950, 1959[a]

State	Average hourly earnings	
	1950	1959
Alabama	$1.18	$1.86
Arizona	1.46	2.41
Arkansas	1.02	1.52
Florida	1.09	1.78
Georgia	1.08	1.61
Indiana	1.57	2.45
Iowa	1.40	2.29
Kansas	1.43	2.29
Louisiana	1.25	2.07
Mississippi	.97	1.49
Nebraska	1.26	2.00
Nevada	1.69	2.62
North Carolina	1.10	1.50
North Dakota	1.23	1.94
South Carolina	1.11	1.51
South Dakota	1.28	1.93
Tennessee	1.19	1.76
Texas	1.35	2.14
Utah	1.42	2.34
Virginia	1.18	1.70
United States	1.47	2.22

[a]Source: U.S., Bureau of the Census, Statistical Abstract of the United States: 1959, p. 235; U.S., Bureau of Labor Statistics, Employment and Earnings, VI (May, 1960), pp. 110, 123-126.

The effects of this interindustry wage level on personal income within states have been clearly described by a government economist as follows:

> The type of industry located within a state has a significant effect upon average personal incomes. Reference here is to interindustry differentials in average earnings apart from those due to geographic differences. As a result, average income in a state may differ from that in another state simply because of a greater or lesser proportion of industries in which average earnings differ from those prevailing in other industries throughout the nation generally.
>
> In every state of the Southeast and Southwest, in all but three in the Northwest, and in the important farm states of

> the central regions, industrial composition is a factor making for below-average income of individuals. Its effect is by far the most pronounced in the Southeast.[4]

One more factor, however, must also be credited with influencing the levels of average personal incomes. Several "right-to-work" states, for example, Arizona, Louisiana, and Texas, though not highly industrialized, are less handicapped by low-wage industrial composition. In fact, they have an unusually large proportion of workers in the higher-wage industries. The significant poin" here, however, is that wages in these states tend to be substantially lower, industry by industry, than in the highly industrialized states. While this gap is closing year by year, it must still be reckoned with, even though the numbers employed within these states are, for the most part, still relatively small. This factor is viewed by the governmental authority cited above as of even more importance than is industrial composition for explaining the low income levels of the Southeast and some parts of the Southwest.[5]

The United States Department of Commerce has also noted some short-run developments in the postwar period that have had considerable bearing on income flow. These include the sharp turns in the character and intensity of national demand for goods resulting from oscillations in government purchases, consumer durable-goods expenditures, inventory investment, business plant and equipment outlays, and residential construction. The effects of the changes in these markets for the national output of goods and services, the Commerce Department warns, may introduce considerable differentials into short-run regional income movements, chiefly because of geographic specialization in commodity production. In addition, the postwar period has been predominantly

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[4] Robert E. Graham, Jr., "State Income Payments in 1952", Survey of Current Business, XXXIII (August, 1953), 14.

[5] Ibid.

one of a strong, though irregular, downward movement in farm income.[6] This last trend is of particular significance because most "right-to-work" states, as previously remarked, have a higher than average share of farm income, which is clearly reflected in economic measurements.

Economic Effects

The foregoing brief analysis of the economic background of states with open-shop legislation provides enough factual information to expose the woeful superficiality and misleading nature of a good portion of the economic argument as it has been used in the "right-to-work" debate. It has been argued, for instance, that a "right-to-work" law threatens to wreck or retard the economic growth of a state, and the low per capita incomes of most "right-to-work" states are cited as evidence.[7] Another statement representative of some union arguments is the following:

> There are approximately one and a half million wage earners in the State of Indiana. Since a "right-to-work" law has been passed, these workers will lose at least 13 cents an hour in wage increases in the next five years if they follow the pattern established in "right-to-work" states in the past five years.[8]

The same statement goes on to remark that these facts mean that under the "right-to-work" law Indiana wage earners will lose 364 million dollars in purchasing power per year. Figures are then cited to show that employment, contract construction, retail sales, car registration, and individual income payments increased more rapidly from 1947 to 1953 in states without the law than

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[6] Cf. Charles F. Schwartz and Robert E. Graham, Jr., Personal Income by States since 1929 (Washington: U.S. Government Printing Office, 1956), pp. 17-18.

[7] Work for Rights (Pittsburgh: United Steelworkers of America, 1958), pp. 45-46.

[8] Political Memo from COPE (Washington: Committee on Political Education, AFL-CIO), August 22, 1957, p. 1.

in those with it.

The futility of this type of argument is partially revealed from data published by organizations that support the law, which start from different base years and use percentages instead of absolute quantities, and thus "prove" that most"right-to-work" states are in a better economic position than they would be without the law. It is pointed out that these states increased relatively more rapidly than the national average in wage and personal income, retail sales, value added by manufacture, bank deposits, motor vehicle registrations, population, and employment.[9]

Within arguments of this kind an alert reader may spot a sentence or two that warns of the argument's limitations. The bulk of the data in support of the argument, however, is so impressive that it tends to obscure the warning. The reader is also likely to overlook the fact that most of the statistics are cited as percentages rather than in absolute quantities. Thus the lowest-ranking states in each category have a better chance, other things being equal, to show a higher relative growth even though lagging far behind in absolute growth. These reports have been widely distributed and may have influenced voters where only the arguments of one side were heard.

The background material presented earlier makes it clear that personal incomes are determined by many variables other than labor legislation. The industrial structure of a state was shown to be one factor, that is, whether industry in the state tended to be a higher- or lower-wage type. Regional wage differentials were also viewed as an important determinant. The predominance of agriculture in many states was another factor. The sharp swings in national demand for goods were also observed as affecting short-run regional income move-

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[9] Cf. Research Report No. 33 (Jefferson City: Missouri State Chamber of Commerce, 1957), pp. 9-24. The same tables are reprinted in Do Right-to-Work Laws Hurt or Help the Economy? (Washington: National Right-to-Work Committee, 1957), passim.

ments. Since the consumption function, or the proportion of income spent for consumer goods, and also the nature of consumer expenditures are strongly influenced by individual income levels, it is to be expected that all these determinants, and not only labor legislation, are exerting pressure on the shifts in economic measurements.

Thus to measure personal income payments, retail sales, or the number of business firms in operation exclusively in terms of the kind of labor law enacted in the states is totally unrealistic if other variables are not even considered. Nevertheless, propaganda on the "right-to-work" issue generally ignores all economic measurements that weaken the position proposed or support the other side. When an objection to this partisan practice was made during an interview in the course of this study, one representative of an organization that professes lofty integrity replied simply, "You cannot expect us to introduce figures that weaken our case. Let the opposition worry about that."

Some comparisons made by the Department of Commerce can be used to illustrate the absence of a demonstrable cause-and-effect relationship between the "right-to-work" laws and state income levels and related economic measurements. In the New England area, where no "right-to-work" law exists, all six states of the region in the first ten years after the war had a relative growth in manufacturing income that was less than the national average. During the same period in the mideastern states, which have less than 4 percent of the nation's land area but 22 percent of its population and 26 percent of its personal income, aggregate individual income expanded moderately below the national average on a percentage basis. Again none of these states has a "right-to-work" law.

On the other hand, in the same Department of Commerce survey cited above, data on personal income and its components indicated better-than-average economic advances in Ohio and Michigan in the Great Lakes region, neither state

having the controversial law. By contrast, several "right-to-work" states in the plains region were sharply affected by the wide swings in the fortunes of agriculture. Income data seem to substantiate, quite independently of "right-to-work" laws, the historical trend of total personal income in the plains area to be in moderate decline relative to the nation as a whole.

The notable rise of income levels of the states of the Southeast, where "right-to-work" laws are almost universal, has been discussed previously. But not all of these states have registered significant advances in personal income above the national average since the end of the war. Louisiana, on the other hand, has been one of the more successful growth states. Nevertheless, its comprehensive "right-to-work" law was in force much too briefly to have had any appreciable influence on its income data. In the Southwest another interesting contrast appears. Both Arizona and New Mexico made exceptional gains in personal incomes in the postwar period; the former has a "right-to-work" law, the latter does not. The same conflicting evidence can be found in every section of the country.[10] However, despite the notable income advances in the "right-to-work" states since the end of the war, it can be stated unequivocally that in all but one of them per capita personal incomes still stand below the national average, and the majority are far below. Fourteen of these states also rank below the national average in the average hourly earnings of production workers in manufacturing. But these facts cannot be attributed simply to the existence of a "right-to-work" law.

A university study completed in 1955 attempted to measure the correlation between restrictive labor legislation and economic growth. It was noted that in the 1920-1921 period stringent labor legislation was enacted in many states and subsequently industrial production declined. Yet in the mid-1930's

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[10] For the personal income measurements used in making these observations on the effects of "right-to-work" laws, cf. Schwartz and Graham, pp. 19-21.

when productive labor statutes were adopted by the states, the 1937 decline in industrial production followed soon thereafter. The next business recession occurred in 1949, by which time various state laws had again become restrictive.[11] This research uncovered similarly conflicting evidence derived from gross average weekly earnings of production workers, personal and per capita incomes, employment statistics, and other statistical series.[12]

Among the conclusions the author of the above study drew from his research, the following are most pertinent to the present discussion. He contended that the type of labor legislation has little, if any, bearing on the volume of production in the various phases of the business cycle. It also appeared to him that the general level of economic activity and the state or threat of war are of far greater importance in predicting or affecting the level of production than is labor legislation. This study left considerable doubt in his mind as to whether labor laws had a causal relationship on the general rise of earnings, but he was certain that the state legislation in no way prevented the rise. Nor do the laws seem to have affected substantially the proportion of the national income going to the members of the labor force. To argue that the rise in income would have been greater or less under different labor laws would be only a matter of conjecture which cannot be borne out by empirical data. Moreover, there is no way of knowing how many additional workers entered the labor market of a state as the direct result of labor legislation pointed at protecting the individual's "right-to-work".[13]

By way of summary with respect to the effects of "right-to-work" laws on the economy, it may be recalled that economists are in serious disagreement

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[11] Cf. Leslie Earl Munneke, An Analysis of Recent Labor Legislation (Ann Arbor: University Microfilms, 1955), p. 307.

[12] Cf. ibid., pp. 309-33.

[13] Cf. ibid., pp. 307, 309-310, 312, 333.

over the impact of unions on the national economy. Various studies of union influence on wage levels indicate that union wages in the long run may rise more than they would without union pressure. These differential gains, however, seem more likely to occur during the early stages of organization and in periods of less than full employment. A number of economists believe that these differentials are not gained under full employment conditions, when union labor may even suffer a relative loss. Some observers also note that the resistance of unions to technological changes is not so strong as it formerly was, if management is willing to cooperate in arranging for employment for as many displaced workers as possible and to permit their employees to share through higher wages in productivity gains. Other research on the subject denies that unions have forced a decline in productivity per man-hour or that the degree of unionism is related to the degree of efficiency of an industry.[14]

Rejection of one or many of these points, however, is widespread. Since this is so concerning the broad impact of unionism, the effects of one piece of labor legislation are certain to be even more obscure and controverted. Given the relatively short period in which "right-to-work" laws have been in operation, their economic effects, whatever they may be, have not been closely measured or defined.

At the present time, therefore, the effects of "right-to-work" laws on the economy do not seem to be ascertainable. To use them in the debate over the laws has little merit or defense. What evidence is currently available suggests that the type of industry, the state of agriculture, income and industrial structure, along with other factors such as climate and geography, have much more influence on economic growth than does labor legislation. This conclusion does not mean that a labor law does not or can not affect the economy. Rather, it

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[14] Cf. Joseph Shister, "Trade Unionism, Collective Bargaining and Economic Growth," American Economic Review, XLIV (May, 1954), 218, 220, 225.

indicates that most economic measurements are interrelated with too many variables to stand as valid arguments for condemning or supporting "right-to-work" laws or other labor laws exclusively in terms of their effect on economic growth.

Effects on Industrial Peace

One of the more commonly expressed fears arising from allegedly excessive union power is the threat to the economy caused by work stoppages or strikes. In fact, a widely used argument in favor of "right-to-work" laws is that they will promote more peaceful industrial relations. By way of example, several businessmen were once quoted by the research director of the Missouri State Chamber of Commerce to the effect that in Iowa, Nevada, and Texas the laws have curbed union activities and agitation and brought about an era of industrial peace.[15] On another occasion the same official cited a Nebraska peace officer who said that his state's law had eliminated the closed shop, which had been one of the greatest causes of strikes.[16]

The observation made by the state peace officer is simply untrue. In no year since 1881, when statistics on strikes were first recorded, has there been any evidence that the primary cause of strikes has been disputes over the closed or union shop.

Economic issues, including wages, hours, and supplementary benefits, have generally been the principal cause of strikes. For the year 1947, for example, the Bureau of Labor Statistics reported that wage disputes were the most important single cause of strikes, being responsible for 61 per cent of all work stoppages.[17] In 1953, "about three-fourths of the year's idleness

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[15] Cf. Research Report No. 33 (Missouri State Chamber of Commerce), p. 8.

[16] W. R. Brown, "State Experience in Defending the Right to Work," in The Academy of Political Science, Proceedings: Right to Work (New York: Columbia University, 1954), p. 34.

[17] "Work Stoppages during 1947," Monthly Labor Review, LXVI (May, 1948), p. 479.

was caused by disputes over wages and/or other monetary matters," according to the Bureau. Strikes over the closed or union shop when this issue was tied in with disputes over wages and/or hours were 1.1 per cent of all strikes during 1953. With the closed or union shop as the sole primary issue in a dispute, strikes were 1.7 per cent of the total. Both these classifications together accounted for a total of 1.4 per cent of all workers involved in strikes during that year.[18]

For 1959, the Bureau reported that disagreement over economic terms, that is, wages, hours, and supplementary benefits, was the principal issue in half of the work stoppages, reflecting little change over the preceding four years. Union Security coupled with wage and/or hour disputes accounted in 1959 for 2.2 per cent of all strikes and 4 per cent of all workers involved. Union security as the sole or major issue in a strike led to 1.5 per cent of all work stoppages, and embraced another .6 per cent of all workers involved.[19]

If union-security contracts, however, make unions more prone to strike for higher wages, better working conditions, and a stronger voice in management decisions, the outlawing of these contracts by a "right-to-work" law ought to result in a decline in strike activity. It is true that the indices of work stoppages by no means portray a complete picture of the peaceful or bellicose state of industrial relations. However, they do provide some information if handled with caution. Arithmetic totals have relatively little value in this regard because they are so strongly influenced by the trend of business cycles or other nation-wide developments. Two or three strikes in only a few major firms or in one or two basic industries can greatly distort the annual data for one or a few states. The expiration of several major agreements in the same

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[18] "Analysis of Work Stoppages during 1953." Monthly Labor Review, LXXVII (May , 1954), 503.

[19] U.S., Bureau of Labor Statistics, Analysis of Work Stoppages: 1959, Bulletin No. 1278, 1960, pp. 4, 11.

year may have a similar result. These effects are partially eliminated by expressing the data for total man-hours idle as percentages of the national totals. Table 8 presents data for all the "right-to-work" states on the number of work stoppages and of total workers involved and the percent of total man-days idle. The year that each state's law was enacted is also given to aid the reader in making comparisons of the effects of the laws on strike activity. The indices for five selected years should bring out evidence of any trend that is the consequence of a "right-to-work" law.

TABLE 8

WORK STOPPAGES IN SELECTED STATES, 1947, 1950, 1953, 1956, 1959[a]

State (year "right-to-work" law enacted)	Number of strikes per year[b]					Number of workers involved (in thousands)					Man days idle (% of total)				
	1947	1950	1953	1956	1959	1947	1950	1953	1956	1959	1947	1950	1953	1956	1959
Alabama (1953)	110	108	110	101	73	64.3	51.1	36.2	63.3	51.3	1.7	1.7	1.0	4.5	1.6
Arizona (1947)	19	23	13	12	28	9.3	8.0	2.1	7.7	30.6	.5	.1	.2	.4	2.3
Arkansas (1944)	25	21	42	23	25	8.6	4.1	11.7	5.7	3.2	.7	.4	.5	.3	.1
Florida (1944)	37	31	75	68	99	14.7	8.5	24.4	11.7	27.1	.7	.2	.8	.6	.1
Georgia (1947)	25	42	54	40	22	10.7	9.8	13.4	12.7	3.7	.7	.3	.4	.6	.1
Indiana (1957)	134	179	191	136	153	65.0	159.0	139.0	110.0	117.0	2.1	5.2	5.5	6.3	1.8
Iowa (1947)	38	52	60	56	63	119.0	32.4	21.2	21.0	24.5	.9	2.7	1.4	.9	.4
Kansas (1958)	19	41	31	27	26	8.8	16.7	15.4	3.9	6.4	.7	.5	1.1	.1	.1
Louisiana (1954)[c]	26	39	70	42	36	15.5	9.2	23.0	26.4	17.5	1.1	.3	1.0	1.3	.2
Mississippi (1954)	17	15	20	20	12	7.8	2.2	2.5	6.4	1.9	.6	.1	.2	.1	d
Nebraska (1947)	8	15	17	24	25	6.3	5.6	4.7	5.4	8.7	.4	.1	.3	.1	.2
Nevada (1952)	8	8	17	13	16	.7	.9	3.6	3.2	5.0	.1	d	.1	d	1.1
North Carolina (1947)	37	31	25	22	13	16.0	12.7	10.1	10.2	1.4	1.6	.2	.7	.9	d
North Dakota (1948)	5	8	10	6	8	1.8	4.4	.9	.2	1.2	.1	.1	d	d	d
South Carolina (1954)	10	15	21	12	9	3.1	8.3	25.4	5.4	1.5	.4	.4	.4	.5	d
South Dakota (1947)	3	5	3	6	3	1.4	.7	.5	.9	.4	.1	d	.1	d	.1
Tennessee (1947)	75	131	125	111	60	36.9	72.3	65.5	32.8	18.7	1.5	1.6	2.1	1.3	.2
Texas (1947)	70	101	89	76	75	46.7	41.4	58.1	43.9	30.4	3.1	2.0	2.4	2.6	.2
Utah (1955)	13	31	39	24	12	9.6	21.4	23.4	12.8	14.9	.3	.9	.9	.3	2.4
Virginia (1947)	69	84	65	49	53	26.3	26.3	24.9	12.6	15.0	.3	1.1	.6	.4	.1

[a] Source: The May issues of Monthly Labor Review, except for 1959, the June, 1960, issue.

[b] Stoppages extending across state lines have been counted in each state affected.

[c] Louisiana's "right-to-work" law was repealed in 1956 and another one enacted in its place that covers only agricultural workers.

[d] Less than 0.05 per cent.

