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Daniel H. Pollitt

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# RIGHT TO WORK LAW ISSUES: AN EVIDENTIARY APPROACH

DANIEL H. POLLITT\*

In 1944, Florida enacted the first right-to-work law: "The right to persons to work shall not be denied or abridged on account of membership or non-membership in any labor union, or labor organization."<sup>1</sup> In 1947, Congress expressly provided in section 14(b) of the Taft-Hartley Act that the individual states would be free to make any right-to-work laws they might enact applicable to inter-state as well as to intra-state commerce.<sup>2</sup> With this congressional go-ahead, ten states, located primarily in the Southeastern portion of the United States, immediately followed Florida's lead with the enactment of right-to-work laws.

Thereafter each succeeding year saw right-to-work law proposals before the voters or legislative bodies of one or more states. In 1958, such laws were on the ballots in six states: approved in agricultural Kansas, rejected in Washington, Colorado and Idaho, and overwhelmingly defeated in industrial Ohio and California.<sup>3</sup> The issue of right-to-work has reached the ballot or legislative stage of development in at least forty states: nineteen states, mostly in the South, North Central, and Rocky Mountain area, have adopted them; four other states first adopted and then repealed them; and twenty states, mostly industrial, have rejected them.<sup>4</sup> The matter is not at end, however, as labor groups

\* Associate Professor of Law, University of North Carolina.

<sup>1</sup> FLA. CONST. DECLARATION OF RIGHTS, § 12 (1944). The constitutionality of state right-to-work laws was sustained over union objection that they (1) violate freedoms of speech, press and assembly, (2) impair the obligation of existing contracts, and (3) deprive unions and employers of equal protection and due process of law. *Lincoln Union v. Northwestern Co.*, 335 U.S. 525 (1949); *AFL v. American Sash Co.*, 335 U.S. 538 (1949).

<sup>2</sup> "Nothing in this subchapter 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." 61 STAT. 151 (1947), 29 U.S.C. § 164(b) (1952). One commentator concludes that this provision authorizes states to outlaw labor-management contracts requiring union membership as a condition of continued employment, but not those contracts requiring the non-union employee to contribute an amount equivalent to union dues. Toner, *The Taft-Hartley Union Shop Does Not Force Anyone To Join a Union*, 6 LAB. L.J. 690, 695 (1955). This issue is of little practical importance however, as a union which charges fees from services rendered non-members thereby jeopardizes its status as the bargaining agent. *Hughes Tool Company*, 104 N.L.R.B. 318 (1953).

<sup>3</sup> N.Y. Times, Nov. 6, 1958, p. 19, col. 1.

<sup>4</sup> The status of right-to-work law legislation in the 48 states is given in SULTAN, RIGHT-TO-WORK LAWS: A STUDY IN CONFLICT 56-61 (1958).

have announced a purpose to seek repeal of state laws where they exist and, the amendment of that portion of the federal labor law which permits their enactment.<sup>5</sup> The problem of "right-to-work" will probably continue as a societal issue for years to come.

The recurrent problem presented by right-to-work legislation has caused great public debate. It takes twenty-three typewritten pages to list the articles carried on the subject by various periodicals.<sup>6</sup> Yet the high emotional intensity engendered by these debates has never been matched by a corresponding degree of knowledge. A Northwestern University law professor recently asked his class whether a union and a company should be permitted to agree voluntarily that all employees represented by the union in the plant should become members of the union. Of the 125 students, 84 answered yes and 41 no. Yet when the same question was asked in different terms, *viz.*, "Are you in favor of 'right-to-work' laws?" there was a complete turnabout. Eighty answered yes and 45 no.<sup>7</sup>

A public member of the Wage Stabilization Board, commenting on 1,350 letters he received when the issue of union-security was pending before the Board, tells us that these letter writers "perhaps the majority, know little or nothing about union security, and much of what they think they know is wrong."<sup>8</sup>

#### RIGHT-TO-WORK-LAWS

The term "right-to-work" is misleading. The states of Washington and Idaho refused to permit proponents of this measure to utilize the term on the ballot for this reason.<sup>9</sup> Right-to-work laws have nothing to do with full employment. The unemployed individual who wrote the *Denver Post* that he favored a right-to-work law because "it is about time that we had a state law that would guarantee a man the right to work"<sup>10</sup> was doomed to disappointment. Right-to-work law proponents frankly state that "the right to work does not mean the right of a particular individual to a particular job. The job is created by the employer, and the right to hire should remain in the employer's hands."<sup>11</sup> Nor are right-to-work laws to be confused with laws designed to eliminate racial, religious, or national origin discrimination in employment

<sup>5</sup> N.Y. Times, March 3, 1959, p. 18, col. 1.

<sup>6</sup> Hutchinson and Patterson, List of Publications on the Right-to-Work Question (1958).

<sup>7</sup> Toledo Union Journal, Feb. 21, 1958, p. 4, col. 1-2.

<sup>8</sup> Aaron, *Public Opinion and the Union Shop*, 2 SOUTHERN ECONOMIC JOURNAL 74, 80 (1953).

<sup>9</sup> AFL-CIO, UNION SECURITY, THE CASE AGAINST THE "RIGHT-TO-WORK" LAWS 26 (1958) (hereinafter cited as AFL-CIO, UNION SECURITY).

<sup>10</sup> Quoted in Cheit, *Union Security and the Right to Work*, 6 LAB. L.J. 360 (1955).

<sup>11</sup> Information distributed by the DeMille Foundation (organized to secure right-to-work laws) and quoted in SULTAN, *op. cit. supra* note 4, at 80.

practices. The DeMille Foundation states that "our opponents sometimes try to persuade the unwary that a Right To Work law is a fiendish substitute for an F.E.P. bill. It is not."<sup>12</sup> It is far more accurate to describe such legislative measures as "voluntary union membership" laws rather than "right-to-work" laws as their principal purpose is to outlaw "compulsory unionism" by making it illegal for management and a union to sign an agreement requiring all employees to join the union and/or pay union dues as a condition of continued employment, i.e. to sign what are known as "union security" agreements.

#### "UNION SECURITY" AGREEMENTS

The term "union security" agreements is used to describe a variety of contractual provisions between management and unions designed to strengthen the union by giving it some degree of control over the individual employee. Union security agreements take many forms. The most prevalent are as follows.

*Closed Shop.* A closed shop agreement is one whereby the employer agrees to hire only union members whenever there is a vacancy in his labor force. In other words, one must join the union before he is eligible for employment.

*Union Shop with Preferential Hiring.* This form of union security device requires the employer to give preference to union members in hiring and additionally requires all employees to join the union within a specified probationary period, generally thirty or sixty days.

*Union Shop.* The employer need give no preference to union members when hiring, but he does agree to require all employees to join the union within a specified length of time and to remain members during the period of employment.

*Maintenance of Membership.* Under a "maintenance of membership" agreement all employees who are members of a union at the signing of the collective bargaining agreement and all employees who later join the union must retain their membership for the duration of the agreement. Many of these agreements permit a fifteen-day period at the beginning of the contract term during which members may withdraw from the union if they do not wish to retain membership for the duration of the agreement.

*Maintenance of Union Dues.* Under this type of agreement, the employer can "check off" or withhold the union dues from the union member's pay check and deliver it directly to the union. This type of arrangement is similar to "withholding" income taxes.

Union security devices are nothing new in this country. A Boston court in 1675 recognized the right of carpenters to refuse to work with

<sup>12</sup> *Ibid.*

non-union members. The New York colonial court in 1674 ordered brewers and bakers to hire only union members as "formerly was accustomed."<sup>13</sup> When the rope makers organized in Philadelphia in 1698, the closed shop principle well may have furnished the inspirations of their Motto: "May the production of our trade be the neckcloth of him who attempts to untwist the political rope of our Union."<sup>14</sup> Prior to the Civil War the cordwainers, the carpenters, the cigar makers, the tailors, the glass blowers, the hatters, the shoemakers, the mule spinners, the carpet weavers, the stone cutters, the potters, and the longshoremen had all formed unions with provisions similar to that found in the 1842 constitution of the Baltimore Typographical Society: "Every person working at the business will be required to make application to join this Society within one month from the time of his commencing work at any office in the city. . . . On the refusal or neglect to comply with these regulations . . . the members of this Society will cease to work in any office where such person may be employed."<sup>15</sup>

Not only are union security devices of ancient lineage, they were also in common use. In 1946, the year preceding the enactment of the Taft-Hartley Act, slightly over 11 million of the approximate 15 million employees working under collective bargaining agreements were covered by some form of union security device: maintenance of membership agreements—3,695,000; closed shop agreement—3,357,000; union shop agreements—2,597,000; union shop with preferential hiring—1,497,000.

Why were union security agreements so prevalent? Why did and do unions deem it desirable to sign "closed shop" and other agreements requiring membership in a union as a condition of employment? There were and are four principal reasons, reasons which often overlap and duplicate one another.

First, in many situations there can be no union without a union security agreement. This is true in those industries marked by sporadic employment of relatively short duration such as the construction industry, the maritime industry, the tourist resort industry, the entertainment industry, and others. The union agreement must be made before employment begins or not at all. Assuming the captain of a ship was authorized by his employer to bargain with the crew, the voyage would be over and the crew paid off before the men could organize a union, elect officers, thrash out demands, and negotiate a contract with the captain. In the building trades industry, it is impossible to choose a union, elect a spokesman, and negotiate a contract before the job is completed and the employees scattered. In addition, as the character of the work changes on a construction job, there is a constant shifting of the

<sup>13</sup> TONER, *THE CLOSED SHOP* 59-61 (1942).

<sup>14</sup> *Id.* at 7.

<sup>15</sup> STOCKTON, *THE CLOSED SHOP IN AMERICAN TRADE UNIONS* 20 (1911).

work force. Excavation men, first on the job, will be followed by carpenters, laborers, bricklayers, electricians, tile layers, plasterers, etc. Frequently, a contractor may have several jobs in one area and shift his employees as required by progress on each job. The shifting character of employment on a single job makes it impossible to determine the appropriate craft or class or unit of employees that should be represented, and hence makes it impossible for a union to be organized, recognized, and go into operation prior to the termination of the job.<sup>16</sup> In 1953, the United States Senate Committee on Labor and Public Welfare, after an investigation of this matter, concluded that "the indiscriminate ban on the so-called closed shop in the Taft-Hartley law has produced a disruption of labor markets in industries with casual or intermittent employment" and recommended that this ban be lifted in the construction and maritime industries.<sup>17</sup> This recommendation was not then adopted by the Congress. The pending Kennedy-Ervin Bill would legalize contracts between building trades unions and builders before any employees are hired.<sup>18</sup> A comparable bill introduced in the House would legalize maritime and building trades hiring halls.<sup>19</sup> George Meany, who rose to the presidency of the AFL-CIO through the plumbers union, has announced that enactment of this provision is essential.<sup>20</sup>

A second reason why unions desire closed shop or other forms of union security agreements is to preserve the principle of exclusive majority representation during a strike. The National Labor Relations Act gives exclusive representation rights to the organization which is the choice of the majority. This is necessary, said a member of the National Labor Relations Board. "While there may be room for a new professional society or a new business concern, the same is not true of employee representatives. Labor representation is more like government; there simply is not room for two in the same unit under our law."<sup>21</sup>

There are several theoretical alternatives to exclusive majority representation. There could be two or even more unions operating within the same unit, each representing its own members and no one else. But if Union A wanted a seniority system based on a plant-wide unit, and Union B wanted a seniority system based on a departmental basis; or if Union B wanted a system of promotion based on seniority and

<sup>16</sup> Covington, *Union Security Elections in the Building and Construction Industry under the Taft-Hartley Act*, 4 IND. & LAB. REL. REV. 541 (1951).

