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THE ROLE OF THE UNION LAWYER

STEPHEN I. SCHLOSSBERG*

INTRODUCTION

Labor unions in the United States got along for many years without any full-time lawyers at all. Forty or fifty years ago most of the lawyers who represented labor unions did so entirely out of conviction and with the certain knowledge that, to earn enough money to live, they would have to do other work. Now, however, there is a relatively small group of lawyers whose entire practice consists of the representation of unions and union members.

In 1944 Louis Waldman, General Counsel of the Longshoremen's Union and counsel to other unions, wrote:

Twenty years ago, the field of labor law was not the established, respected branch of the profession it is today. In those days the outstanding labor attorney in New York was Morris Hillquit. Former Congressman Meyer London, one of the most beloved figures in the Socialist movement, was also known as a labor lawyer. Of course, there were other reputable attorneys, then as now, who were willing to take labor's money to defend it in some particular case. There were also those who were ready to go legal slumming and those who would "do something" for labor for political reasons. But few were willing to label themselves as labor lawyers by embracing labor's cause. Then there were the police court lawyers, the "fixers" who bled labor white and brought into the movement nothing but cynicism and corruption, a legacy which is still with us today.¹

This was written only eight years after the passage of the Wagner Act, long before Arthur J. Goldberg, former general counsel of the CIO and the Steelworkers' Union, had been named, successively, Secretary of Labor, Associate Justice of the Supreme Court, and United States Ambassador to the United Nations. Indeed, times have changed and labor lawyers enjoy new respectability. For instance, several prominent labor lawyers have become teachers of law at major law schools.² Nevertheless,

* General Counsel for the United Auto Workers.

¹ L. WALDMAN, *LABOR LAWYER* 144 (1944); see Segal, *Labor Union Lawyers: Professional Services to Organized Labor*, 5 *IND. & LAB. REL. REV.* 343 (1952).

² Bernard Dunau now teaches law at the University of Virginia; Theodore J. St. Antoine is at the University of Michigan School of Law; and David Feller is at the University of California at Berkeley; all three had been prominent union

it can be said with some certainty that those neophyte lawyers whose personal and professional goals are status and great wealth had best find a branch of the law other than union law.

Labor lawyers in the early days of the twentieth century seldom achieved riches but a number had regional and even national reputations as advocates. The most eminent may have been Clarence Darrow, although he did not stay in the field and quite early in his career devoted himself to the practice of criminal law in Chicago. There were others less well known who served with great fidelity. There was John Murphy, who saw the Western Federation of Miners through the Colorado labor wars. Bill Cunea was a fighting Irishman and Socialist in Chicago, who, it had been claimed, had been counted out as district attorney of Cook County in 1910, or 1914, and his law partner William Rodriguez was a Socialist alderman and a member of the Painter's Union. Carolyn Lowe was associate counsel in the IWW espionage trials and served as counsel in many of the criminal syndicalist cases in the Middle West. Phil Callery was the attorney for the Kansas miners and other labor groups. Maxwell McNutt defended labor cases in the courts of California. George Vanderveer, a conservative Seattle lawyer, became the lawyer for the IWW in that radical union's deepest trouble during and after World War I. He was associate counsel in the Everett murder trial, and then was given the gruelling job of defending 103 members of the IWW in the Chicago espionage trial in 1918, one of the largest criminal trials in American history. Subsequently, he, almost alone, was active in the criminal syndicalist trials in the Northwest. Another advocate for the cause of the IWW was a fine Yankee lawyer and humanitarian, George Roewer, who defended the union during and after the Lawrence strike. Roewer handled union cases when fees were few and far between if there were any at all.

The late Robert F. Kennedy had some harsh—as well as kind—words to say about this generation of union lawyers. Writing of his experiences on the McClellan Committee, Senator Kennedy said:

No one could listen to the testimony before our Committee, or read the record, and not be deeply concerned and badly disillusioned about the practices some attorneys engaged in while representing labor and man-

lawyers in Washington. Two former UAW lawyers have entered teaching: Kurt L. Hanslowe at Cornell Law School, and William Gould at Wayne State University Law School. Another former union lawyer, Louis H. Pollak, is presently Dean of the Yale Law School.

agement. From the first, we found lawyers who considered that their clients were not the rank and file but the union officials who held the purse strings.³

Then, later, he wrote:

However, labor has been fortunate enough to attract the active assistance of many wise and skillful lawyers . . . who have been drawn to the growing labor movement by a sense of idealism and a dedication to the cause of economic justice and a better way of life for the working man. They are men of high principle, who recognize that their profession carries with it certain responsibilities and obligations; they are completely loyal to the best interests of their clients—within the bounds of sound professional ethics.⁴

There are 190 national and international unions headquartered in the United States, with a membership of 19.1 million people.⁵ Some independent law firms specialize in the representation of international unions or both international and local unions. A single small firm or its partners might serve as general counsel to several unions.⁶ A few independent attorneys act largely as "lawyers' lawyers" handling mainly appellate and overflow work for regular union counsel.⁷ Most international unions, such as the UAW, have salaried general counsel and operate departments of law within the unions. Local unions and regional bodies are most often represented by individual lawyers, who are likely to engage also in general practice and often operate extensively in the areas of workmen's compensation and unemployment compensation.

Labor law, from the union side, is an exciting and intellectually and socially rewarding specialty of the law in contemporary America. The body of the law, essentially public in character, is constantly changing and emerging and the problems presented are challenging, often poignant, human problems. Labor law does not, in most instances, remunerate its

³ R. KENNEDY, *THE ENEMY WITHIN* 226 (1960).

⁴ *Id.* at 228-29.

⁵ U.S. BUREAU OF LABOR STATISTICS, DEP'T OF LABOR, BULL. No. 1596, *DIRECTORY OF NATIONAL AND INTERNATIONAL LABOR UNIONS IN THE UNITED STATES* 45 (1967).

⁶ For example, the firm of Van Arkel and Kaiser in Washington, D.C., acts as general counsel for the Musicians Union, the AFL-CIO Bakers Union, the Printers Union, the State, County, and Municipal Workers Union, and others. The Milwaukee firm of Goldberg, Previant and Ullmen represents the Teamsters Union and several other unions.

⁷ Foremost among this group are Joseph L. Rauh, Jr., Mozart G. Ratner, Bernard Duanu, John Silard, Isaac Groner, and George Kaufmann—all of Washington.

union practitioners—and perhaps not even its employer practitioners—so handsomely as do such fields as corporation, tax and business law. More often, however, the union lawyer identifies with his client in so high a degree of ideology and philosophy that he would be unhappy in any other field, no matter how well he was paid.⁸

THE CHARACTER OF THE UAW

Necessarily, because of the author's full time engagement as general counsel and head of the UAW legal department, this article will deal mostly with that kind of union lawyer employed by the UAW, a large industrial union, unique in the labor movement. It is not possible to discuss the lawyer's role in the UAW without some preliminary and brief discussion of the UAW and its remarkable President, Walter P. Reuther.⁹

The UAW has repeatedly acknowledged that its primary function is to represent its members in collective bargaining,¹⁰ but for the UAW, that is only the beginning. The Union, now independent of the AFL-CIO because of the failure of the Federation to respond to UAW calls for reform, consistently strives to express its signal devotion to democracy, internally and externally, its concern with the great issues of society and its willingness to act and innovate. As Walter Reuther said in 1964:

[W]e have striven from the beginning to make our union a broad social movement. We have sought to become not a narrow pressure group, but an integral part of our society—a movement that knows it

⁸ Some union lawyers have come from inside the labor movement. James Youngdahl, a prominent union lawyer in the Southwest with offices in Little Rock, Ark., was an organizer for the Clothing Workers and is the Youngdahl of *Youngdahl v. Rainfair*, 355 U.S. 131 (1957), the famous preemption case. The writer was, for some years, an organizer in the South for the ILGWU.