While the amount of strike activity can be expected to be higher in the more industrialized states, few of which appear in Table 8, the data for the states with "right-to-work" laws reveal no consistent pattern to support the view that the passage of the law has abruptly or even gradually introduced a new era of industrial peace. This observation is fortified by other well known facts about strikes. Some very highly organized industries working under union-security contracts have had virtually no work stoppages for years. A strike called by the International Ladies' Garment Workers Union in 1958, for example, was the first in that trade in more than twenty-five years. Some other unions have equally good or better records of peaceful industrial relations under the union shop. The same is true of many individual business firms, even in industries and areas where labor relations have often been stormy. The incidence of work stoppages therefore, does not seem to provide a solid foundation on which to erect an argument for or against "right-to-work" laws or the union shop. On the contrary, the evidence seems to indicate that the negotiation of union-security contracts has not materially increased the obstacles to labor peace.[20]

Effects on Industrial Migration

Although usually it is kept discreetly in the background of campaigns, an important selling point for a "right-to-work" law has been the tempting lure it supposedly represents for new industry. To a degree, this supposed attraction is related to another controversial argument, that is, whether compulsory union membership, as some management groups aver, injures employee morale and, hence lowers productivity, or whether the union shop improves morale and productivity, as unions contend, because it lessens tension and increases union cooperation with management.[21] The possible influence of the law in determining

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[20] For a similar conclusion drawn from different data, cf. Daniel H. Pollitt, "Right to Work Law Issues: An Evidentiary Approach," North Carolina Law Review, XXXVII (April, 1959), pp. 247-252.

[21] Cf. Paul Sultan, Right-to-Work Laws: A Study in Conflict (Los Angeles: Institute of Industrial Relations, University of Calif., 1958), pp. 69-70.

plant location has not been ignored by either its proponents or opponents.

On one side, the Chamber of Commerce of the United States has stressed as a major contributor to economic success or stagnation the importance of the business climate, a concept that is originally credited to the General Electric Company. Particularly in reference to the textile industry, the Chamber maintains that New England's decline and the Southeast's growth were partly induced by the former's unsatisfactory business climate, which includes such elements as labor relations, work attitudes, and local government policies. The Chamber has also observed that "right-to-work" laws exist in every state where employment trends have been above the national average.[22]

Some areas have not hesitated to advertise their state's "right-to-work" law as a special inducement for new industry to locate there. Shortly after Indiana enacted its statute, the state department of commerce in full-page advertisements in news and business magazines began to list the statute as one of the reasons why so many industries prefer to locate the "debt-free" Indiana. The Tidewater Virginia Development Council is another organization that has extensively advertised the statute as a prime advantage afforded new industry. A two-page advertisement of the Florida Development Commission has described some of the factors which make the state's manpower situation so advantageous to industry. These are said to include labor-management harmony, no demand by labor for high wages, and a "right-to-work" amendment to the state constitution.[23] The Memphis Light, Gas and Water Division has advertised that the city has "conscientious

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[22]Cf. Guy Waterman, "Textile Migration and the Business Climate," American Economic Security, XII (December, 1955), 35-43; Getting and Holding Good Employers (Washington: Chamber of Commerce of the United States, 1957), passim.

[23]Fortune, LIX (June, 1959), 222-23.

labor." The text announced: "Tennessee plants operate under the open shop law."[24] An advertisement of the St. Petersburg, Florida, Chamber of Commerce quoted the state's constitutional "right-to-work" amendment among the advantages of Florida for industrial location. The notice declared that the state had one highest surpluses of skilled and semi-skilled labor in the country--that is, a surplus of unemployed workers--and this surplus would pay handsome dividends through the control of labor costs.[25]

On the other side of the controversy are those who minimize or deny that the "right-to-work" law in itself is a decisive factor in plant-location decisions. They can point to what appears to be a steady decline in the amount of advertising of the type noted above. It is perhaps more significant that most states with "right-to-work" laws seem to avoid mention of the law in their advertising appeals in the leading business publications. Many economists, furthermore, believe that pointing to the migration of the textile industry to the South is an inappropriate example to be used in connection with the "right-to-work" issue. For one thing, the migration began long before the "right-to-work" era. More importantly, numerous authorities in the field believe that the development of the southern textile industry was inevitable, other things being equal, for they fail to see any economic rationale for the industry to have located in New England in the first place. They think that the economics of the textile industry demand that it be located near the source of raw materials, given an adequate labor supply and wage costs competitive with other areas.

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[24] The Wall Street Journal, May 4, 1959, p. 15. Considerable publicity has been given an effusive letter from the mayor of Pelahatchie, Miss., to a Connecticut firm whose employees were being organized by a union. The mayor encouraged the firm to move to a town where there would be no labor troubles. The letter is reproduced in The Case against "Right-to-Work" Laws (Washington: Congress of Industrial Organizations, n.d.), p. 60. Another example of the use of the same argument occurred in South Carolina, where the governor urged the state legislature to enact a "right-to-work" law because it would attract northern industry. Cf. Archibald Cox, "Federalism in the Law of Labor Relations," Harvard Law Review, LXVII (June, 1954), 1303.

[25] Cf. John C. Shott, How "Right-to-Work" Laws are Passed (Washington: The Public Affairs Institute, 1956), p. 59. The advertisement is reproduced on p. 67 of this source.

As in other economic issues, the effects of one piece of labor legislation on industrial migration are very difficult to measure. Other factors are too important to be ignored or even shifted to a secondary role. Unless all these factors are given due weight, the use of this kind of economic argument can be seriously misleading.

The type of industry will largely determine which factors are more important in selecting new plant sites or in deciding which plants to expand. In a study prepared in 1949 by the National Planning Association of eighty-eight new plants in the South, 45 per cent were found to have been influenced primarily in their choice of location by the proximity of a market for their products, 30 per cent by the proximity of materials for production, and 25 per cent primarily by the nature of the labor supply and its costs. The labor-oriented plants in this survey tended to be smaller both in the amount of investment and the number of employees. Where labor costs are the principal costs, the study pointed out, the technology of the industry is usually not characterized by large units of labor-saving machinery.[26]

The supply and quality of labor will also be seriously considered before any firm establishes itself in a new area. The considerable surplus of labor in the Southeast has been caused by declining farm employment, more new entrants to the labor force because of a higher birth-rate than the national average, and unemployment. The surplus has not been offset by the large outmigration of workers.[27] Some believe, however, that the South may be losing one of its chief lures to industry, that of surplus manpower, because of the already rapid growth, percentage-wise, of industry and of the number of production workers in the area,

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[26] Cf. Glenn E. McLoughlin and Stefan Robock, Why Industry Moves South (Washington: National Planning Association, 1949), pp. 26-27.

[27] Cf. Stefan H. Robock, "Industrialization and Economic Progress in the Southeast," Southern Economic Journal, XX (April, 1954), pp. 322-23.

and because of the disinclination to use and train the large reserve of Negro labor.[28]

The unions have contended that the southern labor surplus which has attracted industry is not the result of restrictive labor legislation. Their argument points out that both the South and the West have had plenty of available labor for many years as a result of a decline in farm jobs, a higher birthrate, and an increase in population because of the demands of war production and expanding government programs. Both areas have attracted industry above the national average, although one area had "right-to-work" laws, while the other has never had one. A further union argument has been that labor laws do not provide the essential elements of higher productivity, such as efficient machinery, skilled workers, and capable management.[29]

Other students, however, have observed that the whole framework of labor and welfare legislation in some states may have proved so burdensome to certain manufacturers as to give them cause to seek new industrial sites in other regions. Thus it may be that the absence of social legislation or the nature of it is an accelerating factor in economic development. One writer has commented that the social and labor legislation of the southern states is of a type that would burden very few employers.[30]

Stung by the charge that Oklahoma had lost new industries to neighboring states which had "right-to-work" laws while it did not, the Oklahoma Industrial Union Council (C.I.O.) went to considerable effort to prepare a statistical analysis to verify its contention that the state's postwar industrial expansion compared more than favorably with that of other states. In those instances where the state had lagged behind, the survey indicated that the

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[28] Cf. "Despite Tension, the South Keeps on Growing," Business Week, October 26, 1957, p. 111.

[29] Cf. Union Security (Washington: AFL-CIO, 1958), pp. 58-59.

[30] Cf. Frank T. deVyver, "Labor Factors in the Development of the South," Southern Economic Journal, XVII (October, 1951), p. 205.

explanation lay in natural resources beyond the state's power to control.[31]

Some studies on plant location express the opinion that the influence on industry of a community's tax structure has been widely overlooked.[32] Others believe that the property-tax exemptions for new plants in some states have been vastly overrated. Louisiana, for example, found that only a small fraction of new industrial output would have located elsewhere without this tax-exemption.[33] Some businessmen, however, do say that high property and corporation taxes in some states, together with high labor costs, have impelled them to move elsewhere.[34]

Still another study has attempted to identify the forces that are promoting the trend toward decentralization of a wide range of individual industries. One development is the increasing interdependence of industries because more and more plants work with materials that are already processed to some degree. Such plants hold down their freight-costs when they are near other plants, more so than when they are near a source of raw materials. The revolution in transportation is seen as the principal force in allowing plants to locate closer to their markets rather than in areas where raw materials are concentrated. The lower cost and higher speed of truck transportation for short hauls, together with lower costs for shipping in small lots, as compared to rail trans-

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[31] Cf. A Legal, Economic and Statistical Survey of So-Called "Right to Work" Legislation (Oklahoma City: Oklahoma State Industrial Union Council, C.I.O., /1953/), passim.

[32] For a survey of some of these studies, cf. "How the Tax Bite on Industry Varies from State to State," Business Week, July 13, 1957, pp. 112-14.

[33] Cf. "Tax Report," The Wall Street Journal, October 30, 1957, p. 1. A large advertisement of the Louisiana Department of Commerce in the same newspaper, May 23, 1957, p. 14, states that 1956 was a record year for new industrial investment in the state. It may be observed that during the same year in which this record was established the state's "right-to-work" law was repealed and replaced with one of only limited coverage.

[34] Cf. The Wall Street Journal, November 18, 1959, pp. 1, 18.

portation, are viewed as encouraging the location of smaller plants near their markets.[35]

With respect to the cost of labor, this same study makes other interesting observations. It notes that wage differentials between regions tend to change quite slowly. While differentials have narrowed in numerous industries, they have remained the same or actually widened in almost as many others. One reason is that the outmigration of labor in surplus-labor areas has seldom been high enough to increase the price of labor there. Nor have nationwide unions appreciably narrowed the existing wage differentials, for it is also observed that union pressure for higher wages is stronger in areas where the general wage level is high than where it is low. Furthermore, the automobile enables workers in high-wage industries to travel many miles to work while they may still live in a low-wage community that has a surplus of labor. The fact that per capita incomes have risen rapidly in many low-wage areas is thought to be due largely to the shift of labor from agriculture to industry, rather than to any sizable increase in industrial wages in those areas. It is believed, therefore, that lower wages in some regions may continue to prevail for decades and will be an attraction for firms that seek lower wage rates.[36]

Finally, the variety of special inducements used by states and cities to lure industry must be recognized as being of some significance. A trend is clearly evident for governmental and private bodies to establish industrial parks to attract firms, to underwrite research facilities, and even to make outright gifts of sites or plants to new firms. An increasing number of state legislatures have authorized states and communities to issue full faith

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[35] Cf. Benjamin Chinitz and Raymond Vernon, "Changing Forces in Industrial Location," Harvard Business Review, XXXVIII (January-February, 1960), 127-31.

[36] Ibid., pp. 132-35.

and credit bonds to finance buildings for lease to industry at low rents.[37]

The evidence of the attractiveness of the "right-to-work" law as a means of enticing industry is therefore greatly complicated by the influence of these other forces, even though one does hear of occasional examples of firms that have fled unionized areas and taken refuge in "right-to-work" locales. But they really seem to have been looking for low-wage areas, which often happen to coincide with "right-to-work" areas.[38] On the other hand, certain more industrialized regions have made it clear that they are not interested in attracting firms that are running away from unions, firms that tend to be of smaller size with labor their principal cost. An industrial region prefers more diversified businesses. It may also be noted that some firms which have moved to non-union areas because of the available surplus labor were unionized in their former location and continued to negotiate with unions in their new locations. Other industries have located in low-wage areas because of circumstances that had nothing to do with wages or unions. The petrochemical industry on the Gulf coast is a case in point.[39]

A study of the Virginia law found no evidence that this legislation had been a major factor in attracting industry into the state.[40] North Carolina found that inequities in its tax structure were partly responsible for the unwillingness of large firms to locate there.[41] That state's industrial surge does not reveal any direct connection with the enactment of its labor law and must be largely attributed to other factors, although the law and the very low rate of unionization in the state cannot be totally discounted.[42]

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[37] Cf. The Wall Street Journal, November 5, 1959, pp. 1, 25.

[38] Cf. Pollitt, pp. 245-47.

[39] Cf. ibid., p. 245; Chinitz and Vernon, p. 135.

[40] John M. Kuhlman, "Right-to-Work Laws: The Virginia Experience," Labor Law Journal, VI (July, 1955), p. 460.

[41] "Businessman in the State House--Gov. Luther Hodges," Business Week, November 2, 1957, pp. 74, 76.

[42] Cf. "How to Woo New Business," Time, October 20, 1958, pp. 91-94.

Backers of the Indiana "right-to-work" law say that it has attracted new industry. They claim that in 1957 thirty-eight industrial plants with a total of 40,000 employees moved from Michigan to Indiana.[43] According to a news report in late 1958, Indiana had won eighty-five new plants within a year's time. Yet the same report judged the impact of the law in luring industry to bedebatable. The state had lost sixteen firms in the same period, including two important plants of an automobile manufacturing firm.[44] Walter Reuther of the United Automobile Workers scored the same example, which firm was closing two obsolete plants employing 5,500 workers and moving to a new plant in Missouri, where there is no "right-to-work" law.[45]

An official of the Indiana Chamber of Commerce admitted that if the state had nothing but a "right-to-work" law to offer industry, it would not attract many firms.[46] His opinion may well be the only judgment that can be safely drawn from the testimony about the value of a "right-to-work" as a lure to new industry.

Effects on Population and Employment Trends

Equally unsatisfactory conclusions are all that can be deduced from an analysis of population and employment trends with respect to "right-to-work" laws. These trends have also been featured in the debate over the legislation. A safe first assumption about population changes is that the laws have not affected birth and death rates. What impact state economic trends may have had on more recent population movements has been largely in the form of interstate migration.

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[43] The Wall Street Journal, October 28, 1958, p. 1.

[44] "Right-to-Work Laws: The Results Do not Justify the Trouble," Time, November 24, 1958, p. 88.

[45] Industrial Union Department, AFL-CIO, Union Shop and the Public Welfare: Proceedings of the Second Annual Industrial Relations Conference (Washington, 1958), p. 17; cf. AFL-CIO News, October 11, 1958, p. 4.

[46] Cf. The Wall Street Journal, October 28, 1958, p. 1.

Population figures of the Bureau of the Census reveal that the ten fastest growing states, excluding Alaska, from 1950 to 1960 were, in order, Florida, Nevada, Arizona, California, Delaware, New Mexico, Colorado, Maryland, Utah, and Connecticut. The first three have "right-to-work" laws, which fact could have influenced their rapid population growth. Of the other seven states in the top ten, only Utah has a similar law, which was not enacted until 1955. On the other hand, the ten states with the slowest growing population from 1950 to 1960 include five states with "right-to-work" laws. Three of the four states at the bottom of the list had these laws. Arkansas, which had an open-shop law throughout the decade, had a population decline of 6.5 per cent, a loss exceeded only by the coal-mining state of West Virginia. Mississippi had a gain of less than .1 per cent, and North Dakota increased by only 2.1 per cent.[47]

The speciousness of any "right-to-work" argument based on population trends is further emphasized by comparing the top ten states in population growth from 1940 to 1950 with those of the more recent decade. In the earlier period, the leading states were, in order, California, Arizona, Florida, Nevada, Oregon, Washington, Maryland, New Mexico, Utah, and Virginia.[48] The "right-to-work" laws can scarcely be presumed to have had any measurable effect between 1940 and 1950. Nevertheless, seven of the states are on both lists, and the first four, though in different order, are identical on both lists.

Not only do these states in both periods fail to line up in any consistent geographic or legislative pattern, but the percentage changes in population were only slightly associated with changes in manufacturing employment. A study made in 1955 by the National Industrial Conference Board revealed some tendency

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[47] Cf. U.S., Bureau of the Census, 1960 Census of Population, Advance Reports: Final Population Counts, November 15, 1960, pp. 3, 5.

[48] Growth Pattern of States (New York: National Industrial Conference Board, Inc., 1955), p. 20.

for the larger increases in state population to be associated with larger increases in manufacturing employment, but there were so many exceptions to this tendency that a general rule could not be made.[49]

On the basis of the Conference Board's report, it appears that employment trends in manufacturing, the area most subject to union influence, are also comparatively independent of open-shop laws and of the degree of union organization within states. In fact, at the present time, no one seems able to predict with confidence the employment effects of union power. A range of possibilities exists between two extremes. At one end is the argument that excessive union power obtained through union-security contracts will so narrow profit margins that production will decline. At the other end is the argument that excessive management power will so reduce purchasing power that sales will decline and therefore profits also. On the union side it is contended that higher wages will increase sales and encourage business to expand. On the other side management says it cannot produce or expand if too high wages eliminate reasonable profit expectations. Yet it is equally uncertain that a hypothetically perfect balance of power, wherever that may be, will lead to sufficiently high wages and profit expectations to expand employment opportunities and stimulate population growth within an area. Full and expanding employment depends on more variables than either management or labor or both together can control.[50] It therefore remains debatable whether enactment or repeal of a "right-to-work" law will so change conditions as to be of major significance in either employment or population trends. An argument based on these trends seems virtually worthless.

Political Effects

Although political trends have only a remote relationship with the kind

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[49] Cf. ibid., pp. 19-20.

[50] Cf. Sultan, pp. 77-78.

of effects that are under discussion in this chapter, it is in the political sphere that theeffects of the "right-to-work" laws seem rather clear. Considerable support is attached to the opinion that the losses sustained by the Republican Party in some industrial areas in the 1958 general elections were due in some measure to the identification of the party with the "right-to-work" cause.[51] Meeting in Denver in 1959, the convention of the Young Republican National Federation dropped the "right-to-work" plank from its new platform. Its leaders expressed the belief that the issue had been a major factor in several crushing defeats suffered by the party. One leader said the convention was "facing up to political realism".[52] Another attempt to remove the "right-to-work" label from the Republican Party was made in 1959 by the chairman of the Republican National Committee, Senator Thruston B. Morton of Kentucky. In a statement addressed to an AFL-CIO conference, Morton remarked: "It is my deep personal conviction that decisions relating to the union shop should be determined by collective bargaining between employers and unions and not through 'right-to-work' laws."[53]

Following a meeting in Los Angeles sponsored by the National Right to Work Committee in late 1959, it was reported that an agreement had been reached to stop, at least temporarily, all efforts to submit "right-to-work" measures to the general electorate of the various states by means of an initiative petition or a referendum, although efforts to enact these measures would be continued within state legislatures. This decision was said to be founded on the desire to free candidates for office from a potentially dangerous issue.[54]

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[51] Cf. "Right-to-Work Laws," Time, November 24, 1958, p. 88.

[52] The New York Times, June 21, 1959, p. 1.

[53] Collective Bargaining Today: Proceedings of the Third Annual Annual Industrial Relations Conference (Washington: Industrial Union Department, AFL-CIO, 1959), p. 62.

[54] Cf. AFL-CIO News, November 28, 1959, p. 6.

The controversial and emotional character of the contemporary "right-to-work" issue makes it less likely henceforth that a national political party will tie itself too closely to support of this legislation. The law may have popular appeal in some areas, but it appears at the present time to involve too much risk for political parties in the more populous industrialized centers.