<sup>17</sup> Hearings On Taft-Hartley Act Revisions before the Senate Committee on Labor and Public Welfare, 83d Cong., 1st Sess. Pt. 1, at 504-05 (1953).

<sup>18</sup> S. 505, 86th Cong., 1st Sess. Title VI (1959).

<sup>19</sup> H.R. 889, 86th Cong., 1st Sess. (1959).

<sup>20</sup> N.Y. Times, March 3, 1959, p. 18, col. 1.

<sup>21</sup> Rodgers, *Bakers' Unions: A Study In Schism, A Result: Union Division*, 45 VA. L. REV. 207-08 (1959).

Union C wanted the promotion system based on something else, collective bargaining would break down rapidly. There is the further theoretical possibility of proportional representation—each union within the plant being represented on a joint council on a pro rata basis, with the joint council ironing out differences between the unions and dealing with the employer. This possibility was actually contemplated in the auto industry during the early NRA days, but rejected. The plan of setting up “workers councils,” said the New York Times, was impracticable as it “would bring in American Federation of Labor unions, company unions, rump unions, dissident factions of the A.F. of L., and even left wing Communist Union.” “There is substantial agreement among both students and practitioners that exclusive majority representation is necessary for workable collective bargaining.”<sup>22</sup>

Under the principle of exclusive majority representation, any agreement between the union and management is binding upon all within the unit even though many of the individuals within the unit suffer thereby<sup>23</sup> and even though an individual workman may be capable of getting better terms than those obtainable by the group.<sup>24</sup> However, when no agreement is reached and a strike is called, this majority decision is not binding on the individual employee. He may now, if he chooses, accept individual conditions of employment rejected by the majority. In so doing he is denying the exclusive representation of the union and is assuming the right to act as an individual. Yale Professor Chamberlain points out that unions seek the closed shop “since they are thereby provided with disciplinary powers over those employees whose economic exigency or lack of sympathy might otherwise have led them to ‘scab,’ to use the vernacular, breaking the union’s strength at its most critical moment, weakening its bargaining power when it was most in need of exerting it. With compulsory membership, the employee who ignored the picket line could later be subjected to fine and even dismissed from his job for his derogation of group authority.”<sup>25</sup> Since right-to-work laws deprive unions of power to negotiate with employers for contracts giving them authority to discipline those who break ranks during a strike, many labor spokesmen have called them “right-to-scab” and “right-to-wreck” laws.<sup>26</sup>

A third reason why unions want a closed or union shop lies in the

<sup>22</sup> Chamberlain, *The Problem of Union Security*, 26 Proceedings of the Academy of Political Science 5 (1954).

<sup>23</sup> *Ford Motor Co. v. Huffman*, 345 U.S. 330 (1953).

<sup>24</sup> *J. I. Case Co. v. N.L.R.B.*, 321 U.S. 332, 338 (1944).

<sup>25</sup> Chamberlain, *supra* note 22, at 9.

<sup>26</sup> UNION SHOP AND THE PUBLIC WELFARE, Proceedings of the Second Annual Industrial Relations Conference, Industrial Union Department, AFL-CIO 95 (1958). (Hereinafter cited as AFL-CIO, UNION SHOP AND THE PUBLIC WELFARE.)

need for self-protection from the anti-union employer. The historic technique for destroying a union is to fire the most active and popular union members. This technique is not available to the employer who signs a closed shop contract permitting the union to designate replacements for discharged employees. This need for self-protection still exists in many industries and in many areas of the country. A 1952 Senate Report concludes that "there exists in the textile industry, primarily in the South, a widespread conspiracy to prevent union organization and to destroy those unions which now exist."<sup>27</sup> This Senate Committee adds that one of the techniques for destroying established unions is the discharge of union leaders and leading union adherents.<sup>28</sup> Witnesses before the 1957 McClellan Committee investigation of Nathan W. Shefferman testified that there exist a "legion" of labor-relations firms selling anti-union services. The principal device to this end is to ascertain the active unionists and fire them. When Committee Counsel commented that it was illegal to fire an employee because he was an active unionist and asked how this was achieved, the following colloquy took place:

*Mr. Binns.* Well, one way was, of course, putting them on other jobs.

*Mr. Kennedy.* Putting them on undesirable work? And forcing them to quit that way; is that right?

*Mr. Binns.* Well, yes.

*Mr. Kennedy.* How else was it handled to get rid of these people who were in favor of the union?

*Mr. Binns.* Well, also in this program, absenteeism and if they were accident-prone. That was the two main things. We kept a close check on them.

*Mr. Kennedy.* You were looking for causes which you could use against these individuals to get rid of them, is that right?

*Mr. Binns.* Yes, sir.<sup>29</sup>

The closed shop is the only practical method for depriving the anti-union employer of this weapon. The Taft-Hartley act affords no real protection. Processing the typical unfair labor practice charge before the National Labor Relations Board during the first four years of the Taft-Hartley Act consumed an average period of 27 months from the filing of charge to the Board decision. This delay, concluded the

<sup>27</sup> Labor-Management Relations in the Southern Textile Industry, Report of the Subcommittee on Labor and Labor-Management Relations, 82d Cong., 2d Sess., Committee Print 54 (1952).

<sup>28</sup> *Id.* at 60.

<sup>29</sup> Hearings before the Select Committee of the Senate on Improper Activities in the Labor or Management Field, 85th Cong., 1st Sess., pt. 15, at 58 (1957).



Senate Committee on Labor and Public Welfare, "is such as almost to destroy completely the effectiveness of administrative action."<sup>80</sup>

A fourth reason why unions and union members want union security agreements is to eliminate the so-called "free rider." The problem of the "free rider" comes about in this way. The union organized shop generally pays better wages than does its non-union competitor.<sup>81</sup> "Numerous studies made by the Bureau of Labor Statistics indicate that, within industries, earnings are usually but not uniformly higher in establishments having collective bargaining agreements."<sup>82</sup> Also, the employee in the organized shop enjoys better and safer working conditions and he has far more job security than does the employee in the nearby competing non-organized shop. A recent study of 500 union and non-union plants in eleven southeastern states shows that the union plant has greater fringe benefits in the form of pension plans, insurance plans, credit unions, and lunch rooms; that the union plant takes more precaution in the employment of its workers; that it insists upon compliance with safety precautions; and that the union plant is much more apt than a non-union competitor to have a promotion and lay-off system based on seniority and to have procedures with established steps to permit employees to air grievances.<sup>83</sup> Achieving and maintaining these benefits costs money which comes from union dues. But these benefits are available to each and every employee, whether or not he pays union dues, as the union is required by law to represent non-members "without hostile discrimination, fairly, impartially, and in good faith,"<sup>84</sup> and without charge.<sup>85</sup> Consequently, in the absence of a union shop agreement, there are employees who refuse to join the union and yet enjoy the benefits of working in an organized plant. These employees, called "free riders" or "free loaders," naturally are resented by the dues-paying union members and this resentment ferments a demand for an agreement requiring all employees to pay for the benefits they receive.

When President Walter Reuther of the United Auto Workers was asked by Senator Mundt why his union favored union shop agreements, he replied:

<sup>80</sup> Labor-Management Relations in the Southern Textile Industry, *op. cit.* *supra* note 27, at 63.

<sup>81</sup> The employee in the southern textile plant with a union contract receives approximately 5 cents an hour more than the employee in the plant with no union contract. *Id.* at 52.

<sup>82</sup> Lewis, *Wage Dispersion in Manufacturing Industries, 1950-55*, 79 MONTHLY LABOR REVIEW 780, 784 (1956).

<sup>83</sup> Steele, Myles, and McIntyre, *Unionism and Personnel Practices in the Southeast*, 8 IND. & LAB. REL. REV. 253 (1955).

<sup>84</sup> *Steele v. Louisville & N.R.R. Co.*, 323 U.S. 192, 204 (1944).

<sup>85</sup> The National Labor Relations Board announced that it would "decertify" any union which charged non-union employees for services which it provided union members free of charge. *Hughes Tool Company*, 104 N.L.R.B. 318 (1953).

The pressure is from the membership. I have seen situations where the fellow says, "We would rather have the union shop to make this handful of free riders pay their fare than we would like a wage increase." When you talk about the labor bosses doing these things, you are just kidding yourself. The pressure is from the rank and file, the guys who are paying their fare want everybody to pay their fare.<sup>36</sup>

The results of federal and state elections requiring member consent to the union shop contract bear this out. All but a handful of participating employees voted to authorize their union to negotiate union shop agreements.<sup>37</sup> In the first year of voting under the Taft-Hartley Act—Approximately 2,000,000 employees were concerned—98% of the elections resulted in favor of the union shop agreement, and only 4% of the employees voted against the union shop.<sup>38</sup> A New Hampshire law requiring a vote by employees prior to the negotiation of a union shop agreement brought similar results.<sup>39</sup>

The resentment by dues-paying union members, usually steady workers who have achieved skill, social recognition, and interest in their job conditions, is due in large part to the fact that the "free rider" is usually a drifter or floater.<sup>40</sup> Although the rate of labor turnover is high, it is caused by the activities of a minority of the labor force. A survey of tool and die makers, for example, shows that sixty per cent of the job changing was done by fourteen per cent of the workers.<sup>41</sup> Another type of "floater" is the farmer who seeks temporary industrial employment.<sup>42</sup> The permanently employed union members feel that these temporary employees should pay their share of the costs for maintaining the conditions which drew them to the plant with the union wages and working conditions.

#### THE TAFT-HARTLEY UNION SHOP

In 1947, following a post World War II wave of strikes, Congress decided that the pendulum of power had swung too far to the union side.

<sup>36</sup> Hearings Before the Select Committee of the Senate On Improper Activities In The Labor Or Management Field, 85th Cong., 2d Sess., pt. 25 at 10103 (1958).

<sup>37</sup> Legal requirement that employees vote to authorize the negotiation of a union shop contract rests on the assumption that the rank-and-file need legal protection from union "bosses." The results of these elections invalidate this assumption. Witney, *Union-Shop and Strike-Vote Elections: A Legislative Fallacy*, 2 IND. & LAB. REL. REV. 247 (1949).

<sup>38</sup> Hogan, *The Meaning of the Union Shop Elections*, 2 IND. & LAB. REL. REV. 319 (1949).

<sup>39</sup> *Ibid.*

<sup>40</sup> Strauss and Sayles, *Patterns of Participation in Local Unions*, 6 IND. & LAB. REL. REV. 31, 39 (1952).

<sup>41</sup> Swerdloff, *Worker Mobility In Three Skilled Occupations*, 78 MONTHLY LABOR REVIEW 772 (1955).

<sup>42</sup> Approximately 25% of North Carolina's farmers worked in "off farm" employment for 100 days or more in 1954. CARBART, *THE IMPACT OF STATE AND LOCAL TAXES IN NORTH CAROLINA AND THE SOUTHEASTERN STATES* 52 (1956).