An example of the union lawyer's ideological and philosophical identification with his client occurred in the fall of 1967, when the UAW went on strike against the Ford Motor Company and was faced with the potential of a long, industry-wide strike affecting most of the Union's members. All of the staff lawyers, like the rest of the Union's full-time professionals and regular union staff, insisted on taking a twenty-five percent cut in pay for the duration of the emergency, which turned out to be twelve weeks. While this gesture hardly matched UAW President Walter P. Reuther's refusal to accept *any* pay during the strike, it indicated the depth of feeling of the legal professionals and their close identification with the client's cause.

⁹ For a more complete discussion of the UAW as an institution, see Reuther, *The United Automobile Workers: Past, Present and Future*, 50 VA. L. REV. 58 (1964), written with the assistance of Professor Daniel H. Pollitt of the University of North Carolina School of Law.

¹⁰ *Id.* at 68.

can make progress only as the whole community progresses. If we can but maintain our traditions, we have nothing to fear from the future.¹¹

Just as the UAW's primary task is collective bargaining, the primary legal obligation in the representation of the UAW is in the traditional field of labor law; but because of the UAW's broad social concern UAW lawyers have opportunities and challenges unrelated to those of the legal representative of a business-type trade union.

Before discussing some of the more challenging or esoteric aspects of union practice, one should note that lawyers for large unions have to do many of the same things done by those representing other large institutions. House counsel for a labor organization becomes involved in fairly standard housekeeping matters, many of a non-labor character. For instance, unions have important legal problems in the areas of real property, taxation and governmental reporting requirements. There are also legal matters to do with pensions and insurance for staff and employees. Consequently, union counsel spends considerable time drafting and approving title documents and in approving, preparing and filing tax returns and other governmental reports. While not particularly germane to labor law, other elements of the representation of a large institution with more than a thousand employees, millions of dollars of investments, and an active involvement in the community are found in the work of the union lawyer. There occasionally are suits with banks, tort matters such as defamation, personal injury, and property damage, and a few quite ordinary contract disputes. In the UAW, where phonograph records are produced and books published, there are even occasional copyright matters.

ADVICE, COUNSEL AND BARGAINING

Perhaps the most important function of a union general counsel is that of advice and counsel to the union's officers, its executive board and its staff. This, of course, requires communication with the leaders of the union and it also demands the assumption of a degree of responsibility where the answers are not always clear and the safe and conservative legal approach would be a simple "no." The union's lawyer must try to find a way. In the UAW, current decisions, new laws and other legal developments that have or could have an effect on the union are regularly analyzed by the union's law department. Some matters are brought only to the attention of the officers, others to the full International Executive Board and some to the attention of the entire International staff. There

¹¹ *Id.* at 103.

have been months in which as many as four lengthy memos analyzing new legal developments, most often not directly involving the UAW, have been written and distributed by the general counsel. In addition, the legal department reports orally to the International Executive Board at its regular meetings. The general counsel must supervise the work of independent, ad hoc and regularly-retained counsel acting for the union around the country and establish and maintain a consistent policy.

When a union has learned to use its lawyers, they are consulted regularly by officers and top staff because preventive legal advice can often prove most beneficial to the union; consequently, there are frequent day-to-day consultations between UAW policy makers and lawyers. Contract proposals are carefully checked, and government forms are either prepared or approved by the union's lawyers. Precedent setting arbitration cases are prepared with the assistance of lawyers and, in some instances, handled by lawyers.

The lawyer's role in UAW negotiations, especially in the pattern-setting bargaining at the automobile industry's "big three" and in the difficult negotiations in aerospace, varies depending on the issues presented by a particular set of negotiations, and, of course, the personality and orientation of the particular lawyer. Normally, lawyers advise principal union negotiators in private union caucus, write or check drafts of contract proposals and language, and work out details with company counterparts after agreement on general principles. Sometimes lawyers join the negotiating teams and present union proposals at the bargaining table.

Occasionally, a particular set of negotiations requires more lawyer participation. The 1967 negotiations with Ford, Chrysler and General Motors presented UAW lawyers with several interesting challenges. Besides the more usual problems of contract negotiations such as wages and hours, there were troublesome legal issues with respect to the protection of the bargaining unit from erosion by employer misclassification or by accelerating technology, the protection of the work of the union's members from subcontracting, and others. The most novel bargaining issue, however, was the union's determination to establish wage parity between Canada and the United States for comparable work for the same employer.

The UAW had long felt, as a matter of morality, that Canadian workers who performed the same jobs as workers in the United States for the same employer should have equal pay for equal work. At General Motors, for instance, Canadian workers were paid approximately 43

cents per hour less than those in the United States. With the passage of the Automotive Products Trade Act of 1965¹² and the execution of the United States-Canada Automotive Products Agreement of 1965,¹³ a common market in automobiles, trucks and components was, in effect, created so that original equipment and completed vehicles could be manufactured in one country and sold in the other without any tariff payment at all. For General Motors, Ford and Chrysler a single market had been created in both countries, served by plants in either at the will of the corporations. The UAW, because of its commitment to free trade, had vigorously supported the Act and the Agreement.

The Union concluded that wage parity between the two countries had become a matter of economic necessity for the members of the United States bargaining units. It reasoned that if General Motors could make a Chevrolet in Canada at a wage savings of 40 cents an hour or more for sale in the United States, eventually most Chevys would be made there. Consequently, the UAW made wage parity a high priority demand in its separate negotiations with the three companies. General Motors and Ford refused to bargain on the issue on grounds the Union was attempting to bargain for employees outside the unit. So the issue was joined. Counsel for the UAW filed unfair labor practice charges under sections 8(a)(1) and (5) of the Labor Management Relations Act against General Motors and Ford alleging that the employers had refused "to bargain over and discuss a mandatory subject of collective bargaining—the preservation of unit work." The union relied on decisions of the courts and the NLRB in cases where clauses requiring employers to limit production work to those other plants or employers maintaining commensurate labor standards with those of the bargaining unit were at issue.¹⁴ The issue of the legality of this particular union demand had tremendous importance because it appeared likely that the refusal of the employers to discuss this matter might result in a strike and, were one of the issues on the table of questionable legality, the Union's position would have been unduly endangered. Finally, however, while the cases were still under investigation, the parties reached an accommodation, bar-

¹² 19 U.S.C. § 2001 (Supp. I, 1965).

¹³ Agreement Concerning Automobile Products With The Government of Canada (January 16, 1965).