Effects on Unions

The labor movement has consistently protested that open-shop laws are designed to wreck it and are being used to force down standards and wages gained by unions. It is contended that the laws hurt union organization drives, compel unions to devote many of their resources merely to keeping up their membership in the face of constant employee turnover, and, in general, reduce the rate of union growth and undermine or destroy union bargaining power.

Those who oppose these arguments declare that the labor movement will be a better and healthier institution when it no longer relies on compulsory membership to maintain its strength. The implication is that, given unions as they exist today, the "right-to-work" law affords wage earners the protection they need to quit unions without fear. A further implication, it appears, is that, upon the outlawing of the union shop, members will probably leave in droves. The fear of mass withdrawl, the proponents of the laws seem to think, largely explains union hostility to the laws.

The precise effects of "right-to-work" laws on union membership, growth, and power are not easily determined. It is impossible, first of all, to know exactly what would have happened if a particular law had not been passed or a different law had been enacted. It is almost equally impossible to distinguish clearly these effects from those caused by other factors simultaneously at work. A description of some of these other facts will reveal the difficulties that are involved in measuring the effects of "right-to-work" laws.

Union growth since the end of World War II has not been very impressive.

From 1930 to 1945 union membership had shown a fourfold increase. From 1945 to 1956 membership rose from 14.3 millions to 17.5 millions, a gain of only 23 per cent.[55] The increase from 1954 to 1956 had been only a half-million members, and most of this was due not to new organizing but to the expansion of employment in already unionized firms. Between 1956 and 1958 union membership reversed its long growth trend and dropped nearly 500,000.[56] Only the teamsters showed sizable growth in the period, but that was offset by losses suffered by some of the largest unions most affected by the advance of automation and the rapid increase in the number of white-collar workers.

Five reasons suggested by Business Week magazine for the slow-down in the rate of union growth failed to include "right-to-work" statutes as one of them. The causes were seen as the following: (1) size and nature of the target--most unorganized plants are small and they are often the hardest to organize because their size makes possible a greater community of interest between management and employees; (2) the Taft-Hartley Act, especially the greater degree of free speech for management provided in the Act; (3) nature of the work-force and the changing times--white-collar workers are an ever increasing proportion of the work-force and have generally resisted organization; (4) marginal nature of today's organizing efforts--unions are working on the fringes of industries already well organized where non-member employees have received the same wages and working conditions as union members; and (5) corruption and racketeering revelations may turn the undecided workers against unions.[57]

Some of these factors need to be explained in more detail, but, in addition to them, it should be noted that union growth is strongly influenced by the effects of geographic concentration. In some metropolitan areas where over 90

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[55] U.S., Bureau of Labor Statistics, Directory of National & International Labor Unions, 1957, Bulletin No. 1222, p. 9.

[56] Harry P. Cohany, "Union Membership, 1958," Monthly Labor Review, LXXXIII (January, 1960), pp. 2-4.

[57] "Union Recruiting Dips to New Low," Business Week, July 13, 1957, p.147.

per cent of all factory workers are organized, it appears that even the unions in occupations which typically are poorly organized are helped by a union consciousness in the community, receiving, as it were, the benefits of a "radiation effect", and are more highly organized than elsewhere. Almost two-thirds of all union members live within only ten states.[58] The AFL-CIO reports that almost one-half of its members are concentrated in only four states.[59]

Since the "right-to-work" laws are concentrated in the South, their effects on union growth may be overrated unless it is recalled that much of this area has a strong tradition of community and employer hostility to unionism and to the influex of outside organizers. This feeling would be exerting its influence independently of "right-to-work" laws. Moreover, both in the South and in the northern rural states which have the laws, smaller communities predominate, and these have generally provided a less congenial climate for union organization drives. Some of the national unions have also run into organizing difficulties because of racial tensions. The support given by the leaders of the AFL-CIO to policies favoring racial integration within unions, in addition to their financial support of organizations opposing segregation, has further alienated some areas from organized labor.[60]

The attitudes taken by management toward unions in "right-to-work" areas may also influenee union growth. Large firms opening new plants in a "right-to-work" state are more inclined to ccoperate with the unions if the latter are strong in older plants elsewhere, rather than risk interruptions in production by antagonizing a national union. Thus, despite the severity

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[58] "The Market for Union Membership," Fortune, LIII (June, 1956), p.137.

[59] Cohany, p. 8.

[60] Cf. Fortune, LIII (May, 1956), pp. 215-16; Benjamin Wyle, "Union Organization Activity under Taft-Hartley," in Proceedings of the New York University Eleventh Annual Conference on Labor (Albany: Matthew Bender & Co., 1958), pp. 205-10.

of the Texas "right-to-work" law, managements did not resist the unions in the new aviation and automobile factories built there, and these were quickly organized.[61] Other employers may use the law to hold down union growth.

These factors which exist along side of an open-shop law prevent an accurate appraisal of the effects of the latter. As mentioned above, one weighty factor is the impact of the Taft-Hartley Act over and beyond its "right-to-work" authorization in Section 14(b). The employer free-speech provision of Section 8(c) comes within this category. Employers may counteract the union's arguments by addressing their assembled employees, and, in addition, according to the NLRB's interpretation of Section 8 (a) (1), by interrogating them individually about their union organizational activities, provided there is no coercion or threat of reprisal by employers. While the Board has continued to halt employer abuses of this provision, its rulings, in general, have tended to be liberal toward employers' rights.[62]

It is the opinion of Professor Joseph Shister that these Taft-Hartley provisions have had at least a dampening effect on union growth. Where unions are weak, Shister says, it seems difficult to believe that interrogation by the employer does not deter many employees, and even those who only hear about it, from showing open support of the union. Shister acknowledges, however, that some of the other factors mentioned above are more important in holding back union growth.[63] Still, if an employer should overstep his bounds and be charged with an unfair labor practice--that many do is clear from NLRB reports, the length of time that elapses before a decision is rendered by the Board can be

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[61] Cf. Daniel Bell, "No Boom for the Unions," Fortune, LIII (June, 1956), p. 185. For a similar opinion about the attitudes of multiplant companies with some production facilities in Virginia, cf. Kuhlman, p. 461.

[62] Cf. Wyle, pp. 198-205.

[63] Cf. Joseph Shister, "The Impact of the Taft-Hartley Act on Union Strength and Collective Bargaining," Industrial and Labor Relations Review, XI (April, 1958), pp. 339, 343.

more than sufficient to convince the employees that strength in the plant rests entirely with the employer and not with the fledgling union. This would be particularly true in regions where unions are traditionally weak.

Because of the hazards the Taft-Hartley Act introduced into some sectors of union organization, notably the casual-labor trades of the building and construction industry, there is hardly any question that some of these unions have been seriously hurt by the outlawing of the closed shop and the hiring hall that gives preference to union members, and hurt also by the inadequacy of the union shop in meeting their needs. The NLRB long ago found it impossible to apply the Taft-Hartley requirements for certification elections in the building and construction trades unions on jobs outside of plants. The contractor who wants to operate without union labor finds it easy to do so, especially since under the Taft-Hartley Act it is unlawful for him to discriminate in hiring on the basis of union membership. Any qualified craftsman who seeks a job only to find that hiring is being handled through a union can file an unfair labor practice complaint against the contractor. The remedy applied more recently by the NLRB for this type of infraction can be so financially burdensome that employers are increasingly reluctant to risk a violation.

Accompanying this obstacle have been the legal restrictions imposed on secondary boycotts and common-situs picketing. Union craftsmen who, in the past, would never have taken a job where nonunion men were employed find themselves under the law forced to do so in many areas if they wish to work at all. These developments, it is clear, are the effects of the Taft-Hartley Act and related legislation and exist everywhere, not just in "right-to-work" states. If a craft union has found any benefit in a union shop, it is obvious that a "right-to-work" law eliminates this advantage, but the loss may seem to the unions to be a <u>coup de grâce</u>.

The problem, however, does not arise entirely from legislation that does not allow for the peculiar conditions of specific kinds of employment. The unions themselves have stumbled over their own jurisdictional disputes in

reaching for unorganized employees. Sometimes it has been a question of craft versus craft, but, more commonly, craft union versus industrial union. In some cases, too, the construction and building trades unions have enjoyed so many years of prosperity that they seem to have lost their economic incentive to continue organizing and keeping their own lines intact. Sometimes they have been satisfied with their organization just as it is and have neither sought nor desired more than a minimum of new members. As a result, with the expansion of the economy and the demand for more workers, some unions, while perhaps still growing, have developed less rapidly than the expanding labor force.

Other internal problems have also troubled some unions and held back the growth found in earlier years. Union business agents have often failed to cooperate with each other. Some have been so concerned with finding work for their own members that they have ignored the assignment of nonunion workers to phases of the same job which fall under the jurisdiction of another union. Nonunion contractors, moreover, have sometimes been willing to meet union wage-scales, and this practice further undermines union authority and prestige. These factors, added to the handicaps of organizing under the provisions of the Taft-Hartley Act, have helped to break down union lines and traditions, with the result that many metropolitan areas are proportionately less organized in building and construction trades than they have been for many years.[64] Despite some legal risks, however, the difficulties could probably be overcome by aggressive unionism if the will existed to do so.

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[64] These observations on the problem of craft unions are in accord with those expressed by an official of the Building Trades Dept., AFL-CIO, in an interview with the writer. The union officer estimates that residential construction is no more than 50 per cent organized at the present time. Highway construction is perhaps less than 50 per cent organized. A northern industrial state like Pennsylvania, for example, has become almost entirely an open-shop area in the building and construction trades except in the state's two largest cities.

The development of technology and automation, population shifts, the migration of industry, and the obsolescence of older plants have like-wise affected union growth. The two textile workers' unions, for example, which seem to have such great growth potential in the industrializing South, have lost so many members because of technological progress and the closing of obsolete plants, and have spent so much money on frequently futile organizing campaigns in the South that they are in poor shape to sustain further drives.[65]

Prosperous times since the end of the war have also made employees feel less need of strong unions and representation and less willing to risk aggressive union action. Wages in many unorganized plants, as in the chemical and petroleum industries, are already high without union pressure. The larger companies, moreover, have invested heavily in employee training. Thus they are more eager, and probably better equipped now, to provide for workers displaced through automation by retraining them or offering them jobs elsewhere within their expanding operations.[66] This policy removes what has been one of the chief sources of employee discontent. Management has also appealed to the loyalty and class consciousness of white-collar workers. Meanwhile, the unions are still searching for the formula to attract the white-collar worker into their ranks.

The changing structure of the labor force is itself affecting union growth in a way that cannot be attributed to "right-to-work" laws. The most significant development is the rapidly increasing proportion of white-collar workers in industry. In 1947, blue-collar workers were estimated by number about 23.5 million, as compared to about 20 million white-collar workers. By 1957 the white-collar workers had become a majority, embracing about 25.5 million, as compared to 25 million blue-collar workers. The gap between them has continued to widen. From 1947 to 1957 professional and technical employees increased by 60.6 per cent and clerical workers by 22.8 per cent, while factory operatives were only 4.4 per cent

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[65] Cf. Bell, pp. 137, 179.

[66] Cf. ibid., p. 180.

greater, and unskilled laborers were up only 4.1 per cent. In the same period, nonproduction manufacturing employees increased from 16 per cent to 25 per cent of all manufacturing employees. Individual industries, of course, show much wider or narrower shifts.

For the labor movement this changing structure of employment may contain even greater import than it does for business. This is so because approximately 85 per cent of all union members are presently in the blue-collar category, which is expanding so slowly as compared to the white-collar. Unless the labormovement can make a major move into the more rapidly growing occupations, its future development in terms of the whole labor force is not very promising. This trend in employment has already been responsible to a degree for holding down the rate of union growth.[67]

The only complete data available on union membership by states--only the figures for states or regions are meaningful for the purpose at hand--are limited to the years 1939 and 1953, which, unfortunately, do not correspond with a period which might best show the effects of a law against the union shop.[68] Table 9 lists union membership figures for the states which have "right-to-work" laws, although some of the laws are of too recent enactment to have influenced the figures. However, the figures may be used for comparison.

Some remarks about the data in reference to the "right-to-work" laws should be noted. As previously mentioned, several of the "right-to-work" states are important agricultural areas. This factor alone probably accounts for the small increase in their union membership. The growth of membership in the southern states from 1939 to 1953 occurred largely in durable-goods

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[67]The figures on employment statistics are taken from Everett M. Kassalow, "Automation and Technological Change: A Challenge to the American Labor Movement," Paper read before the Professional, Technical and Salary Conference Board of the International Union of Electrical, Radio and Machine Workers, AFL-CIO, Boston, June 27, 1958, pp. 2, 3. Cf. Cohany, pp. 5-6.

[68]The Bureau of Labor Statistics never collected union membership data by states until its 1960 report, which, however, includes only members of AFL-CIO affiliates and cannot be compared with any previous report. Cf. Cohany, pp. 7-8.

TABLE 9

DISTRIBUTION AND EXTENT OF UNION MEMBERSHIP IN NON-AGRICULTURAL EMPLOYMENT BY SELECTED STATES, 1953, AND INCREASE IN PER CENT ORGANIZED BETWEEN 1939 and 1953[a]

State	Membership, 1953 (in thousands)	Organized Employees as Per Cent of Employees Eligible, 1953	Increase In Per Cent Organized 1939 - 1953
United States[b]	16,217.3	32.6	11.1
Indiana[c]	569.6	40.0	18.3
Texas	374.8	16.7	6.4
Tennessee	187.3	22.6	7.3
Alabama[c]	168.3	24.9	8.8
Iowa	159.2	25.0	7.7
Virginia	156.1	17.4	4.6
Florida	135.9	16.2	4.9
Georgia	135.8	15.0	8.0
Louisiana[c]	135.8	19.5	9.9
Kansas	130.8	23.9	10.5
North Carolina	83.8	8.3	4.1
Nebraska	68.6	19.7	7.2
Arkansas	67.9	21.5	8.8
Utah[c]	56.9	26.3	7.0
Arizona	55.7	27.7	11.1
Mississippi[c]	50.0	14.7	8.2
South Carolina[c]	49.7	9.3	5.3
Nevada[c]	21.8	30.4	12.2
South Dakota	17.4	14.4	7.3
North Dakota	17.3	15.6	4.7

[a]Source: Leo Troy, Distribution of Union Membership among the States, 1939 and 1953, (New York: National Bureau of Economic Research, 1957), pp. 4-5, 18-19.

[b]Includes 458,500 members or 2.8% who could not be distributed by States.

[c]"Right-to-Work" law adopted too recently to have influenced the data.

manufacturing industries, such as primary and fabricated metal products, transportation equipment, and lumber. In the four southern states which had the largest absolute increases, Tennessee, Georgia, Alabama, and Texas, each with

more than 100,000 new members during the period, approximately one-third of the new members were organized by only four unions, namely, the Steelworkers, the Automobile Workers, the Machinists, and the Carpenters. During this same period, the Teamsters had the third largest gain nationwide of all unions in the United States, over 700,000, but this union managed to organize only a total of 6,000 workers in the four "right-to-work" states which had the largest increases in total membership.[69]

It follows from these and previously made observations that a state's industrial structure, as well as its industrial growth, has a bearing on the rate of union growth that is, at least to some degree, independent of a state's labor legislation. The highest scale of unionization in the United States tends to center in particular industries wherever they exist. Thus in 1953 the industries with the largest proportion of organized employees were construction, transportation, mining, and manufacturing. These four accounted for more than 80 per cent of total union membership in the nation. The lowest level of unionization, on the other hand, existed in public service and in the service trades in general, which accounted for less than 20 per cent of the total.

In 1953 the most highly organized states in the country were those with large numbers of employees in building, transportation, and manufacturing industries, while the states with the lowest percentages of organized employees generally had a smaller proportion of employees in these three industries, whether the state had a "right-to-work" law or not. Yet conditions varied greatly by regions, more so than by states. Some manufacturing industries were highly organized, such as clothing and metals, some were poorly organized, such as chemicals, textiles, and lumber. The steel industry was relatively

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[69] Leo Troy, Distribution of Union Membership Among the States, 1939 and 1953, (New York: National Bureau of Economic Research, Inc., 1957), pp. 12, 14, 17.

well organized in both North and South. The regional influence, however, could be seen, by way of example, in the lumber and textile industries. The former was well organized in the West, but not in the South. In the textile industry it was estimated that in 1953 union organization embraced about 60 per cent of the industry's employees in Massachusetts, but only 3 per cent in Georgia, 6 per cent in North Carolina, and 7 per cent in South Carolina.[70] This difference between the ratios in North Carolina and South Carolina is too slight to be of any real significance, although the former state enacted its "right-to-work" law in 1947 and the latter not until 1954, a year after the above membership figures were compiled.

A few other reports have also been made on the relationship between the "right-to-work" law and union membership trends. The effects of the law on union growth in Texas have varied. According to the studies of Professor Frederic Meyers, unions in Texas manufacturing industries have made rapid strides since 1938, with no significant decline in the rate after 1947, when the Texas "right-to-work" statute was enacted. In 1938 virtually no employees in the state were covered by collective agreements, whereas by 1953 about 50 per cent were.[71] It was Meyers' observation that the building trades unions have been hurt by the ban on the closed shop imposed by the Taft-Hartley Act and have been further injured by the state "right-to-work" law. However, the loss of organizational fervor within the printing trades unions was believed to be perhaps the chief cause of their failure to grow with the expanding labor force. It is Meyers' belief that the ban on secondary boycotts probably was largely responsible for the ineffective organization campaigns of the teamster's union. His tentative conclusion is that the Texas law has not been

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[70] Ibid., pp. 23, 25, 26. Cf. Leo Troy, "The Growth of Union Membership in the South, 1939-1953," Southern Economic Journal, XXIV (April, 1958), 407-20.

[71] This increase is considerably larger than the relative increase in union membership in the state. Cf. Table 9. Presumably the discrepancy is due to the substantial development of manufacturing during the war which resulted in many new workers coming under collective bargaining contracts but who were not required to join the union representing them.

very effective in retarding unionization or destroying existing unions.[72]

Nor have the effects been noticeable in Virginia under the restrictive law. According to Professor John M. Kuhlman, the employer's attitude determines the law's effects in a given plant or company or on a given job. Eight years after the enactment of the Virginia law, some contractors were still hiring union men exclusively through the union. Kuhlman found evidence of a change in practice in industrial firms. Under the Taft-Hartley Act they had been complying with the thirty day waiting period required before an employee had to abide by a union-shop provision in the contract. With the advent of the "right-to-work" law, some firms were found to be ignoring both laws by simply telling a new worker that all employees belonged to the union and presenting him with an application card for union membership.[73]

A further example is offered by the International Association of Machinists, which reported that its membership in Arkansas, despite the "right-to-work" law, had increased nearly three-fold between 1950 and 1955.[74] The same rate of growth was reported by the railroad brotherhoods and unions between 1934 and 1951, a period when union shops for them were outlawed. The latter example, however, embraces an industry where there is a very low rate of employee turnover and where seniority is rigidly respected, conditions which lessen the impact of a ban on the union shop.

