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Union Rights And Union Duties

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THE NEEDLE TRADES

THE YELLOW DOG CONTRACT

Union Rights And Union Duties

JOEL SEIDMAN

NEW YORK
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A WARTIME BOOK

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TO KATHY

Foreword

THROUGHOUT most of their history American trade unions have had to struggle for the right to exist. Within the past decade that struggle has been greatly modified with the passage of legislation that encouraged and accepted trade unionism as a legitimate and desirable instrument of workers in an industrial society. As unions have grown in membership, resources, and power, and as militant anti-unionism on the part of employers has given way to the acceptance of collective bargaining, public attention has been focused on the practices of unions and the conduct of their leaders. A host of proposals, some of which have won increasing acceptance in state legislatures, have been advanced in an effort to regulate and improve the conduct of the labor movement in relation to members, employers, and the general public. This book has been written in the hope of contributing to the discussion of these problems.

The preparation of this volume was made possible by an award from the John Dewey Labor Research Fellowship. To the Fellowship, and in particular to Professor Sidney Hook, its chairman, the author wishes to express his sincere appreciation. The author is also profoundly grateful to Professors Sumner H. Slichter of Harvard University and Edwin E. Witte of the University of Wisconsin for the care with which they read the manuscript and the many valuable suggestions that they made. Others who kindly read the manuscript and aided the author with their criticism were Dr. William M. Leiserson of the National Mediation Board, Clinton S. Golden of the United Steelworkers of America, David J. Saposs of the Labor Production Division of the War Production Board,

and Hugh E. Sperry of the staff of the National Labor Relations Board. All of them gave the author valuable assistance, whether or not they agreed with his conclusions, and to all of them the author is very grateful. For the point of view expressed in the volume, for its imperfections in arrangement or treatment, and for its conclusions, the author alone is responsible. The views expressed are not to be attributed either to the John Dewey Labor Research Fellowship or to the National Labor Relations Board, by which the author is presently employed.

Finally, the author wishes to express his appreciation to his wife for typing the manuscript, as well as for helping in other ways.

J. S.

Chicago, Illinois
May, 1943

Contents

1. THE PROBLEM OF UNION RESPONSIBILITY 3

2. RESPONSIBILITIES OF UNIONS TO MEMBERS 20

3. RESPONSIBILITIES OF UNIONS TO EMPLOYERS 52

4. HOW RESPONSIBLE ARE EMPLOYERS? 81

5. RESPONSIBILITIES OF UNIONS TO THE PUBLIC 102

6. GOVERNMENT, THE LAW, AND UNIONS 120

7. HOW RESPONSIBLE IS GOVERNMENT? 143

8. SHOULD UNIONS BE FORCED TO INCORPORATE? 163

9. OTHER PROPOSALS TO INCREASE UNION RESPONSIBILITY 180

10. TOWARD MORE RESPONSIBLE TRADE UNIONISM 202

NOTES 217

INDEX 233

Union Rights
And Union Duties

1. The Problem of Union Responsibility

WITHIN the span of a few years there has been a significant change in the public attitude toward trade unionism, and a remarkable increase in union membership. Little more than tolerated by the law throughout the greater part of their history, and in some of their ventures fought by government almost as bitterly as by employers, trade unions in less than a decade have seen the rights of labor organization and of collective bargaining receive legal recognition and implementation in a series of important statutes. The Norris-La Guardia Act of 1932, Section 7a of the National Industrial Recovery Act of 1933, and the National Labor Relations Act of 1935 were all based upon the premise that the trade union is a desirable and necessary agency in an industrial civilization, deserving of support and protection in our laws.

Taking advantage of their newly achieved legal position and also of a substantial improvement in business conditions, American unions in recent years have vastly increased their membership and their influence. Except for a brief period following the first World War, when union membership reached a peak of five millions, the number of trade union members had rarely exceeded 3,600,000.[1] The building trades were the greatest union stronghold, with mining, transportation, printing, clothing, entertainment, and some of the service industries also well organized. The great organizing drives of the Committee for Industrial Organization, following its formation in 1935, brought steel, automobiles, electrical equipment, rubber, and lesser industries into the union col-

umn, and simultaneously a number of American Federation of Labor affiliates launched vigorous organizing efforts. Virtually all existing unions, whatever their affiliation, increased their membership, and at least the beginning of unionization was made among the employees in almost every industry or occupation. By 1942 there were probably 11,000,000 trade union members in the United States, about 1,000,000 of them in independent unions and the remainder almost equally divided between the American Federation of Labor and the Congress of Industrial Organizations.

This rapid growth in trade union membership, while made possible by favorable legislation and the immediate result of organizing activities, was due in a more fundamental sense to the dissatisfaction of unorganized rank-and-file workers with the treatment accorded them by their employers, and to their belief that collective action could win for them a greater reward and improved working conditions. Wages were believed too low, hours of work were sometimes too long, there was too little security, company officials were too often tyrannical, grievances of all kinds piled up, with inadequate machinery for satisfactory adjustment. Even more important to many workers was the consciousness that they lacked status in the plant, the belief that to the head officials they were not really persons, but just numbers on a card rack. Workers felt that they had a stake along with managers and stockholders in the conduct of the business in which they were employed, and sought a mechanism that would give them an opportunity to discuss issues with the management, with power to influence decisions that most vitally affected them.

As the proportion of native-born industrial workers with high school training rose, this demand became more insistent and a better trained leadership became available from within the ranks. The long depression period of the 1930's, with its limited job opportunities, intensified the desire for security, and made attractive to workers the job protection and seniority rules found in so many union contracts. In the minds of many workers some arbitrary act of a foreman or straw boss

bulked larger than the wage, hour, or other improvements in basic conditions that a union might win. Many workers who did not wish to belong to a union nevertheless desired to have a bargaining agency in their shop, so that they might enjoy higher wages or other benefits. However their motives differed, the industrial experience of most workers drilled into their minds that, acting alone, they were helpless in their dealings with employers.

Employers typically opposed the growth of unionism with all the powers at their command. The conditions under which American industry developed nurtured an aggressive individualism in businessmen and an impatience with any form of control. In the minds of many businessmen, moreover, unions were synonymous with strikes and violence, and vaguely associated with socialism or communism. It was not unusual for employers to declare that they would liquidate their enterprises before they would negotiate with a union. In the battles they fought to prevent unionization of their plants they frequently enjoyed the benevolent neutrality, if not the active aid, of government officials, and the support of the daily press and other agencies that molded public opinion. To many employers this fight against unionism was not a selfish one, fought in the interests of their pocketbooks; much more than that, it was a moral struggle, waged on behalf of freedom, industrial progress, and civic righteousness.

The New Deal legislation that granted legal protection to the rights of workers to organize and bargain collectively forced a readjustment in the thinking of businessmen. Public opinion, more responsive to industrial evils and better attuned to the realities of an industrial civilization, no longer tolerated the frank and open anti-unionism of the pre-1930's. Businessmen and their spokesmen could no longer plead that the open shop was the "American plan." They could no longer hope to argue convincingly that unionism as such was an evil force to be combatted. If they were to be realistic, they had to accept unionism and collective bargaining as relatively permanent, however—to them—undesirable, features of Amer-

ican society, and seek whatever modifications they most desired in union practices or in the law of labor relations.

Employers did not find it hard to point to inadequacies in the law or to shortcomings in union procedures. Many of them felt that the law, while forcing them to deal with unions that represented a majority of their employees, did not impose upon unions the same degree of financial liability for failure to abide by their agreements or for other wrong-doing to which business establishments were subject. Others felt that unions were not dependable in the sense that business organizations were, that they lacked stability and might prove to be but a passing whim on the part of their employees. Even if the union remained it might change its leadership or its affiliation, so that there was no guarantee that any particular set of officers with whom an agreement was negotiated would still be in office by the time that agreement expired. Still other employers pointed to a wide variety of union abuses, from racketeering to unauthorized strikes and from closed membership books to jurisdictional disputes, as evidence of a lack of union responsibility.

It should not be thought that only employers were dissatisfied with various practices of the labor movement. Unorganized workers were frequently just as skeptical, though perhaps for somewhat different reasons, and union members could be found readily, especially in closed shop industries, who believed that their unions were autocratically administered, or that their dues were unnecessarily high. Among those who flocked into unions during the great organizing drives between 1933 and 1937 there were many who were far from being convinced unionists, but who felt that a labor organization at worst could not do them much harm, and at best might do a lot of good.

To the recruits who entered the labor movement in those crowded years unionism was a new and bewildering experience, with meetings and committees, motions and points of order, grievance machinery and collective bargaining procedure. Nor could the national office of the union give much

help, for it was swamped with work, with dozens of local groups clamoring for guidance. If the employer placed no obstacles in the path of the new union the likelihood was that men of mature years and balanced judgment would emerge as leaders. But if the employer fought, the union men with families to support thought twice before running the risk of losing their jobs, and leadership was assumed by young fellows with the energy and devotion of youth but likewise with its inexperience and hot-headedness. They were quick to urge a strike when difficulty developed with the employer, and equally quick to use their fists when some workers in the plant resisted pleas to join.

Many mistakes were made, needless to say, while the new officers learned the complexities of union administration and collective bargaining through trial-and-error. Meanwhile they were fortunate indeed if the newspapers of the town did not keep up a continuous attack on the union, pointing to each error of judgment or each use of militant tactics as fresh evidence of union irresponsibility. If the plant were an important one, ponderous editorials may have pointed out to labor the errors of its ways, while businessmen became more convinced than ever that trade unions would never exhibit that sense of responsibility that they believed management must always possess if an enterprise were to prosper.

Except for the racketeering or anti-social fringe, older unions are seldom charged with lack of responsibility. On the railroads, in mining, in printing, the garment trades, and other industries that have long been unionized, labor officials have had years of experience in all the problems of collective bargaining. Often they know the economics of their industries as well as the employers do, and have learned what demands are realizable without curtailing employment by driving industry away or putting the unionized section of an industry at a competitive disadvantage. Youthful exuberance has been tempered by experience and the problems facing employers as well as workers are understood.

The leaders, if they are wise, act so as to protect the good

name of the union and help build a friendly public opinion for the labor movement as a whole. Both they and their employers have learned that strikes are costly to both sides and that agreements must be adhered to. Unions with such leadership fight as hard as any others, but they first make sure that no possibility of peaceful settlement exists. From employers in the industries with long union experience little or no complaint is heard of union irresponsibility. Indeed in some cases, as in portions of the garment industry, the unions provide the leadership for the solution of industrial problems, exhibiting far more responsibility in the larger sense than do the employers.

If one goes back to the earlier years of these well-established and respected unions, however, one finds that they had to battle for the right to exist even more strenuously than the newer unions of today, for the law was then far less favorable to labor. Much the same charges were leveled against them, at a time when employers as a group were far more bitterly opposed than they are today to the principle of collective bargaining. When it took continuous fighting to keep alive, the unions developed appropriate leadership and tactics or they failed to survive. Not until the organization was firmly established could militancy give way to more conciliatory attitudes and tactics.

In virtually every industry the bitterness with which employers resist unionization causes a carry-over of suspicion and hostility into the collective bargaining period that follows organization and the effort to compel management to bargain. This heritage of mutual distrust is not easily overcome. The employer, forced to deal with a union against his will, may await a more favorable opportunity to renew the struggle; whether or not that is his intention the union leaders probably suspect that it is, and they govern themselves accordingly. They may have emerged as leaders because of their fighting qualities, and they may be unable to develop the ability to negotiate even where the employer acts in perfectly good faith. With the passage of years they either learn to negotiate

or are replaced by leaders better adapted to the collective bargaining process.

In any event union leadership is apt to reflect industrial conditions, and to be molded to some degree by the tactics of employers. In some industries, needless to say, employers get much more intelligent labor leadership than their actions would lead one to expect, as in other instances labor leadership lags far behind the standard that employers themselves set. Nevertheless the attitude of employers is a most important element in the complex situation from which labor leadership emerges. In the words of Philip Murray, president of the C.I.O.:

> Employers generally get the kind of labor relations they ask for. If the union indulges in "excesses," then the employer as a rule has no one but himself to blame for it. For instance, if he engages the services of labor espionage agencies such as Railway Audit, Pinkerton's, or others, if he stocks up his plant with tear gas, hand grenades, sub-machine guns, blackjacks, rifles, and other implements of war, if he hires high-priced Wall Street lawyers to harass the union before the Labor Board and in the courts, if he distributes to his foremen anti-union literature and lets it be known to them that any harm they can do to the union would be forgiven by him, if he contributes to anti-labor organizations such as the notorious Johnstown Citizens' Committee, if he quibbles over words, if he refuses to consent to an election or to sign a contract when he knows the union has a majority, if after a contract has been forced from him he delays and hampers the settlement of grievances, if he continues to discriminate against union members, then labor will answer in kind and nine out of ten businessmen, viewing it from afar, will say, "Ah, another 'excess.' " [2]

This belief that the policies of employers help to determine the type of leadership that labor will develop is shared by Cyrus S. Ching of the United States Rubber Company, an employer representative on the National War Labor Board and a prominent spokesman for American management. At the Fourth Midwest Conference on Industrial Relations, held in October, 1937, Mr. Ching said: "In our company—I am go-

ing to try to impress this on the industrialists here—we are going to get about the type of labor leadership that we develop by our own actions. If, in dealing with labor organizations, we are ethical, are entitled to the confidence of people, use fair tactics and use friendly attitudes, we will get that in return; if we are going to be militant, use underhanded tactics, and fight all the time, that is the type of organized labor leader we will get. So I think we all must realize that, where we are dealing with organized labor, we are going to get about the type of leadership that we are ourselves." [3]

More hostile employers point to the "excesses" of unions, however understandable some of them may be in the light of management's tactics, to justify their attitude, and a hostile press seizes upon and magnifies them, with resulting damage to labor's public prestige. Since the most spectacular of the recent increases in union membership has taken place in the heavy, basic industries, it is not surprising that from these industries has come evidence of "excesses" and "irresponsibility." Following the big sit-down strikes in the plants of the General Motors Corporation in the winter of 1936-37 an agreement between the company and the United Automobile Workers was reached on March 12, 1937. After outlining grievance procedure, the agreement specified that there should be no suspensions or stoppages of work until every effort had been exhausted to adjust grievances through the regular procedure, and that in no event should work cease without the approval of the international officers of the union. Almost daily thereafter, however, illegal sit-down strikes occurred, until the number had grown to 200 in four months, with 48 plants affected. These 200 illegal sit-downs endangered relations with General Motors, and were widely pointed to as evidence of the irresponsibility of the C.I.O.

These unauthorized sit-down strikes, many of them due to trivial causes, proved a serious problem for the youthful union, and it was not until the union leaders had many times appealed for discipline and orderly procedure, and finally threatened suspensions and fines, that order was restored. The his-

tory of collective bargaining in the automobile industry in the subsequent period shows that the union has since grown into a sense of responsibility. Why did the illegal sit-down strikes occur? Largely because the men, formerly kept in a state of fear of losing their jobs, had for the first time tasted power; it would have been remarkable indeed had there been no abuse of that power. Had there been less opposition by management to labor organization the union would probably have grown steadily, but slowly enough to develop an experienced personnel. Instead of that there was a policy of repression with its accumulated bitterness, followed by a mushroom growth, with unprecedented power suddenly in the hands of inexperienced unionists. A raw and untrained worker, elected shop steward, had a lot to learn before becoming a seasoned and responsible union official. Yet the union could not attempt too quickly to discipline its members, for its own authority was not firmly established and it could not afford to alienate those who a few short weeks before had led the sit-down strikers to victory.

On the other hand company foremen had an equally difficult adjustment to make. Foremen until then had been accustomed to unquestioning obedience to their orders, and many of them had been trained to resist unionization of the workers. Just as the union had to struggle to educate and discipline the steward, the company had to struggle to re-educate the foreman, with each side harboring a suspicion that the other was acting in bad faith. It took time and patience before the minor as well as the higher officials of each side got over their resentment against the other, and learned how to make the grievance machinery work.

Strikes and occasional violence, violations of contract, hotheadedness and short tempers on both sides, irresponsible actions due chiefly to inexperience and the problem of adjusting to new legal and economic relationships—such irritations and disturbances in a period of transition might well have been expected. Mr. Ching's view in 1937 was:

The thing that surprises me . . . is not the number of labor disturbances we have had in this country in the last couple of years but how few there have been. Stop to consider that you have written into your federal law, section 7 of the National Labor Relations Act, something we did not have before, something that crystallizes to my mind what are the rights of employees . . . and that publicity has been given it by newspapers, radio, and all the other means of communication we have now. Then couple with that a group of men . . . who, inexperienced as can be, see in this a good opportunity to go out and organize a union and who recruit a lot of inexperienced people who have not belonged to a labor union before and know nothing about the labor movement. When you put that kind of combination up to management, who are the rankest kind of amateurs up to this time in dealing with that kind of a situation, it is a wonder we haven't blown the whole thing up. I am surprised that we haven't had more trouble rather than less.[4]

Unions and employers in the newly organized industries had scarcely had time to adjust to the new situation when the defense emergency of 1940-1 intensified the need for harmonious industrial relations. As William H. Davis, chairman first of the National Defense Mediation Board and then of the National War Labor Board, has said, "The sudden call of the defense program for a tremendous increase in production found collective bargaining between workers and management in our principal defense industries at various stages of immaturity—running all the way from early infancy to the confusions of adolescence. In no important defense industry have they passed the problem age of adolescence, although in some other American industries they have grown out of it." [5] Many persons, with understandable impatience, will ask whether these years of immaturity in collective bargaining relations may not be skipped. In Mr. Davis' view, "that is no more possible in the growth of industrial relations from infancy to maturity than it is possible for a baby to skip the intervening years, and become a man tomorrow." [6]

Though the newer unions have been most frequently charged with irresponsibility, the older unions have by no means escaped that accusation, usually for different reasons.

Whereas the newer labor organizations have been assailed for violence, sit-down strikes, inability to control their membership, and failure to adhere to their agreements, many of the older unions have been charged with racketeering, loose financial practices, and undemocratic procedure. Excessive initiation fees and dues are charged members, it is asserted, and huge salaries paid to officials; workers are forced into the unions against their will by the device of the closed shop, which then permits officers to exercise tyrannical control over members unable to protest for fear of their expulsion from the union and consequent loss of their jobs. Strikes are called and settled without consulting the members, it is charged, free discussion at meetings is not allowed, elections are stolen, and conventions skipped. Unions are said to oppose technological advance, unduly limit the amount of work to be performed, and force employers to hire unnecessary men to perform unwanted labor.

Are such accusations justified? In the chapters that follow the evidence will be reviewed, and it will be seen that every one of these charges can be substantiated with regard to some individuals or union groups, local or national. Yet it must be remembered that 11,000,000 union members form a cross section of our nation, and that among them will be found all types of individuals, from the best to the worst. The 35,000 local unions of the American Federation of Labor will not all be found conforming to the same standards of internal administration or bargaining policy. Among the national unions, similarly, whether A.F. of L., C.I.O., or independent, some will be found to be honest, democratic, and socially conscious to a high degree, while others lag behind in each of these respects.

What degree of control should federations exercise over their affiliated national unions, and similarly how much control should national unions have over local unions, and locals over individual members? Employers demand that unions be able to control their members, and compel them to abide by agreements. Union spokesmen retort that they must have some way of enforcing discipline, and that fines, suspensions, or ex-

pulsions will have little practical effect unless the closed union shop provides automatic enforcement. But this the employer typically refuses to grant if he can possibly avoid it, for fear that the union will then become too strong for him. The employer may or may not be seriously concerned over the threat to the liberties of his non-union employees, but he does fear the higher wages and the restrictions of one sort or another that a powerful union may impose upon him.

Evidence of the abuse of power by unions is not hard to find. Some local unions have refused to install equipment unless it was made by their fellow members, rejecting equipment made by members of other unions. Employers who have negotiated an agreement with the union chosen by their employees in a National Labor Relations Board election sometimes have found their plants picketed and their products boycotted by the losing union and its allies. Corruption has reached into the Executive Council of the American Federation of Labor, with George E. Browne, president of the International Alliance of Theatrical Stage Employes and Moving Picture Machine Operators and a vice-president of the A.F. of L. from 1936 to 1941, convicted of extorting $550,000 from four major film companies, under the threat of calling strikes in motion picture theaters throughout the country. Under the cloak of autonomy the A.F. of L. has permitted racketeers to infest some of its affiliates, taking only halting and ineffective action against them.

Unions are charged with lack of responsibility in still another sense. Because almost all labor organizations are unincorporated associations, it has frequently been charged that they avoid the legal and financial responsibility for their misdeeds that business customarily assumes. Employers' spokesmen have frequently urged that unions be forced to incorporate, and unions have just as vigorously retorted that business is free to incorporate or not as it chooses, and that unions should possess the same freedom of choice. Moreover, unions fear that judges, who upon occasion have shown themselves none too friendly to unionism, might interfere unfairly

in the internal affairs of incorporated labor organizations. It should be noted also that unions engage in widespread business activities, renting offices, publishing papers, administering insurance funds, and engaging in many other activities besides collective bargaining, and in these various activities there is no reluctance on the part of business concerns to deal with them on the ground that they lack legal, moral, or financial responsibility.

Let it not be thought, however, that only the unions have been guilty of irresponsible actions. The record of management in the use of labor spies and strikebreakers, in fomenting violence and violating labor legislation, as shown by the Senate committee investigation of violations of free speech and rights of labor, is one of which the more decent employers must be heartily ashamed. The ex-convicts who have forced or won their way into union office or employ may be matched with ex-convicts chosen by management as the instruments of their labor relations policy. As Senator Robert M. La Follette, Jr., has observed:

> The record of the Senate Civil Liberties Committee focuses attention sharply upon the need for responsible management. A federal law guarantees to labor the right to organize freely and to bargain collectively. In the face of that law, employers have committed their labor policy to the tender care of "Chowderhead" Cohens, have spent thousands of dollars on gas and guns and other thousands on union wrecking through espionage. And when called to account, they have persistently concealed and evaded. Until management is prepared decently and straightforwardly to discharge its duties to its workers, its government and the public, it can ill afford to speak of the responsibility of labor.[7]

The desirability of labor organization is no longer a matter of debate in this country. Even before Congress so firmly wrote the need for unionism and collective bargaining into law, the United States Supreme Court had voiced the necessity and the social justification of the trade union. In the decision in the important American Steel Foundries case, decided in 1921, Chief Justice Taft observed that "Labor unions . . . were

organized out of the necessities of the situation. A single employee was helpless in dealing with an employer. He was dependent ordinarily on his daily wage for the maintenance of himself and family. If the employer refused to pay him the wages that he thought fair, he was nevertheless unable to leave the employ and to resist arbitrary and unfair treatment. Union was essential to give laborers opportunity to deal on equality with their employer." [8]

The democracy that trade unionism introduces into industrial life is a vital contribution to the social welfare of the country, second only in importance to the economic gains that collective bargaining brings to workers with relatively low living standards. As far back as 1902 a governmental investigating body, the Industrial Commission, following an exhaustive survey observed in its report that: "By the organization of labor, and by no other means, it is possible to introduce an element of democracy into the government of industry." [9] Though in particular unions democracy may be seriously limited, moreover, it would be rare to find one in which the members, as a practical matter, have so little control over officers and policies as do the stockholders in many of our leading corporations.

In the following decade the Commission on Industrial Relations, created by Congress to study relations between employers and workers, discovered that the practices of employers were often at variance with their professed beliefs. "It is very significant," the Commission reported, "that out of 230 representatives of the interests of employers, chosen largely on the recommendations of their own organizations, less than half a dozen have denied the propriety of collective action on the part of employees. A considerable number of these witnesses have, however, testified that they denied in practice what they admitted to be right in theory." [10]

At that time it was legal for employers to refuse to bargain collectively, to discharge workers for union membership, and to employ a variety of devices now forbidden by the National Labor Relations Act to crush labor organization. For a time

many employers hoped that the Supreme Court would hold that act unconstitutional. When the Supreme Court crushed that hope in a series of five decisions handed down on April 12, 1937,[11] employers began a campaign for amendment of the act to impose restrictions on unions, or to achieve governmental regulation through some other medium. Sit-down strikes, picket line violence, and clashes between the A.F. of L. and the C.I.O. helped to increase sentiment for such legislation in the months that followed. Bills to amend the National Labor Relations Act failed to pass Congress, but in a number of states, including Oregon, Pennsylvania, Wisconsin, Michigan, and Minnesota, liberal state labor relations acts were drastically amended to impose restrictions on unions or entirely new legislation to that effect was placed upon the statute books.

Recent surveys reported by the American Institute of Public Opinion have indicated that the public, while strongly sympathetic to trade unionism, was likewise in favor of stronger governmental curbs upon labor organizations. In the fall of 1939, for example, 74 per cent of those polled expressed themselves in favor of the principle of unionism, but 79 per cent believed that unions should be regulated to a greater extent by the federal government. The principal reasons given were that the public needed protection from violence and disorder, and that workers needed protection from possible exploitation by their own leaders.[12] In another poll a year later the Institute asked whether unions in the four years to come should be regulated by the federal government to a greater or lesser degree than at that time. Sixty per cent of those with opinions favored greater regulation, 21 per cent less regulation, and 19 per cent wished no change.[13] To a considerable extent these public views, assuming the polls to be representative, are doubtless molded by an unfriendly press; yet the polls showed persons in the lower income groups, large numbers of whom were doubtless union members, to be in favor of increased regulation almost as strongly as were the middle and upper income groups. The war emergency has

intensified this tendency through popular impatience with strikes, whatever their cause.

In the campaign to achieve greater governmental regulation of unions the charge of union irresponsibility, as evidenced by the various practices that have been enumerated, forms an underlying theme. It is alleged that unions lack responsibility to their members, to employers, and to the general public. These charges will be considered in detail in the chapters that follow, and the concept of union responsibility examined in the broadest possible manner, to include all the controversial practices in which the labor movement has engaged. The responsibilities of unions to their members will be examined in some detail, to see the problems involved in democratic and efficient administration of unions. This will include a discussion of union structure, officers and their powers, the closed shop, control over employment, initiation fees and dues, discrimination against Negroes, elections and conventions, discipline, the calling of strikes, and related matters. In a similarly broad manner the responsibilities of unions to employers will be inquired into and it will be seen to what extent unions fail to abide by agreements, prevent technological advance, and in other ways block efficiency. Similarly union practices to which employers particularly object, including the check-off, the jurisdictional strike, and the boycott, will be considered.

Because a frank effort will be made in these chapters to center discussion on union abuses, a false impression of the movement as a whole may be created. To place the problem in its proper setting, therefore, the responsibility of employers to their employees will then be examined, with discussion similarly concentrated on the abuses—on the use of labor spies, strikebreakers and strike guards, industrial munitions, private police forces and their conduct in strikes, back-to-work movements, company unions, the blacklist, and other anti-union techniques. The material for this chapter will be drawn for the most part from the reports of the La Follette Committee on labor's civil liberties. Just as some of the unions have since

corrected the particular abuses that serve in the earlier chapters as illustrations of undesirable practices, so many of the employers listed in this chapter have by now given up anti-unionism for collective bargaining.

Responsibilities of unions to the public will then be examined. This will include the behavior of unions in the emergency before and after Pearl Harbor, strikes that particularly affect the public, violence, and racketeering. The attitude of the government and the law toward the labor movement will then be traced briefly, with attention to injunctions, the anti-trust laws, intervention in labor disputes, and recent federal and state legislation on labor relations. Lest government regulation of unions be considered too easy a solution of the problems raised in earlier chapters, a discussion of the responsibility of the government in labor relations will follow, in which evidence of the partisanship of government officials in labor disputes will be examined. This will include a review of the use of troops, the conduct of local police, the relations between government officials and employers, and the attitude and conduct of the judiciary. As in the case of unions and employers, there will be a deliberate effort to select the worst practices, at the risk of creating a false impression, in order to point up the problem.

The latter portion of the book will deal with various remedies that have been proposed in an effort to increase union responsibility. The incorporation of trade unions, because of the long history of this proposal, will be considered at some length, and there will be briefer treatment of registration of unions, compulsory financial statements, supervision of strike votes and elections, required waiting periods before strikes, and other proposals. In the final chapter the author will review some considerations affecting union responsibility, and advance proposals that in his judgment will help to remedy admitted evils.

2. Responsibilities of Unions to Members

IN September, 1941, the International Hod Carriers', Building and Common Laborers' Union of America met in convention in St. Louis, with some 1,200 delegates representing the 230,000 members of the union. When the previous convention had assembled, in 1911, the union's membership had been only 13,000. Joseph V. Moreschi, who had not even been a delegate to the 1911 convention, was elevated to the presidency of the union in 1926. Under the union's constitution a referendum vote was taken every five years to determine whether or not a convention should be held. Several times, however, the referendum was coupled with one proposing a two-dollar assessment to pay the transportation expenses of delegates. The membership had regularly defeated both proposals.

At the 1941 gathering the anti-administration minority sought a constitutional provision making conventions mandatory, preferably every two years, but was overwhelmingly defeated. Rejected, likewise, was its resolution to bar racketeers from office in the union. Prior to the convention there had been complaints from anti-administration locals that the national officers possessed excessive power over local unions. The new constitution adopted at the 1941 gathering further increased the president's disciplinary powers over locals. One provision, designed to discourage resort to the courts to settle internal union disputes, permits the international officers to suspend from membership those who bring such suits, or assess against them, if defeated in court, the cost of defending the case. The hod carriers, it should be borne in mind, are one

of the powerful building trades unions of the American Federation of Labor, whose members are typically bound to work on construction jobs only if all other workers employed on the project are good-standing members of A.F. of L. unions.

Though the hod carriers in certain respects are an extreme case, they illustrate some of the problems of trade-union structure and administration. Trade-union democracy, like democracy in political life, is a goal toward which members must ceaselessly strive; it is also a technique that must be learned with care and patience, with constantly new problems to which it must be adapted. It does not flow automatically from even the best constitution, but can be won and retained only by an alert and devoted membership. Among the trade unions of the United States, and among the locals of any one trade union, will be found wide variations in the degree of democracy, just as equally great variations will be found among the city and state governments of this country.

The problem of democracy in the American labor movement can be understood only in the light of its decentralized structure. Each national union, whether A.F. of L., C.I.O., or independent, is a law into itself, typically resisting any interference by any outside person or group in its internal affairs. The national unions vary widely in their structure, some placing emphasis upon the autonomy of affiliated local unions and others centering power and responsibility in the national officers. In general the tendency has been toward the former attitude in the earlier years and to progress steadily toward the latter, in much the same way that the federal government of the United States has grown in power at the expense of the states. If a union functions in an industry in which competition is national, its policies likewise must be worked out and applied largely on a national scale. In such a union the tendency will be to build a large national treasury and to give the national officers wide control over strikes and agreements, with power to discipline recalcitrant local groups. Such powers may lead either to efficiency or to tyranny, depending on the type of men in office.

Real and formidable obstacles must be overcome, moreover, if unions are to be run in a democratic fashion, for some national unions include more than half a million members, and some local unions, as in the automobile industry in Michigan, embrace tens of thousands of members. A political science of the labor movement is needed, to study its structure and appraise various devices in the light of democracy and efficiency.

If a local union is to be conducted democratically there must be regular meetings, fairly conducted, with opportunity for members to express their views freely and propose courses of action. Union minorities must be allowed full freedom of expression, without blocking or unduly delaying the action desired by the majority. Elections should be held regularly, with opportunity to all to be candidates, with voting secret, and ballots honestly counted. The membership should have final control over the calling and ending of strikes and the acceptance of agreements. Members should be free to oppose the union officials without fear of excessive fines, suspension, expulsion, or discrimination in the distribution of jobs. Disciplinary proceedings should be permitted only for violation of well-defined and generally accepted union principles, and in all such cases trials should be fair, the accusers should not be the judges, penalties should not be excessive, and prompt appeal to an impartial tribunal should be allowed. The national union, in turn, should hold regular, frequent, and properly conducted conventions, with power distributed among the national organization, the locals, and the members so as to permit effectiveness in administration and collective bargaining, while protecting the members against autocracy and oppression.

It is easier to outline such a code in abstract principles than to frame a union constitution that will work, or to administer a union through bitter strikes and difficult negotiations with employers, with all problems complicated by factional alignments within the union. Practices vary from national union to national union, from local to local within a single union, and from time to time within a given local. The examples

that follow will be largely of undemocratic procedures, illustrative of much that is worst in the American labor movement. Though numerous other examples of practices, equally bad or almost equally bad, might be given, it should be borne in mind that many thousands of local unions enjoy satisfactory and democratic procedure, and never attract outside attention for precisely that reason.

In 1935, following repeated complaints that elections in District Council No. 9 of the Painters' Union of New York City were conducted dishonestly, a Citizens' Committee headed by Professor Paul F. Brissenden of Columbia University was formed to conduct an investigation. Though administration forces refused to appear before the committee on the ground that it was associated with subversive groups and that machinery existed within the union movement for the correction of abuses, the committee was satisfied, from the evidence it accumulated, that widespread irregularities had occurred. The union's rules regarding elections required members to have their photographs pasted in their dues books, to prevent repeating in elections, and provided for a $100 fine on members who repeated. Nevertheless an opposition candidate for office in the 1935 election testified that hundreds of votes were cast by three or four persons in charge of voting machines, and that an administration candidate for business agent "voted until his shirt was wringing wet from perspiration."[1] Police were present, the committee was told, but did nothing, even when watchers who protested against irregularities were thrown out by administration adherents. The 1934 election had been similarly conducted, with the vote in one local exceeding the total registered membership. Members who complained to the District Council about the election irregularities not only got no satisfaction, witnesses testified, but in many cases the Council had them dismissed from their jobs.

After the 1934 election the losing faction appealed to the union's General Executive Board, protesting against the conduct of the election. The Board reached no decision until just 30 days before the 1935 election, the committee was told, when

it dismissed the protest on a technicality. The committee found that the constitution of the national union did not provide specifically for election appeals, though it did provide for appeal to the General Executive Board of all grievances of members against locals. The constitution prohibited members or locals from resorting to the courts until after all means of redress within the union had been exhausted, but there was no compulsion on the union agency appealed to to act within any stipulated time.