¹⁴ *E.g.*, *Teamsters Local 24 v. Oliver*, 358 U.S. 283 (1959); *Orange Belt Dist. Council v. NLRB*, 328 F.2d 534 (D.C. Cir. 1964); *Westinghouse Broadcasting Corp.*, 160 N.L.R.B. 1394 (1966); *Highway Drivers Local 107*, 159 N.L.R.B. 84 (1966).

gained over the issue of the disparity of wages in the United States and Canada and the possible loss of work to the United States unit, and the charges were withdrawn. UAW counsel, in a letter withdrawing the charge against General Motors, wrote the NLRB: "There is no longer a cloud over the bargaining table in the form of an employer claim that a pending union proposal is illegal. . . . Now this matter . . . [is] on the table for good faith collective bargaining. The contest is now a legitimate one—shorn of technical, legalistic roadblocks."¹⁵ It is now, of course, a matter of history that in 1967, the UAW and each of the "Big Three" automobile companies agreed upon the achievement of total parity for automobile workers in Canada and the United States.

A further legal complication in the 1967 automobile negotiations occurred when certain of the employers indicated that they were considering the filing of an unfair labor practice charge against the UAW because it changed its internal system of contract ratification to permit separate ratification and, in so doing, gave the right of veto to skilled trades workers in the units. After some discussion, however, none of the three companies filed such a charge. In 1968, however, a federal court upheld the legality of the UAW separate ratification procedure in a suit brought by a smaller employer.¹⁶

Finally, that set of negotiations had one further elusive legal issue. UAW, in contrast to the Steelworkers Union, bargains individually with the companies in the automobile industry. At the stage of the negotiations when a strike appeared to be a distinct probability, the *Wall Street Journal* did a story on the possibility of an employer mutual assistance combination¹⁷ in the form of either a supportive lockout or financial assistance to the struck company by the other two, which occasioned a flurry of legal research. As far as we know nothing materialized along these lines, possibly because Walter P. Reuther called a press conference and exposed it fully.

INTERNAL UNION MATTERS

As President Reuther has written:

The UAW has not lost sight of the individual. Our contract proposals come from the membership, are ratified by the membership, and are administered by the membership. One of our prime objectives is a

¹⁵ Letter from Stephen I. Schlossberg to Jerome H. Brooks, Regional Director, 7th Region, NLRB, Aug. 25, 1967.

¹⁶ *Lear Siegler v. UAW*, 287 F. Supp. 692 (W.D. Mich. 1968) (appeal pending).

¹⁷ *Wall Street Journal*, July 24, 1967, at 2, col. 2.

grievance process to protect the worker against petty tyranny at the plant level. A.H. Raskin recently wrote that, although the UAW deals for more than 300,000 employees in its negotiations with General Motors, one official of the UAW stated that "we will fight, bleed and die for a word that won't affect more than three people—perhaps not even one in the whole life of the contract." Our concern for and control by the individual member is what differentiates us from the corporations.¹⁸

Perhaps because of attitudes such as the above, UAW lawyers have had little trouble in winning suits brought against it by individual members, nor has there been any great difficulty from the Labor-Management Reporting and Disclosure Act (Landrum-Griffin Act).¹⁹

Sometimes its lawyers take positions unique in the labor movement, as in the area of fair representation. The National Labor Relations Board has held that Congress has imposed upon unions the duty of fairly representing all employees in the bargaining unit. In *Miranda Fuel Co.*,²⁰ the UAW was the only union to file an amicus curiae brief urging the NLRB to take the position that "in the area of racial discrimination, rights and prohibitions inhere in section 8 of the Labor Management Relations Act, which the Board may, in appropriate cases, vindicate through unfair labor practice proceedings."²¹ The NLRB accepted the suggestion and for the first time held that violation by a union of its duty of fair representation because of racial discrimination is a violation of sections 8(b) (1) and (2), where it results in a loss of seniority or other employee benefits.²²

Moreover, the UAW—alone among major industrial unions—has, since 1957, provided for a Public Review Board, an independent body entirely separate and apart from the UAW, composed of outstanding citizens. The Public Review Board (PRB) is a final appellate body whose decisions are binding upon the International Union, the locals and the members. It is composed of outstanding clergymen, academicians and a judge. Chairman of the Board is Msgr. George G. Higgins. Serving with him are Dr. Jean T. McKelvey, Dr. Henry Hitt Crane, Judge George

¹⁸ Reuther, *supra* note 9, at 87.

¹⁹ 73 Stat. 519 (1959) (codified in scattered sections of 29 U.S.C.).

²⁰ 140 N.L.R.B. 181, *enforcement denied*, 326 F.2d 172 (2d Cir. 1963).

²¹ Brief for UAW as Amicus Curiae at 17-18, *NLRB v. Miranda Fuel Co.*, 326 F.2d 172 (2d Cir. 1963).

²² The *Miranda Fuel* rule was subsequently applied in *Rubber Workers Local 12 v. NLRB*, 368 F.2d 12 (5th Cir. 1966), *cert. denied*, 383 U.S. 837 (1967) (union's failure to process grievances of Negroes because of racial discrimination, resulting in loss of position and denial of equal use of plant facilities, held an unfair labor practice).

N. Leighton, Rabbi Jacob J. Weinstein, Dr. Robert W. Flemming and Professor Harry W. Arthurs. In ten years of operation, the PRB has handled 189 appeals and 456 informal complaints and inquiries. The cost of maintaining this private "supreme court" has averaged a little more than three cents per member a year.²³

From the beginning, the Board was composed of persons of the highest caliber. Its original members included three outstanding clergymen (Rabbi Morris Adler, Msgr. George C. Higgins and Methodist Episcopal Bishop B. Bromley Oxnam); a Negro judge (Wade H. McCree, Jr.); a Canadian magistrate (J. Arthur Hanrahan); a university chancellor (Clark Kerr); and a professor (Edwin E. Wittee). It has been written that:

The UAW Public Review Board, established by the 1957 constitutional convention of the Union, represents the broadest grant of authority over its internal affairs ever voluntarily given by a labor organization—or any other organization for that matter—to an outside body.²⁴

The foregoing discussion of the Public Review Board is not meant to convey the impression that lawyers are intimately concerned with it. While UAW lawyers appear before the Board, the PRB has an entirely separate relevance here. First of all, the establishment and operation of the Board tells something in general about the UAW. Second, and of great relevance to lawyers, the existence of the Board and its record make the job of defending the Union against suits by disgruntled members or locals in court much easier than might otherwise be the case. The doctrine of exhaustion of internal remedies is a much more formidable shield when the final step of the procedures involves review by a distinguished independent body.

Even where the UAW has not been a party to an action, its internal remedies, particularly those afforded by the PRB, have been lauded by courts. In *Parks v. IBEW*,²⁵ the court said:

Some unions, like the United Automobile Workers, have responded to the pressure for fairness in internal trial proceedings by establishing, essentially external to the union organization, independent review boards having the final word²⁶

²³ Solidarity, Sept. 1968, at 5 (monthly newspaper of the UAW).

²⁴ J. STIEBER, W. OBERER & M. HARRINGTON, *DEMOCRACY AND PUBLIC REVIEW* 7 (1960).

²⁵ 314 F.2d 886 (4th Cir.), cert. denied, 372 U.S. 976 (1963).

²⁶ 314 F.2d at 913. See Brooks, *Impartial Public Review of Internal Union*

Civil liberties lawyers will find interesting an internal matter in which the UAW lawyers were involved. In 1964, President Reuther said "[The] fact that the majority [in the union] has a right to act in the political arena does not give them the right to utilize the minority's funds for ideological purposes offensive to them."²⁷ In *International Association of Machinists v. Street*²⁸ and *Brotherhood of Railway & Steamship Clerks v. Allen*,²⁹ the Supreme Court held that the union shop provisions of the Railway Labor Act³⁰ did not permit unions, over an employee's objection, the power to use his exacted funds to support political causes which he opposes, but that the dissenting employee must make his dissent known because it could not be presumed, and that such claims were individual and could not be brought in a class action. *Allen* encouraged unions to afford an internal remedy on this issue.