The indication is that the anti-union-shop law has a selective and indirect effect on bringing in new members into unions. Unskilled workers, because of intense competition among themselves, appear to be the category most affected by the absence of a union shop in contracts covering their

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[72] Frederic Meyers, "Effects of 'Right-to-Work' Laws: A Study of the Texas Act," Industrial and Labor Relations Review, IX (October, 1955), pp. 78-81. Cf. "Do State Laws Hurt Unions?" Business Week, May 9, 1953, p. 174.

[73] Kuhlman, p. 461. This practice is not peculiar to Virginia, according to evidence gathered in my own interviews.

[74] The Machinist, December 15, 1955, p. 2.

employment. Employees in plants with a high rate of labor turnover also feel strongly the effects of the law, for the union shop greatly simplifies a union's organizing problems even where turnover is at an average rate. A third situation which is likely to hold back organizing activities under the law is one where relations between union and employer are hostile. In this circumstance a union finds it a complicated and expensive process to overcome the fear of employees that they will lose their jobs by engaging in union activity. Convincing a majority is necessary before the union can petition for an election to be certified as bargaining agent. Unfair labor practices by an employer, like discharging the most actively pro-union workers, can delay an election for months and even years while the union, having no other choice, presses charges before the NLRB and the courts. A new union seldom has the financial resources to hang on during the long stalemate while litigation proceeds. Since a union builds membership loyalty through service, it is in a virtually untenable position when it cannot secure employer recognition. Even if an employer is convicted of an unfair labor practice, the new union may long since have gone out of business. In all the above cases, a "right-to-work" law can give an employer additional leverage to discourage union membership.[75]

While the indirect effects of "right-to-work" laws on the establishment of new unions may work in several directions, the direct effects must necessarily be limited. Excepting those well-advertised instances where unions organize employers, as it were, instead of appealing directly to employees, union-security clauses in general are successfully bargained for only after unions have achieved strength through the enrollment of a good-sized

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[75] Cf. John F. Cronin, "The Morality of Right-to-Work Laws," in the Catholic Theological Society of America, Proceedings of the Twelfth Annual Convention (Philadelphia, 1957), pp. 197-98.

majority of a bargaining unit within a firm. The union-shop clause is therefore an effective instrument for a mopping-up operation to bring in the laggards or the hostile, but it does not and cannot give the initial impetus to organizing nonunion firms. Professor Meyers states the point in simple fashion thus: the negotiation of a union-security contract "comes after the union has succeeded in organizing a unit".[76] He further observes that in most states having "right-to-work" laws employees are numbered among the least organized in the whole country, and the initial organization job has not been accomplished. At the foundation stage of union development the union shop has little pertinence.[77]

A direct effect of the open-shop law that cannot be ignored is what may be called the psychological barrier to union growth. Because of the propaganda barrage attending a "right-to-work" campaign, employees are sure to know that unions regard the law as an anti-union device sponsored by employers' organizations and other groups hostile to unionism. Therefore, when the law is adopted, do employees shy away from unions for fear of losing their jobs if they antagonize their employers by engaging in union activity? An affirmative answer does not seem unreasonable, even though some employers have always been opposed to unions, a fact that was never more evident than in the years following the enactment of the Wagner Act. Nevertheless, at that time employees joined unions in unprecedented numbers despite employer attitudes. On the other hand, the unions have argued that an election or legislative action which approves a "right-to-work" statute clearly shows that public policy has turned against unionization, whereas in the period of the Wagner Act, even if employers were unfavorable, employees knew that public policy supported and even encouraged union growth.

The average employee, it is true, may not know the details of either

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[76] Frederic Meyers, "Right to Work" in Practice (New York: The Fund for the Republic, 1959), p. 21.

[77] Meyers, "Effects of 'Right-to-Work' Laws," Industrial and Labor Relations Review, IX (October, 1955), p. 80.

public policy, but he does know whether it favors and encourages his right to join a union or does not. Some argue, therefore, that such a statement of public policy has an important influence on the undecided or timid worker, and the "right-to-work" law does express a policy that positively encourages him to avoid the union. Thus one report from Alabama found both union and management men agreeing that the major impact of the state's law on labor relations had been psychological, inasmuch as it suggests that state policy is against strong unions, and this has made it harder to organize wavering employees.[78] Another report declares that perhaps the biggest effect of the law has been to put a psychological damper on organizing by weak unions. Evidence of this was seen in Iowa, but more especially in Utah, where not a single instance of an organizing strike or picket line occurred in the first three years after the enactment of the statute. In Nebraska, as a consequence of the law, some weak unions broke up and joined stronger ones. The strong unions were reported to be correcting their lax ways, becoming more responsive to members' needs, and, in general, banding more closely together, according to a top labor official in the state.[79]

A further psychological barrier to membership is seen by some to exist in the freedom the law gives an employer opposed to a union to keep reminding his employees that they do not have to join or support any union to work for him. He can confidently assure his workers that he will personally see to it that they never have to join a union to keep their jobs. What effect this tactic has is unknown, but both unions and managements think it gets results, and it is frequently used.[80] In areas where unions are few and unwelcome, strong employer pressure combined with the psychological effects of a "right-to-work" law has been known to undermine even a relatively healthy, though

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[78] Fortune, LVI (September, 1957), p. 236.

[79] Cf. "Right-to-Work Laws," Time, November 24, 1958, p. 88.

[80] Cf. Meyers, "Right-to-Work" in Practice, pp. 21-22.

newly organized, union. The record of the collapse of such a union in the Virginia textile industry is a case in point. The president of the state AFL-CIO stated that several other unions had dwindled in membership in the same hostile climate.[81]

Finally, it is believed by some that the very type of campaign that the unions have usually waged against a "right-to-work" measure that is later enacted actually hurts them. The psychological reaction to the insistent argument that the law will wreck the unions may, it is thought, convince workers that it is useless henceforth to cast their lot with an organization that will soon be crushed by the new legislation and by an employer who pays their wages.

The accuracy of these last assertions cannot be scientifically measured. The fear of their accuracy, however, has multiplied tensions in the labor movement and introduced additional obstacles to organizing new members where the political and social climate is unsympathetic.

Since the union shop has been viewed by its opponents as providing the labor movement with a power base, they must have assumed that a law against the practice would dilute union power, not only by holding down the number of new members, but also by providing old members with an easy avenue of escape. Moreover, through attrition resulting from employee turnover, a union could not be expected to maintain its strength so easily without the automatic force of a union shop.

There is little evidence, however, that union membership has declined significantly in the wake of a "right-to-work" law. A study of the effects of the Texas law supports this observation. Eleven years after the law's enactment, the proportion of union members to eligibles in most organizing units was found to be very high. Among Texas manufacturing firms studied, which

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[81] Cf. Charles C. Webber, "The Death of a Union," AFL-CIO American Federationist, LXVI (September, 1959), pp. 22-24.

covered probably three-fourths of the employees in bargaining units in manufacturing industry affiliated with the AFL-CIO, union membership was 100 per cent in 30 per cent of the bargaining units and more than 95 per cent in nearly half the units. Among the smallest units there was a high percentage of all employees in the union, but many of these were craft units within plants. The larger the unit the less it was likely to have 100 per cent membership. In several large units, however, it was found that those who were not members had been either expelled or refused membership. Membership still included over 99 per cent of the employees in these instances. It may be observed that the larger the bargaining unit the greater the likelihood of finding one or more sturdy holdouts in the work force, so that 100 per cent voluntary union membership is rather unlikely in any large unit. The "right-to-work" law protects the independence of these nonconformists.

In this same Texas study, 23 per cent of the manufacturing units (excluding printing) had less than three-fourths of their employees in unions which served as bargaining agents. It is doubtful that the state "right-to-work" law has had much effect even in these cases, however, because the membership was probably not strong enough to gain a union-shop contract with the employer if it were permitted.

Assuming that it would require at least 75 per cent of a firm's employees to be members of the union before a union-security contract could be gained in the normal way, the Texas study concluded that nonunion employees in firms more than 75 per cent organized constituted only about 6 per cent of total eligible employees in organized manufacturing bargaining units (except printing). Thus no more than 6 out of every 100 workers would be affected by a restoration of the union shop. The small size of this figure does not seem to point to a substantial number of employees who had been coerced into unions when a union shop was legal or who had availed themselves of the liberty

of nonmembership after the "right-to-work" law was adopted.[82]

The Texas experience that a "right-to-work" law does not promote a high level of nonunion employment in manufacturing industries has been corroborated elsewhere. A nationwide survey of employers and union leaders made by Fortune magazine found little significant withdrawal from unions after the laws were passed. Only in Iowa was an appreciable number of membership cards turned in.[83] It was later reported from Indiana that several hundred members dropped out of an industrial union during the first year the open-shop law was in effect.[84] The most surprising immediate effect of the Indiana law, however, was the great rush to extend union-security contracts. To obtain passage of the law, the emergency clause within it had to be deleted which would have provided that the law take effect immediately. During the three-month grace period that was thus afforded, many employers and unions extended the union-shop clause in their contracts for two or three years, and in some instances even for ten years, although employers were absolutely under no obligation to grant the extensions.[85]

These minimal effects of the law on union membership confirm the experience of General Motors Corporation with its union-shop contract. After a prolonged dispute in 1950 over the union-shop issue, which the company opposed on ethical grounds, a compromise agreement was reached. It provided

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[82] Cf. Meyers, "Right-to-Work" in Practice, pp. 23-28.

[83] Cf. Fortune, LVI (September, 1957), pp. 236, 241.

[84] Cf. James A. Maxwell, "'Right to Work' along the Wabash," The Reporter, October 30, 1958, p. 17.

[85] Cf. Fred Witney, "The Indiana Right-to-Work Law," Industrial and Labor Relations Review, XI (July, 1958), pp. 515-16; The Wall Street Journal, October 28, 1958, p. 1.

for a modified union shop whereby all nonunion employees of that date were permitted to retain their nonunion status, whereas all new employees henceforth were required to join the union as a condition of employment. However, an escape period from the union at the end of one year was also provided. During the succeeding five years in which the contract with the United Automobile Workers was in force, General Motors hired approximately 600,000 new employees, each of whom had the opportunity to leave the union after a year's experience with its policies and activities. Only 600, or one out of every 1,000 employees, exercised that privilege.

In its 1955 contract with the union, General Motors, in the light of this experience, granted the full union shop. At the time there were 16,000 nonunion employees in the firm. Of these only about 100 objected on principle to joining the union, some of them doing so on religious grounds, which the union respects in its constitution. These workers were not required to join, although they had to pay in place of dues an equivalent sum which was turned over to charity. Less than a dozen employees were discharged for refusal to join the union.[86]

In terms of union power due to the proportion of employees holding membership in a local union, the "right-to-work" law appears to have had little direct effect. More important factors seem to be the prior strength of the union and the status of unions in the immediate area. Thus Professor Frederic Meyers observed that, operating under the Texas statute, unions in solidly organized communities tended to have high membership rates whether employers were friendly, neutral, or hostile. It is true, he acknowledged, that where unions are strong there are ways to bring in reluctant employees without a union shop. It was noted, for example, that in industrial communities employees tend to conform to the prevailing behavior patterns. If they do not, informal pressures can be applied, inside and outside the work area,

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[86] Cf. "UAW Has Union Shop Splurge," Business Week, October 8, 1955, pp. 127-28.

through discriminatory work assignments, the "silent treatment", and social ostracism of the nonconformists and also their families. According to Meyers, direct coercion is rare and used only as a last resort, and only in those areas where the union is very secure and union loyalties very strong. The coercion then exerted is more commonly intended to force the worker to quit rather than to recruit him. Even without the union shop most new employees are brought into the union through active and wide-awake shop stewards, membership interest, and community support, Meyers reported.[87]

The effects of the Texas law on the loss of union recognition were also given some attention in Meyers' study. These are difficult to compute because of the lack of formal records. The results of decertification elections are an inadequate measure. A union may also lose certification when its membership drops to less than half the employees or when it loses a strike, but the incidence of these events is not recorded by the NLRB. Drawing from his personal familiarity with the Texas scene, Meyers concludes that unions there, when once established, are about as secure as elsewhere. If the union is secure enough to negotiate a union-shop contract, he thinks, it is not likely to lose its recognition unless it loses a strike, and, in that event, a union shop would be of no help. If the union does not attract enough loyalty from its members to be secure, it probably could not obtain a union-shop contract if it were permitted. Thus there is no indication, Meyers says, that the Texas statute can be given much credit or blame for the losses the Texas labor movement may have sustained.[88]

From the evidence so far available, the "right-to-work" law has

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[87] Cf. Meyers, "Right to Work" in Practice, pp. 28-30.

[88] Cf. ibid., pp. 30-31.

apparently failed to restore an equality in bargaining power between labor and management if this end was to be achieved by encouraging substantial numbers of workers to get out or stay out of unions. Yet the law has been hailed as one means of establishing equality of power. Some of the larger industrial unions, however, would be hard pressed to prove their need of the union shop at the present time to maintain their strength. It should not be forgotten that the giant unions in steel, automobile, and rubber manufacturing, for example, gained much of their present power without benefit of a union-shop clause. The same holds true for the railroad labor organizations.

The equality issue takes on a much different light in the southern and the rural northern states where "right-to-work" laws were adopted, for in most of these states relatively few workers had been organized, while employment and income standards tended to be among the lowest in the nation. The law in these states cannot be said to have re-established an equality of bargaining power, since the unions had scarcely any power in the first place. Where unions had gained little more than a foothold, the union shop does not seem to have posed any immediate threat to management's rights or power.

Regardless of geographic area, the law does not seem to have equalized bargaining power for the smaller and weaker unions. Scarcely anywhere has a serious threat to management power been raised by employees represented by such labor organizations as the Communications Workers, the Retail Clerks, the American Federation of State, County, and Municipal Employees, the Office Workers, the Insurance Agents, the Insurance Workers, or the National Agricultural Workers. The tobacco and textile manufacturing workers in most "right-to-work" areas consider themselves fortunate if they so much as achieve union recognition. Chemical workers' unions, furthermore, have been handicapped in their organizing by the wide diffusion of the industry.

Relatively few locals of the above unions are well enough organized to gain a union-security contract. All of them generally face employers with far superior bargaining power. If the "right-to-work" law is conceived as reducing the power of the strong union, it is unlikely to increase the power of the weak ones to bring them up to a measure of equality at the bargaining table.

Another announced purpose of the "right-to-work" law is, as the preamble to the Texas statute states, to stop excessive union demands and policies. From this point of view the effect of the law has been demonstrated rather clearly. It has encouraged, rather than stopped, allegedly excessive demands. This effect appears in the administration of the contract, more so than in its negotiation. As a result of the law, unions have become highly sensitive to the necessity of satisfying the demands of their members, especially their more vocal members, particularly as expressed in their grievances against the employer. Operating under the law, a union officer finds it virtually impossible to ignore an employee's grievance, even when it is completely unreasonable. To do so is as harmful to union prestige as is the loss of a grievance case by the union. Every grievance case won by the union increases the loyalty of the members and builds up membership. Every case lost has the opposite effect.

Moreover, the union's bargaining policies on wages and working conditions, as a result of the law, are dictated by the expected effect on membership enrollment. Professor Meyers found union officers throughout Texas constantly weighing their dealings with management in the light of possible membership loss. This means, in practice, that officers must be particularly responsive to disgruntled minorities, who may be the most irresponsible, and who are often the least loyal, members, and whose membership is the most

doubtful. The more loyal members are more easily satisfied and will stick with the union even when some of its demands are rejected or its grievance cases lost.[89]

The problem here is the same one that was earlier seen to be inherent in the practice of union democracy. Desirable as democratic procedures may be, they are not to be equated with anarchy. A union leader must lead, and he ought to be responsible for the common good, even when this requires overriding a dissenting minority. The more responsible a leader is, the more likely he is to lose the support of members who are impatient for more and more benefits. Employers, as well as students of the labor movement, know that the rank and file in a union often make excessive demands which have practical value for the leaders who can win them. The leader who must be concerned that the union not lose membership, as he must be under a "right-to-work" law, is under pressure to dramatize the service rendered by the union. This situation favors the more aggressive leader who drives hard bargains with management.[90]

The "right-to-work" law has indeed compelled union leaders to be more responsive to all their members. This is a goal that proponents of the law have allegedly been seeking. Whether achieving it is more desirable than holding down excessive demands and encouraging union responsibility is a complex and debatable question. Experience under the "right-to-work" law appears to make the two goals somewhat incompatible under present circumstances.

Even with more attention being paid to individual members, the unions find some employees unwilling to join. The reasons why employees enter or

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[89] Cf. ibid., pp.37-39, 41.

[90] Cf. Sultan, p. 124.

refuse to enter unions have been analyzed in an earlier chapter. An effort was made in the study of the effects of the Texas law by Professor Meyers to determine what motives prompted nonunion employees to take advantage of the "right-to-work" law. He considered his conclusions on this point to be only tentative and indicative.

A very considerable number of the nonunion employees interviewed had been members of a union at some time. Very few of them objected to unionism in principle. Some even said they would be willing to join if membership were compulsory. Most of them had a grievance against the union representing them. Racial issues were the grounds for some abstentions. Others represented the residue of conflict from the days before the AFL-CIO merger. Some did not approve of the apportionment of dues being made between the national and local union, and some objected to the amount of dues. Objections to the seniority principle were the most common complaint, some employees maintaining that seniority held back the best men, while others thought that unions did not apply it strictly enough. There were those who thought the union was too strong or undemocratically run, and those who thought the union too weak or was contributing to bad relations between the employer and his employees.

A few employees were discovered who could be catalogued as free riders. They recognized advantages in union representation but saved money by not joining. Some of them joined the union in times of personal crisis, when they had a grievance, for example, and then withdrew as soon as possible when the crisis was past. Others had not gained a personal benefit to which they thought themselves entitled and held the union responsible.

Many of these cases demonstrated that a union could sell itself and its policies to employees but could not always please them all. Those who

disagreed with even a minor element of policy protested by withdrawing membership. Beyond doubt it was easier to take this negative action than to attempt to use the policy-making procedures within the union to change a policy or a decision.[91]

There is no conclusive evidence that the "right-to-work" law has affected other areas that might enhance individual freedom. The law was not generally conceived as a means of protecting a person's right to join a union; nor is the union prevented by the law from expelling a member. While a worker cannot be compelled to join, there is no practical way in which a law can be enforced to protect a worker against the subtle and pervasive social pressures that urge him to conform to the behavior patterns of a community. In strongly unionized centers, most workers find it easier to join the union than to resist. In non-union centers, social pressures work in favor of individual bargaining. A "right-to-work" law does not appear to change these patterns very much.

One of the most wished-for results of the law was the riddance of corruption and other abuses in labor unions. Where corrupt officials have seized control, the open-shop law supposedly provides a means of undermining their authority. There is no doubt, on the other hand, that required membership can strengthen the hand of corrupt officials who control a union. Nevertheless, no reports have been forthcoming that show a "right-to-work" law to have rid a union of abuses and corrupt leaders. The law has not prevented the eruption of violence in connection with strikes in "right-to-work" states. The difficulty, of course, is that the measure is a most indirect approach to

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[91] Cf. Meyers, "Right to Work" in Practice, pp. 33-37.

critical problems which might be more effectively attacked by procedures or laws aimed directly at the evils.