Addressing itself to the problem of union security, Congress did several things. First, the closed shop which makes union membership a condition of initial employment was outlawed. Second, the hiring halls and other provisions offering preferential employment opportunities to union members were outlawed. Third, union and management were permitted (but not required) to negotiate for a union shop agreement requiring employees to join the union within thirty days,<sup>43</sup> provided that a majority of the employees eligible to vote affirmatively authorized the union to enter such negotiations.<sup>44</sup> Fourth, Congress provided that even if a union shop agreement were signed, the employer could not discharge an employee for failure to join the union if the employee were denied union membership because of race, religion, sex, political views,<sup>45</sup> or for any "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 union membership."<sup>46</sup> To close all loopholes on this later score, Congress made it an unfair labor practice for a labor union to charge fees or dues "which the Board finds excessive or discriminatory under all the circumstances."<sup>47</sup> Fifth, Congress gave those employees whose union had signed a union shop contract an opportunity to "deauthorize" the union shop. If thirty per cent of the workers in the bargaining unit request an election, the NLRB conducts one and if a majority votes against the union shop, it will no longer be a part of the contract.<sup>48</sup> In sum, the traditional union security agreement whereby the union can cause the discharge of the labor spy, the strike breaker, the saboteur, and the wildcat striker is outlawed; and in its place is substituted the Taft-Hartley union shop (terminable at any time by majority vote of the employees affected) under which the employee who tenders his dues cannot be discharged even if he refuses to join the union,<sup>49</sup> even if he refuses to do picket duty when his union is on strike,<sup>50</sup> even if he continues to work when his union is on strike,<sup>51</sup>

<sup>43</sup> 61 STAT. 140 (1947), 29 U.S.C. § 158(a) (3) (1952).

<sup>44</sup> This proviso was terminated in 1951 at the request of Senator Taft who commented that the elections "have almost always resulted in a vote favoring the union shop." S. Rep. No. 646, 82d Cong., 1st Sess. 1 (1951).

<sup>45</sup> "Provided further, That 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." 61 STAT. 140 (1947), 29 U.S.C. § 158(a) (3) (1952).

<sup>46</sup> *Ibid.*

<sup>47</sup> 61 STAT. 142 (1947), 29 U.S.C. § 158(b) (5), (1952).

<sup>48</sup> The NLRB is required to conduct the "deauthorization" elections even though the employees petitioning for one are not members of the union and even if the petition is inspired by the employer or by a rival union. 19 N.L.R.B. ANN. REP. 70-71 (1954). The NLRB annual reports for the years 1952-1955 show that 425 such elections were conducted with the employees voting to end the union shop in approximately 60% of the cases.

<sup>49</sup> *Union Starch & Refining Co. v. NLRB*, 186 F.2d 1008 (7th Cir. 1951).

<sup>50</sup> *NLRB v. Eclipse Lumber Co.*, 199 F.2d 684 (9th Cir. 1952).

<sup>51</sup> *NLRB v. Bell Aircraft Corp.*, 206 F.2d 235 (2d Cir. 1953).

and even if he uses his official position in the union for the purposes of wrecking it.<sup>52</sup> The only similarity between the traditional union shop agreement and that which is permitted by the Taft-Hartley Act is that both require employees who enjoy union-won benefits to pay their proportionate share of the operating costs of the union.

Finally, the Taft-Hartley Act authorized the states, in their discretion, to outlaw the union shop entirely. Section 14(b) provides that nothing in the act permitting the union shop shall be construed as authorizing such agreements "in any State or Territory in which such execution or application is prohibited by State or Territorial law."<sup>53</sup> Thereafter, the battle over the union shop, and whether it should be banned by a right-to-work law, raged in forty states with contentions running a wide gamut.

#### DO RIGHT-TO-WORK LAWS ENTICE NEW INDUSTRY?

One of the peripheral arguments advanced in support of right-to-work laws is that they attract new industry. Proponents of the laws point out that the eleven states which outlawed the union shop in 1947 have outstripped the national average gains in growth of new industry. The states of Florida and Texas are cited as illustrative. One Oklahoma editor argued that Texas and Arkansas are moving ahead in attracting new industries and that Oklahoma was standing still because "there is no Oklahoma statute which guarantees that unionism will not strangle industry; there is no 'right-to-work' law."<sup>54</sup> In 1953, Governor Byrnes asked the legislature to outlaw closed and union shop contracts so that South Carolina could compete with other southern states in attracting northern industry.<sup>55</sup>

All studies, however, indicate that right-to-work law states have not received more than their proportionate share of new industry, and that the enactment of right-to-work laws is in no way responsible for their increase in non-farm employment.

Between 1939 and 1943 the national increase in non-agricultural employment averaged 63 per cent, and the fact that the original eleven right-to-work states averaged higher is due to the fact that Florida and

<sup>52</sup> *Kingston Cake Co.*, 97 N.L.R.B. 1445 (1952). Williams, an official of union A, urged the members to join rival union B. When a sufficient number did so, a representation election was held and Williams refused to sign a non-communist affidavit for the purpose of keeping his union off the ballot and throwing the election to union B. When union A finally overcame these handicaps and won the election, Williams was expelled from the union and discharged under the union shop contract. The NLRB held this to be an unfair labor practice and ordered him reinstated. Williams at all times had tendered his union dues; the only requirement for retaining employment in a plant with a union shop contract.

<sup>53</sup> 61 STAT. 151 (1947), 29 U.S.C. § 164(b) (1952).

<sup>54</sup> Quoted in NATIONAL RIGHT TO WORK COMMITTEE, *DO RIGHT TO WORK LAWS HURT OR HELP THE ECONOMY?* (1952).

<sup>55</sup> Cox, *Federalism in Labor Law*, 67 HARV. L. REV. 1297, 1303 (1954).

Texas ranked in the top five states in terms of increased percentage. New Mexico ranked first in the nation with a percentage increase of 123 per cent, an increase attributable to the atomic energy installation, not to the fact that New Mexico refused to enact a right-to-work law.<sup>56</sup> Five of the original eleven right-to-work law states (Arkansas, Iowa, Nebraska, North Dakota, and South Dakota) were below the national average of percentage increase in non-farm employment.<sup>57</sup> In the South Atlantic region (consisting of the right-to-work law states of Virginia, North Carolina, Georgia, and Florida and the two non right-to-work law states of West Virginia and South Carolina) the percentage increase in non-farm employment was 43 per cent from 1939 to 1943, and only 19 per cent from 1943 to 1953 when right-to-work laws were in operation. In the West North Central region (consisting of 4 original right-to-work law states and 3 others) the percentage increase prior to the enactment of right-to-work laws (29 per cent) exceeded the percentage increase after the enactment of such laws (23 per cent).<sup>58</sup>

A study of the percentage increase in manufacturing employment in the eleven states in the southeast (five of them original "right-to-work" law states) demonstrates that the enactment of such laws has little or no effect on an industrialization program. The growth of industrialization in this area is not a recent phenomenon. Industrialization has shown a continuous growth since 1899 with the enactment of right-to-work laws in 1947 having no noticeable impact. The percentage increases for each decade since 1899 are as follows: 1899-1909, 58 per cent; 1909-1919, 21 per cent; 1919-1929, 14 per cent; 1929-1939, 2 per cent; 1939-1949, 39 per cent; 1949-1953, 13 per cent.<sup>59</sup>

Interviews with business concerns which did move south in the post war years demonstrate that the decision to move southward was not motivated to any extent by the existence of right-to-work laws or by a low wage scale economy.<sup>60</sup> Industry moved south for three primary reasons: interest in the southern market, interest in southern materials, or interest in the availability of southern labor.

Consumer purchasing power increased rapidly in the South during the war years of 1940-1945, largely due to government military expenditures. Forty-five per cent of the new plants that located in the South during the post war years were interested in this increased consumer market. These "market oriented plants" produce such things as automobiles, farm equipment, electrical supplies, machinery, rubber

<sup>56</sup> Wolfbein, *Changing Geography of American Industry*, 77 MONTHLY LABOR REVIEW 739 (1954).

<sup>57</sup> *Ibid.*

<sup>58</sup> *Id.* at 743.

<sup>59</sup> Robock, *Industrialization and Economic Progress in the Southeast*, 20 SOUTHERN ECONOMIC JOURNAL 307 (1954).

<sup>60</sup> McLAUGHLIN AND ROBCK, *WHY INDUSTRY MOVES SOUTH* (1949).

products, and building materials. They build the largest plants, employ the most people, and pay the highest wages. Ford, General Motors, General Electric, Westinghouse, International Harvester, National Carbon, and others which fall within this category of "market oriented" plants report that they expected to be unionized and were in fact unionized. Many of them have company-wide agreements with the home union whereby wage rates are standardized in all plants, wherever located. Running away from unions had little to do with the location of these plants.

Thirty per cent of the plants which came south in the post war years did so because they were interested in cheap electric power, natural gas, forest products, and minerals. These "material oriented" plants had no concern with avoiding unions. The most common reaction of the plant executives was that they accepted the principle of collective bargaining. One company selected a union town over an anti-union community because the company expected the new plant to be organized and did not want to be caught in a battle between union and anti-union forces.

Twenty-five per cent of the new plants which moved south did so because of an interest in southern labor. These "labor oriented" plants do not provide 25 per cent of the new industrial jobs. None of them employ as many as 1,000 workers, whereas 25 per cent of the "market oriented" plants employ over this number. Most of these "labor oriented" plants came south because of the availability of labor, a few to get cheap labor. The Norge Division of the Borg-Warner plant, for example, built a new plant in Chattanooga, Tennessee because the labor supply in the Muskegon, Michigan area, where the company's original plant is located, was inadequate to meet the requirements of the proposed expansion. The Chattanooga plant is organized by the same union that bargains for the Muskegon workers; and the company said that unionization played no part in its locational decision. Similarly, The Monroe Calculating Machine Company (of East Orange, New Jersey) and a Rockford, Illinois automotive parts company built new plants in the South because of a shortage of labor at home. Neither of these companies moved to avoid a high union wage scale, but to assure themselves of an adequate supply of labor.

There are some companies, however, which moved south to avoid labor unions. These companies are largely in the apparel, shoe, and textile industries. Just what percentage of new jobs are created by the arrival of this type of concern is unknown. However, this type of industry, the type that goes south to avoid union wages, does not increase the economic welfare of the state where it settles. It exploits rather than develops the economy, and thereby makes the region less attractive

to that industry which is "market oriented." A 1956 study of economic conditions in North Carolina clearly demonstrates this fact.<sup>61</sup>

North Carolina is far more dependent for its income on industrial wages than on farm profits. In terms of personal income payments, the largest contributions to the total are made by manufacturing enterprises (25 per cent of state income), the second largest are made in the forms of government wages and disbursements (18 per cent), the third largest source of income comes from trade and service (16 per cent), and the fourth largest is farm income (13 per cent).<sup>62</sup> North Carolina progressively becomes an industrialized state. According to the 1955 Census of Agriculture, 42 per cent of the farm operators in North Carolina are employed in off-farm work, 46 per cent of the income received by farm families is received by persons whose major occupation was in non-agricultural work, and from 1940 to 1950 there was a net migration from North Carolina farms of over half a million, whereas the net migration from the state was only half this amount.<sup>63</sup>

In spite of growing industrialization, North Carolina is still a poor state. It ranks forty-third in the nation in such things as family income, per cent of infants delivered by physicians in hospitals, per cent of homes with running water and electric lights, and per cent of persons twenty-five years of age or more who have completed five or more grades of school.<sup>64</sup>

North Carolina's low economic standing cannot be explained by the fact that there are no manufacturing jobs. It is explained by the fact that the enterprises which comprise the North Carolina industrial family (textile mill products manufacturers employ 22 per cent of all non-agricultural employees in North Carolina; lumber, 3.7 per cent; furniture, 3.4 per cent; tobacco 3.4 per cent; apparel, 2.2 per cent; and food products, 2.1 per cent) are those which are low-wage industries. In 1953, the average weekly earnings in all manufacturing industries for the United States as a whole was \$79.52 whereas the average weekly earnings in the industries which provide the bulk of North Carolina industrial jobs was considerably lower.<sup>65</sup> There is nothing desirable about industrialization *per se*. Industrialization, accompanied by low wages, is the cause, not the cure, for economic problems.