Before these cases came down the UAW had in its constitution a system of "contracting out" for dissenters. Every UAW member had the privilege of diverting the portion of his dues that would otherwise be used for political purposes to a nonpartisan citizenship organization. An objecting member could make this election by individually notifying the International Secretary-Treasurer by registered mail; the election was good for one year from the date of the request and could be continued from year to year by giving similar notification.

The officers of the Union, however, were not satisfied that the constitutional provision fully met both the individual conscience needs of the total membership or the suggestions of the Supreme Court; in late 1967, they began consulting with the legal department on language for the improvement of Section 6 of Article 16 which might be proposed to the Constitution Committee for submission to the 1968 UAW Convention. UAW lawyers worked on this matter first with the officers of the Union and then with the Constitution Committee of the 21st UAW Constitutional Convention held at Atlantic City, May 4-10, 1968. The Constitution Committee agreed unanimously with the leadership proposal, and recommended the amendment drafted by the legal department. The amendment raised the privilege of diverting one's dues to a nonpartisan organization to a right of refund. Provision was made for determination by a com-

Disputes: Experiment in Democratic Self-Discipline, 22 OHIO ST. L.J. 64 (1961); *Developments in the Law—Associations*, 76 HARV. L. REV. 983, 1035 (1963).

²⁷ Reuther, *supra* note 9, at 82.

²⁸ 367 U.S. 740 (1961).

²⁹ 373 U.S. 113 (1963).

³⁰ 45 U.S.C. § 152 (1964).

mittee of the International Executive Board of the proportion of dues spent for political purposes, with a right of appeal from their determination to the full Executive Board and finally to the Public Review Board or the UAW Convention.

The amendment was passed unanimously and the UAW became the first union in America to respond fully to the civil liberties-oriented invitation of the Court. UAW lawyers are understandably proud to have had a part in this matter.

LABOR LAW ACTIVITIES

Organizing

The UAW is one of the most aggressive unions in the country when it comes to organizing the unorganized. In 1967, for example, the Union participated in 413 National Labor Relations Board representation elections. It won 273 of these elections, thereby organizing 36,843 workers. UAW lawyers play a key role in organizing. They teach and lecture to organizers on a regular basis. From the preparation of a representation petition or the letter demand for recognition, all through the organizing campaign, lawyers advise organizers how to conduct their campaigns within the law and how to combat employer conduct that violates the Labor-Management Relations Act or interferes with the conduct of NLRB elections.

Frequently unfair labor practice charges are filed against employers as a result of their conduct in these elections; this generates a substantial volume of litigation, which is handled by UAW lawyers, before the NLRB and, to a lesser extent, the courts of appeals. But the legal problems that arise in union organizing campaigns can run the gamut of labor law. Here are often found problems of general law such as trespass, free speech and freedom of association. More frequently, there are alleged violations of all of the section 8(a) and some of the section 8(b) proscriptions of the Taft-Hartley Act. Preemption and representation problems are also found in this area. The complicated body of law dealing entirely with representation problems, a subject too often neglected in law school labor law courses, particularly demands the constant attention of lawyers.

The legal problems encountered in organizing campaigns are not static; as Mr. Justice Brandeis said:

The history of the rules governing contests between employer and employed in the several English-speaking countries illustrates both the

susceptibility of such rules to change and the variety of contemporary opinion as to what rules will best serve the public interest.³¹

Because the legal problems of organizing are of a recurrent but constantly changing nature,³² UAW lawyers work closely with organizers in general continuing education programs, in addition to working with them on specific litigation. A monthly mailing to each organizer written by UAW lawyers keeps him abreast of current legal developments, and lectures and teaching sessions are held from time to time. A handbook for organizers written by the author of this article was originally developed exclusively for UAW organizers but has since been published for general distribution.³³

Other Litigation

The practice of law for a large industrial union, such as the UAW, includes advocacy before a variety of administrative agencies and the courts. The National Labor Relations Board is, of course, the primary forum. UAW lawyers also handle cases before the state unemployment compensation commissions, the Equal Employment Opportunity Commission, state civil rights commissions, the Missile Sites Labor Commission, and others. In most of these matters, the UAW is the charging party, the petitioner or plaintiff. There are also arbitration matters and suits for contract enforcement in the federal and state courts, as well as the occasional injunction case.

Most of the UAW's cases before the NLRB have been routine in the sense that they involve the problems usually concomitant to normal union activities, such as attacks on employer conduct thought to be unfair and the on-going defense of the union. In several kinds of cases, however, the UAW has attempted to "pioneer"—that is, to help develop the emerging law which in the opinion of UAW lawyers had lagged behind the necessities and realities of the times.³⁴

³¹ *Truax v. Corrigan*, 257 U.S. 312, 357 (1921) (dissenting opinion).

³² *See, e.g.*, *Bernel Foam Prod. Co.*, 146 N.L.R.B. 1277 (1964); *Louis Aiello*, 110 N.L.R.B. 1365 (1954); *M. H. Davidson Co.*, 94 N.L.R.B. 142 (1951).

³³ S. SCHLOSSBERG, *ORGANIZING AND THE LAW* (1967).

³⁴ "Pioneering" in a given field of labor law is, of course, not unique to the UAW. The Steelworkers, for example, established much of the law of arbitration. *See United Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960); *United Steelworkers v. Warrior & Gulf Nav. Co.*, 363 U.S. 574 (1960); *United Steelworkers v. American Mfg. Co.*, 363 U.S. 564 (1960).

The Access to Information Cases

A few years ago, we decided to pursue vigorously cases involving employer refusal to supply necessary information for collective bargaining and contract administration. This was a calculated decision premised on the theory that collective bargaining should be made as informed and rational as possible. The UAW sought out fact situations in which it seemed possible to persuade the Board to elaborate better the duty to disclose information pertinent in collective bargaining or in contract administration. This duty, fundamental to the true implementation of the congressional intention to promote collective bargaining, was long ignored by the Board. However, recently under the prodding of UAW and others, the Board has shown a firm intention to implement congressional policy more fully by assuring unions that they will not be made to bargain in ignorance of pertinent facts arbitrarily withheld by the employer.

The UAW's "campaign" to make bargaining and contract administration more intelligent and rational is illustrated by a series of cases culminating in *NLRB v. Acme Industrial Co.*³⁵ In *Curtiss-Wright v. NLRB*,³⁶ the UAW sought information as to job evaluation factors and wage rates for certain employees alleged by the Union to belong in the bargaining unit, but claimed by the employer to be excluded from the unit. The Board held, with court approval, that the employer, in a case where the union contends there has been erosion of a unit, must divulge information required to enable the union to determine whether the employees were properly excluded from the unit.

In *Fafnir Bearing Co. v. NLRB*,³⁷ the UAW was successful in expanding the Second Circuit Court of Appeal's view of union rights in a phase of contract administration.³⁸ In that case, the Board, again with court approval, held that an independent union time study may be made in an employer's plant *where necessary for the union to function intelligently in behalf of employees* asserting grievances concerning pay ratings of particular jobs. It was not enough that the arbitrator would be permitted an on-site de novo time study because, by permitting the union to enter on the premises to conduct its own study, the union might, on the basis of its more complete information, decide to settle the case. In other

³⁵ 385 U.S. 432 (1967).