If the open-shop laws have had little significant impact on union activities, have they had more on the broader area of labor-management relations? The intense feelings that have been aroused among labor and management representatives during "right-to-work" campaigns were observed in an earlier chapter. Yet the spokesman of one state chamber of commerce declared that letters from businessmen in the "right-to-work" states indicated that the law had helped to improve labor relations for all of them. The general effect of the law was said to have been more peaceful relations.[92] A representative of another state chamber of commerce did not go so far but thought that the law in his state, Indiana, had not created a serious rift between labor and management.[93]

Other views have been less optimistic. An official of the Indiana AFL-CIO found that after the law was passed smaller firms were much more difficult to deal with because they had become truculent and unwilling to bargain.[94] The Texas study previously referred to uncovered one openly admitted instance of a firm taking advantage of the union's insecurity from wavering members by playing one bargaining unit against another, and member against nonmember to maintain superior bargaining power.[95] It has also been pointed out that the pressure put upon a union to continue constant organizing efforts to offset loss of membership through employee mobility and withdrawals introduces an element of conflict and instability into bargaining relationships

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[92] Cf. Brown, pp. 39, 40.

[93] Cf. Maxwell, p. 18.

[94] Cf. ibid.

[95] Cf. Meyers, "Right to Work" in Practice, p. 32.

even if both sides want to be peaceful.[96]

One effect of the law that has appeared in Texas--and other areas report similar experiences--shows how labor-management relations in the building industry can be irritated. Union men are said to take jobs on occasion without revealing their union membership so as to give the external appearance that unions are complying with the law. At the same time, hostile employers' associations are reported to have sent non-union men to seek work on union jobs in order to get evidence of discrimination in hiring practices. Both sides are said to be accumulating evidence of violations to be used in the event of future litigation.[97]

Still another report declared bargaining relationships to be relatively unchanged as a result of the legislation. This conclusion was drawn from comments of union leaders working under the open-shop law. Their impression was that where employers had harmonious relations with their employees' unions before the law was passed, they continued to get along well. Where relations had been acrimonious, they had deteriorated further, with an effort being made to use the law to drive out the union or to reduce standards.[98]

Enforcement Problems

In view of the broad interest stirred by the "right-to-work" debate, it is surprising that so little objective study has been made of the effects of the laws. An even more critical reason for reserving judgment on the impact of "right-to-work" laws on the economy, on unions, and on labor-management relations is the widely-held belief that the laws have, in general, been

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[96] Cf. Cronin, pp. 198-99.

[97] Cf. Meyers, "Right to Work" in Practice, p. 15.

[98] Cf. "Right to Work Laws," Time, November 24, 1958, p. 88.

poorly enforced. To the extent that this is true, it obviously weakens the validity of every argument that uses statistical measurements to weigh the consequences of the laws. All the conclusions as to the effects alleged to flow from the laws, with the possible exception of the psychological barriers to union growth and strained relationships between labor and management, may need to be qualified because of the enforcement problem.

It is well known that the restrictions of the Taft-Hartley Act on the closed shop have been widely ignored in the very trades where the practice was most widely used before 1947. The NLRB itself implied official recognition of the widespread violations of the ban when it enunciated new enforcement policies in 1958 against union hiring halls and contracts that put hiring responsibilities in union hands without due safeguards for nonunion applicants for jobs. The application by the NLRB of the stiff reimbursement remedy of the Brown-Olds decision to reinforce the ban on the closed shop and discriminatory union hiring halls created considerable dismay and consternation among the craft unions.[99]

Few of the "right-to-work" laws impose such potentially costly penalties for infractions. Yet it was only by making employers equally liable with unions for such penalties that the NLRB may have hit upon a method to increase the effectiveness of the closed-shop ban. Moreover, several of the state "right-to-work" statutes establish no enforcement machinery and accordingly have little coercive effect. Thus they can be ignored with impunity by firms and unions which see greater advantages to themselves in so acting. Virginia's 1947 law, for instance, apparently had very little effect and was amended specifically to tighten its provisions and make them

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[99] Cf. supra, pp. 215-21.

enforceable. Even so, as Professor Kuhlman observes, a large firm with multiplant unit will probably not jeopardize all its operations elsewhere by taking a too strict stand in favor of an open shop in Virginia. Nor is it likely that the attorney general of the state will be anxious to prosecute some widely known firm that is not obeying the law, when the state is at the same time trying to attract new industry. Furthermore, the law as applied to the local firm cannot be enforced unless the employer or an employee is willing to provide sufficient evidence for prosecution. If they have previously agreed on the terms of employment, evidence of violation will probably not be forthcoming.[100] The employer who theatens prosecution is more than likely inviting labor conflict, deteriorating labor relations, and a falling off of production. The employee finds it easier to conform to union requirements than to risk his social standing in the community.

An empirical study of five hundred collective bargaining contracts in Florida was also revealing with respect to enforcement. At the time of the study the state's constitutional amendment against the union shop had been in effect for seven years. Yet in 1951, 11 per cent of the surveyed agreements had closed-shop provisions, and 5 per cent still retained union-shop clauses.[101]

Another report produced similar conclusions about large corporations operating under "right-to-work" laws. One example drawn from a survey pertaining to the United Mine Workers showed the laws to be enforced only where employers and state officials wanted to enforce them. Union-shop practices

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[100] Cf. Kuhlman, p. 461; Bell, p. 185.

[101] Cf. Thomas J. Luck, "Effects of the Taft-Hartley Act on Labor Agreements," Southern Economic Journal, XX (October, 1953), pp. 149-50; cf. Shott, pp. 61-62.

were found in the bituminous coal mines of Virginia, Alabama, and Iowa, and they persisted for the very practical reason that no coal would be mined in those states if the laws were strictly enforced.[102] Other examples in the same report included a modified union shop among steelworkers in Alabama, together with traditional union-security practices in the building trades.

A survey of the effectiveness of "right-to-work" laws made by Fortune magazine in 1957 revealed a widespread disregard of them. With no effective enforcement machinery in Arizona, the closed shop continued to operate. There was little change in Arkansas, where not even the building trades had ever been strong enough to have a closed shop. The Florida amendment was seen as having little meaning, although the attorney general had been ordered to study ways to make it more effective. The Georgia statute was reported to have had no appreciable effect. In Iowa, industry had continued to expand, and union membership was at a new high. The Nevada law appeared largely ineffective, for a large proportion of the state's union personnel was in the building trades which were still closed to nonunion workers. Union membership had increased 40 per cent in North Carolina after the law was passed, although it was believed there that the law had attracted new industry. North Dakota had found no specific use for the law since its enactment. Enforcement in South Carolina had been spasmodic, and it was said that most union-shop agreements had been continued despite the law. In South Dakota, union members in the building trades generally refused to work with nonunion men. Tennessee's law had had little practical effect. Union membership in Texas was probably a third higher than when the law was enacted.[103]

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[102] Cf. Edwin A. Lahey, "Right-to-Work Laws Provide Easy Escape," The Detroit Free Press, February 22, 1955, pp. 1, 2.

[103] Cf. Fortune, LVI (September, 1957), pp. 236, 241.

Drawing its evidence from replies by state chambers of commerce in "right-to-work" states, another survey indicated that union-security agreements had been effectively eliminated in three states and to a large degree in three others. In two other states, labor federation officials covered in the same survey affirmed that closed and union shops had been eliminated by the law. It was acknowledged, however, that in several states the closed shop continues in the building trades, while in other industries some union-security provisions continue through unwritten informal agreements or by substitute devices.[104]

A more detailed study of the Texas law likewise points to ineffectiveness. A companion law passed concurrently with the "right-to-work" statute forbids the checkoff of union dues without written authorization of the employee. Nevertheless, a large majority of union contracts continue a voluntary checkoff, irrevocable for a year, and often self-renewing. This amounts to a maintenance-of-membership contract, and its legality has never been challenged in the courts. Some employers are said to have successfully resisted this clause, and they could probably have denied a union-shop demand also. Most employers saw very few results from the "right-to-work" law, it was reported, and many of them hoped that the irrevocable checkoff would be banned by amending the law.[105]

There was no basic change visible in the traditionally closed-shop industries of Texas. In the building trades, almost everyone, it was said,

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[104] Cf. Sanford Cohen, "Operating under Right-to-Work Laws," Labor Law Journal, IX (August, 1958), pp. 574-78. The information in this report may be open to considerable qualification. It would not be surprising to find some bias in the respondents' views. In no instance were responses to the survey's questionnaire received from both chamber and labor officials in the same state. Consequently, the opinions expressed cannot be compared for bias or incomplete information.

[105] Cf. Meyers, "Right to Work" in Practice, pp. 12-13, 32.

violates the law. Some clever lawyers, it was further reported, have revised contracts to give the appearance of conformity. For example, collective bargaining contracts provide that the union will be used by the employer as a source of labor instead of the source, although the effect is the same in either case. However, the law has prevented the organized crafts from insisting that all workers, particularly common laborers, be organized on the job and hired through the union. In outlying areas, organized craftsmen were found working beside non-union workers in the same craft, although this practice also occurs without a "right-to-work" law when the union cannot supply sufficient personnel. Union men also work for the large open-shop contractors, like Brown and Root, the largest in the state.[106]

Other closed-shop trades present a similar picture in Texas. In forty-nine of fifty-eight motion-picture theaters surveyed, union membership was 100 per cent. In the printing trades, 100 per cent union membership was discovered in 130 out of 148 bargaining units. All units embraced almost 5,000 employees, of whom 95 per cent were organized, and some of the remaining 5 per cent probably belonged to unions other than the ones reporting and claiming jurisdiction.[107]

A final factor concerning enforcement that throws doubt on the validity of judgments based on the laws' effects in the several states is the existence of substitute devices to circumvent the law. Unwritten agreements and ambiguous clauses are but two examples. Work-standards based on apprenticeship training, experience qualifications, and seniority may also limit access to employment by nonunion workers. Alleged sickness and other causes of absenteeism are sometimes relied on to put pressure on an employer to

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[106] Cf. ibid., pp. 13-16.

[107] Cf. ibid., pp. 13, 16-17.

prevent him from mixing union and nonunion workers on the same job. The agency shop and irrevocable checkoff clauses are also used to lessen the impact of "right-to-work" laws. In other words, the alert and aggressive union is constantly seeking ways to get around the law, and legislators are at a constant disadvantage in formulating laws that close every possible loophole.

The unions which have traditionally regulated hiring practices in Texas, as elsewhere, view the Taft-Hartley ban on closed shops and discriminatory hiring halls as more recently enforced by the NLRB to be a much more potent threat than the "right-to-work" law. In fact, many of the enforcement proceedings that have taken place against unions under the various state statutes could have been handled under federal law also, except where the jurisdictional standards set up by the NLRB would not have applied. The effort to reword contracts and change hiring practices, moreover, clearly stems from the orders and decisions of the NLRB and not from those of any state agency. Professor Meyers remarks: "These facts, of course, only reinforce the conclusion that the state provisions are almost totally ineffective in the traditional areas of the closed shop."[108]

Conclusion

An argument for or against the "right-to-work" laws as drawn from their effects is largely disappointing and frustrating. The effects prove so little as compared with what was promised or feared by the proponents and opponents of the laws. Of course, some of the laws are of too recent origin to have had much measurable effect, and even the older laws may have been operating for too short a period to have profoundly affected a state's economy.

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[108] Ibid., p. 17.

The attempts to establish the merits or demerits of the law prove little, if anything, with respect to personal income, industrial expansion, population migration, or industrial peace. Instances can be found in which certain firms were attracted to a state because of its labor climate, but the "right-to-work" law is only one factor in a multitude of considerations most businesses take into account before investing in new plants in new locations. The worth of the economic arguments is rendered still more flimsy by the considerable evidence that the laws seem to carry with them troublesome enforcement problems.

On the union side of the case, there is little doubt that the stronger industrial unions and the craft unions are scarcely touched by the "right-to-work" laws. The weaker unions, namely, those that have not achieved bargaining power commensurate with that held by the employers with whom they negotiate, appear to have been hurt, in some instances badly. This result is probably due as much to the hostile political climate as to a statute which reflects that climate. Organizing new unions has been only indirectly affected, and the sharpest effects of the law have probably fallen most heavily on unskilled and common laborers working in the building and construction trades.

Union membership has increased rather than declined since the laws were passed, but not to an impressive degree. This relatively static situation, however, is true throughout most of the country. Only a very modest number of workers seem to have availed themselves of the freedom to work without the necessity of belonging to a union. This freedom has been counterbalanced, perhaps, by the workers who have been discouraged or prevented from joining unions because of the known opposition of their employers to unions as expressed through strong support of the open-shop law. In general, however, the law seems to have accomplished little in promoting effective

individual freedom; nor has it, on the other hand, destroyed the labor movement.

The impact of the "right-to-work" laws depends to an important extent on how the courts interpret and enforce them. From 1944 through 1958 about one hundred court cases deriving from the laws were reported.[109] While the decisions have generally enforced a strict interpretation of the statutes, the number of cases reflects but a minute proportion of the infractions of the laws that most qualified observers believe are occurring every day. If these decisions were to begin to follow the pattern of a few wherein the practice of the union serving as sole collective bargaining agent was declared illegal, the whole pattern of labor relationships would be overturned by the laws. This development, however, would probably soon be judged to be in conflict with federal labor policy.

Despite the admission by many parties that the "right-to-work" law is not proving very effective, a most interesting paradox prevails: the attitudes of both sides toward the law have scarcely changed at all since its introduction. Among employers who supported the law there is still a strong feeling that it is a good thing.[110] Among labor officials there has been little philosophical adjustment to living with a "right-to-work" law.[111] Thus in Texas, with the exception of those contractors who belong to the National Electrical Contractors Association and regard the law as an evil, or at best, a nuisance, most contractors look upon the law as a statement of moral principle. Yet the same contractors hold that the construction industry

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[109] Cf. J. R. Dempsey, "The Operation of the Right-to-Work Law," Labor Law Journal, X (August, 1959), p. 553.

[110] Cf. Meyers, "Right to Work" in Practice, p. 18.

[111] Cf. Cohen, p. 578.

could not operate if it observed the law. Both contractors and unions continue to operate as if the law had never been passed.[112]

This peculiar situation can be explained only in the light of the background that set the stage for the "right-to-work" laws. On the one hand, the American labor movement has always regarded the union or closed shop as a symbol of status and a cherished goal that indicates acceptance of a union in industrial society. The unions have given no sign of retreating from that goal even under the pressure of "right-to-work" laws. Management groups, on the other hand, have continued to stress their fear of excessive union power which several industry-wide unions of a million members and more represent. Some of the employer associations have not been satisfied with the results of any restrictive labor legislation which they have successfully supported. As an example, when the Labor-Management Reporting and Disclosure Act of 1959 was finally passed after a long struggle, some of these groups immediately declared that reform had only been started and announced their intention of pressing for more laws at once. Within some of the states, the passage of the new federal law gave impetus to efforts to get a new "right-to-work" campaign under way.

The "right-to-work" law is a symbol. Its enactment proves that labor can be defeated in the political arena. If labor can be defeated once, it can probably be defeated again. As a symbol, therefore, this law directly counteracts the labor movement's status symbol which is the union shop. It is because this is so, because the issue is more symbolic than practical, that the whole debate is so explosive in character.

Millions of voters continue to believe that the "right-to-work" law

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[112] Cf. Meyers, "Right to Work" in Practice, pp. 18, 19.

is an effective and powerful weapon, for it has been so vigorously characterized as such by both labor and business. As long as this belief prevails, the issue will continue to stir up intense emotions. This is one effect of the "right-to-work" law that does not demand qualification.

It would be inaccurate to blame any one factor for the apparent deterioration in labor-management attitudes in more recent years. The road to peaceful industrial relations still seem strewn with obstructions by the very fact that, in the words of Arthur J. Goldberg, "politically, legislatively, philosophically, labor and management today stand apart, and the degree of polarization of viewpoints in these areas is far greater than in collective bargaining".[113] It seems reasonable to assert that the bitter "right-to-work" controversy has contributed more than its proportionate share to the hardening of attitudes and the obstruction of industrial peace.

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[113] "Labor-Management Relations: 1958-1959," Labor Law Journal, X (June, 1959), p. 381.

CHAPTER XI

AN ETHICAL AND SOCIAL EVALUATION

Never since the question of compulsory union membership first caught the public interest has any heed been paid to the occasional plea that the controversy be confined within some fixed range of debate. Thus the preceding chapters have pointed out some of the issue's economic aspects directly connected with labor-management relations, some of the sociological aspects necessarily affecting economic behavior patterns, and some of the legal and political aspects which have drawn immense popular attention in the postwar years. Numerous facts have been collected, presented, and analyzed.

The "right-to-work" story, however, would be incomplete if no mention were made of the moral aspects, which have been deliberately avoided up to this point of the study. Even in its original dress in the early 1900's, the union-shop controversy made repeated references to rights, duties, freedom, coercion, individual and general welfare, and the goals of man and society. All these concepts touch on fundamental ethical matters. Once the union-shop dispute began to focus on the "right-to-work" concept, the moral issue became conspicuous.

This final chapter summarizes many points previously elaborated upon, but surveys them from a moral point of view. This procedure establishes a foundation upon which to base certain conclusions and on ethical and social evaluation of the "right-to-work" laws.

Up to this point there has been no attempt to minimize the complex nature of the controversy, and the moral issue is no less complex. Conse-

quently, there is no easy or categorical moral solution. On neither side are the arguments so black or white that the "right-to-work" laws may simply be labeled as moral or immoral. Some points made in favor of the statutes are meritorious and constitute strong arguments for them. Some points are unwarrantable and constitute strong arguments against the statutes.

Since the protagonists on both sides of the controversy have been able to use moral arguments in support of their respective positions, it is essential that an established scale of values be used to provide a standard of objective morality that weighs the good and bad aspects of a law. Such a standard must ignore the motives of legislators and promoters of a law, for their intention does not come under the scope of the law. An objective standard will judge a positive law as good or bad according to its content, the circumstances which surround it, and its effects. Since a law is a regulation or practical principle laid down by legitimate authority as a criterion of action, its content must be reasonable. A good law must therefore be advantageous to the common welfare, that is, it must assist the members of society to reach their common goal. The reasonableness of a law is also determined according to the concrete circumstances of a given time in a given place. The circumstances of a complex issue, however, are difficult to know in their totality, and to the extent that facts are unknown or ignored, or the unusual case is unprovided for, positive laws will be defective. Accordingly, practical moral judgments, even by qualified moralists, or by qualified legislators, may and do differ, and better judgments will be made only with more insight and information. A good reasonable law, finally, must have good effects. If it has unintended evil effects, these cannot notably outweigh the good effects. The effects, furthermore, must be in accord with principles of justice and sound social order.