In sum, there is no evidence that industry as a whole is concerned with "right-to-work" laws when selecting a location for expansion. Of the ten states which led in the percentage of increased industrialization from 1939 to 1953, only two of them (Texas and Florida) were right-to-work states. Those industries which are either "market" or

<sup>61</sup> CARBERT, *THE IMPACT OF STATE AND LOCAL TAXES IN NORTH CAROLINA AND THE SOUTHEASTERN STATES* (1956).

<sup>62</sup> *Id.* at 54.

<sup>64</sup> *Id.* at 48.

<sup>63</sup> *Id.* at 52.

<sup>65</sup> *Id.* at 57-58.

"supply" oriented, the industries which create the largest number of jobs and pay the highest wages, prefer a high-wage to a low-wage area. It is only those industries such as apparel, shoe, and textile which concern themselves with a right-to-work law, and these are the industries which create rather than solve problems. As concluded by Mr. Carbert, if a low wage scale is the only enticement which the Southeastern states have to offer new industry, "they might as well be reconciled to a status of permanent economic colonialism. The use of low-wage Southern labor to produce products for sale in a national market represents an exploitation that is just as destructive as an irresponsible mining of natural resources. . . . Such exploitation takes the form of extracting the energies of the state without replacement and without proper compensation."<sup>66</sup>

#### DO RIGHT-TO-WORK LAWS CURTAIL STRIKES AND CREATE INDUSTRIAL PEACE?

Proponents of right-to-work laws often contend that they are desirable because they reduce the number of strikes. For example, Ray A. Nelson, Assistant Attorney General of Nebraska told a Senate Labor Committee that:

We have avoided strikes caused by the unions attempting to enforce a closed shop contract. That has been one of the biggest elements of strikes. It (the Nebraska right-to-work law) outlaws all forms of union security. So we have had the experience of having comparatively less strikes since the adoption of our amendment.<sup>67</sup>

A glance at chart number one showing the number of man days idle due to work stoppages in each state shows that in most of the original eleven right-to-work law states there were more working days lost by strikes in 1947 than in most of the following years.<sup>68</sup> These statistics are misleading if used to prove that right-to-work laws curtail strikes. The year 1947 is not a proper base period because "strike idleness in 1947 was far less than in the record years of 1946 and 1945, but it was greater than in any of the other years since 1919."<sup>69</sup> A more realistic measure of the impact of right-to-work laws on strike incidence is the percentage of the nation's strikes taking place within right-to-work law states as compared to these taking place in the nation as a whole.

Chart number two demonstrates that the enactment of right-to-work

<sup>66</sup> *Id.* at 50.

<sup>67</sup> Hearings on Taft-Hartley Act Revisions before the Senate Committee on Labor and Public Welfare, 83d Cong., 1st Sess., pt. 2 at 877 (1953).

<sup>68</sup> The statistics are compiled from the May issues of the MONTHLY LABOR REVIEW.

<sup>69</sup> Crowther and Herlichy, *Work Stoppages During 1947*, 66 MONTHLY LABOR REVIEW 479 (1948).



NUMBER OF MAN DAYS IDLE DUE TO WORK STOPPAGES

Year	Arizona	Arkansas	Georgia	Iowa	Nebraska	North Carolina	North Dakota	South Dakota	Texas	Tenn.	Va.
1947	182,000	231,000	285,000	322,000	131,000	542,000	22,600	28,000	1,090,000	526,000	244,000
1948	149,000	87,600	189,000	862,000	417,000	238,000	59,000	3,100	280,000	441,000	431,000
1949	86,000	366,000	97,400	121,000	43,200	136,000	14,000	.....	430,000	578,000	914,000
1950	55,300	144,000	101,000	1,060,000	55,200	75,700	37,000	6,200	769,000	636,000	419,000
1951	103,000	53,000	179,000	108,000	39,900	508,000	1,300	2,800	294,000	251,000	411,000
1952	80,300	235,000	253,000	160,000	139,000	277,000	7,530	5,700	1,210,000	516,000	440,000
1953	43,500	132,000	120,000	337,000	87,000	196,000	13,000	18,900	668,000	605,000	157,000
1954	107,000	163,000	367,000	235,000	60,000	82,900	4,550	670	655,000	415,000	97,000

laws did not curtail the number of strikes in the eleven original right-to-work law states. Nebraska, whose spokesman told the Senate that its right-to-work law decreased strikes, was the scene of twice as many of the nation's strikes in the years following the right-to-work law than in the years preceding its enactment. In eight of the eleven original right-to-work law states (Arizona, Georgia, Iowa, Nebraska, North Dakota, South Dakota and Texas) the percentage of the nation's strikes have increased since 1947. For the seven year period prior to 1947, the combined eleven right-to-work law states had an annual average of 3.55 per cent of the nation's strikes; in the seven year period following 1947, the percentage increased to 4.51 per cent.

This increase within the right-to-work law states of the percentage of the nation's strikes is not due to an increase in industrialization or by an increase in the proportion of employees within a state engaged in manufacturing. The growth of manufacturing in the Southeast, for example, was less than the growth in manufacturing in the entire nation. From 1939 to 1952, manufacturing expanded in the Southeast by 54 per cent; during the same period it expanded in the entire nation by 61 per cent. During the 1950-1952 period of the Korean conflict, industrial expansion in the Southeast fell behind that of the nation as a whole, yet the percentage of strikes within the Southeast increased.<sup>70</sup>

The fact that right-to-work laws have failed to curtail strikes is not surprising. The premise of those who claim that a right-to-work law will curtail strikes is that strikes are caused by union demands for a "union shop" and that consequently, when a union shop is made illegal, a primary cause for strikes is removed. This premise, however, is not true. As the Department of Labor tells us, most strikes are caused by disputes over rates of pay and day-to-day working conditions. Strikes for a closed or union shop are responsible for only 7 per cent of the man-days idle due to work stoppages.<sup>71</sup>

Right-to-work laws have not only failed to prevent work stoppages they have the detrimental effect of depriving the employer of what he wants most from a union—a firm "no-strike" pledge for the duration of the collective bargaining agreement. Studies by the Department of Labor,<sup>72</sup> by the Labor Relations Law section of the American Bar Association,<sup>73</sup> and by University of Florida Professor Luck<sup>74</sup> all agree that employers want unions to sign no-strike agreements and that many

<sup>70</sup> Robock, *Manufacturing Production Workers in Southeastern States: 1939-1952*, 20 SOUTHERN ECONOMIC JOURNAL 307, 311 (1954).

<sup>71</sup> Crowther and Herlichy, *supra* note 69 at 485.

<sup>72</sup> Wolk and Nix, *Work Stoppage Provisions in Union Agreements*, 74 MONTHLY LABOR REVIEW 272 (1952).

<sup>73</sup> *The No-Strike Clause*, 21 GEO. WASH. L. REV. 127 (1952).

<sup>74</sup> *Effects of the Taft-Hartley Act on Labor Agreements, 1947-1952*, 20 SOUTHERN ECONOMIC JOURNAL 145 (1954).

WORK STOPPAGE IN THE UNITED STATES  
Per Cent of Total

Year	Arizona	Arkansas	Ga.	Iowa	Nebraska	N. C.	N. Dakota	S. Dakota	Tenn.	Texas	Va.
1940.....	.2	1.2	.6	.5	.01	1.4	.01	.01	.6	1.3	2.1
1941.....	.1	.3	.4	1.0	.01	.5	.01	.01	2.5	.6	1.0
1942.....	.1	.5	.6	.7	.2	.6	.01	.02	1.5	.4	1.0
1943.....	.1	.6	.6	.4	.01	.8	.01	.01	1.7	.2	2.7
1944.....	.01	.2	.4	.6	.1	.8	.01	.01	2.3	.9	.9
1945.....	.2	.1	.4	.7	.1	1.2	.01	.01	1.2	1.3	.7
1946.....	.2	.2	.5	.5	.2	.4	.1	.01	1.0	1.7	1.1

RIGHT-TO-WORK LAWS ENACTED IN THESE ELEVEN STATES

	1948.....	1949.....	1950.....	1951.....	1952.....	1953.....	1954.....	7 yr. average before 1947....	7 yr. average after 1947.....
Arizona	.4	.01	.1	.5	.1	.2	.5	.13	.26
Arkansas	.3	.4	.4	.2	.4	.5	.7	.43	.41
Ga.	.9	.2	.3	.8	.4	.4	1.6	.5	.65
Iowa	2.5	.2	2.7	.5	.3	1.4	1.0	.63	1.23
Nebraska	1.2	.1	.1	.2	.2	.3	.3	.09	.34
N. C.	.2	.3	.2	2.2	.5	.7	.4	.80	.64
N. Dakota	.1	.01	.1	.01	.01	.01	.05	.02	.04
S. Dakota	.01	.01	.01	.01	.01	.1	1.8	.01	.28
Tenn.	1.3	1.1	1.6	1.1	.9	2.1	1.8	1.5	1.4
Texas	.8	.9	2.0	1.3	2.0	2.4	2.9	.9	1.8
Va.	1.3	1.8	1.1	1.8	.7	.6	.4	1.3	1.1

unions refuse to sign such agreements in the absence of a closed shop contract unless they are excused from liability for the acts of those over whom they have no control. Unions feel that if they have no power to punish malcontents and others who lead "wildcat" strikes, they should not assume responsibility for ensuring there will be no such strikes. They insist upon exculpatory clauses excusing them from responsibility for damage because of unauthorized strikes or work stoppages. In 1946, prior to the Taft-Hartley Act and right-to-work laws, only 13 per cent of union contracts contained these "exculpatory clauses." By 1952, the percentage had grown to 50 per cent. These "exculpatory clauses" are far more prevalent in the right-to-work law states than in those states permitting the union shop. For example, in the Denver Colorado area, where the right-to-work law was rejected, more than 80 per cent of the no-strike clauses are unconditional—the union assumes responsibility for wildcat strikes.<sup>75</sup> In the tobacco industry, however, largely centralized in the right-to-work law states of North Carolina and Virginia, 50 per cent of the collective bargaining contracts contain exculpatory clauses.<sup>76</sup>

Not only does the right-to-work law deprive the employer of equal opportunity to obtain an unconditional no-strike agreement from the union, it also deprives him of a technique for eliminating labor unrest. Employee morale, loyalty and productivity increase when the employer signs a union shop agreement. This has been attested by field surveys,<sup>77</sup> by the remarks and testimony of many individual businessmen,<sup>78</sup> and by surveys of businessmen by organizations with no union connections. Business Week, for example, interviewed fifty businessmen from Boston to San Diego and reported that "Employers who have had it (union security agreements) longest find the most advantages in it. . . . [Fifty-eight per cent] declare the net effect on management of the elimination of such security would be bad."<sup>79</sup> Some of the reasons employers gave Business Week for favoring union security are that:

It seems to give the union an incentive to settle disputes quickly rather than drag them along for purposes of recruiting new members.