The committee thought the complaining locals justified in submitting their grievances to it, even though insufficient time had elapsed since the 1935 election for action by the national officers. "Such appeals were made in 1933 and 1934," the committee noted, "but were not acted upon until the terms of office of the District Council officers whose fraudulent election was complained about had expired and such intolerably tardy action, moreover, took the form of a laconic 'appeal dismissed.' "[2] The committee concluded that the 1935 election, like those in 1933 and 1934, had been marked by serious irregularities and widespread violations of the union's constitution and by-laws; that the election rules were ambiguous and inadequate; that the police had repeatedly failed to protect members from violence and intimidation at the polling places, and that appeals to the mayor had yielded no results. The committee recommended that a new election be held under the supervision of a disinterested agency, that proper police protection be provided, and that the union's constitution and by-laws be revised to include specific provision for hearing protests against electoral abuses, with full consideration required in a stipulated reasonable time.[3]

Nor is it only in local unions that abuses may exist. Often entirely too much authority is conferred upon the national union leaders, and a national president, with the aid of a willing executive board, may become a dictator over the union. He may nullify local elections by refusing to recognize defeats of his favorites; this can be done by revoking the charter of a local, awarding it to his friends, and ordering the workers to

register anew with them. In the Carpenters' Union and in others, rump organizations formed by defeated office-holders have been immediately recognized as the legal administration by the national office. Since 1928, Local 4 of the Printing Pressmen of Chicago has been headed by an administrator appointed by the national officers, and for an even longer period Local 3 in the same city has been under such control. Efforts of members to win the right to elect their own officers and administer their own local affairs have thus far proved unsuccessful. The national officers of the International Union of Operating Engineers deprived some of their locals of the right to run their own affairs, appointing a "supervisor." New York Local 125 went to court to rid itself of Supervisor Patrick J. Commerford, and in 1932 it won an order removing him and ordering an election of officers. The national president, with whom Commerford was allied, thereupon revoked the charter of Local 125 and created a new local, No. 130, with which builders and contractors were instructed to deal exclusively. Commerford was named supervisor of the new local and many of the workers were forced to join it in order to keep employed. Some months later the federal government rid the local of Commerford, by jailing him for income tax violation.[4]

The by-laws of the American Federation of Musicians, in a grant of power to the president that far exceeds customary bounds, provide that: "It shall be his duty and prerogative to exercise supervision over the affairs of the Federation; to make decisions in cases where, in his opinion, an emergency exists; and to give effect to such decisions he is authorized and empowered to promulgate and issue executive orders, which shall be conclusive and binding upon all members and/or locals; any such order may by its terms (a) enforce the Constitution, By-Laws, Standing Resolutions, or other laws, resolutions or rules of the Federation, or (b) may annul and set aside same or any portion thereof, except such which treat with the finances of the organization and substitute therefor other and different provisions of his own making; the power so to do is

hereby made absolute in the President when, in his opinion, such orders are necessary to conserve and safeguard the interests of the Federation, the Locals and/or members." [5]

Like some other union heads, John L. Lewis has long ruled the United Mine Workers with an iron hand. For some years the majority of the districts into which the union is divided have been in a sort of receivership, with its heads appointed by Lewis, who has likewise appointed most members of the miners' international executive board. District autonomy, or the right of the miners to elect their own district officials, has been a leading issue at recent U.M.W. conventions.[6] In 1938 Homer Martin, then president of the United Automobile Workers, suspended five of the other six international executive officers, on the ground that they had violated an agreement to end factionalism within the union, and early in 1939 he suspended fifteen members of the twenty-four-man international executive board. This act, which would have given him control of what was left of the board by a margin of one vote, precipitated a split in the union.

If a union head wishes to suspend a troublesome member or local, he may too often find a ready excuse, taking advantage of vague clauses in the union constitution prohibiting "improper conduct" or "disturbing the harmony of meetings." The United Mine Workers authorize their president to suspend or remove any international officer "for insubordination or just and sufficient cause." The constitution of the International Association of Machinists, similarly, gives the president "direction and supervision of all district and local lodges, with full authority to suspend individual members, or district or local lodges, for incompetency, negligence, insubordination, or other failure to properly perform their duties."

The carpenters in 1937 held a referendum on a proposal to subject members to expulsion for "preaching, advocating or counseling disorder, dissension and disobedience of authority at a local union or district council meeting." The proposal was declared carried, but an investigation ordered by a New York State Supreme Court justice showed that in thirteen locals the

vote was sixteen for and 1,775 against. The tabulating committee had announced the vote to be 1,876 for and fourteen against. For exposing the fraud Local 2090 had its charter revoked by the union's general executive board, and had to resort to legal action to prevent disbanding of the local. The constitution of the Retail Clerks' International Protective Association permits the national officers to suspend locals "for any act of insubordination against the authority of the International," without any provisions for trial, hearing, or defense. Suspensions are almost always subject to executive board approval, but the president in too many cases is in control of the board. Appeals must then wait until the next convention, and this right ceases to be of practical importance unless conventions are held regularly and often.

Some unions have what one writer calls "anti-lese-majeste" statutes—provisions forbidding statements that adversely reflect on an officer, regardless of the truth of the statement or the motives of the member who makes it.[7] The 1941 convention of the International Longshoremen's and Warehousemen's Union adopted a less extreme provision, permitting charges to be filed against any member who publicly makes "false charges, unfounded accusations or malicious attacks" on an officer. In the colorful language of the waterfront, President Harry Bridges, who sponsored the provision, told the delegates that he intended to make use of it. Referring to accusations that he had scabbed in a strike and was still a "rat," Bridges was reported as saying: "Let's not do any kidding about what this provision is supposed to do. I want to snake a bozo like that right out of the union." [8] This disciplinary provision did not apply to charges, whether founded or unfounded, that were made in closed union meetings.

Sometimes very heavy fines have been imposed on union members whose real offense was opposition to the administration. Sam Kaplan of the Motion Picture Operators of New York City had members expelled or fined up to $1,000 for seeking an accounting of the union's funds in court. In a local of the Carpenters' Union members who filed charges of mis-

conduct against their officers were themselves suspended for a year and fined for slandering the officers and "disturbing harmony." The Lockwood Committee in New York found that a member of the Dock Builders' Union, during the period of domination by Robert P. Brindell, had been fined $500 for bringing charges of misappropriating union funds against Brindell, though no hearing was held on these charges, and that another member was expelled for contesting Brindell's expense accounts.[9] The by-laws of the Musicians' Union (Article XI, section 14) permit fines for violation of the union's laws to range between $10 and $5,000, unless otherwise provided for. More instances could be cited, but enough has been said to demonstrate that some unions have permitted their officers wide authority to discipline the membership, and that insufficient attention has been paid to the creation of proper judicial machinery. In an interesting experiment the union of Westinghouse employees in Springfield, Mass., in 1937 set up a jury system to try members accused of violating union rules. The jurymen, who are elected at union meetings, hear a case much as a court panel would, and recommend a verdict and the amount of punishment, if any, to the full union groups. Unions should experiment much more than they do with improvements in their judicial machinery.[10]

In a number of cases aggrieved members or locals have resorted to court action to protect their rights. The courts traditionally have been reluctant to intervene in the internal affairs of unions, viewing them as private and voluntary organizations akin to social or fraternal associations. Before accepting jurisdiction the courts usually have required that all internal remedies be exhausted, though in certain cases this requirement may be waived, as where great delay would result or no justice seems possible. The courts treat the union's constitution and by-laws as a contract, and insist that its provisions be followed; in exceptional cases, however, where the terms of the constitution are oppressive, they may be disregarded. The courts require the complainant to show a property right before they will assume jurisdiction. They consider that unions, as

private associations, are the judges of qualifications for membership and will not compel the admission of an applicant, though once an applicant is admitted they consider that he acquires a property right. Expulsion orders are not reviewed in the courts except to see that the procedure is fair and that the union's constitution and by-laws are observed. From time to time courts have ordered new elections, reinstated expelled members, or remitted fines. If the courts intervened too often, needless to say, they could dictate union policies.[11]

When power is at stake labor leaders, like government or business leaders, may disregard the niceties of democratic procedure. David E. Grange of the Marine Cooks' and Stewards' Union, a branch of the International Seamen's Union, had the constitution amended so that he "shall hold office until two-thirds of the entire membership decide by referendum vote that his services are no longer required." This meant as a practical matter that he would hold office for life or until the organization fell apart, since a two-thirds vote of seamen is virtually impossible to obtain. For many reasons, including perhaps this one, the members left the organization to join its C.I.O. rival. In 1921 both the president and the secretary-treasurer of the Chicago Milk Wagon Drivers' Union had their terms of office extended indefinitely. It was December, 1939, after months of effort by opposition groups, before the next election was held, resulting in the defeat of both veterans. The notorious Martin B. (Skinny) Madden had his local union of Chicago steamfitters elect him president, treasurer, and business agent for life.

Most unions, to afford the membership an opportunity to pass on officers and policies, hold conventions every second or third year. In some unions, however, because of financial difficulties or autocratic control, a convention may not be held for years in a row. The A.F. of L. retail clerks had no convention from 1924 to 1939, and in the following year the printing pressmen held their first convention in 12 years. The Tobacco Workers' International Union, perhaps the worst offender, had no convention after 1900 until a referendum and

then a court order, late in 1939, forced the officers to call one.[12] No objection may be made if the decision to postpone a convention is made by the membership in a fair referendum, though it is inadvisable for a union to go for more than three or four years without a convention.

As in political life, men may seek to hold office and power by whatever means may be necessary. Sometimes rival candidates are declared ineligible, their supporters disfranchised, or elections simply stolen. A machine to win union elections is built in much the same way as any other political machine—by rewarding the faithful with jobs, honors, and favors of one sort or another. Positions within the union can be used for this purpose, as can influence with the employers.

Union elections, needless to say, should be conducted fairly and held often, preferably each year, and all policy-making officials should be elected rather than appointed. In an interesting effort to improve the training of officers, the 1937 convention of the International Ladies' Garment Workers' Union decided that candidates for paid union office who have not previously served must complete a course of training conducted by the union's educational department to be eligible to run.[13] For administrative employees in jobs requiring technical skill, such as research directors, editors, and education directors, a sort of union civil service should be developed, with persons chosen for their competence without regard to union politics, and kept in their positions so long as their work is done properly. Too often political considerations prevail in union appointments, as in city, state, or federal politics, and jobs are the bait for convention votes or the reward for faithful machine service.

The most dramatic trade union action is the strike, and it is in the calling and settlement of a strike that union democracy becomes especially vital. No great obstacles to rank-and-file control may present themselves if but a few hundred or a few thousand workers in a single plant or city are involved. In the great steel strike of 1919, however, about 365,000 participated, and almost every steel producing center was affected.

Almost half a million workers, scattered over wide areas of the country, took part in the textile strike of September, 1934. Under such conditions democracy is achieved if the membership sanctions the calling of a strike, and entrusts its conduct to a committee elected for that purpose. Sometimes surprise is an important element, especially when a union is being built, and union officials may be given considerable power to call strikes for that reason. Now that a majority vote in a National Labor Relations Board election obligates an employer to bargain with a union, this consideration has lost much of its force.

Many unions require a two-thirds or three-quarters vote by secret ballot of the workers concerned before a strike may legally be called. A much poorer practice, common in some unions, is to take merely a yea-and-nay vote at a mass meeting. The railroad brotherhoods require signed ballots in strike votes. Even a secret ballot does not automatically insure the carrying out of the will of the majority, for there is a possibility that fraudulent ballots may be cast or the vote falsely counted.[14] Often the consent of the national executive board is required, though in an emergency the president is sometimes empowered to authorize a strike. Some unions permit local strikes to be called by the units involved without the approval of the national executive board, but require such approval in major strikes. Strikers should elect a strike committee, adopt a set of demands, and have the opportunity to accept or reject any proposed settlement. Too often, however, a single union officer calls a strike or settles it without any opportunity for membership action. In certain industries, such as building, there is some excuse for such practices, since the worker may stay but a few days on a single job. It is such centralization of power, however, that opens up the way for corruption.

Though unions need funds to conduct organizing drives and strikes, issue publications, pay salaries, rent offices, and meet a host of other legitimate expenses, they should seek to keep dues and assessments to the lowest sums consistent with the

efficient functioning of the organization. No figures on the total sum collected by American unions are available. The constitutions of national unions customarily fix the monthly per capita payment from locals to the national treasury, leaving the locals free to add whatever sum they choose for local expenses. In industrial unions and among the poorer paid workers in general the monthly dues typically range from one to two dollars, of which from thirty cents to a dollar usually represents the per capita tax due the national office. Among craft unions the dues are usually between two and four dollars monthly and in some cases mount to $10 monthly or even more, though from such dues, unless the union is controlled by racketeers, large sums are usually set aside to provide various types of benefits.[15] Moderate benefits are frequently paid even by unions with low dues. In some instances those members who wish to participate in old age pension, sick, or death benefit funds pay additional sums for those purposes, whereas in other cases everyone participates by virtue of paying the regular dues. In the recent annual reports of the Executive Council to A.F. of L. conventions will be found summaries by union of the type and amount of benefits paid. The tabulations, which cover death, sick, unemployment, old age, and disability benefits, include only payments made by national or international unions which report this information to the Executive Council. For 1940 the benefits paid out by reporting unions reached a total of $23,130,000.[16]

Out of their dues the printers, the printing pressmen, the carpenters, and some of the railroad brotherhoods maintain homes for aged and disabled members. The printing pressmen also maintain a tuberculosis sanatorium, and the ladies' garment workers since 1913 have operated a well-equipped Union Health Center, attendance at which now exceeds 100,000 yearly. The musicians' local 802 of New York, under a contract signed with a Manhattan hospital in 1940, guarantees complete hospital care to 8,000 of its members.[17] A number of unions, notably the Amalgamated Clothing Workers, have operated employment exchanges with great success. Sometimes

the dues support large-scale educational or recreational programs, as with the International Ladies' Garment Workers' Union, the Amalgamated Clothing Workers, and the United Automobile Workers; some unions, including the Amalgamated and the American Federation of Hosiery Workers, have sponsored housing projects; a number of unions have contributed generously to domestic charities, war relief, and other worthy causes outside the labor movement, as well as to organizing drives, strike funds, and political campaigns in which they were interested.

The salaries paid by unions, except for national presidents of some of the larger unions and a handful of racketeers, are not very large. The typical minor union official, such as a business agent or organizer, in most instances receives a salary ranging between $40 and $75 weekly. Frequently the pay is fixed at about that earned by the most highly skilled workers in the industry. The union officer usually works many more hours than an industrial worker, however, and enjoys less security. In rare instances, especially with a new union, he may earn less than in the shop.

The salaries of most national union heads range from about $3,000 to perhaps $7,000, with the figure rising above $10,000 only for the larger and wealthier unions. In very rare cases the president's salary reaches or exceeds $20,000. The president of the A.F. of L. receives $12,000 yearly, the United Mine Workers pay $25,000, the teamsters $20,000, the carpenters $10,400, the Amalgamated Clothing Workers and the printers each $7,500, the C.I.O. automobile workers $5,000, and the rubber workers $3,200. The American Federation of Musicians, one of the larger and wealthier unions, pays its president a salary of $20,000, besides providing a car and a chauffeur. In addition officers enjoy expense accounts, often generous in the case of wealthy unions but usually limited with poorer organizations. A number of unions pay a fixed amount for expenses for each day an officer spends traveling on organization business. Some union officials, beyond any doubt, pad their expense accounts, as do some representatives of busi-

ness firms or other agencies. There is no reason to suppose that unions suffer from this evil more than other groups do. Where a racketeer controls a local union, needless to say, he takes all the traffic will bear, which in the case of a large local in New York City or Chicago may mean a salary as high as $10,000, with perhaps other income on the side.

The financial practices of the labor movement vary considerably from union to union. In an earlier period of trade union history there were a number of cases in which an officer absconded with the treasury, often with the death of the local the direct result. The better unions now bond every officer who handles money, require uniform bookkeeping practices on the part of their locals, audit accounts regularly, and publish full and easily understandable financial statements in their official journals or convention reports. The A.F. of L. acts promptly and vigorously against any directly affiliated federal local whose funds are improperly handled; where it fails to act is against a national union that tolerates objectionable practices in its locals.

Illustrative of the financial practices of the better type of union is the International Ladies' Garment Workers' Union, which maintains a staff of sixteen auditors to make regular, semi-annual audits of the accounts of every affiliate. Each year a statement of the receipts and disbursements of each local and joint board, as well as of the national office, is printed as a supplement to the union paper, which is sent to every member of the union and is also available to the general public.[18] A number of other unions, including the United Mine Workers, make full financial statements public. Convention delegates almost always are given complete financial statements of the national union covering the interval since the previous convention, and usually these statements are bound with the proceedings for anyone who cares to see them. The annual income of the larger unions reaches huge figures, in the case of the I.L.G.W.U., for example, amounting to almost $7,000,000 for the national union and its affiliates.

Abuses are most frequently found where a national union

fails to check regularly on the finances of its affiliates, and one or more of its locals fall under the control of autocrats or racketeers. There are a number of cases in which union members, refused financial statements and denied access to the books, have brought suit to compel an accounting.[19] Occasionally, where officers have been dishonest, judges have appointed receivers to manage local union affairs until an election could be held. Though such action is sometimes necessary, at the hands of an unfriendly judge it may easily cripple an organizing effort or tie the union's hands during a strike or collective bargaining negotiations. The Lockwood Committee, which investigated the New York building industry in the early 1920's, found the books of some unions well kept and others lax, with the worst instance that of Local 3 of the electrical workers, which kept few, if any, accounts though it handled hundreds of thousands of dollars yearly.[20] In other instances the only record has been "organization expense" or some similar entry on a check stub, though hundreds or even thousands of dollars were involved. During strikes especially, financial records are apt to be scattered and inadequate.[21]

In return for their dues the union members expect and should receive a variety of services. Most fundamental, of course, is representation in collective bargaining with employers. Workers expect that through union organization they will be able to obtain higher wages, shorter hours, better working conditions, and a higher degree of job protection than they would otherwise enjoy, chiefly because of the greater power that organization brings but also because through a union they can develop highly skilled bargainers and employ the services of competent lawyers and research workers. Once the contract is signed, workers expect, under its provisions and through their union organization, to set up adequate machinery for the speedy and satisfactory adjustment of grievances. The union, in addition, gives its members a voice in the management of their industry, and it enables them to influence legislation affecting their interests as workers, as consumers, and as citizens.

Through the unions, moreover, workers frequently attempt to solve a variety of other problems, connected in some way with their employment or entirely remote from it. In dangerous trades the union offers machinery for obtaining insurance that otherwise might be denied, except at prohibitive rates. Whatever the occupation, indeed, life, health, or other insurance can often be obtained much more cheaply through the union than through a commercial agency. Unions may also provide educational and recreational facilities, help solve health or housing problems, or provide the common interest around which a credit union or a consumers' buying club can be formed. In times of unemployment the union machinery may be used to assist workers in their dealings with the relief agencies or the unemployment compensation authorities. Indeed, members may come to their union with any problems that they face, whether as a group or individually. In his study of the newly organized Ford plant in the fall of 1941 Victor Weybright found that: "The corridors of the present building [of the Ford Local 600, U.A.W., C.I.O.] teem all day with members. Some come to visit, most come on business, but scores each day come because it is the friendliest place they know to ask personal questions—how to get a birth certificate, pick a doctor or lawyer, locate an apartment, join an orchestra, get up a ball team, or take a course in dramatics." [22]

Since a union is free to determine the qualifications for membership it can exclude undesired groups from union benefits by writing the prejudices of its members into its constitution, ritual, or by-laws, and in a completely organized industry operating under closed shop contracts this bars them from employment. In some instances aliens have been barred from union membership, and in other cases Asiatics. A number of unions, particularly in the last century, refused to admit women, and strikes against the employment of women occurred in various industries. Usually the unions following this policy have been forced to admit defeat, and have changed their rules to permit membership to women after the latter had won a fairly important place in the trade.[28] Other unions

have included a religious qualification for membership. The wire weavers, for example, admitted only Christians; the railway carmen limit membership to those who believe in the existence of a Supreme Being, and the masters, mates and pilots require each applicant to be "a firm believer in God, the Creator of the Universe."

Most widespread and most shameful has been the discrimination against Negroes. In a 1930 publication of the National Urban League there is a list of 24 national and international unions, 15 of them of railroad workers, that exclude Negroes through provisions in their constitutions or rituals.[24] Ten of these 24 unions were A.F. of L. affiliates. Other unions admit Negroes to membership but discriminate against them in a variety of ways, as by restricting their opportunities to advance to skilled work, segregating them in Negro locals, or making them ineligible to hold office or to serve as delegates to conventions.[25] In other cases in which the national union does not discriminate it permits its local unions to do so, with the result that Negroes are admitted on terms of equality with whites in some areas, segregated into Negro locals in others, and completely barred from membership in still others. There have even been instances in which Negro workers had to be discharged from jobs that they had held for years when their employer signed a closed shop agreement with a union that barred them.

These restrictions are found almost exclusively in certain craft unions. In industrial unions it is rare to find discrimination, though some instances have occurred. This reflects the more progressive spirit so frequently found among lesser skilled workers, and is at the same time a recognition of industrial realities. By being barred from apprenticeship Negroes may never be able to qualify as highly skilled craftsmen, but they can learn the ordinary unskilled or semi-skilled factory work as readily as can whites. To refuse them membership in industrial unions would serve only to weaken the union, antagonize the Negroes, and build for the employer an anti-union group to help defeat strikes. Indeed this aspect of race

relations has not been overlooked by employers, who from time to time have used Negroes as strikebreakers. In a number of industries, including steel and meat packing, Negroes won their first firm foothold in this manner. Craft union discrimination has helped to create an anti-union sentiment among large groups of Negroes.[26]

In extenuation it can only be urged that this prejudice is a reflection of the entire social scene and is not created by unions; in some states, merely to hold a mixed meeting of Negroes and whites is to violate the law. In many instances the labor movement has helped to break down prejudice, by bringing Negro and white workers together in a friendly human relationship in the effort to solve their common problems. The more progressive unions seek to allay the suspicion and hostility of Negro workers by employing Negro organizers, and by seeing that colored workers fill a fair proportion of union offices.

Numerous efforts have been made to break down union discrimination against Negroes. At successive A.F. of L. conventions Negro delegates, led by A. Philip Randolph of the Brotherhood of Sleeping Car Porters, have sought to persuade the Federation to end discrimination in its ranks. The autonomy of national unions has hindered action, and the A.F. of L. has proved unwilling to suspend national affiliates on this issue, though it has threatened to revoke the charter of a federal local.[27] In some instances Negroes who wished to join unions that barred them have conducted spirited campaigns to obtain entry, with the aid of organizations such as the National Urban League, sometimes successfully. In other cases national union heads have acted vigorously to prevent discrimination by local groups, as when President R. J. Thomas of the C.I.O.'s powerful union of automobile workers threatened expulsion to a group of white workers who went on strike at a Michigan arsenal plant in 1942 because some Negroes had been promoted to work to which their seniority entitled them.

Some Negro organizations have proposed that it be made

an unfair labor practice under the labor relations act for a union to bar workers from membership because of race or creed. In 1939 Governor Herbert H. Lehman of New York vetoed a bill to deny the benefits of the state labor relations act to unions practicing race discrimination, but early the following year he signed a measure prohibiting unions from denying membership because of race, color, or creed. In case of violation, the aggrieved person may recover up to $500 from the guilty organization, or its members or officers. In April, 1941, Kansas wrote into its law a provision barring a union from acting as a collective bargaining agency if it discriminated against workers because of race or color. Far more effective was the work of the President's Committee on Fair Employment Practice, established in June, 1941, which, as part of its campaign to break down racial bars in industry, ordered certain unions to modify their closed shop contracts so as to permit the employment of qualified Negroes on the same basis as other workmen.[28]

Still another type of discrimination is based on political affiliation or belief. A large and growing number of unions bar membership to communists, and some likewise exclude members of Nazi or fascist organizations. The communists, though discriminated against in many unions, are in turn intolerant of dissenting communist groups, such as Lovestoneites and Trotskyists; in recent years communist meeting halls have been decorated with slogans urging that these groups be driven out of the labor movement. It is significant that the C.I.O. constitution seeks the organization of workers "regardless of race, creed, color, or nationality," but that left-wing delegates were defeated in the 1938 convention in their effort to recommit this section to the Committee on Constitution, where they hoped to have it changed to bar political discrimination as well.[29] Had they been successful the United Mine Workers, then the leading C.I.O. union, would have had to remove from its own constitution the clause prohibiting membership to communists.

The carpenters' convention in 1936 decided to expel any

member "who affixes his signature or his name to any Communistic literature" [80]—and experience has shown how broadly the term "communistic" may be construed. The Buffalo carpenters early in 1940 expelled a socialist, because of a constitutional clause forbidding membership to anyone who aided a revolutionary party. A.F. of L. central labor bodies and state federations are not permitted to seat delegates from local unions that are officered or controlled by communists, and the 1939 convention of the A.F. of L. instructed national unions to refrain from admitting known members or active sympathizers of the Communist Party.[81]

Many unions of highly skilled workers seek in other ways to limit the number of members, so as to secure for those who belong as many job opportunities as possible. Since no one can become a competent mechanic without going through an apprenticeship of some years, the union may limit the number of apprentices, often to a fixed ratio to the number of skilled workers in a shop. The complaint is heard in some trades that often, since many more boys desire to become apprentices than there are places open, the preference is given to sons of union members, so that entrance to the trade as a practical matter is limited to them. In other cases employers are reluctant to spend the time and effort required to train apprentices, and do not accept as many apprentices as union rules permit.

An excessive initiation fee is another device for limiting membership. Initiation fees in excess of $200 are common in some skilled crafts, and some local unions of motion picture operators, electricians, and other crafts have had initiation fees of $1,000 or more. The Chicago glaziers set their initiation fee at $1,500; President William Green of the A.F. of L. denied that anyone ever paid this amount, the high fee being a device to keep out applicants for membership.[82] Fees of several hundred dollars, however, are meant to be paid, as provision for payment in installments testifies. In semi-skilled factory employment the initiation fee is usually less than $10, with provision for payment in installments if desired. Such initiation fees are not unreasonable, for the new member enjoys im-

provements that have been won by the older members over a long period of time, and becomes entitled to benefits from a treasury to which he has not contributed.

Early in 1941 there was sharp controversy over high initiation fees charged workers on defense construction. The A.F. of L. justified fees ranging up to several hundred dollars on the ground that union members had sacrificed for years to obtain existing standards, which newcomers enjoyed at once. The C.I.O. joined the general attack on the high fees charged by A.F. of L. locals, with President Philip Murray contrasting the average $3 fee of C.I.O. unions with the $50 to $250 and even higher fees found in the A.F. of L.[38] Some national unions of semi-skilled workers have an initiation fee of only one or two dollars. It should be understood that initiation fees are customarily fixed by local unions, though in some cases the national union may limit the amount that locals may charge. When unions engage in organizing drives the initiation fee is often reduced or waived entirely as an inducement to workers to join. It would be wise for the labor movement to make $25 the maximum initiation fee, and to charge proportionately less for unskilled and semi-skilled workers.

A union of highly skilled workers is customarily the judge of craft competence, with applicants having to pass a severe examination before admission. Once admitted to the union, they become eligible to share with the other members whatever work is available, often on the basis of a rotating list of unemployed members. Particularly where jobs are of short duration, as in the building trades, the admission of new members reduces the amount of work available to each. Hence the desire of such unions to restrict the membership. Another result, especially in the building trades but elsewhere as well, is the constant fighting among unions over the right to do particular types of work. These jurisdictional disputes are one of the worst features of the American labor movement, and the strikes resulting from them have been a source of great irritation and sometimes substantial loss to employers.

In some skilled trades in which employment opportunities

fluctuate widely, the regular membership is kept small so that employment is assured for all in slack times, with the employer permitted to hire temporary non-union workers as needed. Other unions accomplish the same result by issuing permit or privilege cards, which allow non-members to work on union jobs. The holders of these permit cards pay a fee to the union, frequently of $2 or more per week. This permit card system lends itself readily to graft, for a crooked official may pocket a large percentage of these fees. The union members may not know how many permit cards have been issued, and the holders of the permits, as non-members, have no rights in the organization. In the New York locals of motion picture operators and electrical workers, among others, the permit system has been abused by crooked officers. A number of national unions have made the permit system illegal, in order to lessen opportunities for graft and encourage the locals to admit the former permit card holders to apprenticeship or full membership, depending on their competence.[34]

Still another restrictive device practiced by some craft unions is that of the Class B or non-beneficial membership. This device, used extensively by the electricians, the carpenters, and other crafts, resulted from the admission to these unions of semi-skilled groups, who could not afford to pay the high dues of the craft unions and who were therefore denied the unemployment and other benefits that the high dues permitted. That much was legitimate; what was not legitimate was the denial of democratic rights in the organization. The International Brotherhood of Electrical Workers gave its locals of Class B members, composed of production workers in the radio and electrical appliance industries, one vote per local at national conventions, whereas the highly skilled Class A locals were represented on the basis on one vote per member. Small wonder that many of these production workers helped organize a separate union, the United Electrical, Radio and Machine Workers. The United Brotherhood of Carpenters and Joiners reported 302,000 members at the 1936 convention, of whom 131,000 were non-benefiting members who were al-

lowed only fraternal delegates without voting rights.[35] As a result, a large group of these workers, including lumbermen, loggers, and sawmill workers, soon transferred their allegiance to the C.I.O. In the Screen Actors Guild control was vested in the 15 per cent of the membership who were high-salaried actors, with the much larger group of extras limited to a Class B membership with practically no voice or voting rights.

A somewhat similar practice engaged in by some locals of craft unions has been the admission of workers to a junior membership without the right to vote. Locals of motion picture operators and painters are among those that have employed the junior membership device. As with the permit or privilege cards abuses are easy, and in some instances workers have brought suit against their officers to end discrimination between junior and senior members in dues and jobs, with graft to the officers necessary if junior members were to obtain employment.[36] In other instances temporary cards without voting rights have been used for relatively long periods, sometimes as a disciplinary measure for union offenses.[37]

In a period of declining employment non-unionists may feel that the unions keep their members working steadily at the cost of steady unemployment for those outside the ranks. As the same time it is only human for the unions to fill vacancies from the ranks of their unemployed members before admitting outsiders. Anyone who proposed an opposite policy would have scant chance of election to office. A new member is always welcome, needless to say, if he finds a job in a non-union shop and therefore brings a job with him when he joins the organization.

Non-members should realize that a strict seniority system in a well-regulated industry, whether unionized or not, would similarly bar them so long as experienced workers were unemployed. The unions, in turn, should recognize the danger that non-unionists and young people seeking their first employment will not take philosophically their failure to find jobs. If the unions control employment many of the unemployed will hold the unions responsible for their joblessness,

even though a world-wide depression or the faulty workings of an economic system may be the underlying cause. The unions would be wise to regard themselves as trustees for workers seeking to enter the trade as well as the representatives of those already in it. If the combined efforts of union, employers, and government are necessary to provide employment for all, and especially for the youth, in a depression period, then the unions are not living up to their larger responsibilities unless they lead the fight to provide some measure of opportunity for those denied a place in industry through no fault of their own.

Perhaps the most controversial practice in which the American labor movement has engaged is the establishment of the closed shop, which has been widely attacked as destructive of the rights of non-unionists and also as an undemocratic limitation of the rights of union members to leave the organization. About 40 per cent of all workers under union agreements in 1941, or approximately 4,000,000 workers, were then employed in plants or occupations covered by closed or union shop conditions.[38] The overwhelming votes cast for trade unionism in elections held under the auspices of the National Labor Relations Board show a general belief on the part of industrial workers that they benefit by collective bargaining. Nevertheless, American workers, for a variety of reasons, lack the class solidarity that has made the closed shop less necessary abroad. It should be noted, incidentally, that a distinction is properly made between the closed shop and the union shop. Under a closed shop contract employment is limited to existing members of the union, whereas under a union shop contract any persons may be employed, provided that they join the union within a specified time. In the discussion that follows, however, the term "closed shop" is employed, following popular usage, to include both situations.

To the charge that the closed shop deprives workers who do not believe in unionism of essential rights, unionists reply that all workers in a shop necessarily share the gains achieved under a collective agreement, and that it is only fair that all

of them contribute the money, and also the time and effort, needed to make those gains possible. All residents of a city, state, or nation, they point out, are taxed to support governmental activities, and citizens who object to particular activities or who disapprove of the personnel or policies of the government must nevertheless pay their share. Unionists fear, moreover, that the organization's strength may decline in the absence of a closed shop, either through undermining by the employer or indifference on the part of workers during a period of industrial peace. It is significant, they point out, that so often it is the employer who pleads the case of the nonunionist, rather than the latter himself; is it not likely, they ask, that the employer's real concern is that a closed shop will strengthen the union for collective bargaining purposes?

So long as anti-unionism on the part of employers persists there is force to the unionists' argument for the closed shop, though it should be noted that the protection against discriminatory treatment afforded workers who are covered by the National Labor Relations Act, or comparable state legislation, makes the closed shop less necessary than before. Once employers are convinced that union organization and collective bargaining are necessary and even desirable in an industrial society, as are most employers in Great Britain, the strongest argument for the closed shop will disappear. It is worth noting that, except in the shipping industry, closed shop agreements are seldom found in Britain, and are not seriously fought for by the trade unions. Nevertheless there is virtually a closed shop in practice in many industries, with employers preferring to engage union members and sometimes even suggesting, at the union's request, that particular workers should join.[39] Similarly, "The closed shop is not a significant issue in Sweden, because of the very large proportion of workers who are union members and because the employers no longer try to break down union organization, preferring to deal with their workers through strong trade unions." [40]

The fact that trade unions are strongly entrenched in the railroads, where the closed shop has been rare and where it is

usually considered illegal under the Railway Labor Act of 1926, shows that the closed shop is not essential to the growth and survival of unionism. The National War Labor Board has usually compromised on the issue of the closed shop, by merely ordering those workers who are or become union members to maintain their membership during the life of the contract. Amendments to the labor relations acts of Wisconsin and Pennsylvania, adopted in 1939, were designed to help keep unions open; the Wisconsin measure provides for the termination of a closed shop contract by the state labor relations board if any employee is unreasonably refused union membership, and the Pennsylvania law prohibits the closed shop if any worker employed when the agreement was made was denied union membership. In April, 1943, the Florida legislature approved a constitutional amendment, to be submitted to the voters in 1944, providing that "the right of persons to work shall not be denied or abridged on account of any membership or non-membership in any labor organization or union."