The objective standard for judging the reasonableness of a positive law lies ultimately in the natural moral law. Belief in the natural law is very ancient, for it appeared as early as the fifth century before Christ, was propounded by Plato, Aristotle, Cicero, and Justinian, and interpreted by the scholastics, modern papal teaching, and many other sources consistent with natural law traditon.[1]

The law of nature, or the natural law, does no more than describe the state of things as they are found to exist. It most particularly concerns itself with expressing the nature, operation, and purpose of things. Specific nature determines specific operation and specific purpose. Conversely, observation of specific operation reveals specific nature and specific purpose. The law of nature in man, deduced from the study of his nature and of the nature of society, differs from the law of nature in other creatures inasmuch as man can become aware of and reflect upon the law of his nature and can choose to follow it or not. Precisely for this reason, the law of nature in man is called the natural moral law. Every human action is good that is in accord with man's nature and purpose. Moreover, because of the dignity of human nature, each person has equal rights, as well as equal basic needs. It is the object of positive law to determine and to particularize the principles of the natural moral law so that man can achieve his goals through the protection given his rights and the fulfillment of his needs. Natural law does not directly govern the particular case, no more than the general principles of any science do. But without being grounded on principles, positive

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[1]A discussion of the historical roots of natural law theory may be found in Natural Law Institute Proceedings, II (Notre Dame, Ind., 1948), pp. 3-149.

laws would be capricious and chaotic.[2]

A moral evaluation of the "right-to-work" laws must therefore consider the nature of man and the nature of an industrialized economic society under present-day circumstances. To accomplish this, two questions must first be answered: (1) Are strong, effective, and responsible labor unions necessary in the present stage of economic life in the United States? (2) Is the union shop a reasonable arrangement for making unions strong, effective, and responsible under present conditions in the United States?

Necessity of Labor Unions

The question of whether effective unions are necessary must be answered in terms of the present-day United States. Circumstances may differ in other industrial societies and are of no direct concern here. The effectiveness of labor unions, moreover, would have little significance in a feudal or agricultural society, and it does not have universal relevance even in the United States, where industrialism is not the total culture, although it is a dominant institution that pervades the total culture. The necessity of labor unions has particular reference to the industrial sectors of the economy and must be viewed primarily in that context.

There is more at issue here than simply the right to join a union. If unions are not necessary to represent employees in the interest of stable and peaceful industrial relations and to give them equality in bargaining power, any further discussion is futile. The "right-to-work" without joining a union

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[2] Cf. John A. Ryan, The Norm of Morality (Washington: National Catholic Welfare Conference, 1952), pp. 7-28; Mortimer J. Adler, "The Doctrine of Natural Law Philosophy," in Natural Law Institute Proceedings, I (Notre Dame, Ind., 1947), pp. 76-83; Harold R. McKinnon, "Natural Law and Positive Law," in ibid., pp. 99-101.

would then be beside the point.

In the first pages of this study numerous views were set forth in support of effective union organization for collective bargaining purposes. The reasons underlying those views were so impressive that in the 1930's they caused a complete shift in the policy of the federal government toward support of organized labor. Leaders of all three branches of the government, many social philosophers and economists, business leaders, employees, and churchmen had reached the conclusion that the individual employee in a complex industrial society is virtually helpless in bargaining over the terms of his employment. The absence of collective bargaining generally means no bargaining, since unorganized employees have little or no market power. They are solely dependent for survival on wage incomes that others pay them, and, therefore, they nee protection against discrimination and arbitrary action. In the absence of full employment conditions, moreover, individual workers are likely to be subject to conditions of cutthroat competition for available jobs. Since they must work, they frequently cannot afford to resist wage-cuts or worsening working conditions when the labor supply exceeds the demand. Nor can the goodwill of individual employers in a competitive economy halt the deterioration of employment standards. In sum, it was stated, labor can have no effective voice as long as it is unorganized. The only effective organization for many workers has been found in labor unions possessing the powers of legislation, adjudication, and administration.

It was pointed out, furthermore, that collective bargaining is the best method so far devised for changing and improving labor conditions. For purposes of collective bargaining, employees must have an effective representative, which often means brining in outside help, as management itself often does. In larger firms, management has found individual bargaining with

employees impossible, and it must therefore provide some kind of representation program for its employees in the absence of a union. This kind of program, however, ordinarily limits the bargaining freedom of employees much more than does membership in an independent union. Collective bargaining, moreover, has meant a big step forward in introducing a code of industrial law that defines the rights of workers and of management and in bringing needed order to the production process.[3]

The absolute necessity of harmony and order in economic and social life in industrialized countries has moved leading moralists to regard independent labor organizations as essential to prevent chaotic labor conditions as well as to correct social evils. Many social thinkers are convinced that suppression of collective bargaining or the determent of unions from effective representation of employees would, under present conditions, lead sooner or later to state control and to the impairment or collapse of the free enterprise system. Reflecting this conviction in an address to Belgian workers in 1949, the late Pope Pius XII remarked: "Unions have arisen as a spontaneous and necessary consequence of capitalism embodied in an economic system." Ten years earlier, in an encyclical letter to the American hierarchy, the same Pontiff had said that it is not possible without injustice to deny or to limit the right of employers, employees, or farmers to unite "in associations by means of which they may defend their proper rights and secure the betterment of the goods of soul and of body, as well as the honest comforts of life." On another occasion, in 1955, while speaking to the railroad workers of Rome, Pope Pius took pains to stress the necessity of strong labor unions. He declared:

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[3] Cf. supra pp. 9-37.

> No true Christian can find fault if you unite in strong organizations to defend your rights--while remaining aware of your duties--and to arrive at an improvement in your conditions of life. On the contrary, precisely because the harmonious action of all groups in the state is a Christian duty, no individual citizen ought to become a victim of the arbitrary act or tyranny of others. You are therefore acting in full conformity with the Church's social teaching when, by all means morally permissible, you vindicate your just rights.[4]

While strong, effective unions are obviously a restraint on the economic freedom and unilateral authority of employers and business management, responsible business leaders recognize that some curb on their bargaining power is necessary and that employees will justly benefit by uniting in an organization which has some control over a firm's labor supply. If some choose to call the union a monopoly, they are within their rights and logically correct. Anything less than a union monopoly weakens the union and gives superior bargaining power to the employer.[5]

Dissenting Opinion

If the above evidence seems to indicate universal acceptance of public policy favoring strong unions, one needs only to recall the abundant contrary evidence introduced on other pages. Unfortunately, the matter of union recognition has been muddled by an extraordinary amount of double talk. Some employers who publicly support the right of workers to organize will do almost anything to thwart, legally or illegally, the organization of their own employees. Some employers cannot conceive of any kind of contemporary independent union that would satisfy them. If forced to bargain with a union, they

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[4] The above quotations, and others, of Pius XII are found in John F. Cronin, Social Principles and Economic Life (Milwaukee: The Bruce Publishing Co., 1959), pp. 167-68.

[5] Cf. supra, pp. 25-30, 45-46.

will continue to circumvent it whenever possible, appeal to their employees directly, compete with the union at every turn, try to discredit it, or even to destroy it.[6]

The prevalence of this kind of attitude has appeared week by week in the decisions and orders handed down by the National Labor Relations Board. In one case after another the Board orders a firm to cease and desist from discouraging membership in a union by such practices as "discharging, refusing to reinstate, demoting, transferring or in other ways discriminating against employees"; "threatening discharge and plant shutdown or other economic reprisal and promising wage increases or other economic benefits in order to discourage union membership"; "threatening surveillance of union activities"; "coercively interrogating employees concerning their union views, membership, and activities"; "participating in circulation of petitions to discourage union membership" or "to decertify a union"; "or in any other manner interfering with, restraining, or coercing employees in their rights to engage in or refrain from concerted activities."[7]

The resistance against any kind of union that these practices illustrate is often equalled by the community hostility that prevails in many areas of the country, especially in more recently industrialized sections and in smaller cities. Merchants threaten to shut off credit if workers organize into a union or go out on strike, police power is used to break strikes and to disperse union organizers, and ordinances are enacted to impede organization. Racial tensions, allegations of communism, corruption, or gangsterism, and threats of violence are instigated to keep unions away.[8]

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[6]Cf. supra, pp. 181-95.

[7]Cf. U. S., National Labor Relations Board, Decisions and Orders, passim.

[8]Cf. supra, pp. 154-62, 138-89.

The Roots of Dissent

A substantial portion of this hostile sentiment which has appeared in every "right-to-work" campaign is simply a cloak, not merely to prevent by law the negotiation of union-shop contracts, but rather to cover up a deep aversion to unions and collective bargaining. What the attitude means is that unions are not really accepted by many American citizens, especially if they are strong and effective unions.

This rejection of unions stems, in part, from what remains of an excessively individualist outlook that was impossible to apply universally and consistently. According to the individualist creed, man was totally self-sufficient, in need of no outside help to achieve his goals except for the state to act as a policeman to see that everyone obeyed the ground rules. The common welfare would be achieved, it was said, if everyone worked independently to achieve his own goals. Associations and unions and all other intermediate groups standing between the individual person and the statewere looked upon as divisive and a threat to the people's state. From this point of view, it was logical to consider freedom as a release from all restraint found in customs, traditions, local groups, and associations of every kind. If man were emancipated from association, it was believed, he would be free.[9]

Left with only his own resources, however, the individual found he could not fulfill some of his needs, and he had nowhere to turn for help in his problems and grievances except to the state. And as industrial society has become more complex, the more functions the state has had to undertake as the only institution capable of performing them. Not even the state,

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[9]Cf. Robert A. Nisbet, The Quest for Community (New York: Oxford University Press, 1953), p. 228.

however, is capable of doing everything, whether it acts in the role of dictator or of paternalistic provider. Preoccupied with so many interests and duties, it can give little attention to the individual fulfillment and self-determination of its citizens. On the other hand, with the state the only association permitted under individualism, with the individual person the only holder of rights, with intermediate groups having no rights, the result is necessarily a tremendous concentration of state power before which the individual person, whether employer or employee, is, in effect, helpless. The state can easily crush him if it chooses to do so.[10]

The state or social authority, nevertheless, has an essential role because it is the supreme guardian of the general welfare. Excessive intervention by the state, however, will gradually destroy individual freedom. Too little intervention, on the other hand, leaves weaker citizens at the mercy of the stronger. The one approach leads toward collectivism, the other lays too much stress on individualism, "the twin rocks of shipwreck" which must be carefully avoided, according to Pope Pius XI.[11]

The Role of Unions

Complete repudiation of both individualism and collectivism clears the way for a reasonable social order that accommodates necessary and voluntary associations, such as unions. While the union shop has attracted most of the attention in the "right-to-work" controversy, the real issue in question has been the proper role of the labor union.

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[10] Cf. ibid., pp. 252-53, p. 268; Bernard W. Dempsey, The Functional Economy (Englewood Cliffs, N.J.: Prentice-Hall, Inc., 1958), pp. 278-279; Cronin, pp. 76, 292-94.

[11] Quadragesimo anno, Encyclical Letter, 1931, in Two Basic Social Encyclicals (New York: Benziger Bros., Inc., 1943), par. 46, p. 115.

The ancient principle of subsidiarity in social philosophy provides a key toward unraveling this troublesome problem of sound social organization. This principle perceives and emphasizes man's natural rights and liberty while recognizing his inability without the aid or groups and society to develop all his potentialities. According to this principle, associations intermediate between the individual and the state must be allowed their natural right to exist and to have sufficient strength and independence to assist their members in reaching essential goals.[12]

Clear and forceful expression of the principle of subsidiarity was given by Pope Pius XI in his encyclical letter on the reconstruction of the social order. He declared:

> Just as it is gravely wrong to take from individuals what they can accomplish by their own initiative and industry and give it to the community, so also it is an injustice and at the same time a grave evil and disturbance of right order to assign to a greater and higher association what lesser and subordinate organizations can do.[13]

The principle of subsidiarity was regarded by Pius XI as one of the most basic expressions of the natural moral law as applied to the social order. He called it a "most weighty principle, which cannot be set aside or changed," one that "remains fixed and unshaken in social philosophy."

The importance of the principle lies in the fact that it recognizes the need of social order. At the center of the universe is the free human person endowed by his Creator with dignity, rights, responsibility, and an eternal destiny. But right order calls for natural and necessary groups and associations, as well as those that are free and voluntary, to enable man to

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[12] Cf. Johannes Messner, Social Ethics, trans. J. J. Doherty (St.Louis: B. Herder Book Co., 1949), pp. 196-200, 321-69.

[13] Quadragesimo anno, par. 79, p. 141.

develop and perfect himself. While the nature, structure, and role of these groups vary with circumstances, the more meaningful they are to an individual's needs, the more likely he is to be active in them. Each higher association is subsidiary, or auxiliary, to the lesser groups below it which require its assistance to achieve their proper ends. To safeguard freedom the higher association or society ought to render as much assistance as necessary but no more than that. If the common good demands it, the state should also intervene, to the extent necessary, to order the social process. State authority must be primarily concerned with the general welfare by making social cooperation as effective as possible for the self-fulfillment of all the members of the state. Its proper function is to watch over, direct, stimulate, restrain, and facilitate the free activity of its citizens whenever necessary so that their social cooperation will benefit the whole society.[14]

The Common Good

The unifying principle of order in society is the common good, that is, the good of the society as a whole shared proportionately by each member according to rights. The advantages that each individual person gains through social cooperation comprise the common good which makes it possible for the members of society to realize their individual goals. The common good also orders and provides the conditions by which the lesser or intermediate groups achieve their proper ends. It follows, then, that the common good is not an

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[14]Cf. Johannes Messner, "Freedom as a Principle of Social Order," The Modern Schoolman, XXVIII (January, 1951), 104; Henry J. Schmandt, "State Intervention--When?" Social Order, IV (December, 1954), 435-40; Nisbet, p. 70. Pope Pius XI said that the state should not have to concern itself with matters of lesser importance which can be managed by subordinate groups. Where this is done, he observed, "the State will more freely, powerfully, and effectively do all those things that belong to it alone because it alone can do them: directing, watching, urging, restraining, as occasion requires and necessity demands". Quadragesimo anno, par. 80, p. 141.

end in itself, for its purpose is to assist individuals. People do not engage in social cooperation simply to help society or the group but so that the benefits of common action may revert to each participant according to his rights.[15]

Since unions are necessary for the common good in many areas of employment, an obligation to cooperate with one's fellowmen to safeguard basic rights may require joining a union in some circumstances. This obligation would rise out of social justice, which regulates rights and duties with regard to the common good. Pope Pius XI, in one of his most notable encyclical letters, pointed out that social justice has "its own set of obligations, from which neither employers nor workingmen can escape." Moreover, he said, "it is of the very essence of social justice to demand from each individual all that is necessary for the common good."[16] For many employees, joining a union where they work is the normal way to meet their responsibility to the common good. Regardless of how much individual good a nonunion employee may do for his fellow employees, he will seldom have any influence in directing toward the common good the union that represents his bargaining unit.

This obligation to work for the general welfare must admit of exceptions. When joining a union would be opposed to a person's religious beliefs, for example, his right not to join must be respected because of the higher order of religious values over economic goods. Furthermore, no one holds that a person can be morally obliged to join a union that threatens him with

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[15] Cf. Messner, Social Ethics, pp. 124, 137; Gerald Kelly, "The Common Good and the Socio-Economic Order," in the Catholic Theological Society of America, Proceedings of the Seventh Annual Convention (Notre Dame, Ind., 1952), p. 88; John F. Cox, A Thomistic Analysis of the Social Order (Washington: The Catholic University of America Press, 1943), p. 61.

[16] Divini Redemptoris (Washington: National Catholic Welfare Conference, 1937), par. 51, p. 23.

physical or spiritual harm, or to join one that is clearly opposed to justice or to the common good. Where workers need a union, however, an employee could not be said to have done all that is necessary if, for instance, he does not explore the possibility of using statutory procedures for displacing a corrupt union.

Union Rules

To those who argue that requiring workers to join a union destroys free will or imposes a system of economic slavery,[17] it is necessary to answer that if citizens have the free right to associate in organizations, as they do, they are also perfectly free to adopt whatever form of government and rules which they feel are most appropriate to achieve the purpose of their organization, provided that due regard is had for the requirements of justice and of the common good. In interpreting the natural moral law, the Church does not try to say what is the proper form of government for an organization. Both Pope Leo XIII and Pope Pius XI have stressed the freedom of the members of an organization to establish rules according to their own needs and circumstances.[18]

There are two rules in particular that most American unions believe are necessary and appropriate to achieve their purposes under prevailing conditions, and both have been under attack in the "right-to-work" dispute. The first is the closed or union shop; the second is the principle of exclusive bargaining agent. The policy of the federal government on the first rule has

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[17] Cf. supra, pp. 120-24, 320, 323-24.

[18] Cf. Leo XIII, Rerum novarum, Encyclical Letter, 1891, in Two Basic Social Encyclicals, par. 76, p. 73; Pius XI, Quadragesimo anno, in ibid., par. 86-87, p. 145.

not been uniform, but it has consistently supported the second. The forces opposing both rules favor a return to or a continuation of individual bargaining for those employees who want it in preference to collective bargaining.[19] To grant individual bargaining equal rights, however, would certainly be a backward step toward oppressive competition among workers and toward weaker unions. The Supreme Court itself has pointed out that to permit individual bargaining when a collective bargaining agreement exists is "a fruitful way of interfering with organization and choice of representatives."[20] It is true that the acceptance of the principle of majority representation in the Wagner Act and subsequent legislation lessened the need for a union shop. The principle of exclusive jurisdiction, on the other hand, has proved to be the only practical basis for unionism in the United States, and it has been generally satisfactory in meeting American conditions.

Secular Unions

The traditional and deep-rooted repugnance of organized labor in the United States toward dual unionism, because it weakens unions, has given rise to a peculiar argument which also rejects unions as they are now constituted. This argument, which has particular reference to Catholic workers, declares that it is wrong to require workers to join American unions, which are avowedly neutral with respect to a confession of religious faith. These unions, it is contended, have actually succumbed to a philosophy of secularism that corrodes religious faith while strengthening irreligious selfishness and materialism. Evidence of this serious moral deficiency is offered in the form of unions controlled by un-American and criminal leaders and in the continued

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[19] Cf. supra, pp. 421-24.

[20] J. I. Case Co. v. N.L.R.B., 321 U.S. 332, 338 (1944).

misconduct of unions. Membership in non-Christian unions is accordingly viewed as dangerous to a true religious spirit and as a continuing occasion of grave sin.[21]

The opinion that Catholics are faced with a serious threat to their moral integrity by belonging to neutral unions is derived, in part, from an interpretation of two important social documents, the Christmas Message of Pope Pius XII in 1952 and the Pastoral Letter of the Catholic Hierarchy of Quebec issued in 1950. In his address the Pope referred to the manner in which consciences are afflicted by various forms of oppression. Among these he mentioned the restrictions placed upon access to employment by requiring registration in certain parties or organizations. "Such discrimination", the Pope said, "is indicative of an inexact concept of the proper function of labor unions and their proper purpose, which is the protection of the interests of the salaried worker within modern society, which has become more and more anonymous and collectivist". He then pointed out that unions exist to protect the worker against those who are determined to consider him merely a productive agent with a certain price value. The Pope continued by asking:

> How, therefore, can it be considered normal that the protection of the personal rights of the worker be placed more and more in the hands of an anonymous group, working through the agency of the immense organizations which are of their very nature monopolies? The worker, thus wronged in the exercise of his personal rights, will surely find especially painful the oppression of his liberty and of his conscience, caught as he is in the wheels of a gigantic social machine.[22]

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[21] The leading proponent of this view has been the Reverend John E. Coogan, S.J., in Voluntary Unionism for Free Americans (Washington: The National Right to Work Committee, 1958), pp. 9-19; "An End to Forced Unionism," The Priest, XIV (January, 1958), 27; "Forced Unionism: An Objection Reaffirmed," The Priest, XIV (March, 1958), 218-23. Cf. Edward A. Keller, "Right-to-Work Laws: Just and Beneficial," Homiletic and Pastoral Review, LVIII (October, 1957), 40-41.