³⁶ 145 N.L.R.B. 152, *enforced*, 347 F.2d 61 (3d Cir. 1965).

³⁷ 146 N.L.R.B. 1582, *enforced*, 362 F.2d 716 (2d Cir. 1966).

³⁸ *Cf. NLRB v. Otis Elev. Co.*, 208 F.2d 176 (2d Cir. 1953).

words, in *Fafnir*, the Union needed the information to decide whether or not to take the case to arbitration and an employer's naked property right claim was held insufficient to bar union entry onto the employer's property.

Finally there was the unanimous Supreme Court decision in favor of the UAW (and the NLRB) in the *Acme Industrial Case*,³⁹ where the Court reversed the Seventh Circuit Court of Appeals and enforced an NLRB decision ordering an employer to give certain information and rejecting the employer's contention that the availability to the UAW of a grievance procedure eliminated a separate right to information.

The controversy in *Acme* arose when the UAW discovered the movement of certain machinery from the employer's plant. When Union representatives asked about the movement, the employer told them that he had not violated the agreement and was not obliged to answer the questions. Eleven grievances were filed and the Union wrote the employer requesting the following information:

1. The approximate dates when each piece of equipment was moved out of the plant.
2. The place to which each piece of equipment was moved and whether such place was a facility operated or controlled by the company.
3. The number of machines or pieces of equipment that were moved out of the plant.
4. What was the reason or purpose for moving the equipment out of the plant.
5. Was this equipment used for production elsewhere.

The company refused to furnish the information and the Union filed charges alleging a failure to bargain in good faith. The NLRB found that the information was necessary "to evaluate intelligently the grievances filed" and ordered the employer to supply it. The court of appeals, however, refused to enforce the Board's order on grounds that a clause in the agreement calling for binding arbitration ousted the Board of jurisdiction. The Supreme Court reversed, for otherwise

the union [would be forced] to take a grievance all the way through to arbitration without . . . the opportunity to evaluate the merits of the claim. The expense of arbitration might be placed upon the union only

³⁹ NLRB v. *Acme Indust. Co.*, 385 U.S. 432 (1967).

for it to learn that the machines had been relegated to the junk heap. Nothing in federal labor law requires such a result.⁴⁰

The effect of *Acme* and the other cases has been to make collective bargaining a rational process instead of "a game of blind man's bluff."⁴¹

Remedy

The litigation against the Kohler Company of Wisconsin is deserving of comment. There, lengthy litigation⁴² resulted in a settlement of the contempt and back pay proceedings against the company for four and a half million dollars. Almost as important to the UAW was that Kohler finally reinstated the local leadership. The key decision in this protracted series of NLRB and court battles was that of the District of Columbia Court of Appeals in which the court, relying on *NLRB v. Thayer*,⁴³ balanced the strikers' alleged misconduct against that of the employer.⁴⁴

Kohler stimulated another policy decision. UAW lawyers reasoned that while the more than ten-year string of litigation had finally benefited the workers to the tune of four and a half million dollars, it might still have been more profitable for Kohler, even with tremendous litigation expenses added to the back pay bill, to fight rather than bargain. Moreover, as had other unions, we had witnessed the spectacle of employers "playing out the legal string" so that in initial bargaining cases, they were often able, by resisting bargaining through lengthy NLRB and court litigation, to reap a profit by saving union-bargained wages and benefits for years. We determined to seek a monetary remedy for employees whose employer refused to recognize the union and bargain about the working conditions of newly-organized workers. So the UAW has also attempted to pioneer in the area of remedy. In a case now before the NLRB,⁴⁵ the UAW has sought a compensatory remedy for employer refusal-to-bargain for newly-organized units.

Unions have long been troubled by the gap in the enforcement of the National Labor Relations Act occasioned by the consistent failure of the NLRB to provide an effective remedy in initial refusal-to-bargain cases. As John Silard and I wrote in the *Wayne Law Review*:

⁴⁰ *Id.* at 438-39.

⁴¹ *Id.* at 438 n.8, quoting *Fafnir Bearing Co. v. NLRB*, 362 F.2d 716, 721 (2d Cir. 1966).

⁴² See W. UPHOFF, *KOHLER ON STRIKE* (1966).

⁴³ 213 F.2d 748 (1st Cir. 1954).

⁴⁴ *Local 833, UAW v. NLRB*, 300 F.2d 699 (D.C. Cir.), *cert. denied*, 370 U.S. 911 (1962).

⁴⁵ *Ex-Cell-O Corp.*, No. 25 CA 2377 (NLRB, filed Mar. 2, 1967).

Since the Wagner Act, and continuing under the Taft-Hartley Act, it has been an unfair labor practice for an employer "to refuse to bargain collectively" with the union representing workers he employs. The only catch is that the NLRB has permitted employers who refuse to obey that section of the law to profit at the expense of the wronged workers. The longer the employer breaks the law the more he profits, in the absence of Board-enforced make-whole remedies.

This failure in remedy seems to negate the fact that collection bargaining is the declared policy of the United States. Those few cases where procedures are followed to the very end result largely in meaningless orders. This is so because delay means economic gain for the respondent and ultimate weakening of the employees and their chosen representative.

Most of the cases seem to follow a definite pattern. If a union files for recognition or for an election, the employer's first move is to stall. Even where there are no real issues, these employers insist on a hearing at the NLRB. Before, during and after the hearing they seek postponements—delays in attendance and in filing briefs. Axiomatic propositions are contested. Then, after the NLRB orders an election, there is an attempt to create issues for possible review by the Board in Washington. This is accomplished by filing objections after the Union has won the election. When the local NLRB office overrules the objections they are appealed to Washington. Upon final certification of the union by the Board, there is usually a refusal-to-bargain, thus forcing the union to file a charge of a section 8(a)(5) violation. So the process goes ultimately through the NLRB and a federal court of appeals. If the employer does not seek Supreme Court review or run the risk of a contempt citation, this is the end of the line.

Even assuming these employers act in good faith and are merely "technical" violators of law, the result is the same when they have lost—economic gain for them and corresponding loss for the employees. The standard remedy has been for the court to enforce the NLRB order of posting a notice and bargaining in good faith. Meanwhile all of this has consumed from one to four years. In the end, we have a result that should have been reached years before. At this point in time the union is, of course, in a much weaker position than it was when the violation occurred, and the employees have lost the valuable opportunity to negotiate economic gains and other benefits.⁴⁶

Intervention in Appeals from the NLRB

We determined also to try to eliminate a frustrating matter of procedure. Where a union, an employer, or an individual charged another

⁴⁶ Schlossberg & Silard, *The Need for a Compensatory Remedy in Refusal-to-Bargain Cases*, 14 WAYNE L. REV. 1059, 1059-60 (1968). Those who cherish the institution of collective bargaining remain hopeful that the Board will soon act favorably in the *Ex-Cell-O* case.

with unfair labor practice, participated fully in all proceedings before the NLRB, and won, it nevertheless was not entitled to intervene in enforcement litigation. According to the Board, once a party was fully successful before it, the protection of that victory in the courts was entirely a matter for the Board. This, of course, included decisions whether to seek or oppose certiorari. Similarly a charged party who was vindicated before the NLRB was said to have no right to intervene in the review litigation. We were fortunate enough to have a case in each of two circuits in which we had been a winner as both a charging party and a respondent.