The closed shop deserves support only when the union is open, clean, and democratic. What should then be done with unions that insist upon closed shop contracts, yet bar Negroes or other qualified applicants from membership?[41] What of unions that are controlled by racketeers? What of unions that are run in dictatorial fashion, with critics expelled, elections not held, or stolen, officers appointed instead of elected, and the charters of anti-administration locals revoked? If the closed shop is to remain a legitimate union practice, now that the law regulates employers' conduct, should there not be some mechanism, either within the trade-union movement or provided by the government, to afford protection to rank-and-file workers against discriminatory union rules or the actions of dictatorial officials? We shall return to this question in a later chapter.

The loss of democracy within a union may be dramatic, with strong-arm men choking off dissent, conventions skipped, or ballot boxes stuffed. More often the process is gradual and

subtle, with those who are losing their rights acquiescing in the process and many of them scarcely aware of it. The union head may be unusually energetic and able, with a dominating personality, so that everyone else is usually prepared and willing to yield to his judgment. Especially if he has led his forces through a serious internal battle, against corrupt elements or against extremists of the right or of the left, his followers may cease to express disagreement with his policies in public, lest they lend encouragement to the internal enemy. Their utterances, both within and without the union, may be well sprinkled with phrases of admiration and affection for their president, with no word of criticism, and in such an atmosphere initiates into the union may receive their training. In the course of time the habit of criticism, even of expression of an honest difference of opinion, may be lost.

The union leader, in turn, is of necessity far removed from the membership. He works in the union office instead of in the shops, he draws a larger salary, he meets employers and public officials, he becomes a power in the community and perhaps in the nation. His judgment on union and trade matters becomes far better than that of the great majority of union members, particularly the large numbers who are relatively new in both the industry and the labor movement. The leader may then become impatient with the lack of knowledge and imagination of the rank and file, and come to feel, precisely as does many an autocratic though well-intentioned employer, that he knows what is good for the workers far better than they themselves do. Since decisions in strikes and negotiations often have to be made quickly, and democracy takes time, the union head may form the habit of acting first and getting approval later.

In his own thinking the leader may come to identify himself more and more with the union he heads, so that opposition to him and his policies seems like treason to the organization. The function of the average member, he may come to feel, is to carry out instructions, not to try to formulate policy. Discipline, in his mind, may seem far more desirable than democracy, and he may have the constitution of the union amended

to give himself and his fellow-officers more and more control over members and local units. By this time, if the union is widely organized and the closed union shop has come to prevail, a dissatisfied member may not be able to drop out of the organization without forfeiting his job in the industry. A rank-and-file member is in a weak position as against an unscrupulous union leader, almost as weak as a worker in an unorganized industry is in relation to his employer. If members then rebel, seeking to carry control of their jobs with them, all the evils of dual unionism may ensue. This is the process that has gone on in many unions, so slowly that the membership may scarcely have been aware of changes.

Just as there are some union officials who seek to concentrate power in their own hands, so there are others who forever struggle against apathy, to force their members to assume control over union affairs. The typical union member, however, has little desire to attend a meeting after the day's work is done. He much prefers to go to the movies or listen to the radio, and is quite content to leave all matters in the hands of his officers and a few active members. The local of post office clerks to which the writer belonged some years ago had seldom more than 20 of its 400 members at its monthly meetings, though to encourage attendance there was a two-dollar attendance prize at each meeting. Other locals, including a number in the steel workers' union, have given prizes of this sort, with eligibility limited to members in good standing. A number of unions fine members who absent themselves from meetings without good cause, and some likewise fine those who fail to vote in union elections. Officers of a garment workers' local in Pennsylvania told the writer that their members would attend regularly only upon assurance that they would adjourn in time for the last show at the movies.

Members of the general executive board, almost always the best informed union members other than the president, and frequently the most able and having most influence and prestige, are best equipped to lead debate against the administration policy within a convention. If they are dominated by the

president, so that they adopt his views or express disagreement only privately or within board meetings, the convention delegates are usually helpless, and opposition is negligible. Under such circumstances opposition may readily be identified with a small subversive or extremist element. A rank-and-file delegate may vote to uphold an administration policy with which he disagrees, to avoid encouraging an element that he dislikes or to avoid being identified with them. Thus the president may dominate the executive board and the executive board dominate the convention, with the average delegate's function limited to hearing and approving reports, and applauding and re-electing the administration.

It is to their local leaders that rank-and-file delegates, especially those who are new to conventions, look for leadership. One who attends his first convention is frequently not sure enough of himself to take the floor in opposition to an administration policy. The local leader whom he tends to follow in voting may fail to take the floor, even when he honestly disagrees, because of his ambitions within the union. He may have risen to his present post because of the national president's support, given or claimed, or by identification with his policies, just as a Democratic Party office-seeker may try to identify himself with President Roosevelt's policies or claim White House approval. Those already on the national executive board may fear to incur the displeasure of the national president, lest he turn against them and by his influence insure their defeat; local leaders, ambitious to be elevated to the board, may feel that to be "regular" in conventions is the best road to advancement. The president, moreover, usually has the right, perhaps with perfunctory approval of the board, to appoint organizers. These tend to be personally loyal to him, lest they lose their jobs; if they come as delegates to a convention they form, almost automatically, the nucleus of a political machine.

Much depends, therefore, upon the intelligence and personality of the union head. If he is lustful for power or possesses an ego that craves flattery, he may build a machine that

crushes democracy. He sets the tone at national gatherings, and may so weight the atmosphere against dissent and so identify opposition with treason that only an unusually fearless delegate may dare to express disagreement on an important issue. If the president is unusually intelligent, if he possesses democratic instincts, if he has faith in the capacity of the membership instead of an exaggerated estimate of his own ability and of the role of leadership, he will encourage delegates to express their opinions, even when he thinks they are wrong, and create an atmosphere of intelligent discussion and free interchange of ideas. He will introduce the concept of the loyal opposition that disagrees, not because of subversive motives, but because of a different and honestly held conception of the union's best interests. He may consciously use the convention, with its committee discussions and floor debates, as a training ground and school for younger members. Needless to say, there are few union leaders, as there are few men in any walk of life, who possess this breadth of vision.[42]

If the highest type of union leadership were always elected to office, the various abuses discussed in this chapter would never appear or would soon be eliminated. It is not enough, however, to hope that better officials will be selected in the future. Since unions are encouraged and protected by law, and since the closed shop is so generally a union objective, the trade union has ceased to be a wholly voluntary or private organization. Rather it has become an institution with which the welfare of millions of wage-earners is intimately concerned, and one so directly affecting employers, the government, and the general public, that attention must be directed to union abuses and shortcomings as well as to their achievements. To do this is to perform a service to the rank-and-file union membership as well as to the public at large.

These abuses and shortcomings are found in all departments of union life. Perhaps the worst are devices to limit membership, by excluding certain groups such as Negroes, by charging unreasonably high initiation fees, by establishing a limited membership without full democratic rights, or by

simply closing the books and refusing to admit anyone. Another set of abuses deny democratic rights to those who become members, by the failure to hold regular meetings and conventions, the stealing of elections, the fining, suspension, or expulsion of individuals who protest, or the revocation of the charters of opposition locals and the appointment of officers to conduct their affairs. Other abuses are found in needlessly high dues, excessive salaries for officials, racketeering, dishonesty in union affairs, and the failure to account properly for funds. Still other denials of democracy are sometimes found in the circumstances under which strikes are called or settled. Later chapters will discuss various proposals to remedy these evils.

3. Responsibilities of Unions to Employers

IN April, 1936, George E. Browne, president of the International Alliance of Theatrical Stage Employes and Moving Picture Machine Operators, introduced a representative of the international union, William Bioff, to Nicholas M. Schenck, president of Loew's, Inc., which operates the Loew chain of theaters and produces Metro-Goldwyn-Mayer motion pictures. After about a minute of pleasantries, Schenck testified in a federal court in New York City more than five years later, Bioff came straight to the point.

"Now look, I'll tell you why I'm here," he said. "I want you to know that I'm the boss—I elected Mr. Browne—and I want from the movie industry $2,000,000."

Schenck's reply, he testified, was that Bioff was crazy, but he soon discovered otherwise. The sum that Bioff demanded, under threat of calling strikes in movie theaters throughout the country, was soon scaled down, until agreement was reached that Bioff would receive $50,000 yearly from each large movie company and $25,000 from each of the smaller ones. The money was paid in cash, company officials testified, and hidden on the books by fictitious or raised vouchers. The demand for money cannot have come as a complete surprise to Mr. Schenck, for a few months earlier he had been able to settle a strike at some sixty-odd Loew's theaters in New York by "employing" someone for $100,000, with the understanding that the money went to Browne. In May, 1941, Browne and Bioff were indicted under the federal anti-racketeering act for extorting at least $550,000 from four large movie-producing

organizations under threats of strikes in theaters. A sensational trial in the fall of that year produced evidence that the amounts collected exceeded $1,000,000, and the jury promptly returned a verdict of guilty. Bioff and Browne were sentenced to ten and eight years in prison, respectively, and fined $20,000 each.[1]

A year earlier Bioff's various activities had been interrupted while he returned to Chicago to serve a six-month jail sentence for pandering, incurred in 1922 and evaded for almost twenty years. Ironically enough, Browne, as a vice-president of the American Federation of Labor from 1936 to 1941, was charged, along with the other members of the Executive Council, with enforcement of the anti-racketeering resolution adopted at the 1940 convention of the Federation. The trail finally led from Browne to eight Chicago gangsters of the Al Capone era, who were indicted by a federal grand jury in March, 1943. The gangsters, who had compelled the election of Browne as president at the 1934 convention of the union, pocketed $1,250,000 raised by a 2 per cent assessment, in addition to the more than a million dollars extorted from producers under threats of strikes.

The experience of exhibitors at the New York World's Fair of 1939-40 illustrates another common complaint of employers against unions. Exhibitors declared that unnecessary workers were forced upon them; that frequently electrical machinery had to be taken apart and rewired by local unionists, even though it had originally been wired by union workers; that foreign craftsmen sent over by their governments to work on their exhibits were not permitted to work in many cases unless American unionists were hired for the same jobs, to stand by in idleness. Unions forced unwanted maintenance men upon exhibitors, it was asserted, and in some cases ordered members to slow down so that more overtime work might be obtained. The State of Nevada, it was said, withdrew from the Fair partly because the electrical workers' union insisted that the most important feature of the Nevada exhibit, a huge, electrically operated model of Boulder Dam, be re-

wired in New York, though the original work was done by union labor. Some of the foreign exhibitors, similarly, were reported reluctant to return for the second year because of excessive labor costs. Bert Kirkman, president of Local 3 of the International Brotherhood of Electrical Workers, one of the unions complained against, was quoted in the New York *Times* as saying that members of the union had been "through hell during the depression years," and that the union insisted that they benefit to the full from good times. He argued that imported appliances were rewired to avert fear of fire, and that maintenance crews were necessary to reduce danger of fire and damage to equipment.[2]

Employers also object to a variety of other practices in which unions from time to time have engaged. Besides the closed shop employers may object to lesser types of union control, such as the preferential shop, under which preference in employment is given to union members, or the maintenance-of-membership agreement, which provides that those workers who join the union must keep up their membership to retain employment, though there is no compulsion upon non-members to join. Until the National Labor Relations Act was upheld by the U. S. Supreme Court, controversy likewise raged over recognition of unions. Now an employer is legally bound to recognize and to deal in good faith with any union that his workers desire, accepting it as sole bargaining agent if it has the support of a majority of his workers in any logical bargaining unit.

The check-off of union dues is a device that arouses far greater controversy than its intrinsic importance deserves. It was first used widely in the coal fields, where the employers frequently provided homes, groceries, medical service, blasting powder, and a variety of other supplies and services to their workers, and deducted the charges for them from the miners' earnings each pay day. It was not surprising that the same technique should have been adopted for union dues, with the operators automatically deducting the specified sum from each worker's pay and handing the total over to the union. Other

unions, particularly those in which ex-miners have been prominent, have sought to impose the same device, which eliminates any problem of collecting dues and keeps every worker always paid up. Employers frequently object strenuously, however, to helping solve a union problem and so contribute to its power. For many employers, in addition, the very term "check-off" seems charged with emotional content.

Some unionists do not believe that the check-off is a wise device from their point of view, for it lessens the contact of workers with their union and makes the leaders less dependent upon the membership, and may therefore contribute to a weakening of union morale. Again, if the employer checks off dues to the national or district office of a union, which in turn sends each local union its share, the power of the national or district organization over the locals is greatly increased.

Employers expect unions to abide by their agreements, and are understandably indignant if work is stopped in violation of a contract. Such strikes upon rare occasions may be ordered by a union; in a great many cases, however, they are "wildcat" strikes that violate union rules as well as the contract with the employer, and constitute one of the most difficult disciplinary problems with which unions must deal. Reference has already been made to the many illegal sit-down strikes that occurred in General Motors plants in early 1937, and to the efforts of the union to cope with them. It is interesting, after hearing unions condemned by employers for permitting such strikes, to read a union's appeal to its stewards and committeemen for the elimination of all unauthorized stoppages: "The union is opposed to unauthorized strikes. This is not because a milk and water policy has been adopted. It is primarily because the unauthorized strike or stoppage is undemocratic . . . A handful of men in a single plant cannot be given the right of involving tens of thousands of workers, without their consent, in a costly and dangerous struggle. That would mean that a contract covering thousands of workers could be broken down at the whim of a few individuals." [8]

When outlaw strikes occur union leaders have several

courses of action open to them. If the local engaging in the strike is new and inexperienced the national officials will probably concentrate on settling the grievances that caused the strike as quickly as possible, at the same time explaining to the new unionists and their officers the necessity of following the procedures for adjusting disputes laid down in the contract. If the workers fail to end their strike promptly, particularly if the strike becomes the vehicle of a factional conflict within the union, the national leaders may soon pass from persuasion to threats of disciplining recalcitrant individuals by fines, suspensions, or expulsions. Older locals are presumed to be better acquainted with their obligations and with the proper procedures, and with them the national leaders may proceed more quickly to sanctions. At the least, strike benefits will not be paid from the national treasury, nor aid of any other sort sent or solicited by the national organization from other locals. In more flagrant cases the charter of the local may be revoked, and in extreme instances the national officers may even assume the obligation of supplying union members from other centers to replace those who fail to return to work.[4] Such action, while it enforces union discipline, allows the union leader to be attacked as a strike-breaker and leaves scars that may take many years to heal. For these reasons most union leaders are extremely reluctant to replace outlaw strikers, whatever the legal justification. Employers, not concerned with the problem that vigorous action to break an unauthorized strike may create within the union, often feel that union officials exercise insufficient control over their members, and frequently they suspect, sometimes with justification, that the leaders condone illegal strikes or even encourage them secretly.

As long ago as 1916 the Commission on Industrial Relations observed that: "Joint agreements, on the whole, are well kept. There is a constant increase in the sense of moral obligation on the part of both employers and unions. Violations of agreements on the part of a small number of men or of a single employer occasionally occur. It is found that the unions

tend more and more to punish by fines or other disciplinary measure such infraction on the part of their members. The great difficulty in the rapid solution of this problem is that even greater evils than contract breaking are apt to result from giving officials the power which they must have in order to punish properly individuals or local unions for illegal strikes. The employers' associations, from the nature of the case, have less power over their members, but in practically all cases they exercise in good faith what power they have. Furthermore, since the employer in the first instance has the power to interpret the contract, which he may do unjustly, he may actually be guilty of the breach of contract when the employees who strike against such unjust interpretation are apparently the guilty parties." [5]

Most of the older unions, including those in the railroad and printing industries, have excellent records for living up to their agreements. Sometimes the record in this respect even of new unions wins praise from the employers. In April, 1938, for example, after the United States Steel Corporation had had a year of experience in contractual relations with the Steel Workers Organizing Committee, the chairman of the corporation's Board of Directors, Myron C. Taylor, reported to the annual stockholders' meeting: "The union has scrupulously followed the terms of its agreement and, in so far as I know, has made no unfair effort to bring other employees into its ranks, while the Corporation subsidiaries, during a very difficult period, have been entirely free of labor disturbance of any kind." During the year to which this report referred, it should be noted, the violent struggles of the S.W.O.C. against the "Little Steel" companies took place—struggles precipitated by the refusal of the companies to sign contracts with the union, partly on the ground that it could not be trusted to keep its agreements. The research director of the S.W.O.C. asserted in the winter of 1939 that only 24 of the 1,107 S.W.O.C. lodges, or 2 per cent of the total, had struck in violation of contract, and that these strikes had averaged less than a day in length.[6]

Employers have much the same record with regard to their agreements. For evidence of violation one has but to examine the numerous complaints brought to grievance committees or impartial chairmen. It must be remembered, however, that the nature of a collective bargaining agreement is such that only the employer can violate the provisions regarding wages, hours, seniority, and the like, whereas often the only clause that the union can violate is the agreement not to strike. In a number of cases unions have turned the injunction tables on their employers, and obtained court orders restraining them from violating their contracts. Perhaps the outstanding example of repudiation of contract in the history of American collective bargaining is that of the coal mine operators following the signing of the famous Jacksonville Agreement of 1924. Nevertheless, with employers as with unions, contract repudiation has been the relatively rare exception.

It should not be thought that every violation of contract shows bad faith on the part of the violator. In a great many cases where violation of contract is charged both sides are acting in good faith, but are construing the terms of the agreement differently. The language used in collective bargaining agreements is often vague, permitting different interpretations; or unforeseen situations develop to which contract clauses designed for different purposes must be applied. Too frequently the machinery provided in the contract for the adjustment of disputes is inadequate, precipitating conflicts that otherwise might have been adjusted peacefully. With more experience in the drafting of agreements and in the adjustment of grievances the number of such difficulties should be reduced.

Occasionally the employer is the innocent victim of a struggle within the union, when workers who are dissatisfied with the administration or policies of the union stop work until their complaints are acted upon by the union officials. This was the case in September-October, 1941, for example, when anthracite miners in the Hazleton, Pa., area engaged in a 27-day outlaw strike to protest increases in union dues

and assessments and to force changes in the administration of their district organization. The check-off system, it should be noted, makes it more likely that workers who wish to bring pressure on their union will cease work. Workers who pay dues directly to the union will almost certainly continue at work and show their dissatisfaction by refusing to pay their dues.

Under the contracts in force in some industries the unions or their members are responsible financially for failure to abide by the terms agreed upon. In the hosiery industry, where workers who violate the agreement may be fined, reduced in pay, or discharged, the union assumes full responsibility for disciplining its members and posts a bond for fulfillment. In the event of violation the impartial chairman of the industry may assess damages up to the amount of this bond. The impartial chairman asserted in 1937 that in no case had either party failed to accept the full responsibilities required by a decision.[7] When the United Automobile Workers were negotiating with the Chrysler Corporation in the fall of 1939, the union offered to post a bond for the performance of the proposed contract; the company rejected this proposal, however, on the ground that it was linked to the demand for the union shop.[8] The United Mine Workers have had penalty clauses in many of their agreements, providing that miners who struck in violation of contract were to be fined for each idle day, and that operators who locked out their workers illegally were likewise to be fined. In some industries where the employers are small and often irresponsible, as in the garment trades, the unions have frequently forced the employers to post bonds to guarantee faithful performance of the agreements.

Other types of strikes to which employers especially object are sympathy strikes, general strikes, sit-downs and slow downs, and jurisdictional strikes. The sympathy strike occurs most frequently where members of two or more unions work for the same employer, and agree that all the unions shall cease work if the members of one have a grievance. Unless they

support each other in this manner, unionists argue, their bargaining power is weakened and the employer might destroy each of them in turn. Sympathy strikes, in an important sense, are a product of craft unionism, and seek to obtain for craft unionists the same unity of action that industrial organization would insure. The employer, for his part, has a just complaint whenever workers violate their contract by engaging in a sympathy strike. Unionists who work for other employers can best express their sympathy in other ways than by ceasing work, as by contributing funds to the aid of strikers.

General strikes, or sympathy strikes embracing all organized workers in an area, have seldom been resorted to in this country. The belief is widely held in the American labor movement that a general strike should be called only in extreme cases, as where the government denies the right to picket; and that it is best used as a demonstration and called for a limited period, as 24 hours, rather than for an indefinite time. In other countries, especially where workers could form unions but were denied full political rights, the general strike has been used much more frequently.[9] The sit-down strike has lost popularity among unionists since its widespread use in 1936-37, partly because of its illegality and an adverse public reaction, and partly because it was difficult to control. The slow down has been used only in relatively few cases, usually in mass production industries in the early stages of unionism. Neither the sit-down strike nor the slow down presents a problem of any significance today.

The jurisdictional strike, however, has been and continues to be one of the greatest evils of the American labor movement. In the United States, in contrast with the situation in many other countries, unions receive from their federations, whether the A.F. of L. or the C.I.O., the exclusive right so far as that federation is concerned to organize all workers within certain craft or industrial boundaries. The A.F. of L. in its earlier years granted charters without precise delineation of jurisdictional limits. As unions grew they came into conflict over their boundaries and settled disputes only to have new

industrial processes create new areas of conflict. As with border wars between nations, these jurisdictional conflicts between unions have aroused great bitterness and often cost the contesting parties vastly more than the disputed areas were worth. Unions have fought jurisdictional quarrels so tenaciously partly to control the field of competition, partly to relieve the job-hunger of members, and partly because of considerations of power and prestige. When a jurisdictional dispute leads to a cessation of work, as happens all too frequently, an innocent employer suffers loss and the public is inconvenienced because of the inability of unions to settle their quarrels with each other peacefully.

Jurisdictional disputes occur most frequently between craft unions, and find their most fertile field in the building trades. For decades carpenters and sheet metal workers have clashed over the right to install doors made of or trimmed with metal. In 1933 the erection of large government buildings in Washington was delayed for two weeks because carpenters struck when the installation of radiator covers was taken from them and awarded to the iron workers. Disputes between two locals of a single national union may be just as bitter, with the national officers unable to compel a local to abide by an award of disputed work to a rival local. In New York City a $30,000,000 project was kept at a standstill for seven months, at great loss to the contractor, because of a dispute between locals of plumbers and steamfitters, both chartered by the same national union, over the laying of certain pipes. The A.F. of L. has made repeated efforts to settle these jurisdictional quarrels, through Executive Council and convention action and the efforts of its Building and Construction Trades Department. The stronger unions often refuse to accept an adverse decision, and the Federation, quite understandably, is reluctant to suspend them. Weaker unions, by way of contrast, may be compelled to abide by an unfavorable decision. Sometimes stubborn jurisdictional conflicts are permanently and wisely settled by an amalgamation of the competing unions.

One of the most celebrated jurisdictional conflicts between

craft unions arose over the installation, setting, and erecting of certain types of equipment being installed in a vast expansion program at the Anheuser-Busch brewery in St. Louis. For a quarter of a century the United Brotherhood of Carpenters and Joiners and the International Association of Machinists, both affiliated with the A.F. of L., have clashed over the right to erect and dismantle machinery. Anheuser-Busch employed members of both unions, its agreement with the machinists providing that members of that craft should install metal machinery. The carpenters, who claimed that their contract covered such work, insisted that the company violate its agreement with the machinists and award the disputed work to them; upon its refusal to do so they called a strike of all carpenters, millwrights, and cabinetmakers employed by the company and by contractors constructing a large plant addition, tried to instigate sympathy strikes among employees who belonged to other unions, and urged carpenters and all friends and members of organized labor to refrain from drinking Anheuser-Busch beer. This led to the indictment of leaders of the carpenters for violating the anti-trust acts and the case reached the Supreme Court of the United States. The court's decision, handed down February 3, 1941, was in favor of the carpenters.[10]

Bitter as are jurisdictional conflicts between rival craft unions, those between craft and industrial unions are usually more difficult to settle because an additional factor, the supremacy of a type of unionism, is involved. Classic among disputes of this type is the long-standing demand of the International Brotherhood of Teamsters that the United Brewery Workers, an industrial union, surrender jurisdiction over beer truck drivers. This jurisdictional conflict has lasted more than three decades, and is still unresolved despite frequent attention by A.F. of L. conventions, plus court proceedings. It was the refusal of craft unions of the A.F. of L. to permit industrial unions to be chartered in the steel, automobile, and rubber industries, among others, that led to the formation of the C.I.O. late in 1935.

Though industrial unionism reduces the number of jurisdictional conflicts it does not eliminate them. The men's clothing industry merges into women's clothing, women's clothing borders on both textiles and rubber, rubber runs into automobiles, and automobiles into steel, electrical equipment, and other industries. The International Longshoremen's and Warehousemen's Union and the United Retail and Wholesale Employees, both of the C.I.O., have clashed over the right to organize warehouse workers. Conflicts over jurisdiction may also occur between locals of a single industrial union, as witness the disputes between the coat and suit and the dress branches of the International Ladies' Garment Workers' Union. Thus far, however, the industrial unions have generated far less bitterness than have the craft unions in their jurisdictional quarrels, and employers and the public have suffered little.

The Anheuser-Busch case illustrates the plight of an employer caught in the conflicting claims of rival labor organizations. With the division of the American labor movement into the A.F. of L. and the C.I.O. such instances have multiplied. In a number of cases employers under contract with a union connected with one of the federations have found themselves picketed by an affiliate of the other group, proclaiming the enterprise unfair to organized labor. A Washington hat store which was painted by a member of the C.I.O. was told by the A.F. of L. union in that field that it would have to have the work redone by an A.F. of L. member if it wished to have a picket removed. Employers complain bitterly that, though they are bound under the National Labor Relations Act to bargain with the union desired by the majority of their workers as representative of all in the bargaining unit, the minority union, nevertheless, apparently is free to strike and picket.

From time to time, especially during strikes, charges are heard from employers, the press, or government officials that particular unions are under communist domination or influence. It is often difficult to know when this is the case, since communists typically deny their party affiliation, and since

the charge of communism is frequently made without evidence in an effort to discredit a union and arouse prejudice against it. Frequently the accusation of communism becomes the excuse for denying workers their civil rights. In any event the charge is immaterial, for workers are privileged to elect whomever they please to union office, and employers are properly required to deal with whatever union their employees desire. Union officials are expected to try to get as much for the workers as competitive conditions and the state of the industry permit. If officials who are Communist Party members or who follow the party "line" subordinate the economic interests of the workers to the political interests of the communist movement the workers, in all likelihood, eventually will change their leadership.

Communists occupy positions of leadership in many of the newer C.I.O. unions because they proved able and fearless organizers when those unions were being built. Had employers not resisted unionization so stubbornly their workers probably would have organized much earlier and perhaps more conservative leadership might have emerged. Instead in many plants a handful of communists assumed the leadership during the organizing drives of the middle 1930's and won the confidence of the workers by leading a successful strike or negotiating a good agreement. Often the close organization of the communists, the tightness of their discipline, and their willingness to attend meetings and accept responsibility for union functions have enabled them to exert influence far out of proportion to their numerical strength, especially when the masses of the members, as in many of the newer unions, lacked both trade-union experience and knowledge of the communists' methods. In the A.F. of L. and in most of the older C.I.O. unions the communists exert little influence, except in scattered locals.

American labor relations, unfortunately, have been marred by a great amount of violence. The 10-day British general strike in 1926 produced no violence beyond the smashing of a few street car and bus windows, whereas in strikes in the

United States assaults are common and deaths all too frequent, with property destruction sometimes running into substantial figures. Each side, not unnaturally, seeks to place the greater part of the blame upon the other. Certainly it is true that both sides are often inclined to place their group interests above the law, and that men fighting for their jobs or for a principle they hold important, whether that be unionism or the open shop, may commit acts that they would condemn under other circumstances. So long as frontier conditions prevailed in many industries, as in metal mining in the western states, the violence typically associated with the frontier appeared in labor relations. Now that the National Labor Relations Act and comparable state acts have removed the rights to organize and bargain collectively from the allowable area of economic conflict, there should be much less violence proportionately than in the past. If American employers, following the example of most British employers, cease attempting to operate plants with imported strikebreakers, the amount of violence should be reduced substantially.

It should be remembered that this is a country with a long tradition of violence, with a history of disrespect for unpopular laws. In addition there is a widespread belief on the part of workingmen, not without considerable justification, that the criminal law favors the employer and that the police and the judiciary are partial in labor disputes. If higher standards of police administration could be attained, during strikes as at other times, if the criminal law were more fairly written and impartially administered, if the police and the prosecuting authorities were removed from politics and appointed and kept in office solely on merit, there would be less violence in labor disputes, as in other areas of American life.

That unions are sometimes responsible for violence is readily apparent. Organizers rely primarily upon persuasion, but as union sentiment in a plant increases those who resist may find persuasion turning to threats. A hypothetical but fairly typical situation is thus described by Robert R. R. Brooks: "The appeal of the union workers now changes from persua-

sion to shame and perhaps to fear. The distinctions here are subtle. One worker says to another, 'All of my crowd have gone in, you better come along.' The next time it is, 'You wouldn't scab on us, would ya?' . . . Another meeting is held and a bunch of the weak sisters are invited. The organizer makes a speech which flatters, shames and frightens them. Ten per cent more sign up. 'Some of the boys are beginning to wonder a little about you. 'Course I know you're all right, but if I was in your shoes and wasn't looking for trouble I'd come along with the rest of the gang.' Another 5 per cent signs up. Three workers' Fords develop a mysterious series of flat tires. O'Mara [the union organizer] hears about it and says, 'Take it easy on that stuff, boys,' with a faintly perceptible wink, 'but if you can't be good, be careful.' The piston rings in another Ford suddenly wear thin and it is reported that emery dust was found in the crank case. 'Who's the dirty bum that done that?' says one worker to another with a broad grin." [11] Workers in the rougher trades are more likely than other elements in the population to try to settle differences of opinion with their fists. In some instances, especially in cities controlled by corrupt political machines, gangs of toughs have been hired to fight the battles of the picket line—a practice of which both unions and employers have been guilty.

It is, of course, during strikes that violence flares up, with strikebreakers beaten and property damaged or destroyed. Damage to the plant and equipment of the Apex Hosiery Company during the sit-down strike in the spring of 1937 was assessed by a jury at $82,000. William Green asserts that: "Men on strike are capable of unrestrained violence. I have known them to call out the maintenance men and leave the mines to flood. In Ohio there are mines which were set on fire during the strike of 1884, still burning." [12] The dynamite outrages of the structural iron workers can be understood only as incidents in the long war in which they were engaged with the erectors' association. However, sabotage has never been advocated by any important group in the American labor movement. In extreme cases workers are capable of a massacre

such as that at Herrin, Illinois, in 1922, in which nineteen strikebreakers were killed, most of them after they had surrendered; in the same way employers and government officials are capable of an act such as that at Ludlow, Colorado, in 1914, where eleven children and two women, huddling in a cave in their tent colony to escape machine gun fire from the state militia, were smothered to death when the tents were set on fire by the troops. Such occasional acts of extreme violence on either side can be explained only by the psychology of warfare. Neither side can place the blame for violence solely upon the other; both must actively seek more civilized methods of adjusting their differences.

It should not be thought, however, that unions are responsible for all the violence to strikebreakers or the property of employers that is committed during strikes. In some instances members of the organization may commit the acts without the knowledge of the union leaders, and against their instructions and desires. In other cases it may be an agent of the employer, operating within the union, who urges violence at the order of the employer, who hopes thereby that public opinion will turn against the organization or that he may the more easily obtain an injunction or persuade the governor to send in troops.

Despite the frequent tendency to hold unions responsible for the violence in labor relations, unionists are the objects of serious violence far more frequently than they are the perpetrators. Roger N. Baldwin of the American Civil Liberties Union says:

> On the charge of violence against the CIO, repeatedly and insistently brought, it is difficult to speak without irritation in the face of the wholesale use of violence against it. That the CIO unions like others have been guilty of acts of violence both to persons and property is doubtless true. A few of its members have been convicted of such acts.
>
> But the record of violence against them for seven months of major strife in 1937 alone showed twenty-four men killed on picket lines, and 490 wounded and injured. The circumstances surrounding the

killings, like those of the demonstration before the Republic Steel Company in Chicago on Memorial Day, all testify to the fact that the union members, when shot or injured, were engaging in peaceful activities, though defying what they regarded as unlawful police interference with their rights. On the side of the employers or the public authorities, the record of 1937 shows only one person killed, a police officer in the aluminum strike at Alcoa, Tennessee, under A.F. of L. auspices. It shows only seventy persons injured among strikebreakers and officers of the law.[18]

Instances of the purchase of arms by unions and their distribution to members are exceedingly rare in recent decades. Half a century ago the Western Federation of Miners did distribute rifles and ammunition, but conditions of frontier lawlessness still prevailed in many of the isolated metal mining areas of the west. More recent instances have usually occurred under considerable provocation; for example, the formation of a Workers Defense Corps by the Teamsters Local Union 544 of Minneapolis in the summer of 1938, after a union leader had been slain by unknown gunmen. Silver Shirt leaders, active in the city, had called for raids on union halls, and reports had circulated that an employers' association had raised a large fund with which to import gunmen. The armed activity of the defense corps, the formation of which was publicly announced, consisted of the purchase of four practice rifles and ammunition for target practice. On the basis of this activity twenty-nine alleged members of the Socialist Workers Party, with which leaders of the union were identified, were indicted by the federal government on charges of advocating force and violence to overthrow the government and inciting to insurrection in the armed forces.