[22] Pope Pius XII, "Christmas Eve Address, 1952," Catholic Mind, LI (February, 1953), 118.

There is no doubt that in this statement, as well as in others, Pius XII was expressing his concern over the danger of essential liberties being lost sight of in large labor organizations. While he specifically pointed his remarks to the free world, it is a well known fact that circumstances vary from country to country. Membership in many European unions, for example, virtually implies a confession of faith or political philosophy. The very neutrality of most American unions, on the other hand, has prevented a conflict in conscience regarding religion or philosophy.[23] The encouragement given free collective bargaining in the United States by law has also blunted the urge to create a political labor party. Observers familiar with both the free European and the American labor scenes find the differences so great as to admit of only the most limited application of the Pope's words to the neutral American unions as contrasted with the ideological unions in Europe.[24]

The statement of the bishops of Quebec, which is also introduced in the argument against secular unions, speaks of the formative influence of a union upon its members and declares that unions must adhere to the social principles of Christianity. "Otherwise," the Canadian bishops say, "the association will lead the worker astray to materialism; it will imbue him with a false concept of life eventually made known by harsh claims, unjust methods, and the omission of the collaboration necessary to common good."[25]

The bishops also cite a number of legitimate union goals which express the essential role that unionism must play in industrial society. They then declare

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[23] Cf. supra, pp. 75-76.

[24] Cf. Stephen F. Latchford, "An American Rejoinder," Social Order, IX (March, 1959), 116-18; Benjamin L. Masse, "Catholic Workers and Secular Unions," America, (January 18, 1958), pp. 444-45.

[25] The Problem of the Worker in the Light of the Social Doctrine of the Church (Montreal: Palm Publishers, 1950), pp. 40, 41.

> In order to realize all these aims, and obtain an efficacious joint action, the unions must be able to rely on the greatest possible number of members, without ever facing recruiting difficulties and open or hidden oppositions to their action. Hence one perceives how necessary it is that union security be understood according to the exigencies of the true freedom of association. Employers and legislators must favor this security. It is up to the employers and employees to determine, according to given circumstances, through a collective agreement, the formula by which the union security will be assured in every case.[26]

The bishops of Quebec clearly expect unions to adhere to principles of justice in dealing with employers and with their members and also to work for the common good. The bishops, however, did not restrict their remarks in support of union security to Catholic unions. This is clear from the testimony of a priest closely associated with the preparation of the statement of the Canadian bishops, the Reverend Gerard Dion, director of the Department of Industrial Relations of Laval University, Quebec. He remarked that the bishops were completely familiar with the Canadian and Quebec context of the labor movement, which included both Catholic and secular unions. The bishops knew that both had union-security contracts and that legislation had been introduced to outlaw both closed and union shops. Father Dion continued:

> We do not see how, in all honesty, one could use the authority of the Bishops of Quebec for advocating right-to-work laws, that is to say, laws forbidding employers and workers to include provisions for union security in their collective agreements. This is completely contrary to the wishes of the Quebec episcopacy. If, as the Bishops said, it is up to the workers and the employers to determine according to particular circumstances the formula which would best guarantee this union security, it is evident that this should not be prohibited by law.[27]

More recently, the Catholic unions of Canada, which are concentrated

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[26] Ibid., p. 43.

[27] Quoted by Msgr. George G. Higgins in his syndicated newspaper column, "The Yardstick," NC News Release, June 3, 1957.

in the province of Quebec, have entered into serious negotiations with the Canadian Labour Conference, a federation of secular unions similar to the AFL-CIO, for the purpose of an eventual merger. It is noteworthy that no obstacle has been placed in the way of this step of the Catholic unions by the bishops that would indicate a fear that the faith of Catholics was being endangered.

According to Pope Pius XI, it is clearly the duty of bishops to determine whether secular unions are dangerous to the religion and morals of Catholic workers.[28] The Catholic bishops of the United States, as a group and individually, have, on numerous occasions, encouraged the organization of employees. As early as 1887, James Cardinal Gibbons of Baltimore, in his Memorial on the Knights of Labor, was most explicit in stating his support of neutral unions and his belief that labor organizations of American Catholics under the direction of the Church were neither possible nor necessary in this country. He wrote:

> I sincerely admire the efforts of this sort which are made in countries where the working people are led astray by the enemies of religion, but, thanks be to God, that is not our condition. We find that in our country the presence and direct influence of the clergy would not be advisable where our citizens, without distinction of religious belief, come together in regard to their industrial interests alone. Short of that we have abundant means for making our working people faithful Catholics, and simple good sense advises us not to go to extremes.[29]

In another specific instance, the bishops of the United States quickly expressed their regret over the division that had separated the A. F. of L. and the C. I. O. and led them into conflict.[30]

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[28] Quadragesimo anno, par. 35, pp. 105-107.

[29] James Cardinal Gibbons, A Retrospect of Fifty Years, I (Baltimore: John Murphy Co., 1916), 197.

[30] "Industrial and Social Peace," Statement of the Administrative Board of the National Catholic Welfare Conference, October 14, 1938, in Raphael M. Huber (ed.), Our Bishops Speak (Milwaukee: The Bruce Publishing Co., 1952), pp. 320-21.

The approval given by Church authorities to the American labor movement is reflected in the following remarks of one of the leading moral theologians of the Catholic Church in the United States:

> In those circumstances in which distinctively Catholic unions would not be effective in protecting and promoting the economic welfare of the members--and such is surely the case in our country--it is fully permitted for Catholics to join secular unions. The words of Pius XI indicate that this is not merely a toleration on the part of the Church, but even an approbation of membership of Catholics in such organizations.[31]

In the United States, unions divided along religious, ideological, or political lines would be weak and ineffectual. There could be no real collective bargaining. As necessary institutions in a complex industrial society, unions must be strong, effective, and on an equal footing with management in bargaining over the terms of employment. To say the contrary while upholding the right of workers to organize is no more than double talk.

Reasonableness of the Union Shop

Many of the moral problems alleged to inhere in the union shop dissolve when employers, employees, and citizens in general make a clear affirmation of their conviction that strong, effective unions are necessary for the majority of wage earners in the United States. Since much of the opposition to the union shop is, in reality, opposition to the existence of strong unions, once the latter hurdle disappears the question of the reasonableness of the union shop as a device for making unions effective can be briefly presented.

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[31] Cf. Francis J. Connell, "Catholics in Labor Unions," The American Ecclesiastical Review, XLII (June, 1947), 425.

American Conditions

An effective and responsible union must first be a secure union. Many employers readily acknowledge this to be a fact. Practical experience in the United States has proved that a union shop is one of the most important means of obtaining union security. The almost universal apprehension of union leaders over union insecurity is no mystery. They have constantly been faced with the problem of those employers throughout the country who discourage union membership or discriminate against members. When all employees belong to the union, this problem disappears. The security of unions has also been frequently jeopardized by high employee turnover that is normal in many industries in the United States. Faced with this problem, a union that lacks the protection which a union shop affords must carry on continuous organizing campaigns to the detriment of responsible and mature representation of the employees. This situation usually creates tension, and more so when the employer discourages union membership, or the community is unsympathetic to unions. Smaller unions with weak financial reserves find both organization and survival problems frequently magnified without a union shop.[32]

To serve effectively in this day and age, an organization requires financial support. While there may be little problem on this score for some of the largest unions in well organized trades and industries, the problem is a common one for many locals and for many of the smaller national unions. Some opponents of the union shop look upon the exaction of dues as synonymous with the power to tax. Others disagree and regard these financial payments as a legitimate charge justly made by an agent whose services the employee must use,

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[32] Cf. supra, pp. 149-53.

at least on some occasions. Congress itself seems to have favored the latter opinion by permitting unions to collect reasonable sums of money as the only requirement of a union shop. The agency shop or payment of a bargaining fee without the requirement of union membership are possible substitutes for the union shop as a means of providing the bargaining agent with sufficient funds to fulfill its purpose.[33]

Part of union financial embarrassment is undoubtedly due to the apathy and lack of social consciousness of many American workers. It is all too true that a good many union members tend to drift out of a union when they have no pressing needs or when the union fails to dramatize by constant aggressive action the services it performs for members. At times, apathy must result from the apparent hopelessness of influencing union policies that are controlled by an entrenched faction. More frequently it seems to reflect the typical public apathy toward participation in other associations and in civic and political affairs, as well as employee indifference as long as wages and working conditions are satisfactory. The Taft-Hartley policy of reducing membership requirements to nothing more than a financial obligation may also have contributed to the apathy of many members.[34]

Besides enforcing a financial obligation on members, the union shop can significantly enhance union effectiveness in at least one other respect. It allows a greater measure of orderly authority without which an organization cannot function effectively. A union whose every decision must be made on the basis of whether the action will gain or lose members is not likely to develop into a responsible organization. Where the "right-to-work" law has banned the union shop, some unions have had to be much more careful to respond to every

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[33] Cf. supra, pp. 133-34, 136-37, 163-68.

[34] Cf. supra, pp. 258-62.

member's grievances and demands, even when they are ridiculous or irresponsible, in order to keep the loyalty of the total membership. What actually occurs is that unions become more responsive to a small vocal minority that threatens to leave the union than to the common good of the organization or of the entire work community. To be a responsible and effective organization, a union must be secure both from pressures exerted by the employer and from selfish domination by a minority of its own members.

Curtailment of Individual Freedom

If the union shop helps to make a union effective, it is still necessary to strike a balance between the needs of the union and the freedom of employees. Many arguments advanced against the union shop pay no heed to the needs of a union if the union is to achieve its purpose. While union effectiveness is no excuse for denying basic natural rights, unlimited freedom of each individual person does not exist in other areas of society, and it cannot be expected to obtain in the economic community. Many workers will readily concede that by being party to a union-shop contract to strengthen their union they are limiting their right not to join a union. This limitation of one right seems reasonable to them, however, because it opens the door to the fulfillment of other rights that must be foregone without collective action. These rights would obviously include the exercise of some control over wages and conditions of employment and the protection from discharge without just cause.

Probably the most valid basis for believing that the union shop of itself involves no unreasonable curtailment of individual liberty is the modest burden which, under federal law, union membership imposes upon an employee. The extraordinarily limited definition of what constitutes union

membership, moreover, is the chief reason for believing that the attack on the union shop is often a camouflage for denying the necessity of strong unions. Under the Taft-Hartley law, as interpreted by the NLRB and the courts, the union shop in any industry under the jurisdiction of the NLRB requires no more of an employee than the payment of reasonable initiation fees, periodic dues, and assessments to the union that legally represents him in a collective bargaining contract.[35] The liberty conferred, therefore, by a "right-to-work" law, correctly interpreted, can only be a financial one, that is, it frees the employee from the obligation of making a monetary contribution to the union that is his bargaining agent. The federal law prohibits all other obligations, unless the employee voluntarily consents to them.[36] Some of the state "right-to-work" laws prohibit only a contract requiring union membership as a condition of employment and have been interpreted to permit an agency shop or compulsory bargaining fees from represented employees. In such cases the law is virtually meaningless in industries that lie within federal jurisdiction. Only in those quite limited areas of commerce where state jurisdiction exists over labor matters does the "right-to-work" law excuse the union member from obligations that might be imposed because the federal law does not apply.

While it is true that a new employee in an organized firm, or an old employee who voted against the union selected by the majority, is denied, at least for a time, the freedom to bargain individually, this loss of freedom is not the consequence of a union shop but of the law providing for collective bargaining. The Supreme Court found that this procedure is permissible because the common good of all the employees has precedence over the good of an individual. The Court ruled: "The very purpose of providing by statute for

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[35]Cf. supra, pp. 172-81.

[36]Cf. supra, pp. 99-106.

the collective bargaining agreement is to supersede the terms of separate agreements of employees with terms which reflect the strength and bargaining power and serve the welfare of the group."[37] The principle underlying this ruling conforms to the natural moral law when both goods are of the same genus.[38]

The true common good is not a hindrance to individual good. Instances frequently occur, of course, when the individual citizen must subordinate his private interests to the general welfare. Without the common good of the group and the state, the individual good is impossible. Since the individual is a part of the group and the state which enable him to achieve his ends, he must necessarily be concerned about promoting the common good.[39] While there is no particular reason to believe that a labor union is always intent on the common good, there is even less reason to believe that no union promotes the common and individual good of its members and the whole work community.

Some Safeguards

Nevertheless, there is no doubt that safeguards for employees are needed. There is a genuine danger to individual freedom in the union shop, as advocates of the "right-to-work" laws constantly point out. Corrupt leaders have been known to entrench their position behind the advantages afforded by the union shop. It has been used by some officers as a shield for abusive and tyrannical leadership.

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[37] J. I. Case Co. v. N.L.R.B., 321 U.S. 332, 338 (1944).

[38] Cf. St. Thomas Aquinas, Summa Theologica, II, II, q. 152, art. 4, ad 3; translation by Fathers of the English Dominican Province (New York: Benziger Bros., Inc., 1947), II, 1809.

[39] Cf. ibid., II, II, q. 47. art. 10, ad 2; trans., II, 1395. Cf. Cox pp. 58-60; Cronin, pp. 75-76; Kelly, pp. 88-91; Messner, Social Ethics, pp. 122-23.

Moral authorities who endorse the union shop, it is worthy of note, invariably cite conditions that must be present to safeguard the rights of individual members. One of the clearest statements in this regard has been made by the General Board of the National Council of Churches of Christ in the United States. The Board declared that the union in question should be one recognized by established processes as representative of all employees in the bargaining unit and that the union-shop provision should be subjected to periodic review by the parties to the agreement. There should also be provisions in union constitutions to prevent abuses, the Board said, and these provisions, which should be made enforceable in the courts, ought to include such elements as the following:

> 1. Open membership without excessive initiation fees and dues, and freedom from discriminations of race, creed, color, national origin, and sex.
> 2. Free and regular elections of union officials with ample provision for free and secret expression of opinion on nominations, elections, and policy issues.
> 3. Adequate protection against arbitrary or discriminatory treatment of those who hold a minority opinion on union policy and practices.
> 4. Adequate protection for those individuals who, for reasons of religious belief, cannot participate in all conditions of membership.
> 5. The means whereby members may appeal the decisions of unions, or officers of unions, especially in those instances involving expulsion. Union provisions should be exhausted before turning to the courts.[40]

A pastoral letter issued by the Catholic bishops of the Glasgow province in a heavily industrialized section of Scotland also warns that where the union shop is instituted, "safeguards should be taken to ensure that the rights of the individual are not likely to be jeopardized or workers victimized by some

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[40]"Ethical Issues in Industrial Relations of Concern to Christians," A Policy Statement of the National Council of Churches of Christ in the United States of America, Adopted by the General Board, December 2, 1959, pp. 2-3.

pressure or power group among their fellow workers."[41]

Federal legislation in the United States provides several safeguards for individual union members through democratic elections. These safeguards cover most workers who join unions. Only those employees are unprotected who work for firms which do not substantially affect commerce and over which the NLRB has declined to assert jurisdiction. In these areas the state courts have jurisdiction as provided in the Labor-Management Reporting and Disclosure Act adopted by Congress in 1959.[42] According to federal law, a union cannot require membership unless it has been chosen as the bargaining agent by a majority of employees in an election conducted by the NLRB. There can be no legal or enforceable union shop without the employer's consent expressed in a written contract signed by the employer and the union. Furthermore, neither the union shop nor union representation is necessarily a permanent fixture in a firm. The law permits periodic challenges and also provides for both deauthorization and decertification elections when 30 per cent of the employees in a bargaining unit petition the NLRB. If a majority of those eligible to vote oppose the continuation of the union shop, the contract clause providing for such is immediately void. Similarly, if a majority votes against representation, the contract itself becomes void.[43]

Other forms of protection are also available to the employee. As long as he pays union dues and fees uniformly required of all employees, he cannot be required to attend union meetings, take an oath of loyalty, strike, picket, pay fines or special assessments, nor can he be lawfully prevented from per-

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[41] The Bishops of Glasgow, "Principles Governing the Just Strike," A pastoral letter of December 4, 1955, Catholic Mind, LIV (July, 1956), 420.

[42] Cf. supra, p. 421.

[43] Cf. supra, pp. 282-94.

forming acts that might jeopardize the union's security. His uncooperative actions may lead to his expulsion from the union, but they cannot be a cause of discharge from his job. The employee who feels his rights have been denied by the union may plead his case before the union's appeals system, and, if he still feels he has been unjustly treated, federal legislation provides for an appeal to the NLRB, to the courts, and to the Secretary of the Department of Labor. State laws provide a variety of other safeguards.

Additional safeguards may be desirable. To reduce the possibility of duress on employees, a secret vote might be provided by law to determine if they want a union shop, a procedure that would be similar to one provided in the original Taft-Hartley Act before the 1951 amendments. The Taft-Hartley polls were possibly more of an expression of loyalty to the union than a clear approval of the union shop. If polls were established and again showed overwhelming support of the union shop comparable to that given in the earlier polls, many of the arguments calling for "right-to-work" laws would be quashed. A defeat of the union shop, on the other hand, would not mean a loss of union certification, but the defeat would reveal to union leaders and the public alike that something was wrong in the union. To safeguard the employer from extreme demands or unreasonable coercive pressure, provision could be made for his right to appeal to the NLRB or to a federal court if he believed, on reasonable grounds, that his or the employees' welfare would be jeopardized by requiring membership in or payments to the union as a condition of employment. More extensive problems of protecting individual freedom which urgently need solution in many more areas than that of the union shop include lax law enforcement and unreasonably long delays in processing cases before the courts and the NLRB.

Some Exceptions

The circumstances which can make the union shop a reasonable device for ensuring effective unions do not prevail in every place of employment. Some unions, for example, are in a healthier and happier condition if they do not have to take in unwanted employees or malcontents. Moreover, in some non-industrial situations the union shop does not fit. The union shop is unreasonable in a place where a union is engaged in the initial stages of organizing employees. At times, a union-shop contract may be sought only as a passive substitute for aggressive persuasion and organizing effort. Furthermore, when the device is used to threaten employees or to enrich corrupt leaders, it has no claim to reasonableness. Under some circumstances the use of dues money for purposes other than collective bargaining may raise questions about the union shop. Drawing the proper line, however, is most difficult, particularly when some of the money is used for political purposes with only the remotest connection to collective bargaining. This issue is not at all clearcut, because unions can scarcely avoid political entanglements at a time when labor-management relations are becoming more and more subject to government control and hence are becoming political issues. The problem is just as real for corporation officers who are using stockholders' money to promote their own political views and programs. Each of the above cases must be judged on its own merits.