It has centralized control over employee relations, because we are able now to deal with all our employees as a unit.

<sup>75</sup> The No-Strike Clause, *supra* note 73, at 153.

<sup>76</sup> Wolk and Nix, *supra* note 72, at 274.

<sup>77</sup> Dean, *Union Activity and Dual Loyalty*, 7 IND. & LAB. REL. REV. 526 (1954); PURCELL, *THE WORKER SPEAKS HIS MIND ON COMPANY AND UNION* 18 (1953); ROSE, *UNION SOLIDARITY* 189 (1952).

<sup>78</sup> Patrick McDonough, an Oakland California manufacturer, typically remarked: "When I recognize the union representing my workers and I agree to give it security through a closed shop contract, I get the men to work with me, instead of against me." Quoted in 37 AFL Weekly News Service No. 21 (1947).

<sup>79</sup> Business Week, March 8, 1957, p. 85.

Whenever there is trouble in the plant or some question arises, we know whom we can hold responsible.

An investigation by the National Industrial Conference Board showed that employers with practical experience of dealing with unions under union security agreements preferred a union shop because it:

Places the union in a better position to keep its agreement; eliminates coercion of employees; gives the employer the help of the international officers, if necessary; gives employees greater feeling of responsibility and interest in their jobs because they feel they have something to say about their conditions of work; makes it possible to hold the union responsible for the actions of its members, while with the open shop it cannot be held responsible.<sup>80</sup>

A report of the National Planning Association points out that:

In all of the cases studied, 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.<sup>81</sup>

With the strength of a union security agreement behind it, a union can make constructive concessions helpful to management even though these concessions may be detrimental to the short run interests of some union members.<sup>82</sup> Without this security, unions must press for demands desired by the members even when the results may be of over-all detriment to the company and union.<sup>83</sup> One authority, Harvard Professor Slichter, concludes that: "An assured status for the union is not a guarantee of successful union-employer relations but it is a prerequisite, and the closed shop or its equivalent is the only way of assuring the status of the union."<sup>84</sup>

#### ARE RIGHT-TO-WORK LAWS NECESSARY TO PROTECT EMPLOYEES FROM EXCESSIVE AND EXCLUSIONARY UNION INITIATION FEES AND MONTHLY DUES?

Union security arrangements require the employee to pay union initiation fees and dues in order to either obtain or retain employment.

<sup>80</sup> National Industrial Conference Board, *The Closed Shop*, in *STUDIES IN PERSONNEL POLICY* 6 (1939).

<sup>81</sup> *CAUSES OF INDUSTRIAL PEACE UNDER COLLECTIVE BARGAINING—FUNDAMENTAL OF LABOR PEACE* 74 (1953).

<sup>82</sup> The personnel manager of the New York Herald Tribune commented that it was the existence of a union security agreement that made it psychologically possible for the Newspaper Guild to punish its members for absenteeism. Herrick, *Pros and Cons of the Closed-Shop Issue*, 26 *ACADEMY OF POLITICAL SCIENCE* 20, 24 (1954).

<sup>83</sup> A Texas labor leader points out that under the right-to-work law his union must take many more grievance cases, often trivial ones, to arbitration lest the union members withdraw from the local or grounds that they are not being ably represented. *Time*, Nov. 24, 1958, p. 88.

<sup>84</sup> SLICHTER, *UNION POLICIES AND INDUSTRIAL MANAGEMENT* 95 (1941).

It has been vigorously contended that right-to-work laws (which outlaw union security agreements) are necessary because unions set excessive initiation fees and dues which have the effect of depriving many would-be employees without much money from employment where union security agreements exist. This argument in favor of right-to-work laws is unsound for at least three reasons.

First, the employee is already protected by that provision of the Taft-Hartley Act which makes it a union unfair labor practice to require employees to pay fees or dues which the Labor Board "finds excessive or discriminatory under all the circumstances."<sup>85</sup> Second, assuming that the Labor Board is not doing its job, a simple state law prohibiting excessive union fees and dues would protect the employee without at the same time penalizing all unions, regardless of all other factors. This is the pattern set by New Hampshire where state law sets a maximum limit on initiation fees of twenty-five dollars.<sup>86</sup> Third, union fees and dues are not excessive.

Monthly dues are not set at a high level to keep workers from joining the union for a very good reason—those already members of the union would have to pay the same high amount. Initiation fees are not subject to this limitation and there are many in the rank-and-file who feel that the Johnny-Come-Lately should pay a high initiation fee and thus bear some of the costs of raising the wage and working standards in the industry. Union officers, however, resist high initiation fees as they tend to prevent eligible workers from joining the union. Union leaders know that their effectiveness is diminished in proportion to the number of non-union employees available to the employer. The issue of excessive union fees and dues, however, is not one of theoretical argument. It can be and has been reduced to dollars and cents.

A study of 194 unions with a declared membership of 17,513,514 reveals that 179 of these unions (membership of 17,302,283) have constitutional provisions covering the amount that can be charged by way of an initiation fee. Thirty-six of them specify a single fee, the most frequent being \$5.00. Eighty-two of them have constitutions that permit the local to determine the fee within certain limits. Five dollars is the most frequent minimum initiation fee, \$10.00 is the most frequent maximum.<sup>87</sup> The others set either a minimum or a maximum, and leave the exact amount up to the locals.

A study of the initiation fees charged by locals of unions formerly belonging to the CIO revealed that only one of them charged more than

<sup>85</sup> Section 8(b) (5), 49 STAT. 452 (1947); 29 U.S.C. § 158(b) (5) (1952).

<sup>86</sup> Hogan, *The Meaning of the Union Shop Elections*, 2 IND. & LAB. REL. REV. 319, 328 (1949).

<sup>87</sup> NATIONAL INDUSTRIAL CONFERENCE BOARD, HANDBOOK OF UNION GOVERNMENT STRUCTURE AND PROCEDURES 33 (1955) (hereinafter cited as HANDBOOK OF UNION GOVERNMENT).

\$25.00. This was the Marine Engineers Beneficial Association with a membership of 11,000. The constitution of the automobile workers' union (membership declared at 1,200,000) permitted initiation fees between \$2.00 and \$15.00. The rubber workers' union (200,000) made a flat charge of \$2.00 and the steel workers' union (membership at 1,000,000) permitted its locals to charge a maximum of \$3.00. Most of the unions formerly belonging to the CIO had a minimum, rather than a maximum, initiation fee, and this was generally set at \$2.00. Most locals charged the \$2.00 minimum.<sup>88</sup>

Of particular interest to the southeastern states is the following list of initiation fees charged by 61 locals of 5 unions in the garment and textile industry.

Fees up to and including	Garment Workers	Glove	Hosiery	Textile AFL	Textile CIO	Total Sample
\$ 2.50	5	4	1	13	5	28
\$ 5.00	5	1	4	4	5	19
\$ 7.50	—	1	4	2	3	10
\$10.00	—	—	—	—	—	0
\$12.50	1	—	1	—	—	2
\$25.00	—	—	1	—	—	1
\$50.00	—	—	1	—	—	1

Of the 61 local unions, 57 charged initiation fees of \$7.50 or less, and almost half of them charged initiation fees of \$2.50 or less.<sup>89</sup>

The unions in the garment and textile industries are on the average among those which have the lowest initiation fees. Unions having the highest initiation fees are those in the building and construction trade industries. Initiation fees are high in part because many locals of these unions provide mortuary, sickness, old age, and unemployment benefits. For example, members of the electricians union can draw pensions of \$40.00 per month, and one-third of the payment to the International Union of Operating Engineers is set aside in the Death Benefit Fund. Seventy-two per cent of the current income in the Carpenters Union is paid out in direct benefits—pension and death benefits—to the members.<sup>90</sup> Initiation fees charged by locals that operate without these benefits are uniformly lower than in the locals which provide them.<sup>91</sup> The initiation fees charged by 297 locals in 13 international unions in the building and construction industry run a wide gamut. Of the 297

<sup>88</sup> Taft, *Dues and Initiation Fees In Labor Unions*, 60 QUARTERLY JOURNAL OF ECONOMICS 219 (1945).

<sup>89</sup> TAFT, *THE STRUCTURE AND GOVERNMENT OF LABOR UNIONS* 93 (1954).

<sup>90</sup> *Id.* at 68-69.

<sup>91</sup> Summers, *Admission Policies of Labor Unions*, 61 QUARTERLY JOURNAL OF ECONOMICS 62, 92 (1946).

locals, 31 of them (or 10.4 per cent) have initiation fees of under \$12.50. Seventy-two locals (24 per cent) charge less than \$37.50. The largest concentration—79 locals—is in the \$89.50-\$112.50 group; and 48 locals charge more. Seventeen locals charge over \$200.00 (plumbers' and sheet-metal workers' unions), and 2 plumbers' local unions charged as much as \$312.50.<sup>92</sup> Other unions with high initiation fees are the Actors Equity, AFL (declared membership, 6,695)—\$100; the Boilermakers, AFL (declared membership of 150,000)—\$100 maximum; the Elevator Constructors, AFL (declared membership of 10,000)—\$200; the American Radio Association, CIO (declared membership of 2,000)—\$100; Stage Employees, AFL (declared membership of 42,000)—not more than 4 times weekly scale of local union; and the Air Line Pilots, AFL (declared membership of 9,500)—\$25 to \$200 according to earnings.<sup>93</sup> These are exceptions. "Taking the trade union movement as a whole, initiation fees can be described as modest and reasonable. In many unions the initiation fee does little more than cover the costs of enrolling the member of the local and international books and paying for his dues book and stamps."<sup>94</sup> When union initiation fees are contrasted with the average hourly earnings or rates within the industry, in most unions the initiation fee can be earned in less than two days' work. "Even in the building trades, only a small fraction of locals charge initiation fees that would require more than a week of work."<sup>95</sup>

Dues charged union members are uniformly low. Opposition to raises in union dues exists in almost all unions, and the pleas of officers for increases, unless a good case for the change is presented, are often rejected. In eighty labor organizations most workers could earn their monthly dues by under two hours of work. High dues, where they exist, like high initiation fees are closely related to beneficiary activities and, consequently, part of the dues is an insurance premium against death, illness, or unemployment.<sup>96</sup>

Dues charged by 72 locals of 6 unions in the garment and textile industry reach \$3.00 in only 3 of them. In 49 of the 72 unions, the dues were \$2.00 or less, and in 20 additional locals, the dues were \$2.50 or less.

Dues, as initiation fees, are highest in those unions in the building and construction trade industries. Dues charged by 285 locals in 13 building trades unions are as follows.<sup>97</sup>

<sup>92</sup> TAFT, *op. cit. supra* note 89, at 86, 89.

<sup>93</sup> HANDBOOK OF UNION GOVERNMENT 34-41 (1955).

<sup>94</sup> TAFT, *op. cit. supra* note 89, at 88.