The subcommittee of the Senate Committee on Education and Labor that investigated violations of free speech and rights of labor, reported in 1939, following its exhaustive study of the use of munitions in industrial disputes, that it had found only a few instances of the use of firearms by strikers or their sympathizers. It found no examples of the use of tear or sickening gas or machine guns by strikers. For the most part the use

of arms by strikers was sporadic and unauthorized, though in one or two cases there was a concerted resort to arms in response to the use of arms by agents of the employers. The committee concluded that: "Resort to arms by workmen is a rare occurrence, whereas the practice of industrial munitioning on the part of employers is widespread and commonplace." [14] The committee found only one instance in which a union had inquired about the purchase of gas or gas equipment from an industrial munitions company. The company refused to sell its tear gas weapons to the labor group, asserting that it limited its sales to law-enforcement agencies. As a matter of fact this company, the Lake Erie Chemical Company, like its competitors, actively promoted sales to employers as well as to governmental agencies. The committee found that sales to employers comprised more than half the total business of these munitions firms, though there was no record of a sale to any labor organization or its members.[15]

Where unions have found themselves unable to organize a shop or reach a satisfactory agreement through strike action they have frequently urged their members, other unionists, and the general public to boycott the firm's products. Adverse court decisions have diminished labor's reliance on the boycott, though the weapon is still used. The boycott has proved most effective with regard to products which are purchased largely by working men or their families, such as work clothing or beer.

An effective boycott may be maintained by workers who occupy a strategic place in industry. Longshoremen have refused to unload ships whose cargoes were considered unfair or "hot." Teamsters, similarly, have refused to deliver materials against which boycotts had been declared. The warfare between the A.F. of L. and the C.I.O. has increased the number of boycotts on materials, with the carpenters, for example, refusing to work with lumber previously handled by loggers, lumbermen, or sawmill workers affiliated with the C.I.O. Manufacturers of electrical equipment charge that Local 3 of the International Brotherhood of Electrical Workers ex-

cludes their products from the New York City market; the boycott, they assert, applies not only to equipment manufactured by non-union workers and C.I.O. members but also to products made by sister locals of Local 3 outside the metropolitan area. In cases of boycott by members of one union against the products made by a rival organization the employers of the latter point out that they are helpless, for under the terms of the National Labor Relations Act they are obliged to bargain with whatever union their employees choose.

A common complaint of employers is that unions unduly restrict production, force unnecessary work to be done, and prevent the introduction of modern machinery or methods. There can be no question that many unions engage or have engaged in such practices. The New York City plasterers sought to increase their volume of work by insisting on three coats of plaster in one- and two-family houses, though the Building Code required three coats for tenement houses and certain public buildings only.[16] A St. Louis exposition remained without music because the musicians' union refused to send performers unless a 12-piece orchestra were hired for the entire period of the exposition; the union rejected offers to hire as many union musicians as the exposition could afford.[17] In Chicago carpenters insisted that molding for walls be sawed by hand instead of with a power saw, and electrical workers required motion picture theaters to pay for maintenance men to inspect and oil the motion picture machines, work that the operator or a janitor could do.[18] Painters, to make their jobs last, have limited the size of brushes and barred paint-sprayers. The National Window Glass Workers automatically suspended any member who accepted employment in a plant using machines, and the cigar makers' union fought the introduction of the mold, a tool that permitted division of labor. Stage hands have refused to work for theaters that reproduced music mechanically instead of hiring musicians. In other instances unions have limited the amount of work to be done in a day; they have required tasks for which unskilled or semi-skilled labor would suffice to be performed by high-priced

craftsmen; they have required work that might have been done cheaply in a factory to be done on the job at much greater expense, and engaged in a variety of other practices designed to increase their employment opportunities.[19] Because produce drivers upon arrival at certain markets had been forced to hire unnecessary union drivers, the House of Representatives, in April, 1943, sought to bring such practices under the ban of the Federal Anti-Racketeering Act of 1934.

Nevertheless it must not be thought that organized workers are the only ones who have sought to restrict production or block technological advance. Unorganized workers have widely restricted production, because of a belief among piece workers that if wages rose above a certain level the rate would be cut and they would merely be working harder for the same income.[20] Employers have likewise restricted production where they have the power to do so, if that course promised to raise prices and increase net earnings. Manufacturers have bought newly-patented devices, not to give the public the benefit of a new process, but to keep it off the market until they had earned the maximum return from older machinery and methods.

The abler labor leaders long ago recognized that technological progress could not permanently be stayed by union opposition, and that unions that failed to adapt themselves to new machinery were likely to lose influence. Accordingly the tendency now is for unions to seek to regulate the introduction of machinery so as to minimize the displacement of workers. The printers sought for their members prior opportunity to learn to operate the linotype; the Amalgamated Clothing Workers obtained dismissal pay of $500 for each cutter forced out of the employ of Hart, Schaffner & Marx in the 1920's. Some of the contracts of the Textile Workers Union of America provide that the workers shall get from one-third to one-half of the savings from technological changes. Many other unions have adopted similar policies.[21] In an effort to persuade union employers to purchase modern machinery that would permit competition with non-union plants, the hosiery workers'

union voluntarily took a wage reduction in 1938 on condition that the employers purchase new equipment.[22]

When so-called scientific management was introduced it met with vigorous opposition from organized labor, which saw in it a device to expand production and increase profits at the expense of the workers. More recently many unions have co-operated with employers in the search for more efficient methods. William Green thus sums up labor's attitude: "Certain types of speed-up methods, introduced by so-called scientific management experts, we found it necessary to oppose, for labor had no part or voice in installing them, no chance to see that methods of work and rates of pay were just to those they affected. In many cases these speed-up methods placed an intolerable work load on employees, destroyed craft skills, and gave no just reward for increased productivity, as with the 'stretch-out' in Southern textile mills. Scientific management techniques, however, when they give full consideration to the human element and are installed under joint supervision of management and organized workers, may be of much benefit in eliminating waste, improving work conditions and increasing efficiency. Labor has a very definite stake in efficient management, for unless the production process is conducted as economically as is possible without working injustice on any employee, and unless costs decrease and efficiency improves, we cannot hope to produce the income which will give us higher living standards." [23]

In a number of cases unions have co-operated with employers to increase efficiency and promote the success of the enterprise. In the 1920's union-management co-operation first received public attention, the most prominent plan being that of the Baltimore and Ohio Railroad Company. Other railroads followed the B. & O. example, and the men's garment industry of Chicago and the women's garment industry of Cleveland likewise engaged in interesting experiments. During the depression years many of the earlier efforts were abandoned, but with the recent spread of collective bargaining plans for union-management co-operation have been adopted in a great

many industries. Unions have co-operated with management in research, in installing more efficient methods, and in promoting sales, and in some instances they have even lent money to employers. In this discussion of union-management co-operation it should be borne in mind that, though the effect is to aid the employer by promoting efficiency and improving his competitive position, the union's primary motive is to obtain more work and higher earnings for its members. By doing so, however, it is at the same time aiding employers and promoting the general welfare, and thus discharging its larger responsibilities.

The B. & O. plan was adopted during a critical period, when the company and unions of its employees were holding each other responsible for wastefulness. The unions were interested in reducing costs without cutting wages, and in discouraging management's practice of contracting repair work to lower wage, non-union shops. The plan for co-operation to promote efficiency was first given a year's trial in Pittsburgh, after which it was extended early in 1924 to all B. & O. roundhouses and repair shops. Co-operative committees representing the unions and the management were set up for each district and for the system as a whole, to discuss suggestions for economy and efficiency. Suggestions have poured in at the rate of about 2,000 yearly, and after discussion 86 per cent of them have been adopted. As a result of the co-operative program the shops were made more efficient, the workers' earnings increased, employment became more regular, and relations between workers and management improved. In 1925 the Canadian National Railways installed a similar plan, and shortly thereafter the Chesapeake and Ohio, the Chicago and North Western, and the Chicago, Milwaukee, St. Paul and Pacific did likewise. After several years the last-named roads abandoned the co-operative plan, but on the B. & O. and the Canadian National Railways it is still in effect. The Canadian road has adopted 71 per cent of the thousands of suggestions that have been made to it under the plan.[24] Joint shop committees have also been used in other industries to promote efficiency and elimi-

nate waste, as in the East Springfield, Massachusetts, division of the Westinghouse Electric and Manufacturing Company under agreement with a local of the United Electrical, Radio and Machine Workers; and in the Pottstown, Pennsylvania, plant of the Doehler Die Casting Company under its agreement with the National Association of Die Casting Workers.

In other cases of union-management co-operation the focal point has been joint research, undertaken in the interests of greater efficiency. Such a plan was inaugurated in 1929 in the plant of the Naumkeag Steam Cotton Company of Salem, Massachusetts, when the company sought to meet competition by a "stretch-out" policy that would have eliminated about 250 employees. The workers, organized in a local of the United Textile Workers, proposed a joint research program to seek all possible economies and establish new job standards. As a result the new methods of production were installed gradually, with the displacement of workers kept to a minimum. The joint research program, identified by the mass of the workers with the stretch-out, soon lost popularity with them, and the long and severe depression, with unemployment and wage cuts, intensified their bitterness. In 1932 joint research was ended, and in 1933 and 1935 there were strikes against further increases in job assignments, wage cuts, and the restoration of joint research.[25]

Elsewhere joint research has had a happier history. The hosiery industry has engaged in time study and research, jointly financed by the union and the employers. In the Cleveland cloak industry, following the first World War, the union accepted production standards based on time studies by industrial engineers in return for a plan of guaranteed employment. From 1937 on the Steel Workers Organizing Committee proposed joint research programs to employers under contract with it, provided that savings be shared with the workers and that no one lose his job as a result. All but a few companies have declined the union's proposal of co-operation, because of doubt that the workers could help efficiency or fear that the union would take over management of the plant.

Most of the relatively few firms that accepted the union's offer did so when there seemed to be no alternative but liquidation of the business. Union officers assert that in the cases in which joint research has been given a fair trial substantial savings have resulted.[26]

Still other plans of union-management co-operation have revolved about programs to improve the business. The United Mine Workers, recognized by the Rocky Mountain Fuel Company of Colorado at a time when neighboring operators were bitter opponents of unionism, helped the company meet competition by eliminating waste and conducting sales campaigns, and upon occasion the union also lent substantial sums to the concern. The union and the employers in the women's coat and suit industry, following the invalidation of the National Industrial Recovery Act by the United States Supreme Court in 1935, set up a voluntary body, the National Coat and Suit Industry Recovery Board, to enforce fair labor standards and fair trade practices. The agreements signed by the coat and suit locals of the International Ladies' Garment Workers' Union obligate manufacturers to become members of the board, and the union members are instructed not to produce garments that lack the board's label. Early in 1936 the union and the employers in the millinery industry of New York and New Jersey created the Millinery Stabilization Commission, to study the industry in order to stabilize it and to formulate fair trade practices. As in the coat and suit industry, union members refuse to work on products that do not bear the label issued by the commission. Both the National Coat and Suit Industry Recovery Board and the Millinery Stabilization Commission, along with the unions and the employers' associations concerned, have been charged by the Federal Trade Commission with conspiracy to restrain trade and foster monopolistic tendencies in violation of the Federal Trade Commission Act.[27]

In 1923-24, when the men's clothing manufacturers demanded wage reductions, the Amalgamated Clothing Workers instead abolished restrictive rules and aided the employers to

reduce costs and improve efficiency. The union has developed a number of experts in production and management techniques, through whom it provides a practical industrial engineering service to union employers who find it difficult to meet competition. When Hart, Schaffner and Marx introduced a cheaper line in the 1920's the union assumed the responsibility of settling piece rates so that the labor cost per suit would fall within limits that had been agreed upon. Union officers helped design the garments and aided the employer to maintain a standard of quality. Before long, seven-tenths of the firm's entire production was of this line. In other cases the union has helped manufacturers to reorganize their shops so that they might pay the union scale and still operate profitably. So valuable is the union's contribution that in one interesting case a production manager refused to accept a position with a non-union firm that had been experiencing difficulties unless its heads would enter into an agreement with the Amalgamated and obtain help from it.[28] The International Printing Pressmen and Assistants' Union operates a trade school and a service department to help pressmen and employers solve production problems, and it also studies newspapers and sends analyses and suggestions to publishers without charge. The International Photo-Engravers' Union likewise maintains a research department, the services of which are available to employers as well as to members. Other unions, including the International Ladies' Garment Workers' Union, have helped employers solve technical or engineering problems.[29]

When the collective agreements in the $350,000,000 dress industry of New York City were about to expire in December, 1940, the leaders of the industry gathered at the invitation of the New York Dress Joint Board, into which the 85,000 workers of the market were organized, to hear the union's proposals. To the surprise of many of his hearers, Julius Hochman, the union's spokesman, talked not of wage increases but of efficiency, not of hour reductions but of promotion of the market. Not only was the union prepared to co-operate with manage-

ment to obtain greater efficiency; more than that, the union asked that inefficiency on the part of management be considered a violation of the contract, permitting complaint to the impartial chairman of the industry.

This last union proposal proved the chief stumbling block, with the employers unwilling to concede to any outside agency, even to the impartial chairman jointly selected by themselves and the union, the right to examine into and remove inefficient methods. Their chief fear probably was that manufacturers with small capital resources, unable to make the investment upon which efficiency depended, might be forced out of business. Finally an agreement was reached empowering the impartial chairman to establish rules and standards of efficiency, if the two parties could not agree on them. If a backward employer failed to adopt suggestions to improve his efficiency, the impartial chairman might assess damages, the fund thus realized going to support a department in his office to advise manufacturers on more efficient methods. The efficiency department is also to receive an annual grant of $50,000 from an industry promotion fund that is expected to reach $1,500,000 yearly. Of this sum $1,000,000 is to be raised from the employers through the sale of labels, $100,000 is to come from the union, and the remainder is to be sought from realtors, textile firms, and other parties with an interest in the industry.[30]

In some instances unions have permitted employers to retain part of the earnings of their members as loans. By advancing funds to a sound but hard-pressed employer who is denied adequate loans by the banks, unions may postpone or prevent liquidation of the enterprise, thus saving the jobs of their members and at the same time preventing sale of the assets to another company which might operate on a non-union basis and undersell unionized firms.[31]

In industries in which employers are small and unorganized it often happens that the building of a strong union by the workers puts the employers at a bargaining disadvantage. In such cases the union may be able to dictate terms just as an

employer may dictate to unorganized workers. The remedy, needless to say, is for the employers to organize, and have conditions in the industry determined by a collective agreement between the union and the employers' association. That association could be either local or national in scope, depending upon the relative strength of the parties and the area of competition. In rare cases unions have sought to perpetuate a bargaining advantage by refusing to deal with an employers' association, in much the same way that employers have refused to recognize a union. In the overwhelming majority of instances, however, unions have not opposed or have even welcomed the formation of employers' associations, and in some cases the employers have organized at the suggestion and with the help of the union.

Where the employers fail to present a united front it is possible for the union to impose terms limited only by the ability of the industry to survive. If the employers' costs are increased to too great an extent they will lose business to other areas or move their shops if that is possible. Sometimes unions have interfered unduly in internal business affairs not properly connected with collective bargaining functions. The Chicago teamsters, for example, seeking to increase their job opportunities, forced concerns to use coal instead of gas. In one of the most flagrant cases of this kind, a New York City hotel was compelled to pull down part of a wall because the color and style did not suit the artistic taste of an officer of the plasterers' union, although the owner of the hotel and the architect were entirely satisfied.[32] In some instances unions have fined employers for violation of their working rules. Organization on the part of the employers should readily restrict the activities of unions to their legitimate sphere of interest.

The complaint is often heard that particular employers were getting along satisfactorily, serving their customers and providing employment, until they were forced out of business by exorbitant union demands. It should be remembered in this connection that a great many employers are forced out of busi-

ness each year for a variety of reasons, and that if inefficiency is the cause, their elimination, whatever the hardship on those immediately concerned, is usually considered the price of progress and pointed to as an advantage of a competitive society. Trade unions usually seek a standard wage and standard working conditions in a competitive area; any employer who is forced out of business because he has to establish standard conditions is one who existed only at the expense of his workers, and who tended to lower the competitive level of the industry. An industry usually profits by the elimination of such inefficient and sub-standard units. Nevertheless a union usually is reluctant to see them disappear, for the immediate result is unemployment for members of the organization. As has already been pointed out, several unions have given technical aid to hard-pressed employers in an effort to raise their efficiency to the general level of the industry.

It is quite possible, however, for a union to place an efficient and wholly competent employer at a competitive disadvantage by insisting upon concessions that are beyond the capacity of the employer to grant. Occasionally this happens in a wholly organized industry, where the union drives the best bargain it can with each employer, thereby placing those with the least bargaining power or skill at a disadvantage. More frequently an industry is only partly unionized, and the union may insist upon concessions that place all the unionized firms at a disadvantage, permitting them to be undersold by their non-union competitors. Manufacturing enterprises that are subjected to such unwise treatment tend to move to non-union areas, leaving the union members in possession of high wage scales but no work. The prevention of such a development is one of the motives leading unions to conduct organizing campaigns in the non-union areas, with such campaigns usually carrying the best wishes of the organized employers. Experienced union leaders know enough of the competitive relations of their industry to avoid putting the unionized employers, upon whose prosperity their members' jobs depend, at too great a competitive disadvantage. Intelligence and expe-

rience on the part of the union representatives and organization on the part of the unionized employers should enable the parties to bargain on fairly equal terms within the limits that competitive conditions impose.

The attitude ascribed by a writer to Sidney Hillman illustrates the point of view that able and responsible labor leaders take with them into collective bargaining negotiations: " 'A constructive labor attitude must be in terms of the achievable . . . We cannot ask from industry more than it can soundly afford to give . . . A strike victory or a defeat, as such, settles nothing fundamentally. An employer may win a strike and discover, when it is too late, it was so costly that he has lost his business. A union may win a strike and find that it has lost both the industry and the union. We cannot defeat an industry; when we do that we defeat ourselves . . . Labor must be industry-conscious.' " [38] As unions win recognition and labor leaders acquire experience they tend more and more to become industry-conscious, to realize that upon the welfare of their industry the well-being of their members depends.

4. How Responsible Are Employers?

IN 1934 Richard T. Frankensteen, a trimmer in the Dodge plant of the Chrysler Corporation in Detroit, was elected by his fellow-workers to a leading post in the employee representation plan that the Corporation fostered. Discovering that the representation plan or company union failed to serve their needs, the Chrysler workers formed an independent union, the Automotive Industrial Workers Association, with Frankensteen as president. One evening, after Frankensteen had spoken to the members of the paint local, he was driven home by the local's vice-president, John C. Andrews. Soon a close friendship developed between the two youthful labor leaders, who seemed to be among the most able and devoted workers for unionism in the entire Chrysler organization. Their wives became friendly also, and in the summer of 1935, at Andrews' suggestion, the two families went to Lake Orion for a vacation, taking a cottage together and sharing expenses. Andrews' uncle, A. J. Bath, a wealthy, retired theatrical producer, stayed at a nearby hotel, and frequently entertained the two couples. It was a pleasant vacation, pleasantly spent in the congenial company of trusted friends.

Frankensteen did not suspect that, during every day of their friendship, Andrews had written a detailed report of Frankensteen's activities, and that these reports were sent to the office of the Corporations Auxiliary Company, a detective agency employed by the Chrysler Corporation to spy on its workers. For these daily reports on what Frankensteen did and said Andrews was paid $40 monthly by the spy agency, which in turn charged the Chrysler Corporation $9 daily for the services of its spy L-392, John Andrews' code number. Mr. Bath, the

wealthy and genial "uncle," was likewise a spy in the employ of the Corporations Auxiliary Company, detailed at the behest of the Chrysler Corporation to provide a further check on Frankensteen. The investigation of Frankensteen, including the pleasant vacation at Lake Orion, cost the Chrysler Corporation $1,152. Nor was it merely minor officials of the Chrysler Corporation who were responsible for all this, for one of the items in the expense account was a long-distance telephone call to Walter P. Chrysler, head of the corporation. When a subcommittee of the United States Senate, interested in violations of free speech and rights of labor, began to delve into the labor policies of the Chrysler Corporation a beautiful friendship was marred by the discovery of these unpleasant details.[1]

In the spring of 1935, some months before the Lake Orion episode, the Chevrolet plant of the General Motors Corporation in Toledo, Ohio, was closed by a strike, and Assistant Secretary of Labor Edward F. McGrady was sent to serve as federal conciliator. William H. Martin, one of the forty to fifty Pinkerton spies used by General Motors in Toledo during the strike, told the Senate subcommittee in February, 1937, that his assignment was to shadow McGrady whenever the latter left his hotel. A Pinkerton official arranged for his agents to occupy the room next to McGrady's, where they crouched, their ears to the wall, trying to hear what was said whenever McGrady held a conference.[2]

This use of the Pinkerton agency by General Motors was not an isolated occurrence. Senators Robert M. La Follette, Jr., and Elbert D. Thomas, who comprised the subcommittee, discovered that from January, 1934, through July, 1936, the corporation spent over $995,000 for labor spies, employing 14 separate agencies and at times having as many as 200 spies reporting on its workers' activities. In their report to the Senate on "Industrial Espionage," La Follette and Thomas described the spy situation in the General Motors plants:

> Without exception, every plant manager of the General Motors Corporation engaged private-detective service. This did not suffice.

The personnel directors of the Fisher body and Chevrolet divisions of the corporation also felt the need for spy service. They did not rely on the reports received by their plant managers, but made independent contracts for detective service directly under their control. Thus a superstructure of espionage was spread over the basic plant-espionage network in these two divisions.

The end, however, was not reached. Still another superstructure of spy service was created. The labor-relations division of the executive offices of the General Motors Corporation, responsible directly to the president, did not rely either on the plant detective service or on the division detective service. A separate contract was entered into with the Pinkerton agency to provide for a spy service responsible directly to the labor-relations division . . . and was even concealed from the plant managers themselves . . .

The irresistible logic of espionage reached its final stages when the General Motors Corporation used the Pinkerton agency to spy upon its own Corporations Auxiliary Company's spies . . . The corporation had reason to believe a leak had occurred and that its confidential trade secrets had been betrayed to a competitor. Not unnaturally, suspicion fell upon the spies hired by the various branches of the corporation. Using spies to ferret out the misdeeds of other spies, however, was a method of solving its problem which displayed the folly into which the management of the corporation had fallen.[3]

It should not be thought that in its code of ethics for labor relations the automobile industry differed from other industries that were resisting unionization. The steel industry was well represented among the clients of labor espionage agencies, along with metal products firms, food industries, public utilities, shippers, textile manufacturers, steam railroads, hotels, electrical equipment manufacturers, lumber companies, and a long list of firms and employers' associations in a variety of other industries.[4] The list includes many of the largest and most representative industrial firms in the United States. Some leading employers' associations, including the National Metal Trades Association, provided their own espionage service to their members.

From very incomplete reports the Senate subcommittee on labor's civil liberties compiled a list of 3,871 labor spies who

functioned between 1933 and 1936. The Pinkerton agency alone operated in every important international union in the country, whether A.F. of L., C.I.O., or independent, and also in many local unions and even in company unions. In the period from January, 1934, to June, 1937, a total of 304 Pinkerton spies were affiliated with 93 specific unions. One hundred of these spies held offices of varying importance. Among them were 14 local presidents, 8 vice-presidents, 20 secretaries, 2 treasurers, 4 financial secretaries, 3 business agents, and 3 organizers. One was a national vice-president.[5]

The spy seeks to obtain the names of active unionists, who then may be discharged by the employer. If the spy can be elected to union office it is simple to get this information; in other cases spies have resorted to bribery or burglary to obtain lists of members. Within unions spies have preferred false charges against officers in order to discredit them and create dissension. Often the spy acts as an agent provocateur, attempting to call premature strikes and inciting to violence. During the strike against the Black and Decker Electric Company of Kent, Ohio, in the spring of 1936, for example, according to the business agent of the local of the International Association of Machinists, a member named G. W. Bookhamer tried to get some of the strikers to set off dynamite in the plant, and suggested that the pickets prevent the entry of the mail. Bookhamer was later proved to have been a labor spy sent into the plant by the National Metal Trades Association, of which the Black and Decker concern was a member.[6] If elected to office the spy may sabotage his duties in order to discourage the members. The suspicion that a spy is operating among them makes workers fearful to attend union meetings. The local union of automobile workers in Flint, Michigan, as a result of the activities of spies, fell from a membership of 26,000 in 1934 to 120 in 1936.[7] A local of the United Automobile Workers in Lansing, Michigan, fell in several months to a membership of five, all of them officers and all of them spies.

The labor spy is but one weapon in the arsenal of anti-

unionism. If, despite the activities of spies, the union grows in strength and calls a strike, strikebreakers and guards may be used. Many of the private detective agencies and employers' associations that furnish spies likewise provide these other anti-union services. The strikebreakers who temporarily replace striking employees have sometimes been competent workmen. In most cases, however, they are not qualified workers, but industrial shock troops whose function is to break strikes so that strikers will return to their jobs. Strike guards, who are usually armed, are hired ostensibly to protect non-striking employees, strikebreakers, or plant property. The guards who are hired through agencies form a fairly distinct occupational group, and should be distinguished from regular plant police and the local community police force. When outsiders are hired as strikebreakers or strike guards, observes the Senate subcommittee on free speech and rights of labor, "the almost inevitable effect . . . is to produce resentment, bitterness, violence, and bloodshed." [8] In addition the agencies furnish persons known as "strike missionaries" or "street operators," who mingle with strikers or townspeople to spread propaganda against the strike. When among the workers they pretend to be strikers or sympathizers, with the townspeople they are often disguised as salesmen. Often the "missionary" functions as an agent provocateur among the strikers, urging or committing acts of violence. Sometimes men who are hired as guards or strikebreakers are also called upon to act as "missionaries."

Among the employers' associations that have furnished strikebreakers and strike guards the National Metal Trades Association occupies a prominent position. This powerful association of manufacturers of metal products, with 952 member plants in January, 1937, did not then admit to membership companies operating under union agreements. The association's declaration of principles established the open shop as its cardinal policy, and each member company was obligated to maintain the open shop in its plant. The by-laws of the association required a member to communicate with the association in the event of a disagreement with its workers or a de-

mand made by them likely to lead to collective action on their part. The governing body of the association, if it approved the member's stand, thereupon assumed full control and direction of the strike situation, including terms of settlement. Under Article XIII, Section 7, of the association's constitution, a member who then settled a strike without the consent of the administrative council was required to repay to the association all the funds it might have expended because of the strike, and was also liable to suspension or expulsion.[9]

The association recruited strikebreakers through its branch offices, and obligated itself, upon the request of a struck member, to assist in procuring strikebreakers up to seven-tenths the number of striking employees covered by the member's regular assessment for the current quarter. Section 2 of Article XIII of the association's constitution provided that "The defense of a strike or lock-out which has been authorized by the Administrative Council shall be conducted only under its direction or that of its authorized representative," and under this provision officials of the association who were in charge of its strikebreaking and espionage activities went personally to struck plants to direct activities. Members were not permitted to resign during a strike without the approval of the administrative council. The association also made its espionage, strikebreaking, and guard services available to non-members, who paid all the costs and who were admitted to membership if the strike ended on the employer's terms. A number of other employers' associations, such as the Associated Industries of Cleveland, performed similar functions within their areas of operation.

Strikebreakers are usually asked merely to make a show of working, in order to discourage the strikers. Michael Casey, who was hired through the Bergoff Service Bureau to take charge of a number of strikebreakers sent to the Remington Rand plant in Middletown, Connecticut, testified before the Senate subcommittee that the strikebreakers "just hung around and sat around on benches and chairs, didn't do anything at all." [10] Should they try to run the plant, according to the gen-

eral manager of the Associated Industries of Cleveland, William Frew Long, "these strikebreakers after all do more damage, not being experienced, than they do good, to machinery and so on and so forth." [11] In the Remington Rand case an advertisement was inserted in the papers of Middletown for twenty-five millwrights, to start immediately to dismantle machinery for shipment. In the meantime Pearl L. Bergoff, head of the strikebreaking and espionage agency bearing his name, recruited fifty-nine professional strikebreakers in New York City and sent them to Middletown, where they posed as millwrights appearing in response to the advertisement. Bergoff thus described the qualifications of these men: "A man, a fink, as you call him in the newspapers, he is anything; he may be a carpenter today, a plumber tomorrow, a bricklayer the next day; this particular day they were millwrights." [12]

Those who follow the profession of strike guard are typically maladjusted and anti-social men of violent habits, many of them no strangers to police court and penitentiary. They are hired by commercial agencies and employers' associations with no thought of their criminal records, save in very rare cases. In the words of Senator La Follette, the National Metal Trades Association "furnished strike guards, whose records revealed that they were men of vicious and violent character, some of them with long criminal careers. The Associated Industries of Cleveland . . . furnished to its members strike guards who were recruited from the gutters of Cleveland through an underworld grapevine." [13] The Associated Industries of Cleveland even sent thugs and others with criminal records to the Statler, one of the leading hotels of the city, though it soon combed out some of the worst of them and sent them to another job in an industrial plant.[14] New York apartment house owners were less careful during a strike of elevator operators in 1935, for they entrusted the security of hundreds of their tenants to the notorious Samuel (Chowderhead) Cohen, employed as a strike lieutenant. At that very time Cohen was wanted by the Baltimore police for grand larceny, an offense for which he had been arrested five times

in New York. The list of institutions in which he had been confined included the Elmira Reformatory, the federal penitentiary at Atlanta, and Sing Sing.

The Black and Decker Electric Company employed a number of guards during its 1936 strike. A check of the arrest records of forty-three of them disclosed that sixteen already had criminal records and one later acquired such a record. Crimes for which they had been convicted or arrested included counterfeiting, robbery, larceny, rape, illegal possession of bombs, bootlegging, and carrying concealed weapons. A group of ten guards hired by the National Metal Trades Association for use in this strike were arrested in Akron on suspicion, and the police found arms on two and burglar tools on a third. The association assumed the cost of defending these characters.[15] The Senate subcommittee compiled a record of 150 strikebreakers and strike guards and discovered, without a search of the criminal records for most of the men, that at least 48 had criminal or arrest records. The use of such men could only have an inflammatory effect upon strikers, and wherever they appeared violence was certain to follow. Guards discharged shotguns and tear gas guns without warning, and in at least one case they stole gas equipment, later offering it for sale at a small fraction of its value.

Sometimes the guards feign violence in order to increase their employment. E. J. McDade, a veteran who had been in charge of strikebreakers on a great many jobs, testified that: "If it is quiet sometimes at night some of the regular men will get out and cruise around in an automobile and hurl a piece of brick or possibly throw a piece of dynamite, or travel by in a car at fifty or sixty miles an hour and fire a few shots at some of our own guards—this is usually followed with a request for more guards." [16]

Strikebreaking agencies do not accept jobs on a fixed fee basis. The employer pays for each strikebreaker or guard he uses, with the agency often receiving as its compensation 25 per cent of the total wages paid its operatives. Every added guard or strikebreaker thus increases the profit earned by the

agency. Typically the agency keeps the payroll, submitting to the employer a weekly bill showing only the number of guards or strikebreakers employed each day. The employers usually pay the bills without question, and without following their usual accounting procedure. The sums paid these agencies often reach large proportions. The American Bridge Company paid an agency $173,000 for guards in a single strike, and the RCA Manufacturing Company paid $156,000. Many other firms have paid agencies comparable sums for the services of strikebreakers and guards. This sort of money, Senators La Follette and Thomas observed, "is paid to detective agencies in an atmosphere of emergency and haste and under circumstances which permit a maximum of fraud and deception. Strikebreaking lieutenants are often criminals and their superiors are men lacking in scruples. They can scarcely be expected to refrain from taking advantage of the employer. It is such sums of money and such methods of accounting that make the strikebreaking business attractive to the underworld." [17]

For the use of strike guards and regular plant police some corporations have assembled arsenals far exceeding those maintained by the police departments of large cities. On May 25, 1938, about a year after the S.W.O.C. strike, for example, the police department of the Republic Steel Corporation possessed an arsenal that included 552 pistols, 64 rifles, 245 shotguns, 143 gas guns, 1,325 rounds of rifle ammunition, 58 gas billies, 2,707 gas grenades, 4,033 gas projectiles, and 5,784 shotgun shells, along with other equipment.[18]

During the period investigated by the Senate subcommittee the Republic Steel Corporation was the largest purchaser of tear and sickening gas in the country. Its expenditures for gas came to $79,000, whereas the law-enforcement agency that purchased most gas during the same period, the Ohio National Guard, bought only about one-fourth as much. With 53,000 employees, the Republic Steel Corporation bought more than 10 times as many gas guns and more than 26 times as many gas shells and projectiles as the police force of the city of Chicago, with its population of almost 4,000,000. In addi-

tion to the gas the Republic Steel Corporation possessed more than 83,000 rounds of ball and shot ammunition. The Youngstown Sheet and Tube Company, another corporation involved in the "Little Steel" strike of 1937, had an arsenal of 8 machine guns, 369 rifles, 190 shotguns, 454 revolvers, over 6,000 rounds of ball ammunition, 3,950 rounds of shot ammunition, 109 gas guns, and over 3,000 rounds of gas ammunition. The company maintained in Youngstown an arsenal far overshadowing that of either the city or the county. The arsenals of these two companies taken together, as Senator La Follette observed, would be adequate equipment for a small war.[19]

The Senate subcommittee investigated the sales of the three tear gas companies which sold most, if not all, of such equipment in the United States, and discovered that about half their sales were to industrial corporations and about half to law-enforcement bodies. The subcommittee discovered that, from 1933 to 1937 inclusive, industrial concerns that spent $1,000 or more for gas purchased a total of over $490,000 worth of gas. Of this more than $400,000 was spent when strikes threatened or were taking place. More than $360,000 worth of this gas was bought in connection with strikes or threatened strikes in which union recognition was an exclusive or contributing factor.[20] Gas and other weapons, the subcommittee discovered, were purchased secretly, through dummies, with blind invoices, and supplied in boxes with misleading labels. In a number of cases, including those of the West Point Manufacturing Company, operator of textile mills in West Point, Georgia, and the Youngstown Sheet and Tube Company, submachine guns or machine guns were not registered, in violation of the National Firearms Act of 1934. Numerous other industrial concerns were found to possess machine guns, one company having as many as thirteen.[21] Earlier governmental investigations had likewise found anti-union employers well armed, with army Winchesters and bayonets as far back as 1889, and with machine guns, rifles, riot guns, and gas shells in 1928.[22] Industrial munitions companies and strikebreaking agencies are sometimes closely connected through inter-

locking directorates and the practice of some of the agencies of serving as sales agents for the munitions concerns.