Evaluation of the "Right-to-Work" Laws

It is within the framework of the free society that the "right-to-work" laws ought to be evaluated. Freedom is a postulate of the human person, arising from his very nature. To the extent that man is not free, his power

of self-determination to attain his temporal and ultimate ends is frustrated, and the natural development of his personality is inhibited. Man's nature, however, also requires that he seek his goals as a member of society, since many of his basic needs cannot be satisfied except through social cooperation. Freedom, in the social order, cannot be an absolute, for, if there were no limits to individual freedom, society would inevitably fall into a state of anarchy. On the other hand, whatever limitations are imposed on individuals must be directed toward greater freedom for all the members of society, that is to say, toward more effective social cooperation necessary for individual fulfillment.

Content of the Laws

The content of the "right-to-work" laws may be considered from two points of view, first, the wording of the laws themselves, secondly, the necessary consequences or implications of the laws as distinct from their contingent effects. As will also be pointed out, the title given to the laws has obscured their content for many people.

On the face of it, the purpose of the laws does not appear to do anything more than to protect the liberty of the worker from arbitrary control by a union. In itself this seems to be a laudable objective. Generally speaking, liberty is to be preferred unless there is some compelling reason for limiting it. Accordingly, the content of these laws seems to be in harmony with liberty of the individual and does not necessarily interfere with the performance of an individual's social obligations. On the one hand, the laws do prevent a union or an employer from coercing a worker into a union. On the other hand, they do not prevent a worker from joining a union. In itself the legislation does not necessarily weaken or destroy organized labor. As

pointed out previously, the tradition of freedom to join or not join a union has worked out quite successfully in many circumstances.

Nevertheless, certain necessary consequences of the "right-to-work" laws create serious difficulties in a democratic society. One such consequence is that these laws necessarily deprive the parties directly concerned of their freedom to establish the form of organizational government which seems most appropriate to them. As will be noted later, there are circumstances in which both parties find the union shop mutually advantageous. Because circumstances in the United States vary so greatly from one industry to another and even from one firm to another in the same industry, neither a legislature nor the voting public can possibly be thought to be as fully informed as the management and the employees of a particular firm concerning whether a contractual provision for a form of union security will be helpful or harmful to the individual and the common good. Outsiders are seldom in a position to know whether a union-shop clause in a particular collective bargaining contract will endanger freedom, split loyalties, promote antagonisms, and distrupt production, or whether it will improve morale, promote peace and stability, and protect the economic interests of everyone covered by the contract. Since a prudent decision on any question can be made only with adequate knowledge of the precise circumstances in a given situation, the matter of a union shop seems, therefore, to belong among those conditions of employment that should be decided by collective bargaining between an employer and his employees. It is their responsibility, and it is a proper exercise of democracy in a free society. If the effects show that a mistake has been made, a contract can be much more easily changed than a statute.

Religious leaders have clearly affirmed that the matter of union security is to be decided within the trade or firm and not by the state.

Thus the Catholic hierarchy of Quebec, in a statement previously noted, declared: "It is up to the employers and employees to determine, according to given circumstances, through a collective agreement, the formula by which the union security will be assured in every case."[44] Similarly, the General Board of the National Council of Churches of Christ has said: "Union membership as a basis for continuing employment should be neither required nor forbidden by law: the decision should be left to agreement by management and labor through the processes of collective bargaining."[45] A statement by the bishops of the Ohio Catholic Welfare Conference reads:

> If state statutes were to make such a condition of union maintenance mandatory, we would oppose them as unwise, if not unjust. If state statutes, however, were to forbid the enforcement of such a condition, when mutually accepted by management and labor through collective bargaining, then we would be equally opposed. We believe it is unwise to encourage State intervention in this matter, whether it be in favor of "right-to-work" laws or against them.[46]

State intervention through a "right-to-work" law not only tends to impair collective bargaining by making the crucial question of union security a political issue beyond the control of the affected parties, it also weakens union incentive for self-regulation and self-responsibility which are essential to good social order. The "right-to-work" laws reflect, in fact, a tendency on the part of both federal and state governments to question whether collective bargaining can be trusted to function for the good of all concerned. Furthermore, insistence on absolute freedom of the individual employee to join or not join a union that represents him appears to disregard the essential value of union stability and security as prerequisites for

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[44] The Problem of the Worker, p. 43.

[45] "Ethical Issues in Industrial Relations," p. 2.

[46] "'Right-to-Work' Laws," Catholic Mind, LVI (September-October, 1958), 478.

union responsibility. The insecure union tends to lay so much stress on its right to be an effective union that it belittles the importance of ethical standards, individual rights, and democracy as beside the point if the union fails to secure its position. Effective self-regulation is not very feasible in an organization in which members may enter and leave without penalty or loss of status. In a somewhat comparable situation, the integrated bar associations in some twenty-six states and the medical societies, by means of compulsory membership required under state law, have been able to establish and enforce standards which keep the necessity of government intervention at a minimum. In addition, it should be recognized, these associations have felt free, as have the unions, to use some of their funds to engage in political activities, lobbying, education, and social entertainment which they consider advantageous to the members of the legal and medical professions.

The "right-to-work" laws, moreover, encourage the violation of justice insofar as they give legal protection to one who does not pay for the services of a union. The certified union *is* required by law to represent fairly and equitably all the members of the bargaining unit. When the union is fulfilling its part of the contract, the open-shop law tends to obstruct exchange justice between the union and the employee who refuses to pay a reasonable sum of money for the representation which he receives and usually finds necessary and cannot altogether keep from using.[47]

A matter of social justice is also involved. The "right-to-work" law wraps in a protective mantle the individual who denies that he has any responsibility to associate with or assist his fellowmen in achieving their economic common good. While these statutes do not prevent an employee from

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[47] Cf. supra, pp. 135-42.

fulfilling his obligations under social justice, they do deny that the state has any responsibility to see that the obligations are met or even encouraged. The primary duty of the state, however, is to promote the common good, not only of the state itself, but also of its constituent members, whether they are individuals or associations that assist individuals. Certainly one of the ways the state promotes the common good is by promoting healthy institutions within the state.[48] The content of this legislation, therefore, while it protects the rights and freedom of some employees, interferes at the same time with the rights and freedom of those employees and employers who find the union shop advantageous.

It should be understood, moreover, that the content of these statutes has nothing to do with the "right-to-work" slogan that is attached to them. The term is misleading, and deceptive. Accordingly, it has led to heated disputes over terminology and endless difficulties in semantics, which can confuse even the least biased citizens.[49] The most obvious meaning of the "right-to-work" is that man has the right to engage in economic activity. Under present economic conditions, gainful employment is a necessity for most men. Understood in this traditional sense, the right to work is a principle of the natural moral law. As such, it is an abstraction that has no legal sanction attached to it. To be effective, the right to work would have to be declared a legal right by positive law. If it were, it would establish for the worker a claim upon the community to provide him with gainful employment under decent conditions. Legislation of this nature was at one time considered by the Congress of the United States. One draft of the bill that

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[48] Cf. Jerome L. Toner, "The Right-to-Work Laws and the Common Good," Review of Social Economy, XVIII (March, 1960), 12-14.

[49] Cf. supra, pp. 350-59.

eventually emerged as the Employment Act of 1946 proposed to make the right to work effective by ensuring every citizen the opportunity for employment. Congress refused to incorporate this right into law.[50] In fact, legislative tradition in the United States has never sanctioned this right as a legal right, and certainly the so-called "right-to-work" laws do not do so. The term should never have been applied to a statute that was not intended to determine the natural right to work to be a legal right.

Circumstances

If the content of the "right-to-work" laws raises some serious moral objections, the circumstances in which the laws are applied are even more disconcerting. Under conditions widely prevailing in the United States, there are many cases in which the union shop is a reasonable arrangement. In the first place, by the very fact that the device provides for a degree of union security, it can be an important factor in stabilizing industrial relations. Obviously, this is of benefit to both employers and employees. Furthermore, the basis for many of the objections to the union shop on the part of employers has been removed by the safeguards which are contained in the Taft-Hartley Act.

As pointed out previously, the casual-labor industries, such as construction and longshoreing, present difficulties that are quite different from those found in most other industries.[51] In the former, the closed shop, a more restrictive form of compulsory membership than the union shop, has been traditional and widespread, and no substitute device has been found that offers

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[50] Cf. Stephen Kemp Bailey, Congress Makes a Law: The Story Behind the Employment Act of 1946 (New York: Columbia University Press, 1950), pp. 57, 116, 166-67.

[51] Cf. supra, pp. 200-21.

equal possibilities of stabilizing the labor market and providing minimum standards of training, skill, and other conditions of employment. Unless fixed terms can be established by agreement in the local casual-labor market, there is frequently irresistible pressure on employers and contractors to lower wages and other work standards. Admittedly, the closed shop has led to abuses. Nevertheless, the practice works tolerably well in many areas and finds support among both contractors and employees where it fills an essential need. For this reason, it has remained a standard practice in many labor markets years after it was outlawed by the Taft-Hartley Act and also by the "right-to-work" laws.

It seems possible that, given the determination to do so, a series of government-sponsored conferences between all parties concerned could hammer out a code of ethics and norms for a type of union membership and hiring-hall arrangement that would safeguard the public interest while providing a framework in which the unions would be reasonably secure in these highly competitive casual-labor industries. At least the law should not prevent, as the "right-to-work" laws do, the establishment of some kind of agreement in instances where a large majority of employers and craft unions demonstrate that a stabilized hiring procedure is conducive to individual dignity and to the general welfare. Because of their all-inclusive scope, the "right-to-work" laws make no allowance for the rather large number of cases that may require a union or a closed shop if a union is to be effective.

Effects

In the "right-to-work" debate, the contingent effects which have been alleged or predicted to follow upon the enactment of the statutes have been given far more attention than either their content or the circumstances in

which they are applied. An evaluation of the "right-to-work" laws, as a matter of fact, receives only meager assistance from a consideration of the effects of the laws because, for the most part, the effects are either obscure or non-existent. The statutes have accomplished some good by enjoining the denial of individual rights where the issue has been litigated. In many of the cases that have come before the courts, however, the same or a similar remedy could have been as readily applied under other state or federal statutes.

The "right-to-work" laws have had few other salutary effects. The economic effects of these laws are generally not ascertainable. It cannot be said that the statutes have improved industrial relations. They have not noticeably decreased the incidence of strikes. The embittered feelings aroused in the "right-to-work" campaigns have not lessened; if anything, they have become more embittered. Where mutual respect existed in labor-management relations, the laws have seldom had much impact. Where relations were already acrimonious, they have been further irritated. The laws have not established a balance of bargaining power.

The "right-to-work" statutes have had little direct effect on the labor movement. Unions, in general, have lost few members because of these laws, and the strong unions have not been weakened by them. The legislation has completely failed to correct the kind of union abuses that led many people to vote for the laws--abuses such as racketeering and corruption which can be eliminated only indirectly by the "right-to-work" laws, provided so many members threaten to leave the union that it faces extinction, and the leaders feel compelled to make improvements. Even where flagrant abuses are known to exist, the great majority of union members seem to feel that the alternative of no membership provided by the laws is of less benefit and more hazardous than union membership, even though the ex-member cannot be discharged from his

job for leaving the union. The statutes provide no protection for the rights of workers who choose to stay in unions.

The paucity of significant effects, it has been observed, is probably due, to some extent, to the widespread disregard and violation of the laws by both management and labor.[52] In innumerable instances both parties continue to act as if the statutes had never been enacted. Considering the long tradition of the closed and union shops in the operating patterns of certain industries, some say that work would cease if the laws were enforced. Production schedules would certainly be interrupted in some places. In fact, one candid employer remarked: "This law is making liars out of some of the most respected citizens of Virginia."[53] The difficulty encountered in enforcing the "right-to-work" statutes is probably the most damaging charge made against the legislation. A law that is passed in the heat of emotion and then ignored, or one that is unenforceable, raises grave doubts as to whether it is an ordinance of reason, which every good law must be.

A Symbol at Stake

If the direct effects have been relatively so insignificant, why have attitudes toward the "right-to-work" laws remained so inflexible? The only adequate explanation seems to lie in the fact that the laws have taken on a symbolism which is at the root of the entire controversy. This reasoning is lucidly set forth by Professor Frederic Meyers as follows:

> What is at stake is the political power and public support of management and of unionism. The groups supporting the proposals . . . wish essentially to make a public demonstration of the power to defeat the labor movement in the political arena. "Right-to-Work"

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[52] Cf. supra, pp. 490-96.

[53] Quoted by John M. Kuhlman, "Right to Work Laws: The Virginia Experience," Labor Law Journal, VI (July, 1955), 459.

> proposals have become a convenient symbol for this purpose, perhaps because, in effect, they do mean so little, and perhaps also because vested interests in organizations formed to promote the statute have served to keep it as a symbol. The labor movement can do little but respond with the most strenuous effort to have it rejected.[54]

The "right-to-work" law has come to symbolize for all affected parties a shift away from the earlier federal policy of encouraging workers to organize in unions and toward a public policy of neutrality of actual opposition to unions. The statute has created an unquestionable psychological barrier to the acceptance and growth of unions in some locales.[55] As a consequence, the enactment of "right-to-work" statutes seems to have hurt some weak and smaller unions, especially among unskilled workers, and prevented the establishment of new local unions. This failure of union organization, however, is not due to the ban on the union shop. It is due to the hostile climate that prevails against unions in those states where groups and organizations, totally opposed to present-day unions, have succeeded in expressing their opposition through the enactment of a symbolic "right-to-work" law. The enactment of the law signifies to the average worker that public policy encourages resistance to union organization on the part of the employer and the community.

It seems quite probable that the union shop would rapidly cease to be an important symbol of union status if the necessity of strong, effective, and responsible unions was clearly affirmed in every sector of American business. The issue would probably become as unimportant a question in the United States as in most other industrial societies. Even today, especially in those cases

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[54] "Right to Work" in Practice (New York: The Fund for the Republic, 1959), pp. 45-46.

[55] Cf. supra, pp. 477-79.

where employee turnover is small or where employers accept unions as a normal part of the industrial picture, many unions could survive quite easily without a union shop. If effective unions were fully accepted as necessary in all sectors of American industry, the union shop would not be necessary to assure unions that their bargaining rights would be maintained. The rights of individual members, on the other hand, would still need adequate protection, which the "right-to-work" laws have not provided.

Conclusion

An ethical and social evaluation of the "right-to-work" laws can be drawn from some of the principal points made in this study. Whether these laws are judged to be reasonable or unreasonable is an issue that ultimately reduces itself to the question of whether unions are necessary or not. This question is the very core of the "right-to-work" controversy. The impact of the laws themselves seems to flow largely from their symbolic nature, but the roots of the conflict are buried in the very essence of industrial relations. For that reason, the problems inherent in union security will not be less significant even when public interest in them is distracted by some other more pressing controversial issue. The unions will continue to feel that they must have the support of all represented workers when union security is lacking. Conversely, those who oppose unions, or question their necessity, or believe that unions have become too strong, will continue to advocate more individual freedom and less government support of unions engaged in collective bargaining.

Admittedly, collective bargaining is not the perfect or final answer for ensuring labor-management peace, so necessary for social order. On the one hand, the system, generally speaking, has tended to minimize the social

value of retaining or increasing the power to make decisions at the level of the local plant and the local union. On the other hand, it is an inadequate system for solving major problems that affect an entire industry or the whole economy. At the present time, nevertheless, collective bargaining is the best system available, and it satisfies, within its limits, a profound need of human relations in American industry. The system has proved to be one of the great bulwarks of economic freedom in modern industrial society. While the state must watch over it for the sake of the common good, collective bargaining does promote self-determination alike for labor and management within a framework of the needs and goals of each, and, as the relationship between the two parties has matured, genuine mutual respect has often developed.

The statutes which have emerged from the dispute over the union shop have, regrettably, not only failed to improve the collective bargaining relationship, but they have hampered it and muddled the climate necessary for mature bargaining. While the controversy has perhaps drawn needed attention to many abuses and to the importance of freedom in the economic system, the statutes themselves have interfered with and upset an institutional arrangement that many employers and employees have freely accepted as conducive to, and even necessary for, orderly industrial relations and collective bargaining. Under this legislation, employees are encouraged to act as if they had no responsibility to support their legal representative in the negotiation and administration of a contract when both parties to the contract believe it improves their relationship. Outsiders, that is, both the voting public and state legislatures, have assumed the responsibility of deciding through statutory measures what is the best form of relationship between an employer and his employees, even though experience warns that labor legislation

however carefully devised, rarely corrects all abuses in particular areas without at the same time damaging satisfactory arrangements in other areas.

The campaign to enact "right-to-work" laws has crystallized and aggravated bitter relations between employer and employee. It has brought forth unrestrained and often intemperate criticism of the entire labor movement, which continues to enjoy the respect and loyalty of the great majority of its members. It has spurred fresh resistance to the right of employees to organize. Moreover, by compelling all unions to take a defensive position and to give more attention to political action, the intensity of the "right-to-work" controversy has retarded the development of union self-regulation and awareness of the public interest that would benefit the whole economy, and it has held back unions from becoming more adequate instruments of democracy.

The "right-to-work" laws, furthermore, are a restatement of the discredited theory that individuals can be free only when they are released from the obligation of social responsibility and of association with their fellowmen. The laws do not recognize that some individual rights of employees can be enforced or safeguarded only by collective action through the instrumentality of a strong and effective union. It is true that unions can abuse their power by arbitrarily denying the right of some employees to work, but, on the other hand, it is equally true that unions can actually strengthen that right by the elimination of arbitrary decisions on the part of management concerning the nature and tenure of employment.

This legislation has injected the state into an area that affects individual responsibility. It withdraws from both management and labor the duty and the right to negotiate a condition of employment suitable to their own needs. The support given these statutes exposes the willingness of many people,

who are often strongly opposed to government intervention in other areas, to approve the regulation of industry by new laws which make no allowance for employment needs in widely varying circumstances.

Accordingly, the statutes have been flagrantly abused and ignored. Because they are poorly enforced, and often cannot be enforced, they invite violations. The emotionalism which has risen to outlandish heights during most of the "right-to-work" campaigns has not been sustained in zealous enforcement of the statutes after they have been enacted.

Not only the breakdown of law enforcement, but also the content and the circumstances of the "right-to-work" laws create serious doubts about the wisdom of this legislation. The content is arbitrary in its discrimination, favoring those who are unconcerned about the needs of the people they work with and restricting those who urge more social cooperation to satisfy their needs. The circumstances which surround the laws, while suggesting the desirability of additional safeguards for employees who may be denied their rights, frequently show the fairness of organized labor's claim to more effective security. Finally, the effects of the statutes reveal that the legislation is not worth the effort required to enact it.

In view of the foregoing implications of the "right-to-work" laws, it can be seriously questioned that these laws are an exercise of prudent public policy. They have failed to be practical principles which can serve as criteria of action, as all good laws must, and they do not appear to have been advantageous to the economic common good of most employees or many employers. They have not contributed to better social order.

Industrial relations in an advanced economy of the modern world are indeed complex and require constant examination and re-evaluation. The "right-to-work" controversy has compelled a searching look at the deep

disagreements which lie only a little below the surface of the American industrial scene. But the ill-will created by the dispute has had a most disquieting impact on the quest for industrial peace. The nation might well have benefited much more had the energy and resources poured into the "right-to-work" campaign been directed instead toward securing effective unionism and promoting truly effective safeguards for all employers and employees in American industry.

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