On December 7, 1965, the Supreme Court handed down unanimous decisions in *Local 283, UAW v. Scofield* and *Local 133, UAW v. Fafnir Bearing Co.*⁴⁷ in an opinion constituting a complete victory for the UAW. The Court held, in agreement with the UAW, "that both the successful charged party (in *Scofield*) and the successful charging party (in *Fafnir*) have a right to intervene in the Court of Appeals proceeding which reviews or enforces Labor Board orders."⁴⁸

In *Scofield*, a number of members had charged the Union with a violation of Taft-Hartley because they were fined for exceeding local union production ceilings. The NLRB found that the Union had not violated the Act and the employees sought review in the Seventh Circuit Court of Appeals. The UAW sought to intervene, and when the court of appeals refused to permit the Union to come in as a party we petitioned the Supreme Court. In *Fafnir*, the Union charged the company with refusal to bargain and the Board found the employer guilty. The employer sought review of the Board decision in the Second Circuit Court of Appeals and the UAW sought to intervene there to protect its victory. Again, the court of appeals denied us intervention and this case was joined with *Scofield* in the Supreme Court.

We believe these cases are of great importance to all parties who practice before the Labor Board. Experience has shown that even though we have great respect for NLRB lawyers, we cannot rely entirely upon them to protect our interests. Most important, where we are a party in the court of appeals, we have an independent right to seek Supreme Court review and, of course, the right to oppose such review sought by an employer or the Board in appropriate cases. These decisions give unions and employers the right to argue orally in the courts and to point out

⁴⁷ 382 U.S. 205 (1965).

⁴⁸ *Id.* at 208.

pertinent parts of the record below. The result will be a new standard of fairness in the administration of the Labor Act in the courts. But, at the same time, prudence is in order. The UAW has taken a very strong policy position to ascertain that the newly-won right of intervention in cases in which enforcement or review of NLRB order is sought is not abused. Obviously, it would be a serious mistake if lawyers for local unions or, for that matter, for international unions decided to intervene in every NLRB review of enforcement case. The currency would be cheapened. Neither should lawyers flood the Supreme Court with petitions. Cases in which Supreme Court review is sought must be screened carefully so that parochial, inconsequential cases will not snow under the Court and only important questions will be presented to it.

Now, however, because of *Scofield* and *Fafnir*, a party victorious before the Labor Board can be heard in protection of the victory. Experience has taught us the importance of this right.

Plant Relocations and Contracting Out

When an employer moves his plant to a new location, or contracts out substantial amounts of bargaining unit work to another employer, the move, as planned, almost invariably results in his employees losing their jobs. Because of the severe impact such employer conduct has on the lives of its members, the UAW, in the courts and before the Labor Board, has tried to require the employers involved to make adequate provision for his employees. In *UAW v. Crescent Brass & Pin Co.*,⁴⁹ for example, we secured a preliminary injunction in a federal district court to require the employer, who was moving his plant to Georgia and had offered transfers to his employees, to continue to apply the labor contract at the new location.⁵⁰ The contracting out of bargaining unit jobs was involved in *UAW v. NLRB*.⁵¹ A court of appeals held that General Motors violated its duty to bargain by unilaterally contracting out six bargaining unit jobs, and reversed the NLRB, which had held that the company's action was permitted by the contract and that the loss of only six jobs from a large assembly plant was not a significant detriment to the unit

⁴⁹ 46 L.R.R.M. 2975 (E.D. Mich. 1960).

⁵⁰ Other cases involving plant relocations in which the UAW was a party include: *UAW v. Seagrave Div., F.W.D. Corp.*, 56 L.R.R.M. 2874 (E.D. Ohio 1964); *UAW v. Avis Indus. Corp.*, 56 L.R.R.M. 2632 (E.D. Mich. 1964); *Oddie v. Ross Gear & Tool Co.*, 195 F. Supp. 826 (E.D. Mich. 1961), *rev'd*, 305 F.2d 143 (6th Cir. 1962), *cert. denied*, 371 U.S. 941 (1962).

⁵¹ 381 F.2d 265 (D.C. Cir.), *cert. denied*, 389 U.S. 857 (1967).

or the employees.⁵² The law in both these areas is still unsettled; accordingly the Union anticipates that more litigation will be required to secure the safeguards that its members must have.

"EXTRACURRICULAR" ACTIVITIES

Union lawyers are often fortunate in that their institutional clients' interests extend far beyond traditional trade union or labor law matters, so that they become involved in areas such as civil liberties, civil rights, and the broad spectrum of legal matters that can have some effect on the quality and kind of society and community in which we live. UAW lawyers have perhaps more such opportunities than most lawyers for international unions.

For instance, UAW is presently participating as amicus curiae on the side of the Detroit School Board in a suit against the state of Michigan alleging a violation of the equal protection clause of the fourteenth amendment and of the state constitution in the allocation of state aid to school districts.⁵³ The UAW's reasoning is that aid to students should be supplied on the basis of how much it takes to provide a decent education in particular situations rather than the value of the houses and establishments in a particular community—that is, on the amount of the tax base in a school district. The school board alleges that the principle of equal protection is violated when there is a much larger per pupil expenditure in tax-rich suburbs than in inner-city slum schools. The case, while still in the early stages at this writing, has already attracted considerable attention⁵⁴ and seems to be a potential candidate for Supreme Court review.

Another pending suit in which UAW was filed a brief as amicus curiae is *Consumers Union of United States, Inc. v. Veterans Administration*.⁵⁵ The suit was filed by Consumers Union, publisher of Consumer Reports, and seeks to force the Veterans Administration to release test information that the VA has on commercial hearing aids. The consumer organization filed the suit in July 1968, seeking to require the federal government to release the information under the Freedom of Information

⁵² See *Weltronic Co.*, 69 L.R.R.M. 1282 (1968).

⁵³ *Board of Educ. v. State*, Civil No. 103342 (Wayne County Cir. Ct., filed Feb. 2, 1968).

⁵⁴ *E.g.*, Wall Street Journal, July 16, 1968, at 1, col. 2.

⁵⁵ Civil No. 68-2875 (S.D.N.Y. filed July 19, 1968). A similar case, *McInnis v. Shapiro*, No. 68C. 673 (N.D. Ill. Nov. 15, 1968), was dismissed by a three-judge panel. At the present, a direct appeal is pending in the Supreme Court, No. 1033, Oct. term, 1968, and the UAW filed an amicus brief on March 10, 1969.

Act.⁵⁶ The tests were conducted for VA by the National Bureau of Standards. If successful, the suit might set a precedent which could force the government to release information on thousands of items it tests and evaluates regularly. The Act, which went into effect in July, 1967, provides for judicial review of a federal agency's refusal of access to, or withholding of, information. Consumers Union had exhausted the administrative channels outlined in the Act when the VA, on June 26, 1968, refused its final appeal.

Of course, UAW has no direct interest in this action, but President Reuther said: "We are taking this action because of this Federal agency's refusal to divulge to the consuming public information the public is entitled to have and which is vitally important to it. If consumers are to spend their hard-earned money intelligently, they must be able to know what products are a 'good buy.'"⁵⁷

The UAW's intense commitment to the principle of equal justice and the cause of civil rights has led its lawyers into many cases attacking race prejudice. Three cases serve as examples.