Private police forces often attain substantial size, that of the Republic Steel Corporation, for example, numbering in ordinary times about 350 uniformed men. Primarily maintained to protect property, these private police forces also serve to carry out the labor policy of their employers. The Republic Steel police force conducted labor espionage activities and "rough shadowed" union organizers, keeping them under open surveillance so that they and the workers to whom they wished to talk knew that they were being followed. A company policeman even accepted paid employment with the S.W.O.C. as an organizer, turning in false membership cards until he was discovered.[23]

The private policeman is often as violent and as lawless in his conduct as the worst type of strike guard. During the strike against the Berger Manufacturing Company plant of the Republic Steel Corporation in Canton, Ohio, in 1935, for example, company police fired indiscriminately at pickets and bystanders with tear gas and shotguns, and drove through the city streets firing gas projectiles. Two city policemen, instructed to stop the discharge of tear gas, ordered the armored truck to halt, and in return had a gas bomb thrown at their feet. City authorities had to threaten to use machine guns, if necessary, to stop the Republic police raids. As a result of assaults by Republic police 28 persons were hospitalized with serious injuries, including fractured skulls, a fractured jaw bone, and gunshot and buckshot wounds. Numerous other persons were gassed with tear and sickening gas. It cost the corporation more than $46,000 to settle the damage claims of 110 persons.[24]

The S.W.O.C. strike against the Republic Steel Corporation plant in Canton, Ohio, in 1937 illustrates the use by employers of still other anti-union techniques. On the very day the strike was called a back-to-work movement made its appearance. Though this movement purported to be a spontaneous one on the part of Republic Steel employees who

were opposed to the strike, an inquiry later showed that its leaders were paid by the corporation on the basis of a 14-hour day plus bonuses. The back-to-work movement had its headquarters in hotel rooms paid for by the district manager of Republic Steel, and its leaders kept in constant touch with corporation officials. Two days after the strike began a citizens' committee of business and professional men was appointed by the president of the Canton Development Corporation, an organization seeking to attract new industry to the city, and closely allied to the Canton Chamber of Commerce. One of its largest subscribers was Republic Steel. The citizens' committee professed neutrality in the strike, holding its interest to be the maintenance of law and order.

The committee soon evolved into the Law and Order League, headed by the president of the Canton Development Corporation. Its active members came almost exclusively from this corporation, the Chamber of Commerce, Republic Steel, the Republic Steel law firm, and the bank that served as its depository. Though the treasurer of the League was a bank officer, he kept no accurate accounts and could not explain the source of over half the League's funds. The League cooperated throughout with the back-to-work movement and Republic Steel. Its propaganda took the form of public statements that law and order had broken down and that revolt threatened. It urged that a large force of citizens be deputized and that the National Guard be called in. It helped the back-to-work leaders to obtain an injunction limiting picketing.

In various towns affected by the "Little Steel" strike of 1937, as well as in many recent strikes in other industries, this familiar pattern of back-to-work movements and citizens' committees or law and order leagues has recurred.[25] Both types of organizations were nominally independent of the employer, but in practice they were closely allied with it, drawing from it both their inspiration and a large percentage of their funds. The Johnstown Citizens Committee, formed in Johnstown, Pennsylvania, to help combat the S.W.O.C. strike against the Bethlehem Steel Corporation,

launched a movement to form a national citizens' committee. Such an organization was formed in July, 1937, with representatives present from local citizens' committees, chambers of commerce, employers' associations, and two company unions, but the effort proved abortive. A number of detective agencies include the setting up of citizens' committees among the strikebreaking services that they sell to employers.[26]

Sometimes a citizens' committee or law and order league is inflammatory and openly vigilante in character. During the strike of rubber workers in Akron in 1936, for example, the head of the Citizens' Law and Order League, former Mayor C. Nelson Sparks, said in the course of a radio speech: "Help us to gang up for constitutional law and order in this wonderful city. Help us to make this Law and Order League so representative of public opinion that we can say to those out-of-town radical leaders, who have lighted the fires of discontent in this city, to get the hell out of here, and we are not going to be too much interested in the dignity of their going." [27] This league, like almost all of its type, was set up with the knowledge and financial support of the struck concerns. Sometimes citizens' committees rely primarily on propaganda appeals to the general public, sometimes they function as extra-legal military organizations, sometimes they rely upon economic weapons, such as boycotting non-cooperating employers and shutting off the credit of strikers.[28]

It remained for James H. Rand, Jr., president of the office equipment manufacturing firm of Remington Rand, Inc., and a director of the National Association of Manufacturers, to perfect a strikebreaking technique in which citizens' committees and back-to-work movements were expertly manipulated. Rand's method, in brief, was to bring economic and personal pressure upon local-government officials and leading citizens so as to create citizens' committees, whose show of force, combined with a company-inspired back-to-work movement, would break the morale of the strikers. In carrying out these plans Rand made liberal use of strikebreakers, guards, and "missionaries" furnished by private detective

agencies. The 1936 strike against a number of Remington Rand plants, including the one at Ilion, New York, attracted widespread attention. The National Association of Manufacturers, after analyzing the methods used to break the strike, commented: "The N.A.M. appreciates the opportunity, through these columns, of bringing to the attention of industrial America the constructive manner in which this controversy was handled by these villages. Regardless of the final settlement of the dispute, here or at other Remington-Rand plants, Ilion has made a real contribution to civic dignity." [29] The "Mohawk Valley Formula," as Rand himself termed his technique, exerted a strong influence upon employers throughout the country.

Part of Rand's technique, a threat to move his plant, was merely one variety of economic pressure used by anti-union employers to force co-operation from other businessmen. More direct forms of pressure have been used in some cases, including boycotting, refusing raw materials, and shutting off bank credit. In 1919, following the attempt of the A.F. of L. to organize the steel industry, steel manufacturers and dealers decided to sell fabricating material for erection only on open shop principles. This policy, enforced in New York, Philadelphia, and other areas, made it impossible for unionized firms to obtain structural steel unless they sub-let the steel erection to a non-union concern.[30] During the New York City millinery strike of 1919, manufacturers who signed with the union were forced to break their contracts when their orders were canceled and their bank credit and supply of materials cut off. During the fight for the open shop in the San Francisco building industry in 1921, contractors who refused to operate on an open shop basis were refused materials and bank credits. Two decades earlier the Employers' Association of the same city had announced its intention to boycott employers who recognized organized labor.[31]

More recently, in 1936, the eastern representative of the National Metal Trades Association, L. A. Stringham, reported to Commissioner Homer D. Sayre of the Association that

George E. Deming, vice-president of the company controlling Philco Radio and Television Corporation, was influencing other Philadelphia employers to sign union agreements. "This man should be broken down," Stringham wrote to Sayre. "Can you suggest anything that we can do to offset his activities?" Sayre's reply was a suggestion that complaint be made to the head of the Chrysler Corporation, which could exercise influence over Philco through stock ownership and through its large purchases of Philco radios.[32] Pressure has also been exerted by anti-union businessmen or employers' associations upon ministers, editors, and teachers who were thought to be too sympathetic to unions.[33]

In 1933, with the enactment of Section 7a of the National Industrial Recovery Act, a virtual stampede of workers into unions got under way. In an effort to deflect this movement into company-controlled channels, large numbers of employers sponsored organizations that were typically limited to the employees of a single plant. These organizations made their appeal to workers on the basis of low dues, friendly relations with the employer, and freedom from domination by outside labor leaders. Company unions or employee representation plans had appeared earlier in American industrial relations, and had enjoyed popularity during and immediately after the first World War. During the N.R.A. period, however, they achieved their most widespread development.

In a number of cases the constitution of the employee representation plan automatically made every employee a member, whether or not this was his desire. In some instances, where membership was voluntary, workers joined through fear that otherwise they might incur the displeasure of their employer. More typically unorganized workers welcomed the plan because it gave them some mechanism for the adjustment of grievances. In a great many cases the workers were soon convinced that the employee representation plans were ineffective and unsatisfactory bargaining agencies, and at the first opportunity tried to transform them into genuine trade unions.

In 1935, when the company union movement was at or near its peak, a careful study of 126 representative company unions was made by the Bureau of Labor Statistics of the United States Department of Labor. The investigators found that the great majority of company unions were set up entirely by management, though in a number of instances one or more of the employees played an important role. Behind the establishment of the company union there was usually the pressure of a bona fide trade union, conducting an organizing drive or a strike in the trade or the vicinity. Almost never did the workers have an opportunity by secret ballot to choose between a company union and an outside trade union. In about a third of the cases investigated a secret ballot was held, but the vote was limited to one for or against the proposed company union; in some of these cases the company union was established despite a negative vote. In another third of the cases the workers were merely allowed an open vote at a public meeting or permitted to express consent by signing a petition or membership roll, and in the remainder of instances the company unions were installed without any opportunity for expression of opinion by the workers.

Specifically or by implication, management was a party to the functioning of these plans. In many cases management was given the power to veto amendments to the company union constitution. Less than one-tenth of the plans were self-supporting, the remainder relying wholly or partly upon management for funds. About a third of the plans failed to handle individual grievances, and a large percentage of those that attempted to handle them did so ineffectively. Many of the company unions concerned themselves with individual grievances and some matters relating to working conditions without making any genuine effort to bargain on wages and hours. Even when the company unions were most vigorous they were isolated, without access to information or personnel from a national union office, without the independence that comes with a substantial treasury, and without trained negotiators who were on the union instead of the company pay-

roll. Arbitration was rarely sought and strike action almost never considered.[34]

When the Supreme Court's decisions upholding the constitutionality of the National Labor Relations Act outlawed the old-fashioned company unions, many employers sought to transform them into "independent" unions, in which their control was less obviously apparent.[35] Such organizations should not be confused with genuinely independent but unaffiliated unions, wholly free from employer domination or influence. When disguised company unions likewise failed to meet the test of legality some employers, in an effort to forestall unions they disliked, entered into "backdoor" agreements with minority unions, in some cases even with unions that then had no members in the plant.

Before the National Industrial Recovery Act and then the National Labor Relations Act limited the anti-union activities in which employers might engage, the discharge of union members and the refusal to recognize a union or bargain with it were typical employers' tactics. In the early 1900's and again following the first World War employers conducted vigorous and widespread campaigns for the open shop, which in many instances meant a shop closed to union members. The term "American Plan" was applied to the open shop, in an effort to identify anti-unionism with patriotism. In many cases workers were forced to sign "yellow dog contracts," in which they agreed as a condition of their employment not to join a union.

Where anti-union employers are closely knit into an association which maintains an employment office or employment files, an effective blacklist against union members may be maintained. With the National Metal Trades Association, for example, "the blacklisting of union workers is an integral part of its open-shop program. . . The employment offices maintained by branches of the association in large industrial centers contain files of machinists and other workmen available for employment by members of the association. Through the machinery of these employment offices and through the

undercover service of the association, supplemented by information received directly from its members, the association is able to regulate employment within the industry so as to eliminate active union workers." [86] Sometimes employers sent lists of applicants for employment to the association to be checked against its records, and also helped the association keep its files up to date by furnishing the names of men discharged for union activity. As far back as 1909 the association stated that it had on file in its local branch offices the records of 291,038 workmen, and by 1914 the number had grown to 404,386.[87] Other employers' associations, including the National Founders' Association, have maintained an effective blacklist. A form of the blacklist used in earlier years by operators of metal mines in the west was the permit or rustling card system, under which a miner had to obtain a card from the association office before his application for employment at any mine was accepted.

The power of employers over the lives of their workers has reached an extreme in the company towns of the steel, mining, textile, and some other industries. These towns, built by companies upon land that they own, are wholly the private property of the employers. The workers live in company-owned houses, walk to work on company-owned streets, spend their earnings in company-owned stores, and in many instances even use company scrip as money. There is no popular government in such towns, the company exercising all administrative functions, including that of policing. Union representatives seldom stayed long in non-union company towns. At Aliquippa, Jones and Laughlin Steel Corporation town in Pennsylvania, company policemen met incoming trains, arrested suspected organizers, and put them on the next train back to Pittsburgh.[88] In the coal fields, particularly, workers were frequently evicted from company-owned houses during strikes. Injunctions which restrained unionists from trespassing on company property sometimes served to block off entire towns.

In some instances employers have made wholly unreason-

able profits on the services they furnished their employees in company towns. The Harlan Wallins Coal Corporation, for example, which employed more than 1,200 men in its four mines in Harlan County, Kentucky, did not permit independent merchants to open shops in its company town. Supplies were readily available only at a store operated by the Verda Supply Company, which had been formed by the general manager of the coal corporation. The corporation permitted employees to draw their earnings in cash in advance of the semi-monthly pay day at a 15 per cent discount, or it gave them scrip which it redeemed from independent merchants at a 15 per cent discount, and from the Verda Supply Company at only 10 per cent. In 1935, the first year of operation, the Verda Supply Company paid $9,600 in dividends on a $6,000 investment.

The medical service that the Harlan Wallins Coal Corporation arranged for its workers was likewise a source of profit, for the doctors were paid not more than $1,250 monthly, whereas the sums checked off from employees' wages for medical service came to between $1,800 and $2,400. More ingenious was the semi-monthly lottery of a second-hand car, tickets for which were sold by the foremen, with workers afraid of dismissal if they failed to buy the chances. As much as $800 was collected for each car, admittedly far more than it was worth. Corporation officials disposed of their used cars in this fashion, as did the corporation itself, the treasurer of Harlan County, and the commonwealth attorney for Harlan and Bell Counties. The profits to the corporation from the raffles amounted to $1,800 or $1,900 in 1936, and were shown on its books as a regular account, headed "car raffles." [89]

It must be remembered that, as with the recital of union shortcomings, the practices of employers here described have been among the worst. For the most part the illustrations have been taken from the reports of the La Follette committee, which describe conditions that existed between 1933 and 1937. Many of the companies mentioned in this chapter have since recognized unions, and now deal with them as fairly as once

they bitterly fought them. With the great bulk of American employers the weapons of industrial warfare described in the preceding pages have given way to collective bargaining, grievance machinery, arbitration, and other techniques of peaceful industrial relations. It is not without significance that a series of articles from *The Wall Street Journal* could be published in 1923 under the title, *A History of Organized Felony and Folly: The Record of Union Labor in Crime and Economics,* whereas a series that appeared in the same paper in 1938, when published in book form, bore the title, *Getting along with Labor: Practical Personnel Programs.*[40] Nevertheless, as this chapter shows, in the turbulent and emotionally charged field of industrial relations labor has not been guilty of all the evils and excesses. Management's conduct, in a wide sphere of American industry, was anti-social and irresponsible to a high degree until proper standards were written into the federal law and a suitable administrative agency established to interpret and enforce them.

The accusations of some employers that labor violates the law is best examined in the light of the army of inspectors required to force businessmen to observe wage-hour laws and other labor legislation. Nor has business escaped the dishonest type of leader that we have already found holding high union office. Among the prominent businessmen discovered in the last few years to have been somewhat less than honest were Samuel Insull, the utilities executive; Richard Whitney, president of the New York Stock Exchange; Howard C. Hopson, who once dominated the $1,000,000,000 Associated Gas and Electric Company system; and Philip Musica, an ex-convict who as F. Donald Coster used his presidency of the $86,000,000 McKesson & Robbins drug concern to mask his illicit activities.

The widespread regulation of business and the elimination of most of the evils that management has contributed to labor relations, along with governmental encouragement of unions, have served to bring into sharper focus the faults and excesses of labor unions, discussed in earlier chapters. If gov-

ernment regulation has served to improve management's conduct, to the gain of society as a whole, would not regulation likewise remove the worst union practices, to the gain of workers, employers, and the general public? A discussion of this problem will be reserved to later chapters, after the relations between unions and the public and the conduct of government officials in labor disputes have been reviewed.

5. Responsibilities of Unions to the Public

THE fall of France in the spring of 1940 created a defense emergency for the United States, with the need for producing supplies of all sorts for embattled Britain and for this country's expanding military forces. The country awoke to the realization that the fate of democracy and western civilization depended to a large extent on the skill and patriotism of American workers, that the assembly lines of the United States might well decide who would win the war. Every interruption to defense production, whatever the cause or justification, led to a clamor for governmental intervention, with rising sentiment for legislation to curtail or suspend the right to strike for the duration of the emergency. Labor was widely charged with avoiding its responsibility to the public in order to pursue its own selfish advantage. Every shortcoming of the labor movement was magnified, every evil became more glaring, and every critic found himself furnished with new texts and more attentive audiences.

The defense emergency could scarcely have come at a more difficult time for the labor movement. Affected most directly by the emergency were the heavy industries that had fought unionism so bitterly for so many years. Most of the steel, automobile, airplane, shipbuilding, rubber, chemical, and electrical manufacturing concerns that operated under union contracts had had but few years' experience in collective bargaining; in many of the plants the workers were still undisciplined, their leaders inexperienced, and management just as new to the problems that arise under collective agreements. Most of

the defense industries, moreover, were but partially organized, with the unions seeking to extend their influence to the remainder. A tremendous demand for defense workers brought millions of new employees into the factories, and the change from civilian to defense production subjected workers to the strains of temporary unemployment and job shifts.[1] The cost of living rose rapidly, while employers, working at capacity on government contracts, were more prosperous than they had been for years. The split in the labor movement between the A.F. of L. and the C.I.O. added still another disturbing factor to an already explosive situation. In addition there were a number of unions led by communists, who opposed aid to Britain and were critical of and unsympathetic to the entire defense program until Hitler's invasion of Russia in June, 1941.

Small wonder that defense production was disturbed by strikes, and that the National Defense Mediation Board created by President Roosevelt in March, 1941, found itself swamped with work. More than half the disputes handled by the mediation board revolved about organizational problems—the closed shop, maintenance of membership, union recognition, attacks upon the certified union in the plant—and these disputes, according to Chairman William H. Davis, had a core of bitterness lacking in controversies over the terms of employment. When the issues concerned hours, wages, and working conditions, the experience of the board was that the disputes yielded to the processes of persuasion.[2]

Early in January, 1941, the chief officers of 13 metal trades unions of the A.F. of L., with a combined membership between 850,000 and 900,000, adopted a no-strike policy for national defense orders. Where direct negotiations between representatives of unions and management failed to adjust differences, the union leaders pledged their organizations to obtain the services of federal conciliators, and to submit the dispute to arbitration if conciliation failed.[3] The building trades unions of the A.F. of L., widely criticized for jurisdictional disputes and for high initiation fees charged workers

on defense construction projects, pledged themselves on March 31, 1941, not to permit work to be stopped on essential defense projects because of jurisdictional quarrels. They agreed also to keep initiation fees to a minimum, with a reasonable period of time for payment; and to allow defense contractors to employ non-union men where a sufficient number of union men were not available, without collecting permit, privilege, or initiation fees from such workers unless they qualified for union membership.[4]

Four months later a no-strike agreement for the duration of the emergency between A.F. of L. building trades unions representing 800,000 workers, and defense agencies, was approved by the Office of Production Management. A stabilization agreement was adopted for the shipbuilding industry, in which the Industrial Union of Marine and Shipbuilding Workers of the C.I.O. was the dominant union, which sought by classifying jobs and adjusting wages to minimize strikes and insure maximum production. In July, 1941, representatives of automobile manufacturers and labor met with government officials to plan the conversion of the industry to defense needs. Railway unions, many of them affiliated with the A.F. of L., similarly co-operated with defense officials, reexamining with management the labor needs of the roads in order that skilled men might be released for defense industry.

Even more striking was labor's effort to help solve the problems of defense production. From Walter P. Reuther, director of the General Motors Department of the United Automobile Workers of the C.I.O., came a challenging plan late in 1940 for using the automobile industry's facilities and mass production methods to produce an estimated 500 planes each day. President Philip Murray of the C.I.O. proposed that a management-labor council be created for each major industry, to co-ordinate production facilities, achieve the greatest possible output, and promote industrial peace.[5]

From the beginning of the emergency bills were introduced in Congress to curb strikes in defense industries. Criticism

mounted throughout 1941, which proved to be one of the worst strike years in the history of the country. The volume of bills increased with each major strike and rose to flood levels in the fall of 1941. The many bills that were introduced revolved for the most part around two central proposals, a "cooling-off" period for defense strikes and restrictions upon the closed shop. More extreme measures proposed to draft manpower for defense labor purposes, establish compulsory arbitration, declare certain strikes treasonable, and deny recalcitrant labor its rights under the National Labor Relations Act, anti-injunction legislation, and unemployment compensation laws.

Angered by the attitude of John L. Lewis in the captive mine strike, the House of Representatives on December 3, 1941, with little or no attempt at serious consideration of its many harsh provisions, passed by a vote of 252 to 136 the most drastic of the many measures to curb defense strikes that had been presented to it. The bill, introduced by Representative Howard W. Smith of Virginia, forbade a strike or lockout on a defense contract until after a 30-day "cooling-off" period, and likewise prohibited defense industry strikes for the closed shop. Strikes were to be forbidden except after a majority vote of the affected workers, in a secret ballot supervised by the Conciliation Service of the Department of Labor. Unions that struck illegally were to be deprived of their rights under the National Labor Relations Act and the Norris-La Guardia anti-injunction law. Jurisdictional strikes and boycotts that affected defense contracts were also outlawed under the bill, as were threats, violence, picketing by others than bona fide employees, and the picketing of homes of workers. A new National Defense Mediation Board was provided for. Every union was required to register annually with the National Labor Relations Board, and any union failing to register or to file certain required information was disqualified to act as a collective bargaining representative. The bill likewise denied the benefits of the National Labor Relations Act to any union that knowingly or negligently

permitted any members of the Communist Party, the Young Communist League, the German-American Bund, or any person who had been convicted of a felony involving moral turpitude to hold any appointive or elective office. By its terms the life of the measure was limited to two years, or until the President proclaimed the unlimited national emergency to be terminated.[6]

Several days after the ill-considered action of the House on the Smith bill the Japanese assault on Pearl Harbor plunged the United States into war. The labor movement, along with other elements of the population, rallied immediately to the cause of national defense, and from virtually every labor group there came pledges to allow no disputes to interfere with war production. The months that followed the Pearl Harbor attack were almost free from serious labor strife, except for a number of unauthorized or "wildcat" strikes that unions opposed as vigorously as did the government. The National War Labor Board, created by President Roosevelt on January 12, 1942, included labor members and received excellent co-operation from both labor and management. The new board was given broad authority to settle disputes by mediation or arbitration. It made full use of these powers, typically determining the troublesome closed shop issue by granting the union a maintenance-of-membership provision. When a group of workers struck in protest against a board decision, the government enforced the decision by assuming operation of the plant. The government similarly commandeered several plants when employers refused to accept board decisions. The sharp decline in the number of strikes following our entry into the war led to a Congressional postponement of further action on anti-strike legislation. When a jurisdictional dispute threatened a work stoppage in July, 1942, however, public members of the board asserted that the laws against treason would be applied to labor officials responsible for a strike. Labor participated in the work of other governmental war agencies, and following a request of the

War Production Board 1,650 labor-management committees were soon organized to speed war production.

In the spring of 1943, however, when negotiations for a new coal mining contract deadlocked, John L. Lewis precipitated a crisis by announcing that the United Mine Workers would not work in the absence of a contract and would not submit their case to the National War Labor Board, which he asserted was a court packed against labor. The government thereupon seized the mines, to assure continued production of coal. Further talk of a strike, if no contract were negotiated during a fifteen-day truce period, led to Senate passage early in May of a measure prescribing criminal penalties for the disruption of war production in factories or mines seized by the government.

Though war intensifies the problem, satisfactory industrial relations in time of peace likewise are the proper concern, not merely of workers and employers, but of the general public as well. Workers suffer an immediate financial loss from strikes as a result of lost wages and strike expenditures, just as employers experience losses due to idle plants, delayed or lost orders, and plant protection or strike combatting activities. These losses may be made up in part, it should be remembered, by the transfer of work to other shops, by overtime work after the strike is settled, or by the extension of industrial activity into otherwise dull seasons. It is beyond argument, however, that strikes involve an economic loss to both parties immediately concerned, and also to other elements in the community. So great is the loss to all parties that both unions and employers should act so as to reduce the number of industrial disturbances to the minimum.

Public suffering during a strike cannot be measured in financial terms alone. Strikes bring with them a cessation of goods or services upon which public comfort, convenience, or well-being may depend. Particularly does the public suffer hardship if railroad, street car, or other transportation is shut off, if insufficient coal is available in winter months, or if other services of the nature of public utilities are curtailed. It is unfortunate that labor's primary economic weapon

against employers should carry with it such inconvenience and sometimes real hardship to the public. The general tendency of the public is to blame labor whenever a strike occurs, though the underlying cause may be the unduly low standards of the employer and an unwillingness to raise them unless compelled to do so by strike action. Until the passage and validation of the National Labor Relations Act labor had to strike for the rights to organize and bargain collectively, as it still must strike, except during the war emergency, to obtain the various terms that it desires.

Strikes of public servants may carry with them particular danger to the community, if safety or health is thereby endangered. Very seldom have strikes of police exposed the public to danger from lawless elements, though one such instance was the Boston police strike of 1919. The public health has been endangered more frequently, as by strikes of garbage collectors, and strikes of firemen have also occurred. In addition there have been occasional strikes of teachers or building service workers that closed school systems, and strikes of other groups of public employees have curtailed other public services. Strikes of government employees are usually considered illegal, though this view is sharply challenged by some unionists. Whether the employer is public or private, however, certain essential services, including police and fire protection, hospitals, water, sanitation, education, and power must be provided. In these fields strikes should be outlawed, though it is equally important that just working conditions prevail in this type of employment and that adequate machinery for the prompt adjustment of grievances be made available.[7]

Public suffering reaches an extreme in the general strike, which seeks to paralyze all industrial activity, save the minimum necessary to preserve life and health, in order to force concessions from government or employers. The first important general strike that this country witnessed occurred in Seattle, Washington, in 1919, when trade unionists struck for six days in an effort to help shipyard workers win a wage

increase. On an even larger scale was the three-day general strike that paralyzed San Francisco in July, 1934. This strike was called to protest the arrival of the state militia to suppress the picket lines of striking longshoremen. More recently general strikes of short duration have occurred in several American cities, including Terre Haute, Indiana, and Pekin, Illinois, and in a number of other cities such strikes have been threatened. Usually the cause has been some action by governmental authorities against strikers which the remainder of the union movement considered a denial of labor's rights.

Whether an action of some government official or of a private employer is being protested, a general strike inevitably is a challenge to the government, for while the strike is effective the strike committee is the master and therefore the real government of the community. Because a general strike arouses such great antagonism and because it cannot be carried on long before it collapses of its own weight, the tendency in this country is for unionists, given sufficient provocation, to call a "labor holiday" of specified duration, such as twenty-four hours, rather than to embark upon an indefinite general strike. In one such labor holiday called in Lansing, Michigan, in 1937 to protest the arrest of pickets, workers seized control of part of the city, with flying squadrons sent to close down stores and other business establishments. In this country the overwhelming majority of union leaders, and likewise of rank-and-file members, is opposed to the use of the general strike, and it can scarcely be considered an important issue at the present time.

In still another important way the public is affected by the practices of the labor movement. As consumers, the public is interested in getting an honest dollar's worth for every dollar it expends. For this reason the public does not look kindly upon the opposition of some unions to technological advance, or on such union practices as tearing out the electrical wiring from a pre-fabricated house so that it may be reinstalled by a union electrician, or cutting off the threaded

end of a pipe so that it may be re-threaded on the construction project by a union plumber. Assistant Attorney General Thurman W. Arnold has quoted estimates that these and other "illegitimate" practices of unions cost consumers upwards of a billion dollars yearly.[8] There was widespread public disapproval, similarly, when James C. Petrillo, president of the American Federation of Musicians, announced in July, 1942, that the 140,000 members of that organization would cease to make records or any other form of electrical transcription of music, in order to force the employment of musicians in radio stations, bars, and restaurants. Moreover, just as unions and employers may not get along well enough, from the point of view of the public, so there is a possibility that they may get along too well, with wages and profits both protected by an unduly high price level that burdens consumers. The building trades, particularly, have witnessed the use of agreements of this type.

The absence of unionism may occasion far greater public burdens than unionism at or near its worst, in the form of police and charitable expenditures. Where labor is unorganized low wages and insecurity are likely to bring with them housing, health, and policing problems that drain community resources, with an enormous relief burden during periods of unemployment. The higher wages and improved working conditions for which unions strive advance the public welfare just as truly as they benefit wage-earners; indeed, the latter form such a large percentage of the public in an industrial community that the terms are synonymous.

The labor movement performs other functions of great value to the community. It gives the huge mass of workers a mechanism through which they can bring their influence to bear upon civic as well as industrial problems. Where unions are well organized and intelligently led they are interested in housing, health, education, relief, taxation, and all other civic problems, expressing in community councils the point of view of the lower-income groups. In Detroit, Michigan, the United Automobile Workers, C.I.O., is a vital

part of community life, and in other centers a similar situation exists.

Like every other organization in the community, the labor movement has an obligation to keep the peace and obey the law. Were public officials unprejudiced towards unions and the law fair to them, this obligation might be stated simply, with workers properly subject to condemnation and punishment whenever they broke the law. In practice, however, the issue is far more complicated, for until recently the law has been heavily weighted against labor, and in some communities that condition still prevails. Too many legislators, executives, and judges have been prejudiced against the labor movement, and have sought to use their official powers to hamper it. The worst abuses, particularly in the use of injunctions to crush strikes, fortunately are in the past. Labor has an obligation to respect the law, beyond any question, but the law must be written, interpreted, and enforced so as to deserve the respect of free men.

The labor movement, in turn, is obligated both legally and morally to keep out of positions of influence and trust persons who abuse their office for personal gain, or whose records of conviction for offenses involving moral turpitude show that they are unfitted for responsible posts. This is an obligation, needless to say, that the labor movement owes to its members and to employers as well as to the general public. Though the amount of racketeering in the labor movement has been exaggerated by unfriendly or sensational publicists, it cannot be denied that it represents a serious problem, particularly in certain of the building and service unions affiliated with the A.F. of L. It is found most frequently in certain metropolitan centers, especially New York City and Chicago, that have been under the control of corrupt political machines. In rare cases, notably that of George E. Browne of the Theatrical Stage Employes, a racketeer has risen to the presidency of a national or international union.

Racketeering is by no means peculiar to the labor movement. Business and government, along with others of our

institutions, have suffered from the same evil. Indeed, racketeering in unionism can best be explained as a reflection of influences pervading the entire community. Labor rackets take various forms, some of which affect only the union members, whereas others primarily affect employers or the public. Stealing from the union treasury, accepting graft from members in return for jobs, or the use of strong-arm men to crush dissent within the union are examples of the former type. Illustrations of the latter include graft given a union official by an employer to avert a threatened strike, settle an existing strike, or avoid a clause of an agreement. Or union leaders may engage in business, using the threat of strikes to force employers to purchase supplies from them. In extreme cases professional gangsters may "muscle" into a union and by force and intimidation compel their election to office or the election of puppets chosen and controlled by them. Often the victims, whether union members or employers, have been reluctant to complain to the police or to testify against the racketeers in court, for fear of physical violence. No racket can long flourish where the police are efficient, the city administration honest, and the judiciary free from corrupt politics.

Businessmen, in turn, may also have connections with the underworld, in competition-ridden industries for example, where employers' associations have used gangsters as an illegal police force to prevent price cutting. In other cases, as in the New York City restaurant trade, businessmen have been the victims of racketeers using a trade association as a front for levies upon the industry. In still other cases individual businessmen have employed gangsters to keep union organizers away from their shops.