<sup>95</sup> *Ibid.*

<sup>96</sup> *Id.* at 81.

<sup>97</sup> *Id.* at 70.



Up To And Including	\$1.00	\$1.50	\$2.00	\$2.50	\$3.00	\$3.50	\$4.00	\$4.50	\$5.00	\$6.00	Over \$6.00
Asbestos Workers..	1				1						1
Bricklayers.....			2	12	13	6	9	4	1		2
Bridge Workers....	3	4	3	2	1			1	1	2	2
Carpenters.....	2	4	5	4	9	2					
Electrical Workers.	1	4	1		2	4	4	4		4	2
Operating Engineers			9	2		2	4		1	1	
Hod Carriers.....	2	4	13	6	7					1	
Lathers.....		1	1		1					1	
Marble Workers...		1	2	3	1		1		1		
Painters and Paperhangers...			3	1	4	1	1	1			1
Plasterers.....		2		1	1	2	1	3	7	3	2
Plumbers.....			17	1	9	2	6	1	10	3	9
Roofers.....							2	2			
Total.....	9	20	56	32	49	19	28	16	21	15	19

Over two-thirds of the dues charged by these high-dues unions were under \$4.00 per month. Only 19 of the 285 locals (9 of them in the plumbers union) charged more than \$6.00 per month. Only one local (a member of the Asbestos Workers Union) charged as high as \$10.00 per month. Clearly, right-to-work laws are not necessary to protect the employee from exclusionary union dues.

#### ARE RIGHT-TO-WORK LAWS NECESSARY TO PROTECT EMPLOYEES FROM EXCLUSIONARY UNION ADMISSION PRACTICES?

As it is claimed that right-to-work laws are necessary to protect the employee from excessive union fees and dues, it is also claimed that the closed and union shop provisions should be outlawed because unions practice arbitrary admission policies. It is argued that unions close their membership to qualified job seekers, and that this bars them from employment opportunities where the union shop exists.

There is no question but that some unions discriminate in their admission policies. For example, constitutions of 56 unions with a combined membership of 6,190,044 specifically state that no Communist or other subversive is to be admitted to membership.<sup>98</sup> Five unions with a declared membership of 442,197 have provisions in their constitutions which prohibit the admission of Negroes and other racial minorities.<sup>99</sup> On the other side of the ledger, 39 unions with a combined membership of 4,320,551 have constitutional provisions declaring that all persons qualified for membership are to be admitted regardless of their race, or color.<sup>100</sup> The constitutions of 149 unions have no pro-

<sup>98</sup> HANDBOOK OF UNION GOVERNMENT 61 (1955).

<sup>99</sup> *Id.* at 63. The unions are the Brotherhood of Locomotive Engineers, Brotherhood of Locomotive Firemen and Enginemen, Postal Transport Association, Brotherhood of Railroad Trainmen, and the Brotherhood of Railway Conductors.

<sup>100</sup> *Id.* at 64.

visions either way, but at least 11 of them, with a combined membership of 209,900, were known in 1948 to bar Negroes from membership.<sup>101</sup> The AFL-CIO constitution makes clear its purpose "to encourage all workers without regard to race, creed, color, national origin or ancestry to share equally in the full benefits of union organization" and there is undoubtedly a large decline in the number of unions that exclude from membership because of race or color.<sup>102</sup>

Citizenship and sex are also criteria for membership in some few unions. Seven small unions<sup>103</sup> exclude aliens from membership and 22 additional unions require that the worker must have filed a declaration of intent to become a citizen. Eight unions (mostly in the railroad industry) exclude women from membership, and two unions have constitutional restrictions on admission because of creed.<sup>104</sup> Forty-six unions, including most of those formerly in the CIO, protect against exclusion because of creed.<sup>105</sup>

There is no doubt but that these restrictive union admission policies when coupled with a union shop agreement might well bar otherwise qualified workers from employment opportunities. The answer to this problem, however, does not lie in enactment of a right-to-work law, for this punishes the unions which condemn as well as the unions which condone discriminatory admission practices. The answer to this problem given by Congress in both the Railway Labor<sup>106</sup> and the Taft-Hartley Acts<sup>107</sup> is to permit the union shop but to prohibit the discharge of those non-union members to whom membership was not available "on the same terms and conditions generally applicable to other members." The answer given by the state of New York is to make it a crime for any labor union to deny a person membership "by reason of his race, color or creed."<sup>108</sup> The evil of discriminatory union admission policies lies in the existence of the closed union, not in the existence of the closed

<sup>101</sup> Airline Pilots (2,700), Asbestos Workers (4,000), Flint Glass Workers (25,600), Granite Cutters (4,000), Masters, Mates, and Pilots (3,000), Plumbers (130,000), Seafarers (30,000), Wire Weavers (400), Marine Firemen (3,000), Railroad Yardmasters (3,500), and Train Dispatchers (3,500). Summers, *Admission Policies of Labor Unions*, 61 *QUARTERLY JOURNAL OF ECONOMICS* 66, 92 (1946).

<sup>102</sup> Rauh, *Civil Rights and Liberties and Labor Unions*, 8 *L.A.B. L.J.* 874, 877 (1957).

<sup>103</sup> Bookbinders, Broom and Whisk Makers, Glass Workers, Glove Workers, Marine Engineers, United Licensed Officers, and the Welders. Summers, *supra* note 101, at 92.

<sup>104</sup> The Masters, Mates, and Pilots union requires a member to be a "firm believer in God, the Creator of the Universe," and the Railway Car men exclude a worker from membership unless he "believes in the existence of a Supreme Being." There is no evidence that the two unions make any attempt to enforce these provisions. *Ibid.*

<sup>105</sup> *Ibid.*

<sup>106</sup> Section 2(11), 64 *STAT.* 1238 (1951), 45 *U.S.C.* § 154(11) (1952).

<sup>107</sup> Section 8(a)(3), 49 *STAT.* 452 (1947), 29 *U.S.C.* § 158(a)(3) (1952).

<sup>108</sup> *N.Y. Civil Rights Law* § 43. The constitutionality of this statute was sustained in *Railway Mail Ass'n v. Corsi*, 326 *U.S.* 88 (1945).

or union shop. It seems better policy to eliminate the former and leave the latter intact.

# ARE RIGHT-TO-WORK LAWS NECESSARY TO PROTECT EMPLOYEES FROM DISCRIMINATORY EXPULSION POLICIES?

In like vein, it is also argued that right-to-work laws are necessary because unions expel their members for arbitrary reasons, thereby depriving them of employment opportunities where the union shop contract is in effect. The case of Cecil B. DeMille, expelled from the American Federation of Radio Artists for refusal to pay a one dollar assessment to fight the California right-to-work proposal, is often referred to in this connection.

Right-to-work laws, however, do not seem justified on this score. First of all, the Taft-Hartley Act now prohibits an employer from discharging an employee expelled from his union so long as the employee continues to tender union dues.<sup>109</sup> Cecil B. DeMille could not now be denied employment opportunities if expelled from his union, no matter how unfraternal his actions. More importantly, and all apart from the protection afforded by the Taft-Hartley Act, very few persons are expelled from unions; those persons who are expelled generally deserve to be expelled; and the courts prohibit unions from expelling those members who should not be expelled.

Since the union's effectiveness is based largely on the degree to which it controls the available labor, expulsions tend to weaken the union and very few members are in fact expelled. Expulsions, without a very good cause, don't make sense. If members are expelled in large numbers, they become a threat to union standards. Even more likely, they will be driven into the arms of a rival union. In the words of President Burke of the Pulp Workers: "Our union is not interested in expelling members. We are spending thousands of dollars every year in organizing new members."<sup>110</sup>

A survey of forty-three international unions shows that expulsions are "very rare," "few and far between," or "almost negligible." The replies of ten of these unions (identified only by size of membership) are given below.<sup>111</sup>

<i>Size of Union</i>	<i>Number of Expulsions</i>
1. 10,000	Average 4 a year
2. 40,000	In a normal year, 10 expulsions would be high
3. 70,000	25 members expelled a year for theft, intoxication, or dual unionism

<sup>109</sup> See text at note 49 *supra*.

<sup>110</sup> Summers, *Disciplinary Powers of Unions*, 3 IND. & LAB. REL. REV. 483, 487 (1950).

<sup>111</sup> *Ibid.*

4.	70,000	1945, three expulsions; 1946, two; 1947, twenty—in every case due to returning to work in shops still on strike.
5.	150,000	An average of five or ten a year
6.	250,000	Average of less than ten annually
7.	250,000	Average of less than ten annually
8.	250,000	Eleven appeals in 1947
9.	250,000	Ten expulsions in the last ten years
10.	500,000	Three appeals a month to the general office.

Union discipline is not imposed arbitrarily. The constitutions of 194 unions require that the member be given charges, trial before the local union, and opportunity to appear at all hearings, to testify, and present evidence in his own defense.<sup>112</sup> Charges generally involve serious matters, and the trials are fair.

Thirty charges against members of the National Maritime Union were:

Fighting aboard ship.....	2
Leaving ship shorthanded.....	8
Misconduct aboard ship.....	1
Discriminating against a Negro member.....	2
Refusing to stand watches.....	1
Drunkenness aboard ship.....	4
Refusal to obey orders.....	1
Refusal to attend ship meeting.....	1
Failure to complete assignment aboard ship.....	1
Refusal by head of department to meet with regularly elected grievance committee.....	2
Failure to prepare required meals.....	1
Bringing false charges.....	1
Charging patrolman with back door shipping.....	1
Attacking physically a member aboard ship.....	3
Threatening to kill a member aboard ship.....	1

One member quit when he received the charges; the other 29 members had trials before trial committees who were elected by the membership in the particular port where the ship paid off. Of the 29 cases, 18 were found guilty and 11 not guilty of the offenses charged. Of the 18 found guilty, one member was put on probation for one year, another member put on probation for six months, and the others fined an average amount of below fifty dollars. The large number of acquittals indicates that these trials are not kangaroo proceedings.<sup>113</sup>

But the matter does not end with the verdict of the trial committee. A convicted member is given a right under almost all union constitutions to appeal the verdict upward through superior organs.<sup>114</sup> The first appeal is to the national office which often reverses or modifies the lower decision. A year's statistics in a few of the larger unions are as follows.<sup>115</sup>

<sup>112</sup> HANDBOOK OF UNION GOVERNMENT 65.

<sup>113</sup> TAFT, *op. cit. supra* note 89, at 172-173.

<sup>114</sup> HANDBOOK OF UNION GOVERNMENT 65.

<sup>115</sup> TAFT, *op. cit. supra* note 89, at 138, 144, 163, 167, 177.

Union	DECISIONS			
	Total Appeals	Upheld	Reversed	Modified
United Auto Workers, CIO.....	25	17	8	0
Carpenters.....	39	21	11	7
Ladies Garment Workers.....	29	14	4	11
Machinists.....	26	14	5	7
Plumbers.....	129	63	66	0
Total.....	248	129	94	25

Thus, almost half the appeals were successful, at least in part.