In *Chapman v. Watson*,⁵⁸ the Union, through two outstanding Chicago attorneys who regularly represent the UAW, Harold Katz and Irving Friedman, participated in support of the position of the Illinois State Director of the Department of Registration and Education, who had been enjoined by a lower court from enforcing a rule against the acceptance of discriminatory listings by real estate brokers. The Supreme Court of Illinois, focusing on the interest of the plaintiffs in perpetuating racial discrimination, reversed and ordered the injunction dissolved.⁵⁹

Another Chicago amicus curiae appearance involved the UAW in supporting the Illinois Fair Employment Practices Commission, and was less successful. In *Motorola, Inc. v. FEPC*,⁶⁰ the state supreme court reversed a lower court affirmation of findings by the FEPC that the employer had committed an unfair employment practice in falsely recording

⁵⁶ 5 U.S.C. § 301 (1966).

⁵⁷ UAW, Press Release, July 20, 1968.

⁵⁸ 40 Ill. 2d 408, 240 N.E.2d 604 (1968).

⁵⁹ [O]ur attention in this case must focus on the conduct of the plaintiffs, the nature of the interest they seek to protect and its relation to public policy, rather than on the extent of that interest or on the legality of the defendant's conduct. Because the contracts upon which the plaintiff's actions are based are contrary to public policy the circuit court should have dismissed the complaints in the consolidated case.

Id. at 415, 240 N.E.2d at 609.

⁶⁰ 34 Ill. 2d 266, 215 N.E.2d 286 (1966).

a test grade of a Negro applicant for a job to avoid hiring him. However, despite the employer's claim that the act setting up the FEPC was unconstitutional, a proposition vigorously resisted by UAW, the court found the act and the procedures under it constitutional. Its reversal of the lower court was based only on its view that the commission had failed to establish discrimination by a preponderance of the evidence.

UAW lawyers joined with the NAACP in *NAACP v. City of Detroit*⁶¹ in an action seeking a judgment declaring a "home owners" ordinance unconstitutional.⁶² The issue was whether the ordinance was so vague as to be unconstitutional. The problem for the drafters of the ordinance had always been that if they were specific enough to convey the real purpose of the statute they would reveal that the City of Detroit was acting to preserve segregation, so the plaintiffs and amici properly pointed out the fatal vagueness of the ordinance, and the court held the ordinance unconstitutional.

Quite apart from the participation in such cases as those described above, there are other opportunities to work on matters of general public interest. For instance, another interesting matter, completely unrelated to labor law, arose in 1967 and 1968. President Reuther served as a member of the American Bar Association Commission on the Reform of the Electoral College. His work on that distinguished commission involved questions of constitutional law and national policy and, as might be expected, occasioned consultation with his lawyers. The commission

⁶¹ No. 38272 (Wayne County Cir. Ct., Dec. 27, 1966).

⁶² Detroit, Mich., Ordinance 898F, Sept. 16, 1964:

Sec. 1. Each Detroit resident and residential property owner shall enjoy the following rights, and it is the public policy of the City of Detroit to recognize, respect and protect such rights:

(a) The right of privacy, the right to choose his own friends and associates and to own, occupy and enjoy his property in any lawful fashion according to his own dictates;

(b) The right to freedom from interference with his property by public authorities attempting to give special privileges to any group;

(c) The right to maintain what in his opinion are congenial surroundings for himself, his family and his tenants;

(d) The right to freedom of choice of persons with whom he will negotiate or contract with reference to such property, and to accept or reject any prospective buyer or tenant for his own reasons;

(e) The right to employ real estate brokers or representatives of his choice and to authorize and require them to act in accordance with his instructions.

Sec. 2. Any person willfully interfering with or denying such rights of any Detroit resident or residential property owner shall be punished by fine not to exceed \$500.00 or by imprisonment not to exceed ninety days.

recommended the abolition of the electoral college and the election of the President and Vice President of the United States by direct popular vote. Senator Bayh introduced a resolution to accomplish these reforms⁶³ and hearings were held on the reform of the electoral system in the United States.⁶⁴ At those hearings I, as general counsel of the UAW, testified for reform of the presidential election process. During the course of that testimony there developed a colloquy on strategy which illustrates a difference in approach between the senator and the labor lawyer:

Mr. Schlossberg. At this point, Mr. Chairman, if you would not object, I would like to comment on the question you put to Senator Long. We understand the complexion test of the legislative process and the need for flexibility in presenting a resolution of such great importance, which involves the amendment of the Constitution. But we urge, Mr. Chairman, that if, in those few rare cases, it becomes necessary to have a runoff, the principle which motivates the entire thrust of this bill is still applicable and still valid and that the people should still elect the President.

In other words, we say, Mr. Chairman, that there should be no give on this principle of direct election. If a runoff becomes necessary in those very rare instances, we think a runoff should be conducted even though it would be expensive and time consuming. Sometimes the processes of democracy are more costly than other processes, but we believe that price is a price well worth paying.

Senator Bayh. If I may interrupt, since you did depart from your text here momentarily—

Mr. Schlossberg. Yes, Mr. Chairman.

Senator Bayh. Certainly, you are familiar with the bargaining process.

Mr. Schlossberg. Yes, sir.

Senator Bayh. I have found that the experience I have had in the Senate, having dealt personally with one constitutional amendment, is that it just is physically impossible to get intricate and major changes in this vital document, our Constitution, without a significant amount of bargaining. Now, given these two alternatives, and we may not get to that point—I hope we do not—but given the opportunity on the one hand, to elect our President by popular vote for the first time in history, barring only the contingency in which one candidate gets less than 40 percent, and you are well aware of the infrequency of this, the improbability of it—comparing that contingency with the fact of having no change, what do you say is the better of those two alternatives? Admitting, as I say, that I hope we do not get ourselves into that position.

⁶³ S.J. Res. 2, 90th Cong., 2d Sess. (1968).

⁶⁴ *Hearings on S.J. Res. 2 Before a Subcomm. of the Senate Comm. on the Judiciary*, 90th Cong., 2d Sess. (1968).

But sometimes you get down to the place where the tunnel narrows; then you have to look it squarely in the eye.

Mr. Schlossberg. Well, Mr. Chairman, my experience with the bargaining process leads me to say that if you begin bargaining by stating your fallback position, you have really, in the very essence, adopted that fallback position. We have found in our experience in another area of bargaining, in another area of negotiation quite different from the Congress, I am sure, that any indication of an acceptable position other than the position we espouse at the time with dedication and sincerity, an indication of a fallback position is likely to become the position that you are espousing.

Senator Bayh. I really do not think that that is exactly appropriate to the responsibility of a congressional subcommittee, though. I understand the delicate position labor and management are in in negotiations. I think our position is pretty well admitted when we introduce a piece of legislation bearing our name. But in trying to explore and pick the minds, if I may use that phrase, of those of you who are really significantly involved in this whole picture, I think we have a responsibility to explore these alternatives. Because you, unfortunately, are not going to be sitting in on this negotiation when it occurs.

Mr. Schlossberg. That is right. I understand that. I just want to say this, that—

Senator Bayh. I am well aware that you do not expose your whole [*sic*] card until the last moment.

Mr. Schlossberg. That is right. I feel, though, that even—first, I feel as a matter of principle that the principle of congressional election of the President under any circumstances, whether it was thrown from the electoral college into the Congress or whether it was thrown as a result of a non-40-percent candidate into the Congress, is a bad principle and I am opposed to it. I am here to support direct election by the people even in the event of a runoff.