There is also evidence that some businessmen have preferred to deal with a racketeering union official rather than an honest one, where the graft given the former amounted to less than the wage increases that the other might have obtained. In Chicago, according to the Building Investigation Commission headed by Senator John T. Dailey, "The general build-

ing conspiracy could not exist without the aid of the contractors . . . Some contractors through choice, others through fear, and others through intimidation became a part of this corrupt system, and either by active aid, tolerance or passive acquiescence aided, abetted, and assisted the criminal business agents." [9] Theodore Brandle, racketeering boss of the New Jersey iron workers, indeed, was at the same time director of an employers' association.[10]

The racket reaches its most complete development when union and employers combine to raise both wages and profits at the expense of consumers, with employers who are not parties to the agreement driven out of business by the violence of hired thugs, with protection purchased from political leaders. Indeed, Gordon L. Hostetter, secretary of the Chicago Employers' Association and critic of the organized labor movement, regards this as the typical racket.[11] In a very able and valuable report on racketeering an impartial New York City group, the Subcommittee on Labor Unions of the City Club of New York, observed: "It is an interesting commentary upon the relationship that sometimes exists between the employer and the labor racketeer that the head of an employers' association in a notoriously racket-ridden industry is reported to have asked that one of the principal convicted defendants be paroled in his custody pending an appeal. And in the recent trial of restaurant racketeers, it was brought out that substantial contributions to their defense fund were made by restaurant owners. It is true that employer groups protest the labor racket, but such protests are chiefly in the form of proposals for curbing all unions, whether corrupt or not, and, moreover, often come from groups not affected by racketeering." [12]

Racketeering has found its greatest strongholds in the building and service industries, both of which are made peculiarly vulnerable by certain economic factors. Both are industries in which the work cannot possibly migrate to other areas. In building, in addition, the contractor is typically subjected to a penalty under the terms of the contract for failure to

complete his work within a stipulated time. A strike might ruin him, whereas an allowance for graft in a corruptly controlled city may be added to every contractor's estimate and passed on to the consumer in the form of higher building costs and rents. Because each job lasts but a short time union officials have been vested with an unusual degree of control over the calling and ending of strikes. This combination of circumstances, especially in a city controlled by corrupt politics, has resulted in many of the worst instances of racketeering unionism.[13]

Of the various rackets that have flourished in the service industries that in the New York restaurant trade may serve as a typical example. The restaurant racket, successfully prosecuted by District Attorney Thomas E. Dewey, involved two local unions, one of waiters and one of cafeteria workers, over which the racketeers obtained control. One of the locals was revived by the racketeers for their own purposes and the other was taken over by threats, with the elected union officials acquiescing or resigning. At the same time the band of racketeers, headed by Jules Martin, a lieutenant of Arthur Flegenheimer (Dutch Schultz), organized the Metropolitan Restaurant and Cafeteria Association, which purported to be a trade association. Restaurant and cafeteria owners were forced by threats of violence and by strikes of the two racketeer-controlled union locals to join the association, paying high fees that were pocketed by the racketeers. At the same time the members of the racketeering gang who headed the unions exacted tribute from the members, and used strikes and picket lines as a means of forcing bribes from the employers. The entire plan was enforced by violence, and protected politically by payments to one of the most influential of Tammany district leaders, James Hines.[14]

The live poultry market of New York City was long controlled by one of the most strongly organized rackets from which this country has suffered. The leading racketeer was Arthur (Tootsie) Herbert, whose official title was that of delegate of the Chauffeurs, Teamsters, Stablemen and Helpers

Union, Local 167, but who exercised dictatorial control over every other phase of the industry as well. Members of the local were forced to pay $10 monthly dues, of which $1 went to the national office of the union, leaving the remainder, aggregating $51,000 yearly, for the local. Fines which were imposed on the slightest pretext added another $5,000 yearly. The total office expenses of the local did not exceed $6,000 yearly, leaving $50,000 at the disposal of Tootsie and his fellow racketeers. Herbert's share was estimated at $20,000 by Philip B. Reister, who made a careful study of the racket for the Department of Markets of New York City.

Herbert and the other racketeers working with him had many other sources of income. Through their control of Local 440, the orthodox poultry slaughterers, they derived another $22,000 or more obtained from $6 monthly dues plus fines and assessments. They organized the New Jersey Coop Company, the New York Live Poultry Trucking Company, and the Metropolitan Feed Company, and by violence obtained and enforced a monopoly of each of the important services or supplies needed in the business. In addition to being overcharged by each of these monopolies and victimized by the unions, the dealers were forced to pay huge sums to the racketeers for "protection" and for permits to carry on their business. Corrupt politicians and officials of the city Department of Public Health received a share of the plunder. As a result the cost of unloading, crating, and trucking a car of poultry rose to $169.50 in New York City, whereas in neighboring Philadelphia it cost but $60. The racket was estimated to cost the public over $2,000,000 yearly. The racketeers enforced their will by bombing the places of business of those who opposed them, by giving poisoned feed to chickens, by wrecking trucks and firing their cargoes, and by kidnaping or killing those who resisted. The victims were then persecuted by the crooked politicians who protected the racket and shared the spoils.[15]

In the racket that flourished in the fur dressing and dyeing industry of the New York City metropolitan market, it was

a group of employers who took the lead. They organized the Fur Dressers Factor Corporation, which controlled competition and boosted prices. The furriers' union co-operated, its members receiving higher wages as their reward. The racket was enforced through an arrangement with Louis (Lepke) Buchalter and Jacob (Gurrah) Shapiro, New York City's leading industrial racketeers, who sent their thugs to assault businessmen who disobeyed instructions from the Factor Corporation, to bomb their establishments, or throw acid on their furs. Lepke and Gurrah maintained rackets in a number of other industries, and at the peak of their power had an army of some 200 thugs, with an annual income estimated by the authorities in excess of $5,000,000.

Still another type of racket was the one that flourished in the men's clothing industry of New York City during the depression years. Under the prevailing system of production in that market, cloth was cut in New York City and sent for sewing and finishing to contract shops located in the metropolis or within a radius of a hundred or more miles of it. Under the contract with the Amalgamated Clothing Workers the cut goods were required to be sent only to unionized contract shops, and the union office checked by comparing the quantities received by contractors with the amounts reported sent from the various cutting rooms. Employers could scarcely avoid operating unionized cutting rooms because the highly skilled workers employed there were well organized, but those that could then send the work to non-union contracting shops for the lesser skilled operations could undersell their competitors. Gangsters were therefore hired to guard the trucks that carried the cut goods to non-union contract shops, with the leading cutters receiving a share of the spoils in return for sending false reports on the number of cut garments to the union office.

Other rackets could be listed, but enough has been said to indicate the various types that have existed.[16] Once rackets have become established they have proved exceedingly difficult to oust. The indifference and ignorance of many union

members simplifies the task of the union racketeer to preserve his power. Other members are frightened or bribed into submission, and still others have no complaint so long as they are employed at wages they consider reasonable. Experience has shown that members will often suffer many abuses before they are sufficiently aroused and united to risk expulsion and physical violence in a battle for honest unionism.

The attitude of the national officers of the union with which a local controlled by racketeers is affiliated typically determines whether the membership can readily oust the crooks. If the national leaders are honest and vigorous they will soon receive complaints from members or employers, or themselves suspect that improper activities are being engaged in. They can and should investigate promptly, suspend the guilty officers, and assume control of the local's affairs until new elections may be held. Most national officers function in this manner, and so keep crookedness to a minimum. The racketeers may resist national union discipline, but revocation of their charter places them in a weak position and deprives them of the support of other labor groups. If the national union at once starts a new local in competition with that controlled by the racketeers, the latter can seldom long survive.

Appeals to the American Federation of Labor to remove racketeers from affiliated national unions, whether they were entrenched in national or local office in those unions, have been of little avail. The Federation has always insisted that it was barred from action by the autonomy of national unions. This is mere evasion of the issue. Though the Federation lacks the power to remove from office a local official of an affiliated national union, it can revoke the charter of a national union that fails to act promptly, vigorously, and honestly. Given the support of the Federation, the honest majority in every union could eliminate the racketeers and their henchmen without great difficulty. Indeed, if the Federation officers were to investigate thoroughly each reported instance of racketeering and publicize the facts fearlessly, along with

recommendations for remedying the situation, the racketeers in most cases could be driven from office without the necessity of revoking national charters.

At the 1940 convention of the A.F. of L. the delegates of the International Ladies' Garment Workers' Union introduced a resolution to give the A.F. of L. Executive Council summary power to order the removal of union officials who had been convicted of corrupt practices or offenses involving moral turpitude, if the national union failed to act. The resolution was passed in a much weakened form, which merely provided that wherever a union official was evidently guilty of wrong-doing and the national union evaded its responsibility, "the Executive Council shall be authorized to apply all of its influence to secure such action as will correct the situation." [17] This meant little, for the council can exert influence on any matter in the absence of specific convention authorization. In the first case that arose after adoption of the resolution, that of Jacob (Jake the Bum) Wellner of the Brooklyn painters, the council proved as ineffective as in similar cases in the past. Only against federal locals, the local unions that are directly attached and responsible to the A.F. of L., has the Federation acted vigorously.

Ample legal remedies against racketeering seem to be available. There are criminal laws against the violence used by racketeers, and against extortion, embezzlement, and bribery. The federal government may proceed against racketeers under the income tax laws, and in some cases under the anti-trust legislation. If interstate commerce is affected federal officials under some circumstances may prosecute under the Federal Anti-Racketeering Act of 1934. The failure to oust racketeers is due to no lack of available legal remedies, but to the indifference or fear of union members and employers, or to the political influence that racketeers possess. It is a disgrace to the labor movement, however, that racketeers should so often be tolerated until the government intervenes.

There is a type of union activity which, though not dishonest, has been the subject of considerable criticism and some

prosecution under the anti-trust laws. This is a combination of employers and workers, found typically in the building trades, in which competition is restricted, some products barred, and prices kept high, with the cost passed on to the public in the form of higher prices. In agreements of this sort the union pledges its members to work only for parties to the combination who observe the rules agreed upon, and receives its reward in the form of the closed shop and high wages. A widespread combination of this sort existed in the tile setting industry, for example, until a prosecution in 1940 for violation of the anti-trust laws. The combination included leading tile manufacturers, local tile contractors' associations, and local tile setters' unions in Chicago, Detroit, and St. Louis, who agreed to prevent the sale of tile to persons other than those selected by the combining parties. The union, acting as a policing agency, circulated lists of "legitimate" contractors, who alone were able to buy tile and who boycotted manufacturers who sold tile to persons not on this list. Another combination between contractors and Chicago building trades unions barred building stone cut outside Chicago. Unions which engage in collusive practices of this sort are properly subject to the anti-trust laws on precisely the same basis as the employers with whom they combine.

Unions should act so as to win the respect and confidence of the general public. Contracts should be lived up to, violence avoided, and workers in certain essential services should forego the right to strike. Unions should not lower the national income by unduly blocking technological advance nor raise costs by requiring work once done to be redone. Above all, workers must keep their unions open, clean, and democratic. Only by convincing the public that the trade union movement is democratic, honest, jealous of its good name, and as patriotic as any other element in the community can labor hope to ward off repressive legislation.

6. Government, the Law, and Unions

WHEN the first trade unions were formed in the United States, in the closing years of the eighteenth century and the opening decades of the nineteenth, the attitude of the government was antagonistic. American labor law was strongly influenced by the doctrine of criminal conspiracy that had been developed in English jurisprudence, and trials for criminal conspiracy hampered some of the earliest unions formed in this country. Soon the legality of the union movement as such was admitted without qualification, though judicial attack on some of its methods and objectives continued. The government's attitude became one of toleration, with workers allowed to form unions and engage in collective bargaining provided they could muster enough economic strength to emerge victorious in conflicts with employers. The government conceived its function to be that of an umpire, intervening only to see that the rules of the game were observed—that life and property were protected, contracts adhered to, and violence and other illegal methods not employed. This attitude of government, it should be noted, favored employers, whose physical property and intangible property rights received protection long before the rights of workers to organize and bargain collectively enjoyed legal sanction.

In the course of time the government's attitude shifted, as disputes between unions and employers disrupted production and commerce and caused hardship to the public. More and more the government intervened in strikes or in negotiations to help the parties settle their differences. The government did

not cease being the policeman, but it became a mediator as well, in the belief that industrial peace advanced the public welfare. In very recent years the attitude of the government has again changed, to one of encouragement of trade unionism. Now the government is committed to the belief that sound public policy requires legal protection of the rights of workers to organize and bargain collectively. The government continues to function as policeman and as mediator, but in addition, through labor relations laws and boards, it attempts to ensure that employers do not use their superior economic power to deny workers their right to organize. On the railroads, where the process has reached its most complete development, comprehensive machinery has been set up by the government to help the operators and their employees solve every type of controversy, with the danger of work stoppages minimized.

Throughout this long period of development labor has been the aggressor, in that it has sought constantly to gain new rights for itself and limit the rights previously enjoyed by employers. This process had to continue for a long time before labor, as a previously submerged and underprivileged group, obtained legal protection comparable to that enjoyed by employers. Labor has been under the additional disadvantage that the holders of high governmental office, whether executive, legislative or judicial, have usually been chosen from among the more privileged groups. These officials, because of their background, have tended to be property-minded rather than labor-minded.

Particularly has this been the case among the judiciary, who of all government officials are farthest removed from the electorate. This has raised new obstacles on labor's road to greater legal rights, for the social attitude of a judge often proves more important than the wording of the law. As former Justice Oliver Wendell Holmes of the United States Supreme Court once observed in commenting upon one type of labor case, "The ground of decision . . . suggests a doubt whether judges with different economic sympathies might not decide

such a case differently when brought face to face with the issue." [1] A leading student of the development of American labor law asserts that "the rights of labor are determined quite as much, if not more, by the social and economic philosophy of the judges as by so-called immutable principles of the law. In other words, legal theory is shaped to fit economic and social facts as the judge sees them." [2] Since American judges have the power to declare legislation unconstitutional, their point of view on social issues is of especial importance.

Early American labor law can be understood only in the light of its heritage from England. Beginning in the fourteenth century, British workers were subjected to minute regulation by statute, and as late as 1800 a strike was a crime in that country and a trade union an illegal association. In the meantime British judges had been developing a common law doctrine of conspiracy, under which a combination of persons to commit an offense constituted a crime, as did the use of unlawful means, whatever the objective. So long as unionism and strikes were expressly forbidden by statute, there was no occasion to apply the doctrine of criminal conspiracy to activities of British workers. After the repeal of the restrictive labor legislation by Parliament in 1824 and 1825, however, attempts were made to prosecute strikers for conspiracy in restraint of trade.

Even before this time the conspiracy doctrine, inherited by American law along with other principles of English jurisprudence, had been applied by courts in this country to labor cases. In 1806 American unionists for the first time were prosecuted for criminal conspiracy, as a result of efforts to raise their wages. In the years that followed criminal conspiracy cases became more frequent, though relatively few of the unions of that period were prosecuted and the record showed only nine convictions to four acquittals.[3] Criminal conspiracy prosecutions did not prevent the growth of a fairly strong labor movement in the late 1820's and early 1830's. In the early cases there were suggestions that unions might be un-

unlawful in themselves, or that any combination to raise wages was illegal, though the methods used by strikers were also denounced as unlawful.

The law was clarified somewhat in 1842 by Chief Justice Shaw's decision in the famous Massachusetts case of Commonwealth *v.* Hunt.[4] After this time it was accepted law that workers might form trade unions, though the methods employed by the unions continued to be scrutinized by the courts. In particular, picketing, the sympathetic strike, and the closed shop were condemned as intimidation and coercion with intent to injure other parties. Closely allied with the prosecution for criminal conspiracy was the doctrine of restraint of trade, under which inconvenience suffered by the public through interference with the channels of trade became the test of legality of the conduct of workers and also employers in labor disputes. Until the 1880's, when a more effective legal weapon against the labor movement was developed, almost every legal action against labor was based on the criminal conspiracy doctrine.

The injunction, an old legal remedy, was designed primarily to prevent irreparable injury to property by preventing the commission of a damaging act. In more recent times the use of the injunction has been extended to many types of controversies, among them the labor dispute. The first labor injunction was issued in England in 1868, a little more than a decade before this weapon was used in an American labor case. The earliest cases concerned properties in the hands of receivers, which were held to be under the special protection of the courts. Before long the injunction was applied to other labor disputes, and with the American Railway Union or Debs case of 1895[5] the labor injunction became one of the best known and most widely used legal weapons against labor. From that time until the passage of the Norris-La Guardia Act in 1932 one of labor's foremost legislative objectives was the curbing of the injunction.

The injunction was most frequently resorted to while a strike was in progress, to prevent or regulate picketing and to

restrain violence and threats. Other clauses might enjoin boycotting, trespassing, the holding of union meetings, the payment of strike benefits, or any other of the numerous acts connected with a strike. Sometimes, on the theory that the strike was unlawful, every act connected with it in any way was enjoined, and union officials were even ordered to call off the strike. Sometimes, in addition to a long list of prohibited acts, a "blanket" clause was added restraining the defendants from interfering in any way with the business of the complainants. The injunctions typically named the strike leaders as defendants, and frequently the unions involved in the strike as well. In addition the injunction by its terms usually applied to all persons acting for or aiding the named defendants, and sometimes a blanket clause, applying to "all persons whomsoever" was added. Sometimes an injunction was issued in the absence of a strike, to prohibit the calling of a threatened strike or to enjoin boycotting. Violation of an injunction was punishable as contempt of court, though relatively few violators ever faced contempt proceedings.

Until the passage of the Norris-La Guardia Act and of comparable state legislation, temporary restraining orders were too frequently issued on the basis of a bill of complaint and supporting affidavits, without prior notice to the defendants and with no opportunity for them to be heard at that time. The theory of the courts, which worked well enough in non-labor cases, was that the temporary restraining order served merely to preserve the status quo until the rights of the parties could be adjudged. A strike situation, however, could not be preserved, but was typically won or lost within a very few days. The temporary restraining order, if it served to prevent picketing or to demoralize the strikers, frequently broke the strike, before any hearing on the merits of the case could be held. It was this feature of the injunction which, more than any other, aroused labor's ire. In many cases, however, strikers disobeyed the injunction, with little attempt being made to enforce it. The temporary restraining order remained in effect until a preliminary hearing, following which the judge might issue a

temporary injunction. A permanent injunction was not issued until after a full hearing. The issuance of or the failure to issue a temporary or permanent injunction might be appealed to the higher courts, but in labor cases the immediate dispute was almost always settled long before an appeal could be heard. The primary purpose of appealing a labor injunction was to settle the law for the effect upon other cases that might arise in the future.

A leading student of labor law has definite references to 508 cases in federal courts and 1,364 in state courts in which injunctions were issued, prior to May 1, 1931, on employers' applications. In addition there were 32 federal and 191 state cases in which injunctions were sought but not allowed. Every state but one was in the list, with the great industrial states predominating. His total of 1,845 injunctions included 28 issued in the 1880's, 122 in the 1890's, 328 in the opening decade of this century, 446 from 1910 to 1919, and 921 between January 1, 1920, and May 1, 1930. The list shows the increasing importance of the labor injunction, though some allowance must be made for a better coverage of those issued in more recent decades.[6]

Among the injunctions that labor most bitterly resented were those issued to enforce "yellow dog contracts." These contracts were promises not to join a union, which workers in many non-union establishments were forced to make as a condition of employment. From a legal point of view this constituted a contract, with which no third party could be allowed to interfere. Accordingly injunctions were readily issued against union representatives, prohibiting them from making any effort to induce such workers to violate their contracts. In one celebrated case a single injunction, issued in 1927, restrained interference with the non-union contracts signed by employees of 316 coal companies of West Virginia,[7] so that the chief industry throughout broad sections of the state was legally insulated against union organization.

Public opinion from the first was largely opposed to the use of these anti-union contracts, for there was something

offensive about the use by employers of their superior economic power to compel workers to surrender their legal rights. Beginning with New York in 1887, no less than 16 states enacted laws under which it became a criminal act to force workers to agree not to join unions. In the Erdman Act of 1898, relating to carriers engaged in interstate commerce, Congress included a similar provision, and likewise made it a criminal act for a carrier to discriminate against an employee because of union membership.

These laws soon ran afoul of the courts, which lagged far behind public opinion in most issues relating to the labor contract. In 1908 the United States Supreme Court held unconstitutional the section of the Erdman Act prohibiting discrimination because of union membership.[8] To compel an employer against his will to retain an employee, the court said, was a violation of the Fifth Amendment to the Constitution, which declares that no person should be deprived of liberty or property without due process of law. Seven years later the Supreme Court declared that state laws prohibiting the use of anti-union contracts were likewise unconstitutional under the Fourteenth Amendment, which provides that no state shall deprive any person of liberty or property without due process of law.[9] Under this amendment, the court argued, freedom of contract could not be impaired, and since an employee could be dismissed for joining a union he could be forced to agree not to join one. Labor was little disturbed by these decisions, for the laws had been widely broken by employers, just as anti-union contracts had been disregarded by labor. When the yellow dog contracts were enforced by injunctions, however, labor realized that it was confronted with a weapon of great power.

While the courts thus protected the right of employers to dismiss unionists, they restricted the exercise of labor's economic power. If the courts decided that the primary purpose of a strike was to injure the employer or non-union workers, the strike was declared illegal. In many states strikes for the closed shop were held illegal, as were sympathetic strikes and

strikes against the use of material produced under non-union conditions. Whenever a strike was declared illegal, all acts connected with it likewise came under the ban of illegality, and were frequently forbidden by injunction.

Picketing, on which the effectiveness of strike action peculiarly depends, has been scrutinized carefully by the courts. Though various state and federal courts are far from agreement in their attitude toward picketing, the general rule has been that persuasion is legal but that the use of threats, intimidation, or coercion is illegal. The difficulty arises in determining the boundary line between persuasion and intimidation. Some courts have held that speaking to workers against their will constitutes intimidation. In one important case "peaceful picketing" was declared as much a contradiction in terms as chaste vulgarity, peaceful mobbing, or lawful lynching,[10] though in other cases the right to picket peacefully has been protected. Part of the confusion has been caused by different meanings ascribed to the term "picketing" by various judges. In an important case in 1921 the United States Supreme Court held militant picketing unlawful, but nevertheless permitted a union representative to be stationed at each entrance to the factory to present the strikers' case peaceably.[11] A similar rule has been followed in a number of cases that have arisen since 1921, and there has been some tendency for judges to fix the number of pickets and prescribe their conduct. Local police officials have varied greatly in their treatment of picketing, from forbidding any such activity to permitting a mass picket line to block all entrance into a struck plant.

In their treatment of the boycott the courts have been even more severe. The primary boycott, a simple agreement among workers not to patronize an employer, has indeed been upheld in many jurisdictions, but it is of very limited economic importance because few employers sell directly to consumers. Pressure can be brought on most manufacturers only through the dealers who sell their products. This is a type of secondary boycott, which has been almost universally condemned by the courts. Employers long found it difficult to fight a boycott

in the courts, however, for often an injunction merely acquainted more people with the existence of the boycott and thus contributed to its effectiveness. Not until the successful application of the damage suit to the boycott under the anti-trust acts did the boycott cease to be an effective labor weapon.[12]

The Sherman Anti-Trust Act, destined to play so important a part in the development of labor law, was passed by the federal government in 1890, when the labor movement had just begun to assume national significance. Congress passed the act in an effort to curb the trusts and monopolies then beginning to control the country's economic life, and left obscure its intentions with regard to the labor movement. The language of Section 1 of the act, "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal," was broad enough to include activities of the labor movement, if the courts so decided. Students of the problem disagree sharply on the intent of Congress, some holding that Congress intended to exempt the labor movement and others that Congress deliberately used words that might be applied to labor as well as to capital, leaving the final decision to the courts.[13]

Whatever the Congressional intent, the courts soon applied the Sherman Act to labor, with serious results. In 1893 and 1894 the act was invoked against labor in seven cases, all but one of which resulted from railway strikes, in the course of which interstate commerce was directly interfered with. The injunction in the famous American Railway Union strike of 1894 was based upon the Sherman Act, but the United States Supreme Court refused to pass upon this issue, justifying the injunction upon other grounds. Little more was heard of the Sherman Act, so far as labor was concerned, until the important decision of the United States Supreme Court in 1908 in the Danbury hatters' case, in which the court held unanimously that a national boycott conducted by the hatters' union against the non-union Loewe Company of Danbury, Connecti-

cut, was in restraint of commerce in the sense in which those words were used in the Sherman Act.[14]

The Danbury hatters decision, more than any other, convinced labor that the courts were partisan in the labor struggle, that they sought to deprive labor of its economic weapons while protecting employers in the free exercise of their power. This feeling was intensified as a result of the Bucks' Stove and Range Company case, in which the A.F. of L. was enjoined from publishing the firm's name on its unfair list, and Gompers and two of his most prominent associates were cited for contempt for disobeying the injunction. Recognizing the ambiguity of the Sherman Act, however, the labor movement began a campaign to amend the anti-trust law so as to free labor from its provisions. Particularly did labor fear that unions themselves would be held to be unlawful combinations in violation of the Sherman Act, though there was nothing in the Supreme Court's decision to justify this interpretation. Labor took an active part in the presidential and congressional elections of 1908, 1910, and 1912, supporting candidates who promised relief from injunctions and anti-trust prosecutions. The result was the inclusion in the Clayton Act of 1914 of Section 6, which provided:

> That the labor of a human being is not a commodity or article of commerce. Nothing contained in the anti-trust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purpose of mutual help . . . or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the anti-trust laws.

Almost as important, from labor's point of view, was Section 20, which prohibited the issuance of injunctions by federal courts "in any case between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employ-

ment, involving, or growing out of, a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property, or to a property right, of the party making the application, for which injury there is no adequate remedy at law."

Sharp controversy has raged over the purpose of the Clayton Act. Samuel Gompers, in an enthusiastic appraisal, referred to the first sentence of Section 6 as "the Industrial Magna Carta upon which the working people will rear their structure of industrial freedom." [15] All that could be said with certainty was that there was no more danger that unions would be outlawed as such, or that every strike that affected interstate commerce would be held to violate the anti-trust acts. For the rest, unions were free under Section 6 to carry out "lawfully" their "legitimate objects," which seemed to leave matters much where they had been before the Clayton Act was passed.

In any event this was the interpretation that the Supreme Court, in a series of important decisions,[16] adopted. Indeed, in one important respect labor was in a worse position, for under Section 16 of the Clayton Act a private party injured by an unlawful restraint of commerce might apply for an injunction, whereas under the Sherman Act only the federal government could obtain an injunction. The anti-trust laws were used against labor far more frequently after the passage of the Clayton Act than before, with injunction suits predominating but with a number of criminal prosecutions and a few damage suits also resorted to. In its decisions the Supreme Court held that interstate boycotts of non-union material could be enjoined under the anti-trust laws, that local strikes were lawful but that substantial strikes affecting interstate commerce constituted violations of the anti-trust legislation, and that even a refusal of workers to use non-union materials was a violation, though no effort was made to induce non-members to take any action. In addition, the courts narrowly construed the exemptions conferred upon labor by Section 20.

Until the 1930's, when statutory labor law first became of great importance in the United States, the law of labor rela-

tions was largely determined by judicial decision. That this judicially developed law was heavily weighted in the employer's favor cannot be doubted. Legislative attempts to outlaw the anti-union contract and the discharge for union membership were held unconstitutional in the name of liberty of contract and due process of law. On similar grounds a number of legislative efforts to establish minimum wages or maximum hours were declared invalid by the courts. Certain types of strikes were held illegal, as was the secondary boycott, and in many instances picketing was sharply restricted by judicial decision or local police regulation. The injunction proved a far more potent weapon against union activities than the criminal conspiracy prosecution had been, and the anti-trust laws were so written and interpreted that they became powerful instruments to control some types of union activity. By way of contrast the employer was protected at almost every step, and permitted, so far as his workers were concerned, to make free use of his superior economic power.

The executive and legislative branches of the federal government, by way of contrast, proved somewhat more liberal or more responsive to public opinion or to the pressure of the labor movement. Presidents of the United States have many times acted to avert threatened strikes or to urge settlement upon the parties, as when Theodore Roosevelt intervened in the anthracite coal strike of 1902, obtaining the consent of the parties to his appointment of the Anthracite Coal Strike Commission to arbitrate the dispute.[17]

Since 1913 a Conciliation Service has functioned within the Department of Labor, making the services of expert conciliators available to employers and labor. In addition the federal government has appointed a number of commissions to investigate industrial and labor problems, among the more important of them being the Industrial Commission of 1898 and the Commission on Industrial Relations of 1912-15. In 1918 the National War Labor Board was appointed to settle industrial disputes for the period of hostilities. The principles under which it operated included the right of workers to or-

ganize and bargain collectively, without any interference by employers. Workers were not to be discharged for union membership or activity, but were not to use coercive measures to induce other workers to join their unions or employers to deal with them, and there were to be no strikes or lockouts during the war.[18]

Federal legislation for the adjustment of disputes has had the longest history with regard to the railroads, partly because federal jurisdiction has always been established for interstate commerce and partly because railroads were the scene of strong unionization and bitterly fought strikes in the latter decades of the last century. A long series of federal enactments, beginning with an investigation and arbitration act of 1888, preceded the Railway Labor Act of 1926, which safeguarded the rights of all parties and prescribed the procedure to be followed in collective bargaining.

Under the provisions of the act, which enjoyed the support both of management and of workers, each side was guaranteed the right to choose representatives for collective bargaining, without interference or coercion. These representatives were to make every reasonable effort to reach agreements, with provision for boards of adjustment to interpret agreements and a Board of Mediation to help the parties settle disputes involving changes in wages, rules, or working conditions. If mediation failed the board was to urge arbitration upon the parties, and if that failed an emergency board might be appointed by the president of the United States to report within 30 days, with no change in the controversy permitted for 30 days after its report was made. This act, the essentials of which have not been altered by subsequent legislation, established an integrated government policy for the achievement of railroad peace, with emphasis upon peaceful collective bargaining, with competent governmental assistance at every stage of the proceedings, but with a minimum of compulsion. With its adoption, governmental labor policy in one important sphere attained a maturity that has yet to be achieved in other areas.

Various state governments, in the meantime, had enacted

legislation providing for mediation or arbitration in labor disputes. Except in several of the more highly industrialized states, where adequate personnel was provided, the law generally proved ineffective. Governors of states, like the national executive, in some cases mediated labor disputes and in other instances ordered troops to strike scenes to preserve order or prevent picketing. It remained for two states with relatively little industry, Kansas and Colorado, to experiment with efforts to prevent or postpone labor disputes.

The Kansas law, the most drastic ever adopted in this country, provided for the compulsory arbitration of industrial disputes in industries affected with a public interest, including public utilities, the manufacture of food products and clothing, coal mining, and the transportation of these industries' products. A Court of Industrial Relations was created in 1920, with power to decide disputes in these industries, punish strikers, and if necessary assume control of industries in which its orders were disobeyed. Strikes and lockouts were declared illegal, as were picketing, boycotting, and similar activities. Labor's right to organize and bargain collectively was recognized, though unionists held this of little value without the strike weapon. Labor attacked the court bitterly and employers were dissatisfied with it as well, both sides challenging its constitutionality. In two cases brought by the Wolff Packing Company, the United States Supreme Court held invalid first the fixing of wages and then the entire plan of compulsory arbitration for the manufacture of food products, on the ground that the industry was not sufficiently affected with a public interest.[19] The remainder of the act has never been tested, but no attempt has been made to enforce it. The state legislature abolished the court in 1925, transferring its powers to a public service commission.

Five years before the Kansas Court was established, Colorado created an Industrial Commission to mediate labor disputes, and if mediation failed, to hold formal hearings and issue recommendations for settlement. Either party was required to give 30 days' notice to the other and to the commission of an

intention to change hours, wages, or conditions of employment, and no strike or lockout was legal until the commission terminated jurisdiction, even though its award was not available within the 30 days. Originally limited to disputes in industries affected with a public interest, the commission's jurisdiction was enlarged in 1923 to include all industries except agriculture, domestic service, and enterprises employing fewer than four persons. Two years later jurisdiction was limited to public utilities, mines, and intra-state railroads. Labor attacked the law bitterly, charging that employers were allowed ample time to prepare for strikes, whereas the discharge of union members was not prohibited. Compulsory investigation has worked far more satisfactorily on the railroads, where both sides desired it and where discrimination for union membership was prohibited.

Meanwhile public opinion had been coming slowly to the conclusion that in an industrial society the right of workers to organize and bargain collectively deserved legal protection. This growing sentiment resulted in the early anti-discrimination and anti-yellow dog contract statutes, which met such an unhappy fate at the hands of the Supreme Court. The wartime labor rules and railroad labor legislation both recognized unionism as a desirable social agency, and encouraged its growth by prohibiting interference by employers with the exercise by workers of their right to organize and bargain collectively. The Railway Labor Act of 1926 went even further than the National War Labor Board by stating explicitly that workers should be free to select representatives for collective bargaining without interference by employers. In an important decision in 1930 the United States Supreme Court upheld the constitutionality of this provision, and on the basis of it ordered the disbanding of a company-dominated union.[20]

Further protection was afforded the labor movement with the enactment by Congress in 1932 of the Norris-La Guardia Act, which at last gave labor relief from the worst abuses of the injunction. Under this measure temporary restraining orders were prohibited except under unusual circumstances,

with the defendants being given notice and an opportunity to be heard in all other cases. Jury trial was provided for persons charged with contempt of court for violating an injunction, unless the contempt was committed in the presence of the judge. An employer was declared not entitled to an injunction unless he could show that other remedies were inadequate. Other injustices of injunction procedure were likewise remedied. The yellow dog contract was declared contrary to public policy and unenforceable in the federal courts. Similar legislation was soon enacted in a number of states.

The famous section 7a of the National Industrial Recovery Act, adopted the following year, borrowed much of its phraseology from the statement of public policy in the Norris-La Guardia Act. Section 7a, besides providing for maximum hours and minimum wages, stated that:

> Every code of fair competition, agreement, and license approved, prescribed, or issued under this title shall contain the following conditions: (1) That employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; (2) that no employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing.

Section 7a soon became a subject of controversy, its vague language being subjected to a variety of conflicting interpretations. The act was deficient, moreover, in that it made no provision for the adjustment of labor disputes. The wave of strikes that swept over American industry in the summer of 1933 and the threat of further disputes arising from the President's Reemployment Agreement or blanket code led to the creation by President Roosevelt of the National Labor Board on August 5, 1933. The board had no statutory authorization, however, and its powers were subject to question. In July,

1934, it was replaced by the first National Labor Relations Board, set up by President Roosevelt under the authority of Public Resolution No. 44. Though the new board was in a stronger legal position, in that Congress had authorized its appointment, it found itself in an increasing number of cases unable to obtain compliance with its decisions. This first National Labor Relations Board, along with a series of boards that had been appointed to adjust labor disputes in particular industries, was swept away by the famous Schechter decision of the Supreme Court of May 27, 1935,[21] which held the entire National Industrial Recovery Act unconstitutional. The work of all these boards helped to clarify the issues, however, and guided Congress in its enactment of new legislation to deal with labor's right to organize and bargain collectively.