In the event the member loses his appeal at the national office level, in 180 unions he can argue his case before the national convention.<sup>116</sup> This is not a cut and dried matter. At the 1945 National Maritime Union convention, 30 members appealed from union expulsion of whom 16 were successful. The unsuccessful appellants had been charged with such misdeeds as stealing the ship's treasury funds, fighting with a dangerous weapon, gambling aboard ship with crooked dice, using abusive language before passengers, and smuggling narcotics into the United States.<sup>117</sup> A member's rights to appeal do not end at the union's convention. In at least two unions there is a further right to appeal to a Public Review Board composed of outstanding citizens who have no other union connection.<sup>118</sup> In all cases the expelled union member can take his case to courts. "Judicial remedies are quite complete. Upon finding that a member has been improperly expelled, the court will order reinstatement which automatically entitles him to receive insurance benefits and to work under a union security clause, as well as to participate fully in union activities."<sup>119</sup> The courts can also award damages for "mental suffering, humiliation and distress" resulting from union expulsion in violation of the union's constitution and by-laws.<sup>120</sup>

A study of the confidential records in eight unions results in the conclusions that disciplinary penalties "are seldom severe or unwarranted," that the appellate machinery "offers real protection," and that union "disciplinary machinery functions, on the whole, justly and effectively."<sup>121</sup> In view of these conclusions and the existing protection afforded by the Taft-Hartley Act and the courts, enactment of a right-to-work law is wholly unnecessary to protect the employment opportunities of the union member who might unjustly be expelled from his union.

<sup>116</sup> HANDBOOK OF UNION GOVERNMENT 70.

<sup>117</sup> TAFT, *op. cit. supra* note 89, at 175.

<sup>118</sup> RAUH, *supra* note 102, at 880.

<sup>119</sup> Summers, *Legal Limitations On Union Discipline*, 64 HARV. L. REV. 1049, 1093 (1951).

<sup>120</sup> *International Ass'n Machinists v. Gonzales*, 356 U.S. 617 (1958).

<sup>121</sup> TAFT, *op. cit. supra* note 89, at 180 (1954).

# ARE RIGHT-TO-WORK LAWS NECESSARY TO PROTECT EMPLOYEES FROM COMMUNISTS AND GANGSTERS?

Mr. Fred Gurley, President of the Atchison, Topeka and Sante Fe Railway System told an audience that right-to-work laws are necessary to protect employees from union leaders they dislike: "It is bad enough to force a man into a good union" remarked Mr. Gurley, "but what about forcing fine American citizens into a union dominated by Communists, or one dominated by racketeers? That is being done in this country today. Theoretically the dissatisfied member has his remedy by the election of a new slate of officers or even by voting for a change in the collective bargaining agency. Actually these remedies are not often invoked because they are enormously difficult to use."<sup>122</sup>

Out of the 194 national unions operating through more than 75,000 locals, there are undoubtedly some that contain communist or gangster leadership.<sup>123</sup> However, the dissatisfied union member has ample opportunity to oust the leadership he dislikes, and has exercised this opportunity on numerous occasions.

First, under the so-called "schism" doctrine, locals in large number vote themselves out of a communist or racketeering dominated parent organization.<sup>124</sup> In 1949, the CIO expelled the United Electrical Workers Union on charges of communist domination. At that time the union was one of the most powerful in the CIO. Today, as a result of local union disaffiliation under the schism doctrine, it is "almost completely wiped out," "a union in name only."<sup>125</sup> Similarly, in 1957, the AFL-CIO expelled the Bakery and Confectionery Union because of corruption, and within one year a newly organized union (The American Bakery and Confectionery Workers Union) won more than half of the members of the expelled union.<sup>126</sup>

<sup>122</sup> Gurley, *Unalienable Rights vs. Union Shop*, 26 Proceedings of the Academy of Political Science 58, 67-69 (1954).

<sup>123</sup> The average local union official is a married man 44 years of age with two children. He is a white Protestant, born in the United States, descended from northern European ancestors. He is interested in and takes an active part in community affairs and holds an elected office in a fraternal, religious, and/or veterans' organization. He continues to hold his regular job while he serves as a local union officer, a position which pays him less than \$25.00 a month. He accepts the responsibility of the local union office because of the opportunity to improve the working conditions of co-employees. Miller and Stockton, *Local Union Officer—His Background, Activities and Attitudes*, 8 LAB. L.J. 28 (1957). Such is the composite picture of the local union officer in a representative community—honest, sincere, dedicated to the welfare of the union, its members and his community.

<sup>124</sup> The schism doctrine, which permits a local union during the term of a bargaining agreement to disaffiliate from its parent organization without losing its collective bargaining status, is applicable following a policy conflict within the parent organization which has a detrimental effect on the stability of bargaining relations. Rodgers, *A Study In Schism, A Result: Union Division*, 45 VA. L. REV. 207, 210 (1959).

<sup>125</sup> AFL-CIO, *UNION SHOP AND THE PUBLIC WELFARE* 69 (1958).

<sup>126</sup> Kennedy, *Bakers' Union: A Study In Schism, The Problem: Corruption*, 45 VA. L. REV. 203, 205 (1959).

Other evidence belies Mr. Gurley's statement that the dissatisfied union member has only a "theoretical" remedy when represented by a union he dislikes. The union member can change his affiliation upon expiration of the company-union contract. In a single brief two year period shortly preceding Mr. Gurley's speech, some 367,470 American workers were involved in elections to change their union bargaining agent. Of the elections held, 52 per cent resulted in turning out the incumbent in favor of a different union.<sup>127</sup> Still another remedy is available to the dissatisfied member. Within the period covered by the company-union collective bargaining agreement he can vote out (decertify) a union by a procedure which is identical to the one by which he voted in the union. In the seven year period preceding Mr. Gurley's speech, there were a total of 2,804 "decertification" elections, in 68 per cent of which the union was voted out.<sup>128</sup> Two experienced observers, after independent studies, reached the identical conclusion that the rank and file union member "is given adequate opportunity to elect the people who, directly or indirectly, participate in the negotiations with the employers"<sup>129</sup> and that although some unions are more democratic than others, "even in the most autocratic union, the rank and file still has the power to sweep union leadership out of office."<sup>130</sup>

The only instance when union members do not have ample opportunity to rid themselves of union leadership they dislike is when local law enforcement permits hooliganism to run rampant. This situation has nothing to do with the existence or non-existence of right-to-work laws. Secretary of Labor James P. Mitchell made this perfectly clear on the broadcast "Meet The Press" when asked the following question by reporter May Craig:

*Mrs. Craig:* May I ask you this: Don't you think it is the closed shop and the union shop that has made it possible for the corruption and the exploitation of members revealed in the McClellan Committee?

*Secretary Mitchell:* No, I don't think there is any relationship, Mrs. Craig, and let me tell you why; the McClellan Committee exposures have in the main revolved around such things as arson, gun-toting, extortion, even murder, all things which are now illegal under federal, state, and local laws. A great deal of the material which comes before the McClellan Committee has to do with the violation of existing laws; violence, for example.

In the state of Tennessee, which is a right-to-work state, the McClellan Committee discovered 173 cases of violence, gangster-

<sup>127</sup> Krislov, *Raiding Among The "Legitimate" Unions*, 8 IND. & LAB. REL. REV. 19 (1954).

<sup>128</sup> Note, *A Survey of Decertification Under the National Labor Relations Act*, 29 TEMP. L.Q. 454, 457-58 (1956).

<sup>129</sup> Shister, *Who Controls Union Policies*, in READINGS IN LABOR ECONOMICS AND INDUSTRIAL RELATIONS 219 (1951).

<sup>130</sup> WITNEY, GOVERNMENT AND COLLECTIVE BARGAINING 10 (1951).

ism and hoodlumism. Some of the most violent reactions we have had in labor strife—and I will give you the names of the strikes—the Southern Bell strike of two years ago. The Louisville and Nashville Railroad strike of a couple of years ago incited violence, rioting and all the other things which are bad. These are all right-to-work states.<sup>131</sup>

The introduction of the union shop has been known to eliminate racketeering. In the maritime industries, for example, the “shape up,” a method of recruitment whereby job applicants assemble and are selected by employer representatives, led to kick-backs, loan-sharks, and ultimate corruption in many forms. All this was eliminated by the closed shop. “The introduction of the union hiring hall,” remarked the Director of the Federal Mediation and Conciliation Service, “has been the single most constructive step in establishing a measure of orderly labor-management relations on the widespread waterfronts of the United States.”<sup>132</sup> It might also be noted that the International Typographical Union and the International Ladies’ Garment Workers Union, two unions long associated with the closed shop, have enviable records for internal union democracy and freedom from communism, gangsterism and corruption.

One employer, the President of U.S. Industries, Inc., suggested that it is the enactment of right-to-work laws, not the closed shop, which leads to corruption in union leadership. He reasoned this way:

As an employer, I put the issue on the basis of the importance to me of encouraging full participation in the union and of not offering money incentives to stay out.

The obligation to pay dues carries with it the right to go to union meetings and complain if things are not going the way they should. If I were an employee, I would want to preserve that right at all costs and particularly if I did not like the way the union was being run.

By encouraging employees to stay away, the advocates of the “right-to-work” laws are actually entrenching in power the leadership they claim needs regulation.<sup>133</sup>

Without examining further the contention that the union shop increases internal union democracy, the facts remain that (1) union members have ample opportunity to rid themselves of union leaders they dislike, an opportunity which has been and is now being exercised;

<sup>131</sup> Interview with Secretary of Labor James P. Mitchell, August 31, 1958, printed in pamphlet issued by National Council for Industrial Peace, 1426 G Street, N.W., Washington 5, D. C.

<sup>132</sup> Hearings on Taft-Hartley Act Revisions before the Senate Committee on Labor and Public Welfare, 83d Cong., 1st Sess., pt. 1, at 505 (1953).

<sup>133</sup> Address by John I. Snyder, Jr., to the Second Annual Industrial Relations Conference, printed in *AFL-CIO, UNION SHOP AND THE PUBLIC WELFARE* 47 (1958).



and that (2) right-to-work laws to date have had no effect in the elimination of corrupt union leadership. The question of corruption in high places is not a question of right-to-work laws but one of establishing necessary "police" legislation to allow prosecution of wrongdoers.

#### ARE RIGHT-TO-WORK LAWS NECESSARY TO PROTECT INDIVIDUAL FREEDOM?

The issues discussed above are of secondary importance. The primary issue in the right-to-work law fight is the morality of the union shop. "The typical spokesman for employers opposing the union closed shop usually reckons with his audience and asserts that the closed shop is un-American, that it keeps the non-union man out of work or compels him to join the union in order to secure employment. This, he says, deprives the worker of an inalienable right."<sup>134</sup> Proponents of the Florida right-to-work law in 1943 emphasized "the right-to-work without being compelled to pay tribute to any man or organization"<sup>135</sup> and the Farm Bureau editorialized that:

A man in free America is no longer free to work where he will, when he will, and for whom he will. No, he must, if he would live and support his family, join a union, pay an initiation fee at least once and pay dues through payroll deduction.<sup>136</sup>

Proponents of the law comment that "No other private organization has the right to conscript members"<sup>137</sup> and also point out that (1) an individual's religious conviction may prevent his membership in a union and that (2) a union member's dues may be used to support a political candidate he dislikes.<sup>138</sup> Opponents of right-to-work laws belittle the importance of the "right" protected by right-to-work laws and impugn the motives of their proponents. The famous Mr. Dooley put it this way:

"What's all this that's in the papers about the open shop?" asked Mr. Hennessey.