Now, having said that, let me say that as a matter of tactics and strategy, and you certainly are a better judge of that than I am in your area, in your bailiwick, so to speak, I still would say that with the tremendous support that has come for your resolution, for the philosophy embodied in your resolution from the divergent groups in this society, from the chamber of commerce and from the NAACP, is not opposed to the direct election system, because I would assume that the Congress would make sure that there would be no discrimination in the voting for President and Vice President and that the courts will see, too, that that is done, that that does not exist.

So I would say that when you have an opportunity to amend this thing, it ought to be done clean and it seems to me that the principle, as I say, of direct election is as valid on runoff election as it is in the first instance and that with the powerful pressure of groups like the American Bar Association, the NAACP, the UAW, the chamber

of commerce, and other groups who have endorsed this in philosophy and with the time being ripe, I think we ought to do it in a way that is clean. It seems to me the principle is just as valid and I would urge the Senator to stick to the direct election principle all through.⁶⁵

Then anticipating the unanswered question of why a labor union testified on a resolution unrelated to unions, the writer stated:

Our interest, Mr. Chairman, in electoral college reform is a logical one that springs directly from the basic principle on which the UAW was founded and on which it has always operated. That is the principle of equality of individuals, equality of economic opportunity, equality of educational opportunity, equality of social opportunity, and equality and equity participation. It was to secure a greater measure of equality and equity for the working people of this country that the UAW came to its existence. The UAW has never subscribed to the narrow philosophy that says that a labor union's only function is to secure higher wages for its members. President Reuther believes that a union's interests go far beyond the shop. Indeed, no one can accuse the UAW of having taken a parochial point of view. We are interested in every important aspect of national life. While it is important to secure a decent wage to make a worker a first-class citizen, the UAW has, from its inception, recognized the importance of participation in the total society. There are many things that workers cannot achieve for themselves at a bargaining table or on a picket line. Some of those things, dealing with the quality of a society, can only be achieved through the election of executive and legislative representatives responsive to the needs and desires of their constituents, who can create the legal framework of an equitable, just society. To this end the UAW has, for many years, maintained an extensive group of programs to educate its members to be intelligent, informed members of the electorate and to insure that they exercise their right to vote.

As we see the question of method of election it involves the basic principle of equality—of the right of every citizen of age to vote and have his vote count exactly the same as that of every other voter. This is, I take it, the theoretical basis of the recent one-man, one-vote decisions that the courts have handed down. To us the logic and morality of those decisions is inescapable. And if the principle is right and important in the election of State legislators, surely it is just as right, and just as important in the election of the two Executives of our country—officials who represent the constituency of all Americans—all equal participants, by constitutional mandate, in the political process. That this constituency wants its collective voice heard more directly, by abolishment of the electoral college and substitution of direct election has been made manifestly clear by recent polls. And that the

⁶⁵ *Id.* at 677-86.

officials whose election we are talking about favor such a change was made clear in President Johnson's remarks on the subject last year.⁶⁶

Closer to home, but out of the run-of-the-mill matters of labor law, are those instances in which the UAW has litigated and defended the constitutional rights of its members and staff in civil liberties cases. Three cases are particularly noteworthy. John T. Watkins, an UAW staff employee, refused to tell the House Un-American Activities Committee whether he knew some thirty persons to have been members of the Communist Party. Although he had been a forthright witness with regard to his own activities and the activities of those he believed to be still active in the Communist apparatus, he was convicted of contempt of Congress. The UAW assisted him in financing the costs of his defense, and in *Watkins v. United States*,⁶⁷ the Supreme Court reversed his conviction on grounds that he had not been sufficiently informed as to the pertinency of the unanswered questions to hold him in contempt. The UAW, in *Taylor v. McElroy*,⁶⁸ sought the reinstatement of a member discharged from his job in a defense plant as a security risk. The case hinged on the denial to Taylor of his right to confront his accuser, who was unknown to him. Union lawyers argued that it was unconstitutional to label one as a security risk on the word of an unknown accuser. The case was argued in the Supreme Court but was mooted when the government granted Taylor security clearance and reinstated him in his job.⁶⁹ Finally, the UAW intervened to protect a member critical of the Union leadership from deportation. Frederick John Williams was born in Wales and came to the United States as an infant. Subsequently, he joined the Communist Party but left it in 1947. Yet as late as 1966, the Immigration and Naturalization Service sought to deport him. Although Williams had been a bitter internal political opponent of the Union leadership, UAW lawyers assisted him in contesting the deportation proceedings, and were able to convince the Board of Immigration Appeals to grant Williams permanent residence.

CONCLUSION

The secret in practicing law regularly for a union is to have the closest

⁶⁶ *Id.* at 680.

⁶⁷ 354 U.S. 178 (1957).

⁶⁸ 360 U.S. 709 (1959).

⁶⁹ A companion case, however, held that the Secretary of Defense could not deprive an employee of his job in a proceeding which did not afford the opportunity of confrontation and cross-examination. *Greene v. McElroy*, 360 U.S. 474 (1959).

kind of identification and relationship with the client without *becoming* the client. This is true with respect to both inside, or house, counsel and outside, or retained, counsel. Those who understand this, serve their clients best.

Martin Mayer reports in his book *The Lawyers* that Arthur J. Goldberg expressed amusement at the surprise of those impressed with his efficiency in administering the affairs of the giant United States Labor Department. Mayer quotes Goldberg as saying, "Phil Murray used to get sick a lot, and *I had a lot to do with running the CIO*. I got relaxed about administration."⁷⁰ Indeed, Arthur Goldberg "had a lot to do with the running" of the Steelworkers Union as well as the CIO. But there is only one Arthur J. Goldberg. Most of the best union lawyers today share their clients' reluctance to have the lawyers very much involved "with the running of the union." Ideally union lawyers like very much to be lawyers.

Most union lawyers are happy in their work. The body of law with which they deal is dynamic and fluid. Their cases involve real live human beings in poignant human situations. Their contacts with interesting personalities in the leadership and ranks of labor are frequent and stimulating. Moreover, in almost every instance there is a feeling of identification with client goals that is rarely found in other kinds of law practice. There are important psychological rewards in labor law for those whose inclinations are toward goal advocacy rather than the pure art of practice for its own sake.

Labor union lawyers, while rarely organized on a formal basis, find many opportunities to fraternize with their colleagues and to share experiences and theories that might improve the administration of the law or promote greater equity as they see the need. Their relationships with their counterparts who represent management are, for the most part, cordial and often rewarding. One of the most compelling reasons for this generally friendly relationship is that the parties are entwined in continuing relationships. A contract, an arbitration, and even a litigated case is rarely in labor law the final chapter. There are very few "one-shot" propositions. The parties must live together. The not infrequent brushes union lawyers enjoy with academicians, arbitrators and dedicated government labor lawyers are often a source of great pleasure to them.⁷¹

⁷⁰ M. MAYER, *THE LAWYERS* 383 (1966) (emphasis added). Mayer is himself the son of a labor lawyer, Henry Mayer, who is one of the few labor advocates to practice on both sides of the table.

⁷¹ I, for instance, have found great stimulation from association with such

Just as other advocates, labor lawyers like to win cases. Their most important satisfaction, however, usually derives from their unspoken feeling that, win or lose, they are practicing public law in the public interest.

academic greats as Professors Philip Taft, Charles O. Gregory, and Philip Ross. My association with William E. Simkin, former Director of the Federal Mediation and Conciliation Service, was a most rewarding experience.