This new legislation was the National Labor Relations Act, adopted in July, 1935. The new act guaranteed to workers the right to organize and bargain collectively through representatives of their own choosing, with interference by an employer made an unfair labor practice. It was also declared an unfair labor practice for an employer to dominate, interfere with, or contribute to any labor organization; to encourage or discourage membership in a union by discrimination in regard to hire or tenure of employment; to discharge or otherwise discriminate against an employee for filing charges or giving testimony under the act; or to refuse to bargain collectively with the representatives of his employees. Provision was made for elections at which workers might choose representatives, the choice of the majority in an appropriate bargaining unit to be the exclusive representative of all in the unit for purposes of collective bargaining. The closed union shop was permitted, provided the union represented the majority in the bargaining unit and was not established, maintained, or assisted by the employer. Administration of the act was placed in the hands of a National Labor Relations Board to be appointed under its provisions. The board was empowered to order violators of the act to cease their unfair labor practices and reinstate wrongly discharged employees with or without

pay. In cases of failure to obey the order, the board was authorized to petition any federal circuit court of appeals for enforcement, the board's finding of facts, if supported by evidence, to be conclusive.

Employers met the challenge of the National Labor Relations Act by attacking its constitutionality, and until the spring of 1937 the board was forced to devote much of its time and energy to meeting these attacks in the courts. During this period almost a hundred injunction suits were brought to restrain the board from holding hearings or taking other action against employers charged with unfair labor practices. The issue was not settled until April, 1937, when the United States Supreme Court, in a notable series of decisions, held the act constitutional with regard to interstate communication, transportation, and manufacturing. Only then did the board have an opportunity to function as Congress had intended.

The employers' attack on the board and on the act did not cease, however. It merely shifted from an allegation of unconstitutionality to charges of prejudice and one-sidedness. A great many amendments to the act were suggested, and numerous bills embodying them were introduced in Congress. Among the more important were proposals to forbid unfair practices by labor, prevent minority strikes, regulate internal union affairs, protect the free speech of employers, prevent the invalidation of contracts, make the craft unit mandatory in elections, and separate the prosecuting function of the board from its judicial work.[22] Adverse amendment of the act was staved off, at least temporarily, when changes in the personnel of the board increased Congress' confidence in the administration of the act.

In a number of the states, particularly the most highly industrialized ones, legislation followed a similar pattern. The enactment of the National Labor Relations Act was followed in 1937 by the adoption of similar legislation in New York, Wisconsin, Massachusetts, Pennsylvania, and Utah. Only one of these laws, that of Massachusetts, provided that employees might be guilty of an unfair labor practice, the measure so

defining a sit-down strike. The reaction soon came, however, with sit-down strikes, violence in picketing, and A.F. of L.-C.I.O. clashes creating widespread sentiment for curbing labor's powers. Oregon adopted a drastic anti-picketing law in 1938, and in the following year Wisconsin and Pennsylvania amended or replaced their former liberal laws while Michigan and Minnesota adopted labor relations laws sharply curtailing labor's rights. The state laws of 1939 listed unfair practices by labor, provided for a cooling-off period before strikes, outlawed the sit-down strike, restricted picketing, and regulated union activities in other ways. In 1941 Rhode Island adopted a labor relations act based on the N.L.R.A.[23]

During this period the labor movement faced new threats through the anti-trust laws. In the spring of 1937 sit-down strikers had seized the Apex Hosiery Company plant in Philadelphia, remaining in possession of it for almost seven weeks. The company obtained from the Federal Circuit Court of Appeals a ruling that the union had restrained interstate commerce in violation of the Sherman Act. A Federal District Court jury assessed physical damage to the plant and equipment at $82,000, company overhead expenses during the strike at $105,000, loss of company profits at $45,000, and loss of seasonal merchandise and of elastic webbing at $7,000. This made a grand total of $237,310.85, which was tripled under the Sherman Act to yield a verdict of $711,932.55. This decision, if upheld, would have permitted punitive damages to be assessed against labor whenever illegal methods were employed in a strike affecting interstate commerce. The Supreme Court, however, with three justices dissenting, held in its decision of May 27, 1940,[24] that the unionists were not guilty of violating the anti-trust laws because their activities were not intended to affect hosiery prices or restrain commercial competition in some substantial way, nor did any such results actually follow. In full settlement of the damage claims the union finally agreed to pay $110,000 to the company. Though labor won a victory in the Supreme Court's decision in this

case, it was disappointed by the portion of the majority ruling which held that unions were subject to the anti-trust laws.

In 1939 and 1940 the anti-trust laws, as interpreted by Assistant U. S. Attorney General Thurman W. Arnold, became the source of another far-reaching challenge to the labor movement. Following extended studies by the federal government of the concentration of private economic power, the Anti-trust Division of the Department of Justice, under Arnold's direction, sought to apply the anti-trust laws so as to eliminate various types of restraints, with the building industry selected for the first tests. During 1940, especially, a series of indictments of building trades unions in a number of cities, along with other factors in the building industry, caused labor's apprehension to mount.

In a letter to the Central Labor Union of Indianapolis in November, 1939, Arnold listed five labor practices which his division considered violations of the Sherman Act. These were:

1. Unreasonable restraints designed to prevent the use of cheaper material, improved equipment, or more efficient methods.
2. Unreasonable restraints designed to compel the hiring of useless and unnecessary labor.
3. Unreasonable restraints designed to enforce systems of graft and extortion.
4. Unreasonable restraints designed to enforce illegally fixed prices.
5. Unreasonable restraints designed to destroy an established and legitimate system of collective bargaining.

As the Sherman Act was thus interpreted by Arnold, it was an instrument to be used against racketeering, jurisdictional strikes, and certain unreasonable collective bargaining demands, as well as against the sort of combination to restrict competition and raise prices to which the anti-trust laws had traditionally been thought to apply. Arnold argued that labor would benefit under his policy, since public enforcement of the anti-trust laws would be substituted for private enforce-

ment and since union members could be protected from improper actions of union officials.[25]

The first labor case to reach the United States Supreme Court under Arnold's indictments was that of William L. Hutcheson and other officers of the United Brotherhood of Carpenters and Joiners, who, as previously mentioned, were prosecuted for picketing and boycotting the Anheuser-Busch Company as a result of a jurisdictional dispute with another union. In its decision of February 3, 1941, the Supreme Court held that these acts did not violate the anti-trust laws. Since such activities could not be enjoined under the Clayton and Norris-La Guardia Acts, the court declared they were not punishable criminally under the Sherman Act. The effect of this decision, it should be noted, was to reverse the position that the Supreme Court majority had taken two decades earlier in the Duplex case. Just two months later the Supreme Court, citing the Hutcheson decision, refused to review three lower court cases in which anti-trust indictments against labor groups had been dismissed. These cases involved A.F. of L. building tradesmen in New Orleans who refused to handle materials delivered by C.I.O. truckmen; Chicago hod carriers who insisted that mechanical mixers should not replace laborers; and carpenters in the state of Washington who boycotted plywood made by non-members. Early in 1943 the Supreme Court approved a lower court finding that the American Federation of Musicians, in compelling the hiring of stand-by members during radio broadcasts from records, had not violated the anti-trust acts.

A word should also be said about the attitude of the courts toward collective bargaining agreements. Earlier in our history union agreements on hours and wages were not considered by the courts as binding contracts but merely as gentlemen's agreements or expressions of the customs in the trade. Many courts held that the only contract was between an individual worker and his employer, though the terms of this contract might be found by reference to the collective agreement. Unions were unincorporated associations, moreover, and the

power of such organizations to enter into contracts had not yet been established. At the present time, however, it is possible to make a collective bargaining agreement that can be enforced in court just as any other contract. The union and the employer may enforce its terms against each other, and the individual worker in most cases may also bring suit.

The first step in enforcement is to use any grievance machinery provided in the contract, or to resort to arbitration if the agreement so provides. The courts will not act until these steps have been taken, unless it can be shown that such action would be futile. The aggrieved party may ask the court by a declaratory judgment to determine the rights and duties of the parties, or monetary damages or an injunction may be sought. Injunctions to enforce an agreement are somewhat difficult to obtain, because of recent legislation restricting the use of the injunction in labor disputes and because the complainant must show that the injury which he would suffer could not be measured in terms of money. In no case, however, will employees be ordered to return to work, since that would constitute involuntary servitude.[26]

Despite the law's backing of the labor movement, it would be a mistake to assume that unions and union members occupy a preferred legal position. Prosecution for criminal conspiracy no longer occurs, and the worst abuses of the labor injunction have been curbed, but union leaders and union members are subject to the same criminal laws that regulate the conduct of the rest of the community. Picketing is subject to regulation, strikes may still be crushed by police, injunctions are still issued in labor disputes, unions may be sued for damages, and some labor weapons, including the secondary boycott and the sympathetic strike, remain illegal in many jurisdictions. Though unions have grown in wealth and power employers, by virtue of their economic resources and their control over jobs, in most instances retain superior bargaining power. Labor's most notable advance has been registered under the National Labor Relations Act, which guarantees workers the right to organize, requires employers to recognize and bargain

with unions, and forbids employers to engage in certain unfair labor practices. No unfair labor practices of which unions may be guilty are listed in the federal act, though they are in certain of the state labor relations acts. The net effect of these acts, however, has merely been to give workers freedom to build organizations that are desirable and necessary in an industrial society, permitting them to bargain with their employers on terms approaching equality.

7. How Responsible Is Government?

IF the law now encourages the growth of trade unionism, it may be asked what public policy should be with regard to the various undesirable practices in which some unions or union leaders have engaged. In an earlier chapter it was pointed out that the growth of economic power in the hands of business leaders had blinded many of them to their larger social responsibilities, and led to regulation by the government of various aspects of business life. Perhaps a similar process is now going on in the labor movement, which should similarly be checked by the supervision of an impartial governmental agency, acting to safeguard the public and to protect union members and employers. Before reaching that conclusion, however, one should be aware of the abuses in labor disputes of which some government officials have been guilty. Government regulation of unions may be desirable and necessary, but at least the dangers that it involves should be recognized. The practices described in the following pages, it should be emphasized, are in no sense typical of the conduct of public officials as a group, but are presented as examples of abuses that have occurred.

During the 1937 strike of the Steel Workers Organizing Committee against the Bethlehem Steel Corporation plant at Johnstown, Pennsylvania, the relations of Mayor Daniel J. Shields to the Johnstown Citizens Committee and the Bethlehem Steel Corporation illustrate the lack of conception of public duty and the attitude in labor disputes of one type of official, fortunately rare in public office. Mayor Shields, it should be noted, had previously served 19 months in jail following

conviction for conspiracy to violate the National Prohibition Act.

The Citizens Committee had had no funds prior to the initial meeting of its executive committee on June 16, 1937, five days after the strike began. At this meeting Sidney D. Evans, assistant to the general manager of the Bethlehem Steel Corporation, on behalf of the corporation offered to contribute $25,000 for "the purpose of maintaining law and order." That day $10,000 in cash was transferred in secret from Mr. Evans to Mayor Shields, with Francis C. Martin, chairman of the Citizens Committee, acting as intermediary.[1] On June 18 Martin obtained $15,000 more from Evans, which was delivered to Fulton Connor, Director of Finance of the city of Johnstown, who served as treasurer of the Citizens Committee from June 18 to 23 or 24. The mayor, whose office was less than a hundred feet from Connor's office, called for the money as he needed it. Connor kept no books of account and turned over neither funds nor records to the succeeding treasurer.

Further sums were transferred by the Bethlehem Steel Corporation to Mayor Shields. On July 9 the sum of $5,621.25 was sent by the corporation to the mayor through a bank messenger acting under Martin's direction. A fourth payment of $4,372, according to C. R. Ellicott, general manager of the corporation, was delivered by him personally to Mayor Shields, though the mayor later denied receiving it. Senators La Follette and Thomas, after examining all the evidence, concluded that Ellicott's testimony was valid. A fifth payment of $1,457 was made by the corporation on July 28, the money being brought to the mayor's office by Chairman Martin of the Citizens Committee.

The mayor kept absolutely no records of the funds that he received during the strike, or of his expenditures therefrom, all of which were made in cash. Some of the expenditures were made by other city officers, but whatever records they made were turned over to the mayor at his request and personally destroyed by him. When the Senate subcommittee that investigated the strike asked Shields to estimate from memory

the amount he had spent on each item he listed—special police, taxicabs and private cars, rewards, restaurants and hotels, feed for State Police horses, stablemen, hire of extra horses—the total came to nearly $37,000, or almost $6,000 more than the total he admitted receiving. The subcommittee concluded that these items were deliberately padded in an effort to allay suspicion that he had diverted part of the money to his own use. During the three months following the strike, it was disclosed, the mayor and his wife had paid off debts to the extent of more than $23,000, some of which had been outstanding for six years. The mayor's explanation was that his wife had had this money for years. The Senate subcommittee concluded that had Shields kept vouchers and receipts for his expenditures they would not have accounted in full for the funds he received, and that the balance had been diverted to his own use.[2]

Shields was not the only mayor to turn a strike to his personal profit, as witness the conduct of C. R. Ely, Mayor of Euclid, Ohio, in 1934 and 1935. In April, 1934, the city of Euclid had provided special policemen to the Chase Brass and Copper Company during a strike, and the company, in accordance with the law of Ohio, had reimbursed the city for their services. The Addressograph-Multigraph Corporation, similarly, had been billed by the city for some eighty special policemen furnished during its strike in May and June, 1935. A later investigation by the state government disclosed that none of the money paid for the special policemen by either of these companies had gone into the city treasury. The special policemen, moreover, proved to have been armed guards supplied by two detective agencies. The mayor had commissioned these men, and had submitted bills to the companies far in excess of the actual cost of their services. In the case of the Addressograph-Multigraph Corporation, at least, the mayor had pocketed the difference, at a personal profit of more than $7,000. The state examiner found that $32,918 was due from Ely to the city treasury, this being the total he had collected

for special policemen under color of office, and diverted to his own pockets or those of the detective agencies.[3]

Nor does labor complain only of the relatively small number of cases in which a government official is corrupt. The honest official who is partial to management in labor disputes is scarcely fitted to regulate the affairs of trade unions, or to appoint the persons who will regulate them. Former Governor Harold G. Hoffman of New Jersey, who served as the state's chief executive from 1935 to 1938, is a case in point. Just prior to the 1936 strike against the RCA Manufacturing Company of Camden, New Jersey, an officer of the Sherwood Detective Agency of New York City presented himself to company officials with a letter of introduction from Governor Hoffman to E. T. Cunningham, president of the company. The letter read:

> This letter will be presented by Mr. Max Sherwood, chief of Sherwood's Detective Bureau, 1457 Broadway, New York City.
>
> I have been acquainted with Mr. Sherwood for some time, and have been most favorably impressed by his work. He feels that there may be some opportunity for service to your company, and I would more than appreciate it if you can grant him a short interview, or refer him to the proper official of your company.
>
> With kindest regards, I am, Sincerely.

Sherwood, who was hired partly on the strength of the governor's letter of introduction, offered to provide 200 state detectives. The men that he furnished, however, not only were not state detectives, but were so undesirable that Camden local authorities refused to deputize them. Because Sherwood failed to make good on his promise to furnish state detectives the company refused to use his missionaries or guards.[4]

Though many notable exceptions are to be found, labor believes that government officials, taken as a group, tend to accept the point of view of management rather than that of unions where labor disputes are concerned. This is due in large measure to the fact that government executives and legislators, on the whole, are drawn in disproportionate number from the upper and middle income groups. With the judiciary,

which of necessity must be drawn from the ranks of a learned profession, this is obviously true. The relative weakness of labor political organization in this country, moreover, limits the number of candidates with a labor point of view who are elected to office. Persons elected to public office, naturally enough, tend to select for high appointive positions persons whose social point of view is similar to their own. Agricultural areas, though often progressive in many ways, usually reflect little knowledge of unionism or of the problems of industrial workers. A number of states, through poll tax laws, make it a hardship for low-paid workers to be voters. Effective labor lobbies are maintained in the federal and in many of the state capitols, but industry on the whole is better organized to exert political pressure, through lobbies, large political contributions to campaign chests, and the mere possession of economic power. It should be recognized, moreover, that strikes present extremely difficult situations to local authorities. Though by far the greater number seek to discharge their duties impartially, a substantial minority is frankly biased in favor of employers, just as some, especially in areas where labor exercises important political influence, are biased in labor's favor.

Federal and state executives, on the whole, have a better record for impartiality in labor disputes than do local government officials. This reflects the wider influences that help select national and state officials and the more varied pressures to which they are subject. The worse abuses are apt to occur in small communities controlled by a single employer, or in areas dominated by a closely knit group of industrialists. Some of the states, however, have rather bad records, and that of the federal government has been none too good in certain periods.

Federal partiality has been shown chiefly in the use of troops and in intervention to obtain an injunction against strikers on the ground that the anti-trust or other federal legislation was being violated. Federal troops have not been used as frequently as state militia to police strikes, and the federal army's record is much better. Though in a number of cases, including the Pullman strike of 1894, labor believed

that the federal troops were sent in to break the strike, in several instances labor has welcomed the arrival of regular army units, which afforded workers protection against lawlessness of the employers' forces or the partiality of the state militia. Federal troops were used fairly in Ludlow, Colorado, in 1914, following the massacre of which the state militia had been guilty. In the Coeur d'Alene mining district of Idaho in 1899, on the other hand, federal troops acted as though they were agents of the operators, holding hundreds of miners in a "bull pen" for months without trial and even without charges being preferred against them, and enforcing a permit system under which workers had to sign yellow dog contracts before they could be employed. The worst instances of partiality in the use of federal troops, however, occurred prior to 1900.[5]

The federal government has intervened in labor disputes more openly on the side of management through its obtaining of injunctions against strikers. During the American Railway Union strike of 1894, it was the federal government that sought and obtained the first drastic labor injunction that this country had known, based on the Sherman Act and the need to prevent obstruction of the mails. As special attorney in charge of the government's court efforts against the strikers Attorney General Olney appointed Edwin Walker, a leading railroad attorney who at the time was counsel for the Chicago, Milwaukee and St. Paul. The federal troops who were soon afterwards sent to Chicago to enforce the injunction and prevent obstruction of the mails were practically subject to Walker's orders.[6]

The bituminous coal strike of 1919 and the railway shopmen's strikes of 1919 and 1922 were among the other leading ones in which the government asked for and obtained injunctions against strikers. Under the Sherman Act, which has been the basis for most such actions, the government has sought injunctions restraining workers' activities on ten occasions, and in eight of these it obtained writs. Other grounds have also been invoked, as the Lever Act providing for wartime control of food and fuel in the 1919 bituminous coal strike. In asking

for the government's injunction against striking railway shopmen in 1922, Attorney General Harry M. Daugherty called attention to the interference with interstate commerce and the passage of the mails, and argued that the strike evidenced an illegal conspiracy in violation of the Sherman Act and the Transportation Act of 1920. The resulting injunction, issued by Federal Judge Wilkerson, was one of the most sweeping ever issued against labor.

State governments have used their military forces in much more highly prejudiced fashion than has the federal government. The governors of all the states have authority to use the militia to preserve law and order, and many of them have exercised this authority to end picketing and defeat strikes. So aroused was labor by this use of the militia that a number of unions forbade members to belong to the National Guard, until such rules were made a violation of the law. The militia possesses broad power, and is subject only to the orders of the governor. If he proclaims that a state of insurrection exists, most courts hold that the military authorities may arrest and hold without trial any persons they think necessary. During the Colorado strikes in 1903–04 and 1913–14 strikers were held by the military authorities for months without trial, and in the earlier of these cases many of the strike leaders were deported.

In rare cases, as in Harlan County, Kentucky, in 1934 and 1935, a liberal governor has used the National Guard to preserve workers' civil rights and protect union representatives from violence at the hands of local police officials or employers' representatives. In the overwhelming number of cases, however, as labor has learned from bitter experience, the entrance of the militia has meant the crushing of a strike. During the textile strike of 1934 the Georgia National Guard set up a barbed wire concentration camp, in which members of the flying squadrons of union pickets were imprisoned. During the following year, when the Goodyear Tire and Rubber Company of Akron was anticipating a strike, a picked force of employees was trained in military tactics by National Guard officers on

company property.[7] The training that some National Guard units in recent years have received in the breaking of picket lines has served to increase labor's apprehension.

One of the most careful and authoritative students of government action in labor disputes thus sums up the record of the state militia: "Militia officers have little training for police duties and are likely to be unsympathetic toward the strikers. Their powers are ill defined, and in most cases no attempt has ever been made to formulate any rules to govern their course in strikes. Some of the militia officers have assumed their function to be the suppression of the strike. A further difficulty at times is that the guardsmen are quartered on the employers' premises, if not fed and armed at their expense as well. The militia has not always made a bad record in strikes, and it is the author's impression that in most cases the calling out of the guard was justified. But clearly the use of the militia to preserve law and order should be reserved for emergencies and as a regular procedure is a most unsatisfactory method of strike policing." [8]

Worse by far than the use of the state militia has been the practice of conferring police powers upon private guards. On the railroads, in coal fields, and in steel areas, particularly, guards employed and paid by private companies have been commissioned as deputy sheriffs or, in Pennsylvania, where probably the worst abuses existed, as members of the "coal and iron police." In that state, beginning in 1865, railroad companies were permitted to pay and direct their own police, who held commissions from the governor of the state. In the following year the system was extended to the operators of collieries and furnace or rolling mills, and later certain utility companies were also included. When Gifford Pinchot became governor of Pennsylvania in 1923 he found no less than 5,830 commissions outstanding. In 1931 Pinchot revoked all outstanding coal and iron police commissions, then totaling 1,015. The Carnegie Steel Company then had 380 of these private policemen, and the Bethlehem Steel Corporation had 129.

When their coal and iron police commissions were revoked some of the companies had the same men appointed deputy sheriffs, though they still remained on private payrolls. In 1935 the law empowering the appointment of coal and iron policemen was repealed.

"That . . . a public police official should be privately paid is indefensible," said the U. S. Coal Commission.[9] The record of violence and brutality of the coal and iron policemen, who functioned as the private armies of private employers, was a disgrace to Pennsylvania until the system was abolished. The Commission on Special Policing in Industry appointed by Governor Pinchot in 1934 reported that:

> Like the company deputy sheriffs, the coal and iron police were, for the most part, simply armed men employed by certain companies to protect their interests. The fact that the law gave them police powers and that their commissions were issued by the Governor, added to their effectiveness as a kind of private militia. And if they abused their authority, their employer was not liable in damages, unless he had directed them to do something unlawful. . . . It must be remembered that every square foot of land in a company town is owned by the company and that under the terms of many of the leases the workers may be and are evicted at any time. The fact that the coal and iron police were in company pay and under company orders, that some of them were guilty of brutality, and above all that they were compelled to side with their employers in case of strike, led the workers to regard them generally as enemies . . . Every member of the United Mine Workers to whom we talked, spoke of the coal and iron police with active hatred.[10]

Occasionally a state is headed by a chief executive who makes no effort to conceal an anti-labor bias, and who even takes pride in it. Governors of this type have been rarer in recent years, but occasionally one is still found. Of this type was W. Lee O'Daniel, governor of Texas from 1939 to 1941, when he became a member of the United States Senate. Under O'Daniel's leadership Texas adopted a law banning the use of force or violence by pickets. In a letter to industrialists on

April 4, 1941, O'Daniel called their attention to the law, copies of which he enclosed, and said in part:

> We have not had much labor trouble in Texas yet, but we have been reading about the trouble in other States, and I think some of these wild-eyed labor-leader agitators and racketeers will think a long time before they come to Texas to start their foolishness. We are not taking away from labor the right to strike. They can strike all they want to, and go fishing; but, when they strike and quit their jobs, we have plenty of other men in Texas to take their jobs, and anyone who, by force or violence, or by threat of force or violence, tries to prevent any of these men from working at the job which he has just quit, will find himself picking cotton on one of our prison farms. We have seventy-five thousand acres of prison farms in Texas, so there is plenty of room. . . .
>
> I trust you will give this consideration in your business expansion.[11]

Partial as some state officials have been in labor disputes, greater abuses by far have occurred in the case of local governments, many of which have functioned as though they were the representatives of employers rather than as law enforcement agencies. Workers have been denied their civil rights, police have perpetrated or permitted illegal violence against strikers, employers have been allowed to select deputy sheriffs or have themselves been appointed, and in numerous other ways local government officials have shown partisanship when workers have sought to organize or strike. A great many municipalities have sought to attract industry in much the same manner used by Governor O'Daniel, by promising manufacturers freedom from labor difficulties, in addition to other advantages.

For lawless violence by police probably nothing in recent years can match the performance by Chicago police on May 30, 1937, during the S.W.O.C. strike against the Republic Steel Corporation. Strikers and sympathizers, following a meeting, were marching to the plant in order to establish a mass picket line when their way was blocked by police. While the leaders of the marchers were arguing with the police in

an effort to get permission to pass through the police line and picket the plant the police attacked, shooting, gassing, and clubbing.

The Senate subcommittee on workers' civil rights, after study of a Paramount News reel of the incident, thus summarizes what happened: "When gas was thrown into the east of the marchers' line the crowd in that section turned and fled, the police in full pursuit. The police then advanced all along the line swinging their clubs and shooting. The marchers in the front ranks in the center and to the west of the line attempted to escape, only to find their way barred by the mass of tangled bodies of those already shot or fallen in their haste to flee. The police surrounded the mass of fallen men and women, clubbing them as they attempted to rise. In groups of two or three they continued the pursuit, struck laggards to the ground and clubbed the fallen where they lay." [12]

Ten of the marchers were fatally shot. Seven of them received the fatal wound in the back, three in the side, none in front. Thirty other marchers received gunshot wounds, almost all of them in the back and side. Twenty-eight marchers received lacerations and contusions requiring hospitalization, and between twenty-five and thirty others suffered injuries requiring medical treatment. There were thirty-five police injuries, including four sprains and five gas cases. None of the police was shot and only three were hospitalized, though a total of nine received hospital treatment. When the fighting was over, moreover, the police "treatment of the injured was characterized by the most callous indifference to human life and suffering . . . The wounded and dying strikers were unceremoniously thrown into police patrols along with uninjured prisoners." [13]

Even in the coal fields, with their record of lawless violence, it is scarcely possible in recent years to find the equivalent of the Chicago Memorial Day affair. In the coal fields of southern West Virginia, where local police power was abused and workers' civil rights suppressed, conditions that

existed in the mid-1920's were thus described in the report of the U. S. Coal Commission: "In Logan County the sheriff has nine regular deputies and many others who are stationed at the mines. Many of these are stable bosses, pay-masters, and office guards, sanitary officers, etc. One of their special duties is to keep a sharp lookout for union organizers, and to devise ways and means to discourage them from remaining longer than the next train . . . Generally speaking, all the ground except the bed of the creek is privately owned, and a union organizer can scarcely move off the station grounds without becoming, technically, at least, a trespasser. Once his business is discovered, it is the duty of the deputy sheriffs to prevent his activity by ejecting him from privately owned property. Actually, without the consent of the operators, a union organizer can do little more than ride on a train and look out of the windows." [14]

Few areas in the United States have approached Harlan County, Kentucky, in their lawless control by police officers who in fact were agents of the dominant employers. Prior to the passage of the National Industrial Recovery Act, according to the Senate subcommittee on labor's civil rights, "the winding roads leading into Harlan County, patrolled by deputy sheriffs, many of them dangerous, heavily-armed criminals, were an uninviting prospect to union organizers. Miners within the county considered that the possibility of being met with a hail of machine-gun bullets set too high a price on the exercise of the right of self-organization for the purpose of collective bargaining." [15]

In the summer or fall of 1933, when the United Mine Workers sought to unionize the county, the Harlan County Coal Operators' Association doubled its assessments. The funds were handled by Ben Unthank, the association's "field man," who was then also a deputy sheriff. Assisted by three other deputy sheriffs and two labor spies, Unthank carried on a campaign of terror, including shootings and dynamitings, against union organizers and sympathizers. Though under indictment for one of the dynamiting jobs, Unthank and

some of his associates were reappointed deputy sheriffs, and their appointments were confirmed by the county judge. By the summer of 1934 Harlan County was again at their mercy. Unionists were shot at, kidnaped, or beaten, and strikes were broken by armed deputies who took men out of their homes and forced them to enter the mines and go to work. A leading union official who entered the town of Harlan with some associates on business of the Bituminous Coal Labor Board was trapped in his hotel room by deputies and thugs, and had to be rescued by the National Guard.

By the spring of 1937, when the union again was seeking to organize the county, Sheriff Theodore R. Middleton had increased the number of deputies until 163 were on active duty, only three of whom were paid from public funds. Among the deputies that Sheriff Middleton appointed from January 1, 1934, to March 1, 1937, there were 37 who had served sentences in the state reformatory at Frankfort. Four of these had been sentenced for murder and 14 for manslaughter. Three deputies had served terms in a federal penitentiary. In addition, 64 had been indicted by the Harlan County grand jury, mostly for crimes of violence. Again terror reigned in Harlan County, including dynamiting and tear gassing, and culminating in the killing of the son of a union organizer when deputies poured a volley of shots into his home during his absence. A deputy sheriff who protested against the excess of violence committed by his fellow deputies in the county was himself shot and left for dead.

At that time it was difficult to tell where the coal operators' association stopped and the government began. The Commonwealth attorney, Daniel Boone Smith, who was in general charge of criminal prosecutions in Harlan County, was receiving regular retainers amounting to $175 monthly from three of the Harlan County coal companies.[16] Grand jury foremen and commissioners included coal operators and deputy sheriffs. Both the sheriff, who appointed deputy sheriffs, and the county judge, who confirmed the appointments, were associated with leading coal operators in highly profitable busi-

ness transactions. In three and a quarter years Sheriff Middleton's net worth increased by more than $90,000, though his annual salary as sheriff was limited to a maximum of $5,000, and his average income from other sources came to only $6,500 yearly. A few years earlier the secretary of the Harlan County Coal Operators' Association had simultaneously held the office of high sheriff. The investigations of the Senate subcommittee on labor's civil rights, aided by the National Labor Relations Board and the Federal Bureau of Investigation, finally restored peace and civil liberties to the county. In 1938 Kentucky adopted a law prohibiting the appointment of strikebreakers or men with criminal records as deputy sheriffs, and forbidding the private employment of deputies.

In a great many other instances the relations between government officials and employers have been much too close to permit any doubt as to the sympathy of the former in labor disputes. During the copper strike in Arizona in 1917, for example, a citizens' meeting attended by officials of the mining companies decided upon a mass deportation of strikers. An armed force led by the sheriff rounded up 1,186 men, placed them aboard a train, and took them to New Mexico, where they were abandoned at a small desert town without adequate food, water, or shelter.[17] During the 1919 steel strike a number of mayors and sheriffs in the affected districts were themselves officials of steel companies involved in the strike. In some cotton plantation areas of the South the government has been simply an agency of the dominant planters. In California members of the Associated Farmers, an employers' body that opposed the organization of farm labor, had an agreement with the authorities that its members would serve as deputies. California sheriffs have helped break strikes of agricultural laborers by threatening to deport non-citizens, or by threatening arrests for vagrancy.[18]

In a great many cases non-union employees, members of "citizens' committees," or guards furnished by detective agencies have been deputized, thus clothing the forces on one

side of the labor struggle with the authority of the law. These deputies have often been paid by the employers and have been subject to their orders while they exercised the power of police officers. The Pinkerton agency was one of several furnishing strike guards that regularly sought to have such men deputized as special police officers and deputy sheriffs. Enough has already been said of the character of strike guards and the manner of selecting them. During the "Little Steel" strike of 1937, the citizens' committee of Warren, Ohio, urged that citizens be deputized as police officers. Since the county lacked funds to pay the special deputies a loan to the county was made by two banks, secured by contributions of Warren manufacturers in proportion to the tax value of their properties. The largest contributors were the Republic Steel Corporation and Youngstown Sheet and Tube Company, both of which were involved in the strike. Eventually the county repaid the banks, and the manufacturers' contributions were returned to them.[19]

That public law enforcement agencies should be armed by interested private parties is equally revolting. Yet this has happened on a number of occasions, usually with great pains being taken to conceal the nature of the transaction. So frequently have employers provided local sheriffs or police chiefs with gas or other weapons that the Senate subcommittee on labor's civil rights called this one of the commonest aspects of the industrial munitions business. In most cases the arms or munitions were furnished to public authority by employers during strikes in which they were involved. "In many cases of this practice examined by the committee, employers have made such gifts clearly with the desire that the law-enforcement agency use them to accomplish ends other than those of maintaining law and order. In some cases such gifts have been accompanied by repeated demands and the exertion of pressure upon the law-enforcement agency to take aggressive and unwarranted action against strikers." [20]

The Senate subcommittee's record showed that the practice of private payment for munitions furnished to public author-

ity was prevalent in all parts of the country. In practically all communities in which Republic Steel Corporation plants were affected by the 1937 strike the corporation made gifts of munitions to law-enforcement authorities, in some cases demanding at the same time that the authorities act more aggressively against pickets. During the Chicago Memorial Day massacre the police used tear gas and hatchet handles furnished by Republic Steel, in addition to regulation equipment. During the 1937 strike the Youngstown Sheet and Tube Company likewise donated gas and gas equipment to law-enforcement officials in communities in which it had plants. In March, 1936, the Goodyear Tire and Rubber Company of Akron, Ohio, spent $11,378 for gas and gas equipment, all of which except for some $1,300 worth was given to the sheriff of the county. Machine guns and cartridges, as well as gas and gas equipment, have been delivered to public authorities, with the bills, amounting usually to hundreds and sometimes to thousands of dollars, being paid by private employers. In May, June, and July, 1934, during the maritime and longshoremen's strikes in San Francisco, the police department of that city received $20,000 worth of gas and gas equipment paid for by private parties, evidently the Waterfront Employers Union. This, so far as is known, is the largest sum spent by private interests to furnish munitions to a public authority. Here, as in Johnstown, Pennsylvania, during the 1937 steel strike and in Los Angeles during the 1934 street railway strike, the chief concern of the participants was to keep their activities secret.[21]

The partisanship of local officials sometimes takes the form of passing legislation intended to hamper the labor movement, sometimes of strained interpretation of existing laws, sometimes of conspiracy to disregard offenses committed against union representatives. A large number of rural counties in California, in an effort to prevent successful strikes by agricultural workers, passed ordinances prohibiting picketing, whether peaceful or otherwise. Even more extreme were the ordinances passed by two of the counties requiring union

organizers to obtain permits and pay quarterly license fees before they could organize workers. Needless to say, few, if any, permits were issued under these laws. In Morristown, New Jersey, where an ordinance forbade itinerant salesmen to peddle wares without a permit, union organizers were arrested in 1938 for "soliciting without a permit." In parts of the South members of the Ku Klux Klan have kidnaped and beaten union organizers, sometimes with fatal results. In some of these cases police officers, deputy sheriffs, and other officials of the local government were Ku Klux Klan members, and implicated in the illegal violence against the unionists.