"Why, don't you know?" said Mr. Dooley, "Really, I'm

<sup>134</sup> MILLIS and MONTGOMERY, *ORGANIZED LABOR* 483 (1945).

<sup>135</sup> SHOTT, *HOW 'RIGHT-TO-WORK' LAWS ARE PASSED, FLORIDA SETS THE PATTERN* 32 (1956).

<sup>136</sup> *Id.* at 27. When the right-to-work law was introduced into the Florida legislature it was opposed by the representatives from urban districts (where the closed shop was in operation) and favored by a margin of 5 to 1 by the representatives of the rural districts who were unacquainted with the practices and actualities of industrial labor-management relations. *Id.* at 77. In Virginia the right-to-work law was opposed by the representatives of the industrialized areas and passed by the votes of those from the rural areas. Kuhlman, *Right-To-Work Laws: The Virginia Experience*, 6 *LAB. L.J.* 453, 454 (1955). This accords with the conclusion that the employer with the union shop agreement is far more apt to want it than is the employer with no first-hand information. See text at note 79 *supra*.

<sup>137</sup> SULTAN, *RIGHT TO WORK LAWS: A STUDY IN CONFLICT* 65 (1958).

<sup>138</sup> *Id.* at 67-68.

surprised at yer ignorance, Hennessey. What is th' open shop? Sur, 'tis where they kape the doors open to accommodate th' constant stream av min coming in t' take jobs cheaper than th' min what has th' jobs. 'Tis like this, Hennessey: Suppose wan av these freeborn citizens is workin' in an open shop for th' princely wages av wan large iron dollar a day av tin hour. Along comes anither son-av-a-gun and he sez t' th' boss, 'Oi think Oi could handle th' job nicely f'r niney cints.' "Sure," sez the boss, and th' wan dollar man gets out into the crool woroudl t' exercise his inalienable rights as a freeborn American citizen an' scab on some other poor devil. An' so it goes on Hennessey. An' who gets the benefit? True, it saves th' boss money, but he don't care no more f'r money thin he does f'r his right eye.

"It's all principle wid him. He hates t' see men robbed av their indipindence. They must have their indipindence, regardless av anything else."<sup>139</sup>

In like vein the late Clarence Darrow stated that:

There can be no inalienable right to work without a place to work, and neither the government nor those who declare the loudest or insist the most, have ever furnished the laborer a place to toil. To this class the inalienable right to work means simply the inalienable right of the employer, without let or hindrance, to go out in the open market and bid for laborers on the hardest terms, or rather, to so order the industrial world that men and women and children must bid against each other for a right to toil. The closed shop is the only means that experience has shown to be essential to protect the liberty workingmen have already won.<sup>140</sup>

Right-to-work law opponents point out that a union shop contract democratically results from majority action by the employees and from free collective bargaining between union and management. It is the right-to-work laws, they contend, that are undemocratic as they force employees to associate with persons they dislike<sup>141</sup> and deprive employers of liberty to contract.<sup>142</sup> Answering other contentions, they say that a union (unlike all other private organizations) is entitled to require all eligible persons to join because a union (unlike all other private organizations) is required by law to represent all eligible persons.

<sup>139</sup> Literary Digest, Nov. 27, 1920.

<sup>140</sup> THE OPEN SHOP, an undated pamphlet quoted in CIO, THE CASE AGAINST THE RIGHT-TO-WORK LAWS at 77 (undated).

<sup>141</sup> To union people, the non-unionist "is nothing more than one who seeks to reap where he has not sown, who wishes to enjoy benefits without burdens, protection without taxation, security without sacrifice, and rights without risks." TONER, THE CLOSED SHOP 169 (1942).

<sup>142</sup> Alfred M. Landon, Republican candidate for President in 1936, came out against the Kansas proposed right-to-work law because, as he stated: "The question involved in this legislation is government interference with the independence of both management and labor to negotiate whatever kind of contract they may agree upon." Address of July 7, 1954 at Topeka, Kansas, quoted in AFL-CIO UNION SECURITY at 96 (1958).

Finally, they point out that compulsory unionism does not deprive members of political freedom as the expenditure of union dues for political purpose is an integral part of necessary union functions<sup>143</sup> (subject to check by majority action) and in any event is greatly circumscribed by the Taft-Hartley Act.<sup>144</sup>

What are the merits of these respective arguments? The issue of individual freedom, unlike the issues previously discussed, does not lend itself to an evidentiary approach. All that can be done, other than restate the contesting arguments, is to point out the following: Constitutionally, there is no objection to either a law which bans the union shop or to a law which permits a union shop.<sup>145</sup> Ethically, the clergy are divided; but most of the organized religious groups<sup>146</sup> and most of the articulate clergymen<sup>147</sup> who speak favor the union shop. The American Civil Liberties Union maintains a hands-off policy with the statement that the considerations involved "range over economic, political and social fields, but are outside the civil liberties field."<sup>148</sup>

#### CONCLUSION

The union shop contract is essential to the very existence of unions in some industries, and conducive to better labor-management relations in all. The overwhelming majority of employees affected want the union shop, as do those employers with first-hand experience. The evidence indicates that there is no valid reason why the payment of union dues as a basis of continued employment should not be left to agreement by management and labor through the process of collective bargaining.

The arguments most commonly advanced in support of right-to-work laws have no basis in fact. Right-to-work laws do not attract new industry that adds to the prosperity of a state; do not curtail the

<sup>143</sup> *Railway Employees' Dept. v. Hanson*, 351 U.S. 225 (1956).

<sup>144</sup> Section 304 makes it illegal for a labor union to make a "contribution or expenditure in connection with any election . . . or in connection with any primary election or political convention or caucus to select candidates." 61 STAT. 159 (1947), 18 U.S.C. § 610 (1950). In *United States v. International, UAW*, 352 U.S. 567 (1957), the Court held that an indictment under this act which alleged that a labor union expended funds from its general treasury to sponsor a television broadcast "urging and endorsing" the election of candidates for national office was sufficient.

<sup>145</sup> *Lincoln Union v. Northwestern Iron & Metal Co.*, 335 U.S. 525 (1949).

<sup>146</sup> See, e.g., Division of Christian Life and Work of the National Council of Churches; The Board of Social and Economic Relations of the Methodist Church; The Rabbinical Council of America; and the Catholic Committee of The South, AFL-CIO, UNION SECURITY 102-07 (1958).

<sup>147</sup> See, e.g., Archbishop Rummel of New Orleans; Bishop Oxnam, President of the Methodist Church Council of Bishops; Rev. Dr. Walter Muelder, Dean of the Boston University School of Theology; Dr. Reinhold Niebuhr of Union Theological Seminary; Rabbi Abba Silver of Cleveland; and the Rev. Francis B. Sayre, Jr., Episcopal Dean of the Washington Cathedral. *Ibid.*

<sup>148</sup> News Release of Feb. 17, 1955, quoted *Id.* at 78.

number of strikes; are not necessary to curtail alleged union abusive or discriminatory exclusionary policies; and are not necessary to enable employees to rid themselves of, and otherwise have had no effect on, corrupt union leadership.

The Taft-Hartley union shop does not require the individual employee to comply with union policy, or even to join the union. It only requires him, if employed in a shop where the union and management have negotiated a union security agreement, to pay his proportionate share of the union expenses. There seems no valid reason why this individual's asserted freedom to refrain from paying his share of the costs (usually an amount equivalent to two hours' pay) should be given preference to the asserted freedom of union members not to associate themselves with a person they consider a "free rider." To this conclusion the writer would make one exception: the employee whose religious beliefs and moral scruples prevent him from making financial contributions to a union should not be discharged for exercising his rights of conscience. This individual, however, should be required to demonstrate his good faith by paying an amount equivalent to union dues to a charitable organization mutually acceptable to the employee and the union.<sup>149</sup>

The current right-to-work law drive is not without precedent. In 1903, the NAM sponsored an "Open Shop" drive (open the shop to non-union employees).<sup>150</sup> Following World War I employer organizations sponsored the "American Plan" (abolish the "un-American" closed shop).<sup>151</sup> Following World War II we have witnessed the "right-to-work" movement. The underlying purpose of all these drives is to hamstring union effectiveness.<sup>152</sup> So long as unions must fight for

<sup>149</sup> The United Auto Workers and other unions follow this practice by agreement with religious organizations whose members are employed in plants organized by the union. Testimony of Walter Reuther, Hearings Before the Select Committee on Improper Activities in the Labor or Management Field, 85th Cong., 2d Sess., pt. 25 at 10102 (1958). Legally, there is no requirement that this be done. In *Otten v. Baltimore & O. R.R.*, 205 F.2d 58, 61 (2d Cir. 1953), Judge Learned Hand held that "the First Amendment gives no one the right to insist that in the pursuit of their own interests others must conform their conduct to his own religious necessities. . . . We must accommodate our idiosyncrasies, religious as well as secular, to the compromises necessary in communal life; and we can hope for no reward for the sacrifices this may require beyond our satisfaction from within, or our expectations of a better world."

<sup>150</sup> The open shop was open to all but the union member. The featured speaker at the 1905 NAM convention advised its members to "discharge union men promptly" and in 1906 Bethlehem Steel refused to sell its products to contractors who employed union men. AFL-CIO, *UNION SECURITY* 45 (1958).

<sup>151</sup> While the older, longer-established unions were able to withstand this attack, the open shop drive completely wiped out the war born unions in the steel and southern coal industries. *Id.* at 47.

<sup>152</sup> The Florida right-to-work drive got under way following a CIO effort to organize the workers in the citrus industry. Opponents of the right-to-work law found it significant that officers of the Right-To-Work Committee "come entirely from the backward, low-wage sections of the state, where the lumber and turpentine

the right to exist, so long as the principle of good faith collective bargaining is denied in large quarters,<sup>153</sup> unions need and should have the freedom to protect themselves by permission to negotiate for and enter into union security agreements.

interests rule their workers like barons of old, and laborers receive little or nothing for working in groves and on the farms." *SHORT, op. cit. supra* note 135, at 31.

<sup>153</sup> In 1947, the year of Taft-Hartley and 10 state right-to-work laws, the NLRB received 4,232 complaints that employers had deprived employees of their right to join unions. Twelve per cent of these were filed from the South Atlantic states as contrasted with 6.2% from the New England States, 6.9% from the West North Central states, and 2.0% from the Mountain states. Industrywise, food and kindred products accounted for 10.5%, textile-mill products, 4.3%; apparel and other finished products, 3.2%; as contrasted with aircraft industry, .9%; coal mining, .3%; and construction, .7%. 12 NLRB ANN. REP. 68-70 (1948).

In 1948, the Labor Board reported that: "Section 8(1) of the act forbids employers to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7. . . . This was the provision of the act as to which violations were most frequently alleged and found. . . . *Id.* at 24.

The current NLRB annual report recites that "The most common charge against employers continued to be that of illegally discriminating against employees because of their union activities. . . . Employers were charged with having engaged in such discrimination in 4,649 cases filed during the 1958 fiscal year." Twenty-Third Ann. Rep. of the NLRB 4 (1959). Once again the food industry leads in the total number of such complaints, with a totally disproportionate number in the textile, apparel, lumber, and furniture industries. *Id.* at 147. The South Atlantic states were the source of 5 times the number of such complaints than the Mountain states, 4 times the number than the New England states, 3 times the number than the West North Central states, and twice the number than the Pacific states. *Id.* at 148.