In a speech to the United States Conference of Mayors in November, 1937, J. Warren Madden, then chairman of the National Labor Relations Board, charged that in some cities the National Labor Relations Act was being frustrated with the connivance of the mayor and other officials. "Mayhem, murderous assault and kidnaping have been committed with impunity in cities against American citizens whose only offense has been that they were union organizers," Madden said. "Some of these crimes have been committed under circumstances in which the criminals could not possibly have escaped detection unless the police had been under instructions that crimes against these people were to go unpunished." [22]

The members of the judiciary, usually men of wealth and social position, have typically shared the social views of their class. They have tended to sympathize with employers rather than with workers, to place greater emphasis upon property than upon human rights. With rare exceptions judges have been men of integrity, who could fearlessly perform their duty as they conceived it because they were financially independent, secure in their positions, and far removed from the electorate. For the rest, conservative social views and anti-labor precedents have been responsible for the decisions that have made labor so distrustful of the courts. Cases are not lacking, however, in which judges have acted in a highly improper fashion in labor controversies. On January 2, 1937, for example, when sit-down strikers were in possession of Gen-

eral Motors Corporation plants in Flint, Michigan, the corporation obtained from Circuit Judge Edward S. Black a drastic injunction restraining the United Automobile Workers from remaining in the plant or from picketing it in any manner. Three days later Homer Martin, president of the union, charged that Judge Black owned 3,665 shares of General Motors stock, worth about $220,000, and that Bertha B. Black of the same address owned 80 shares. The union asserted that Black's action violated a Michigan statute prohibiting a judge from sitting in any case in which he is financially interested. Perhaps because of these embarrassing circumstances no effort was made to enforce Black's injunction. A month later, however, a very similar injunction was obtained from Circuit Judge Paul V. Gadola. In Harlan County, where everything was done in cruder fashion, County Judge Morris Saylor engaged in profitable business ventures with Mr. Bassham of the Harlan Wallins Coal Corporation. Judge Saylor was allowed to obtain a one-fourth interest in the enormously profitable Verda Supply Company, and likewise to share in the ownership of coal lands which the Harlan Wallins Coal Corporation leased at a handsome annual royalty.[23]

Sometimes the attitude of a judge toward the labor movement, and particularly toward its more progressive or radical wing, is apparent in the wording of the decision itself. During the lockout of the men's clothing workers of New York City in 1920-21, for example, Justice Van Siclen, in issuing an injunction against the Amalgamated Clothing Workers, said that the courts "must stand at all times as the representatives of capital, of captains of industry, devoted to the principle of individual initiative, protect property and persons from violence and destruction, strongly opposed to all schemes for the nationalization of industry, and yet save labor from oppression, and conciliatory toward the removal of the workers' just grievances." [24] Judge Joseph P. Rogers of Philadelphia, who issued an injunction against the Amalgamated in 1922, was even more extreme. He ordered the union offices raided, called one of the union leaders a liar, and declared that "this

organization is no corporation, should have no legal recognition, and should be driven out of all existence as a menace to the nation." [25]

It would be difficult to find many union leaders as irresponsible as some of President Harding's cabinet or Huey P. Long, under whose regime Louisiana came dangerously close to totalitarianism. There have been few, if any, union administrations as corrupt as some of our city and state political machines. Former Mayor Richard W. Reading of Detroit, who had been a bitter opponent of the United Automobile Workers during his term of office, was later convicted along with high police officers and other officials of his administration on charges of conspiracy to protect a huge numbers racket.

Mayor Frank Hague of Jersey City, another enemy of the C.I.O., long denied representatives of that organization their constitutional rights of free speech and free assembly. Apart from his long political domination of Jersey City and nearby areas, Hague was best known for his assertion "I am the law." The C.I.O. was refused permission to hold public meetings and found itself unable to rent a private hall because hall owners had been intimidated by the city government. If they rented their halls to the C.I.O., they feared, their taxes would be raised, their liquor licenses taken away, or their buildings condemned. It took a U. S. Supreme Court decision in June, 1939,[26] to re-establish free speech and free assemblage for the C.I.O. in Jersey City.

As in the case of earlier chapters dealing with union leaders and employers, this chapter has pictured some of the worst abuses of which government officials have been guilty in labor disputes. It should not be thought that the practices here described are in any sense representative of the conduct of the great body of government officials, most of whom seek to administer the law fairly in complicated and difficult labor situations. Though judges with an approach like Van Siclen's or of the Rogers type, governors like Long and O'Daniel, and mayors like Reading and Hague are in a small minority, how-

ever, they help to explain labor's determined opposition to government control. The excellent records of agencies like the National Labor Relations Board and the United States Conciliation Service, while giving unions greater confidence in government, has not diminished labor's fear of governmental regulation.

Nevertheless the evils that have crept into union administration may make some degree of governmental regulation desirable and unavoidable, despite the danger that the wrong type of official may from time to time be vested with regulatory power. The practices described in the preceding pages, however, should serve to remind us that public officials are not necessarily impartial in labor disputes, and that the type of regulation to be imposed deserves the most careful consideration. We will now examine the chief proposals that have been advanced for increasing the legal responsibility of unions or otherwise improving their conduct.

8. Should Unions Be Forced to Incorporate?

OF the various measures that have been suggested from time to time to increase labor's responsibility, one of the most insistent has been the proposal for the compulsory incorporation of trade unions. The labor movement as a whole has been bitterly opposed to this, though a few unions have voluntarily incorporated. More recently some employers' groups have begun to doubt the desirability of pressing for compulsory incorporation legislation. In all probability a compulsory incorporation law, were it to be enacted, would neither fulfill employers' hopes nor realize labor's fears. Compulsory incorporation of unions, however, is undesirable because it would select trade unions for discriminatory treatment, accomplish little in the way of increasing financial or other responsibility, and needlessly antagonize the labor movement.

The incorporation of trade unions became an issue in the very infancy of the American labor movement. In the first quarter of the nineteenth century, when organizations of workers tended to be primarily beneficial in character, some of the organizations sought incorporation as a means of protecting the funds that they accumulated for mutual-aid purposes. Particularly was this the case among the printers' unions that early developed. In 1809 the Philadelphia Typographical Society sought incorporation to protect its funds, at the same time seeking to preserve its trade union character. After 1810, however, the Philadelphia society did not submit a wage scale, becoming a benefit society exclusively. In 1816 the New York Typographical Society, in a similar effort to protect its relief

and burial funds, applied to the state legislature for a charter of incorporation. The legislature proved unwilling to grant a charter except under terms prohibiting the society from attempting to regulate wages or otherwise concerning itself with trade matters. The society, after rejecting these terms in 1816, accepted them two years later, and ceased to exist as a trade union. The Columbia Typographical Society of Washington, D. C., almost accepted similar terms in 1821, but the vote of its president broke a tie in favor of remaining a trade union rather than incorporating as a beneficial society.[1]

The conflict over incorporation that arose in the latter half of the century had little relation to this earlier issue. Though the protection of funds remained of some importance, unions then sought the right to incorporate primarily to improve their status, both with employers and at law. Unionists argued that a federal charter of incorporation, in particular, would legalize unions, free them from the conspiracy laws that a number of states had passed, and help them, so far as employers were concerned, to obtain recognition and collective bargaining relations. The National Labor Union, which was founded in 1866, declared in its platform that: "Voluntary associations of working men and women are entitled . . . to the same chartered rights and privileges granted to associated capital, and we demand their practical recognition and enforcement." In 1869 and 1870 labor groups in Massachusetts sought without success the passage of a state incorporation bill. In following years it was primarily federal incorporation that unions sought. The Industrial Congress of 1874 and the Knights of Labor both demanded the right of incorporation for trade unions. In the 1880's the budding national unions generally demanded federal incorporation in the hope that this would give them recognition by employers, freedom from state conspiracy laws passed after the 1877 strikes, and protection of funds.

The Federation of Organised Trades and Labor Unions of the United States and Canada, the precursor of the American Federation of Labor, placed legal incorporation of trade

unions in its original platform adopted in 1881. The 1883 convention repeated the demand for incorporation of unions, and at its request a bill to accomplish that objective was introduced in Congress. At hearings held in 1883 by the Senate Committee on Education and Labor on relations between labor and capital, leading unionists argued that incorporation would legalize unions, protect their funds from misuse, and promote union stability. If unions were incorporated, their spokesmen asserted, they would be better able to enforce contracts, institute arbitration proceedings, control strikes, and discipline members. If Congress lacked power to pass a general act of incorporation to legalize unions, it was even suggested that a constitutional amendment be passed to permit such legislation. Federal incorporation was favored as against incorporation under state laws, which might require the taking out of a charter in each state. Employers opposed these repeated efforts to obtain laws permitting union incorporation because they feared that unions, once expressly legalized, might grow in strength.

In 1886 Congress, in response to labor's pressure, passed a measure to legalize the incorporation of national trade unions. Labor was disappointed, however, because the new law covered only those organizations having headquarters in the District of Columbia or in the territories. Nevertheless at the 1886 convention of the Federation of Organised Trades and Labor Unions the legislative committee, of which Samuel Gompers was chairman, reported that the new federal law recognized the "principle of the lawful character of Trades Unions, a principle we have been contending for for years." [2] After this time labor lost most of its interest in incorporation, and no union ever made an effort to obtain a national charter under the provisions of the 1886 law. That measure remained largely forgotten on the statute books until 1932, when it was repealed because insurance companies, most of which insured against divorce, had incorporated under its provisions as beneficiary societies.[3]

The attitude both of unions and of employers' spokesmen

underwent a sharp and rapid change as a result of the decision of the British House of Lords in the Taff-Vale case [4] in 1901, which held that a registered union in that country might be sued and its funds attached to satisfy damages resulting from the unlawful acts of its officers. The case involved a strike by the Amalgamated Society of Railway Servants against the Taff-Vale Railway Co., in which the company sued the union for damages and obtained a judgment amounting to about $150,000. In his next annual report to the American Federation of Labor, President Gompers warned unionists against the law that labor had considered so vital just a decade and a half earlier. In the words of Matthew Woll, for many years a vice-president of the A.F. of L., labor leaders of that period, "instead of looking to a Federal charter as a protection to their property . . . saw it now as a pitfall which would enable hostile business corporations to break any incorporated labor union by piling suit on damage suit until the union treasury was bare." [5] Employers' organizations, seeing in the Taff-Vale decision an opportunity similarly to hold American unions responsible in damages for unlawful acts of their representatives, began an agitation for the compulsory incorporation of trade unions, echoes of which are still heard today. Employers argued that unions as unincorporated associations were not subject to suit, and that for this reason they escaped legal liability for the illegal injury they caused to others.

From that time until the present labor has looked upon compulsory incorporation of unions as a proposal of its enemies seeking to destroy it. It should be noted that, prior to the British decision, labor's plea had been for the right of voluntary incorporation of unions, never for a compulsory incorporation law. In the early years following the Taff-Vale case, so good a friend of labor as Louis D. Brandeis, later to become a Supreme Court justice, still supported union incorporation. In a debate on this subject with Gompers in Boston on December 4, 1902, Brandeis argued that, because it was so difficult to reach the funds of an unincorporated association, unions were practically immune from legal liability.

Instead of this constituting a great advantage, as it seemed to so many labor leaders, Brandeis asserted that it was just the reverse, since it tended to make officers and members reckless, antagonized employers, and alienated public sympathy. In Brandeis' view, moreover, this lack of corporate reality brought upon trade unions one of their greatest grievances, the labor injunction; if the courts had been dealing with a responsible union instead of irresponsible defendants, he argued, many of the applications for injunction would have been denied. Other friends of labor and some unions took a similar position, proposing incorporation as the remedy for the injunction evil.

The overwhelming majority of labor leaders, however, agreed with Gompers that incorporation might cripple the union movement. With the passage of years even Brandeis modified his views substantially, though he still failed to see in incorporation the dangers that Gompers feared. In 1916, in his testimony before the United States Commission on Industrial Relations, Brandeis asserted that incorporation of unions was a matter of no very great importance, and that the chief reason that he would recommend it was to "remove this more or less groundless idea on the part of employers that there was something in incorporation which would put a union on equality with the corporation itself." [6]

Most employers' representatives, however, continued to place as much stress upon union incorporation as in the years immediately following the Taff-Vale decision. James A. Emery, counsel for the National Association of Manufacturers, was less certain. He told the United States Commission on Industrial Relations that: "The incorporation of trades-unions is a matter upon which I must confess that I have had a divided opinion . . . It is easy to incorporate them to such a point that, not having of course capital stock or share capital, they might dispose of their funds in such a manner that a suit is vain . . . No organization should be permitted to exert power that will not be responsible for the injury that it may do to others . . . it seems to me that an incorporation

in the ordinary acceptance of the term 'incorporate' is not sufficient; but that the State should probably give labor organizations a legal status . . . so that it can sue and be sued as voluntary organizations may be, and assume such control or provide for such control of its funds as will make it responsible within its limit for such injuries as it does." [7]

Until 1908, when the United States Supreme Court handed down its decision in the Danbury hatters case, unionists were little concerned about the danger of suits for damages. Union funds could not be reached because unincorporated associations, having no legal standing, were not subject to suit as such, and it was virtually impossible to join all union members in an action so as to obtain jurisdiction over the union funds. In addition, the financial resources of individual members were so limited that the danger of suit against them seemed remote, though such cases did occur. Edwin E. Witte asserts that there were at least thirty-three damage suits against unions or their members before 1900, one of them as early as 1834, and that in eleven of these cases damages were recovered.[8] The difficulty of reimbursing employers for illegal damage caused by unions furnished in large measure the justification for the use of the injunction in labor disputes.

The hatters' union had carried on an aggressive nation-wide boycott against the Loewe Company of Danbury and likewise against dealers who handled its hats. In 1903 the company, proceeding under the Sherman Act, filed suit for triple damages against 197 members of the union, only two of whom were prominent in the union. Though many of the union members testified that they knew nothing of the boycott, they were held liable as members for the actions of their officers, largely on the ground that they had continued to pay dues and support their officers while the boycott was being carried on. About $70,000 was obtained by the attachment of the savings accounts of the union members, and the homes of 140 of the workers were ordered sold to satisfy the remainder of the judgment. Before the sales could be carried out an agreement was reached, settling the case for an additional payment of about

$165,000. Most of this amount was raised by the A.F. of L. from other unions. Following this decision a number of New Jersey unions hastened to incorporate, to avoid subjecting their members to a similar danger. Though the Danbury hatters case has often been regarded as the American equivalent of the British Taff-Vale case, in the latter instance it was the union that was sued, not the individual members.

The American parallel to the Taff-Vale case was the Coronado decision rather than the Danbury hatters case. The Coronado litigation arose out of the troubled coal mining fields of Arkansas. A group of nine affiliated mining companies broke their agreement with the United Mine Workers, precipitating a conflict in which violence, an injunction, a private detective agency, and finally federal troops were involved. In the course of the disorder, a mob of union sympathizers set fire to the mines. The receiver into whose hands the mining companies were placed entered a damage suit against the union which dragged through the federal courts from 1914 to 1927, and ended with the plaintiffs receiving only part of their court costs and lawyers' fees. The receiver named as defendants the national organization of the United Mine Workers, District 21, and certain individuals, and asked triple damages under the Sherman Act. In 1918 a jury awarded $600,000 damages to the plaintiffs; attorneys' fees, costs, and interest brought the judgment to $745,600.

The case went to the United States Supreme Court, which reversed the decision and ordered a new trial. Though the union thus won a victory, the decision caused great concern to the labor movement. The court held that the evidence presented had not made out a case under the Sherman Act, nor had the miners' national organization been proved to have been connected with the illegal conduct in Arkansas. The court declared, however, that District 21 was responsible for the unlawful acts, and in one of the most significant portions of the decision it held that unincorporated labor unions were subject to damage suit as entities and their funds liable for the unlawful acts of union members. The court argued that

federal legislation had recognized the entity of the union, and that the language of the Sherman Act, covering not only corporations but also associations existing under or authorized by federal, state, territorial, or foreign law, was broad enough to include trade unions.[9]

Moreover, the court declared, public policy required that unions be liable financially for the acts of their agents. Chief Justice Taft, who wrote the decision, frankly admitted that by their decision the justices were disregarding common law rule and judicial precedent, which held that an unincorporated association was a partnership which could only sue or be sued in the names of its members, with liability enforced against each. The public policy that made it desirable for unions to be subject to suit was thus stated by the Chief Justice:

> It would be unfortunate if an organization with as great power as this International Union has in the raising of large funds and in directing the conduct of four hundred thousand members in carrying on, in a wide territory, industrial controversies and strikes, out of which so much unlawful injury to private rights is possible, could assemble its assets to be used therein free from liability for injuries by torts committed in course of such strikes. To remand persons injured to a suit against each of the 400,000 members to recover damages and to levy on his share of the strike fund, would be to leave them remediless.[10]

Gompers commented that: "This decision means that big business has won its objective in its long campaign for trade-union incorporation. . . . These laws are no longer necessary. The Supreme Court of the United States has arranged matters to suit the convenience of big business, which can hereafter turn its strike breaking over to the judiciary."[11] Following a new trial the case went again to the Supreme Court, which held that a case under the Sherman Act was made out under the evidence now presented.[12] In 1927 the case was finally settled by the payment from District 21 to the plaintiff of $27,500, with each side paying its own costs. Since the costs probably amounted to more than $100,000 the coal companies

actually lost by the suit. However, they succeeded in establishing, at least so far as the federal courts were concerned, the principle that unions, though unincorporated, might be sued as entities.

The Danbury hatters and the Coronado cases are merely the best known of a long list of damage suits that have been filed against trade unions. The Apex Hosiery case is the most important of the damage suits of more recent years. Edwin E. Witte in 1932 had a list of 314 cases in which damages were sought from unions or their members for actions committed by unions or their agents. About two-thirds of these cases were actions in tort, the remainder being equity suits in which an accounting for past damages was asked along with an injunction to prevent future injury. The plaintiffs were not always employers; some were non-unionists, expelled union members, or third parties who had suffered injury from strikes or other union activities. Most of these cases were brought in state courts, and were based upon general tort and agency law; only five were brought under the Sherman Act, which had the advantage of allowing triple damages but the disadvantage that interference with interstate commerce, as well as an actionable wrong against the plaintiff, had to be shown. A great many of these damage suits were never brought to trial. During strikes such suits are often filed as a bluff or to tie up union funds, and when the strike is ended the suits are dropped. In at least 66 cases prior to 1932, however, damages were recovered from unions or their members.[13] Nevertheless an employer is primarily interested, not in collecting damages, but in keeping his business operating, and for this reason the injunction, so long as its use is permitted in labor disputes, will probably be used far more frequently than the damage suit.

The Supreme Court decision in the Coronado case, of course, bound only the federal courts, though there has been a distinct tendency in labor cases, as in other areas of the law, for state courts to be influenced strongly by Supreme Court pronouncements. Whether as a result of statute or judicial decisions, however, unincorporated unions may now

be sued in three-fourths of the states. In an article published in 1938 William Green declared that 13 states then had laws which subjected unincorporated associations, like corporations, to the jurisdiction of law courts, and a fourteenth state had a somewhat similar statute which might or might not cover unions. Twenty-two other states, moreover, all of which Green listed, permitted unions to be sued by actions entered against officers or selected members as representative of the entire membership. Thus three-fourths of the states, including all the important industrial states except two, had removed all barriers to damage suits against unions. In most of these states, moreover, any resulting judgment might be satisfied by execution, not only against the property of the union, but also against the individual property of the union members before the court, and the property of the other union members might be reached by supplementary proceedings. In all states, of course, unions were subject to equity jurisdiction. The result, Green argued, was that unincorporated unions were subject in most states to greater legal liability than were corporations, one of the fundamental purposes of which was to limit liability.[14] Even in some of the states where unincorporated unions are not subject to suit in their common name this objection must be made before the case is tried, and cannot be heard later.

Once the principle of union suability is accepted, a troublesome problem of agency remains to be decided. For what illegal acts incident to a strike or other activity should a union be held responsible? In some cases unions have been held responsible for illegal acts committed during their strikes even though there was no proof that their pickets had committed the acts. In other cases a somewhat milder rule has been followed, holding the union responsible for all acts of pickets, but not for acts of others. Even more liberal is the view that unions are responsible only for acts authorized by them or by their officers, or ratified after commission by the furnishing of attorneys or the payment of fines, or by failing to discipline the guilty members. So far as individual members are concerned,

some courts have held that mere membership is enough to make them liable for all illegal acts of agents of the union, though in most cases the members have been held individually responsible only if they continued payment of union dues after knowledge of the illegal acts. Union liability has been extended beyond the ordinary principles of agency by the conspiracy doctrine, under which all parties to a conspiracy are responsible for illegal acts that any of their number commit in furtherance of the unlawful object.[15]

The proposal of union incorporation raises other problems. At what point in the formation of a union should it be required to incorporate; before it begins its first organizing or before it signs its first contract? Would a charter be granted automatically upon request or would government officials have discretion to deny incorporation and thus prevent a union from functioning? Does incorporation imply supervision, and if so, of what type and by whom? May the charter, once granted, be revoked, and on what grounds? What power will judges have to declare an incorporated union in receivership, and appoint receivers, under court control, to manage the union's affairs? How will a liberal use of this power affect organizing drives, strikes, and collective bargaining negotiations? Should a union be required to incorporate under federal law, at least if it is active in more than one state, or might it choose the state law that offered it the greatest number of advantages, in much the same way that business organizations prefer to obtain charters from Delaware or other states with liberal laws? Should the national union alone be required to incorporate, or should each local or other subsidiary unit be under a similar necessity? Would this affect the control of the national body over its subsidiary units? These are but some of the troublesome questions that would have to be answered before a compulsory incorporation proposal can expect serious consideration.

Moreover, unions might have their lawyers determine the plan of corporate organization that would involve fewest restraints. One commentator suggests that "a national union,

like the United Mine Workers, could set itself up in a series of holding companies. The top holding company could hold the no-par-value voting shares of its subsidiaries. It could thus control the union with a minimum of attachable assets. It could sign and violate contracts every day and have nothing attachable except the control of the union. If an employer attempted to attach this power of control in satisfaction of a damage claim, he would be violating the N.L.R.A. as it now stands. No one has yet suggested that the act be amended to allow employers to take over unions and operate them for personal benefit. The idea that the magic spell of responsibility can be cast over 600,000 coal miners by the legal abracadabra of incorporation is . . . fantastic." [16]

The argument frequently is heard that business incorporates and is financially responsible for any unlawful damage it may commit, and that unions should be forced to undertake a similar obligation. This overlooks the fact that businessmen have liberty of choice with respect to incorporation that, under a compulsory incorporation law, would be denied unions. Moreover, businessmen incorporate to limit liability, as well as to obtain other advantages, never to increase liability. Unincorporated unions, as we have seen, are as fully subject in most states to damage suit as are incorporated bodies, and individual members are subject to greater liability if their unions are not incorporated. Employers' associations are not required to incorporate, and most of them in fact are not incorporated. Indeed, the suggestion that employers' associations, along with unions, be required to incorporate has helped diminish the enthusiasm that some employers' groups once showed for the compulsory incorporation of trade unions.

Another argument sometimes heard is that incorporation would be a means of eliminating racketeers from unions. Yet it should be apparent that, in the case of business establishments that have been preyed on by racketeers or subject to their control, the corporate form of organization has been no protection. If racketeers cannot be curbed by the ordinary criminal law, special anti-racketeering legislation, and income

tax laws, it is scarcely likely that the requirement of incorporation would be a bar to their activity in any chosen field. Incorporation, observes the subcommittee on labor unions of the City Club of New York, "could place no serious obstacle in the path of racketeering; on the contrary, paper corporations and dummy officers might easily lend themselves to the extension of racketeering activity." [17] Whether for this reason or in an effort to give an appearance of legality to their operations there have been a number of instances of unions being incorporated by racketeers, and a well-known labor lawyer asserts that racketeers who want to shield their activities behind the union label usually incorporate, just as racketeer-controlled trade associations are invariably incorporated. He concludes that "Incorporation has not been a sword against racketeering, but a shield for it." [18] Incorporation could be a protection against racketeering only if it were accompanied by careful regulation. Regulation, however, could be established by appropriate legislation without incorporation, and in fact this is the policy urged by leading employers' spokesmen today. This proposal will be considered in the chapter that follows.

Still another reason sometimes advanced for compulsory incorporation is that unions would thereby be made more democratic. Those who advance this argument believe that the requirement that the union constitution and by-laws be filed with a governmental body as part of the public record would keep the rules of incorporated unions democratic. This overlooks the fact that union constitutions and by-laws are now printed and widely distributed and are available in many public libraries, and also that the incorporation laws have not helped to make business organizations democratic. Compulsory incorporation could help make unions more democratic only if a governmental body examined and approved proposed constitutions and by-laws before charters of incorporation were granted. This, however, implies a degree of regulation over internal union affairs that business corporations are not subject to. Such regulation of unions, indeed,

could be established apart from incorporation requirements.

Nor is any analogy with British law and British unions at all accurate. In Britain unions may register under the act of 1871, but this is a voluntary process. Indeed, "the act of 1871 prohibits the registration of trade-unions under the Companies Act; in other words, they cannot be incorporated." [19] In England the Taff-Vale decision of 1901, which held that unions could be sued for unlawful acts and their funds seized for damages, led to the British Trades Disputes Act of 1906, under which neither unions nor employers' associations can be sued in tort for illegal acts allegedly committed in their behalf. This is still the law of England today, and recovery may be had only against the individuals who committed the wrong. Even the Trade Disputes and Trade Union Act of 1927, following the general strike of 1926, failed to increase the legal liability of unions, though it outlawed the general strike and the sympathetic strike, limited the right of picketing and the use of union funds for political purposes, and restricted the union affiliations of government employees.

Labor believes that those employers who propose compulsory incorporation of unions are less than frank in giving their motives. For reasons that have been cited union leaders argue that the effect on financial liability would be extremely limited, and on racketeering even less. What, then, does labor believe the real motives to be? Philip Murray's answer is that "Under the disguise of 'making labor responsible,' the enemies of labor advocate the incorporation of labor unions as a cleverly designed effort to put them in a strait-jacket, and then into the graveyard. The United States Senate Civil Liberties Committee has revealed how employers have placed agents provocateurs inside labor unions for the purpose of disrupting and discrediting them. On some flimsy pretext such agents could demand an examination of the books of an incorporated union and obtain information valuable for union-smashing purposes. The day when labor's enemies are successful in compelling labor unions to incorporate will be a victory for them indeed,

and a defeat for the proponents of genuine collective bargaining." [20]

Vice-president Matthew Woll of the A.F. of L. denies that unions oppose incorporation to escape legal responsibility, asserting that since unincorporated unions are subject to suit, the responsibility of their members is greater than that of members of incorporated bodies. Why, then, should unions refuse to incorporate? Because, Woll declares, a voluntary, unincorporated association possesses much greater power over the admission and expulsion of members and other internal affairs. If a union were incorporated, members who had been disciplined could appeal to the courts, and the union might be involved in constant litigation. Rights granted under a corporation charter, Woll asserts, might be withdrawn the following day. No other proposal made in this country, in his view, so nearly approaches the spirit of fascism as that of compulsory incorporation of trade unions.[21]

What labor fears from incorporation, then, is not greater financial liability but endless law suits, the tying up of union funds, judicial interference in internal union affairs, suits for receivership, and lessened union control over the admission and disciplining of members. Unionists argue, moreover, that the corporate form of organization is not well suited to their purpose, internal organization, or discipline. Were incorporation to be made compulsory for unions, labor fears that a hostile political regime might refuse to grant charters, or delay a charter until an opportunity to organize workers had been lost. At a critical time, such as a strike, an action to dissolve, started by a spy or a disgruntled member or faction, might demoralize the membership. As long as so many judges are hostile to unions, labor is understandably reluctant to increase their powers to dissolve unions, place them in receivership, or regulate internal affairs. Besides, unionists see no reason why incorporation should be forced on them so long as business remains free to incorporate or not as it chooses.[22]

It is for these reasons that the labor movement discourages its affiliates from incorporating, though each union is free to

determine its own policy and some in fact have incorporated. The Screen Actors' Guild, an affiliate of the Associated Actors and Artistes of America, for example, is incorporated under the laws of California. The Brotherhood of Painters, Decorators and Paperhangers of America was incorporated under Indiana laws in 1894, and remained a corporation until 1941, when on the advice of its attorneys the corporation was dissolved and the union continued as an unincorporated, voluntary association.[23] A number of the unions of railroad workers, including the conductors, signalmen, switchmen, train dispatchers, and dining car employees, are incorporated, as are unions of post office clerks, letter carriers, railway mail clerks, and post office laborers. In some cases local unions that were involved in controversy with their national organizations have incorporated. Under the rules of most national unions the property of a dissolved or seceding local goes to the national body, and sometimes locals have hoped that incorporation would enable them to retain their treasuries if their charters were revoked or if they decided to secede.[24] Other locals have had other motives for incorporating. A great many company unions and independent unions, some of which are not free from the suspicion of employer domination, have also incorporated, perhaps in an effort to gain respectability.

Early in 1943 Colorado adopted a comprehensive "Labor Peace Act" which, among other provisions, required every union in the state to incorporate. The election of officers annually by secret ballot was made mandatory for all such corporations, the use of funds for political purposes was barred, and the reasonableness of fees or dues was made subject to review by the Industrial Commission of Colorado, which was also charged with the annual examination of financial records and the review of disciplinary action.

The entire controversy over incorporation of unions seems to have generated more heat than light. The nature of the labor contract is entirely misconceived if the ability of an employer to collect damages from a union in the event of unlawful damage is considered most important. What is much

more important to the employer is that the union abide by its agreements and co-operate to solve industrial problems. Any unlawful damage committed by unionists would almost certainly be incident to a strike, which should be avoided if the employer obeys the law of labor relations and both sides show an understanding of industrial problems and a willingness to bargain in fairness and good faith. Since unincorporated unions can be sued in the federal courts and in most state courts, little would be gained in this respect were incorporation of unions to be made compulsory. Though a few labor leaders, including William Green,[25] recognize that labor's fear of incorporation is greatly exaggerated, it remains true that labor should be free to decide for itself whether the corporate form of organization is well adapted to its needs. The real issue is regulation, not incorporation.

One of the most astute attorneys for employing groups, Walter Gordon Merritt of the League for Industrial Rights, asserts that the legal responsibility of unions is essential but that the proposal of compulsory incorporation is not sound. Incorporation is a privilege conferring limited liability, he points out, and is not forced on employers except in a few enterprises affected with a public interest. In Merritt's view:

> All of the regulations which it is desirable to impose on labor unions, can be imposed on them even though they elect to remain unincorporated. The real approach to the problem is to forget the shibboleth of incorporation and to establish proper industrial codes and rules and regulations to govern labor unions whether incorporated or unincorporated. Today, some unions are incorporated by their own election, and the fear of others to incorporate is as unfounded as the public hope that incorporation will tend to purge unionism of its unlawful phases. With adequate laws permitting unions to be sued, permitting courts to protect property rights against unlawful activities on the part of unions and requiring democratic administrations of union affairs and strict accounting as to union funds, the public can well leave the question of incorporation where it leaves the same question with employers, to the choice of the unions themselves.[26]

9. Other Proposals to Increase Union Responsibility

THE important questions, then, are whether unions should be subjected to some special form of governmental regulation, and whether the law should be altered to impose greater financial responsibility upon labor or curb certain practices that may be considered objectionable. The proposals that have been made to accomplish these objectives are so numerous and so varied that an attempt can be made here to consider only the more important of them. In the consideration of these proposals it should be remembered that unions are as subject to the general law of the land as any other group, and that the question is whether some additional form of regulation is necessary or desirable. It should also be borne in mind that some proposals are made by persons who are sympathetic to unionism and who wish to strengthen it as a social agency by the elimination of abuses, whereas other persons, fundamentally hostile to genuine collective bargaining, seek under the guise of regulation to weaken unionism and limit its effectiveness. It should also be recognized that union officials, being human, are likely to oppose any form of regulation that may be proposed, no matter how beneficial it may appear to employers, union members, or the public. In such opposition they have the sound objection that regulation would place the labor movement, which is relatively weak in political influence, at the mercy of a hostile majority, though they may also be motivated by the understandable reluctance of any group of people who exercise authority to have their actions supervised by any outside agency.

Samuel Gompers, the president until his death of the American Federation of Labor, did not deny that there were evils in the trade union movement. Illustrative of his point of view, which would likely be shared by most responsible labor leaders today, was this colloquy with Samuel Untermyer, counsel for the Joint Legislative Committee on Housing that investigated the building industry in New York between 1919 and 1923:

Q. (By Mr. Untermyer) How about confiscatory fines that are equivalent to expulsion, fines upon labor men of from $500 to $2,000 for an offense; don't you think they are equivalent to an expulsion? A. For all practical purposes they are, yes.
Q. They amount practically to expulsion? A. Yes.
Q. And they would come equally under your condemnation?
A. Yes, sir.
Q. Suppose it appeared, as it does in the record here, that the constitution of practically every labor union in this State connected with the building trades, and certainly in this city, having a constitution and by-laws, has provisions for expulsion of members without any power of review; don't you think that the State should regulate that so that the courts could have the right of review over the expulsion of members? A. No, sir.
Q. You don't? A. I do not.
Q. You think that the labor unions should be permitted to exercise this autocratic and despotic power of capital punishment without any say by the courts? A. God save labor from the courts . . .
Q. You would allow that injustice to remain unredressed until the enlightenment of the labor movement has reached the stage at which expulsion would no longer exist? A. I would, yes.[1]

The views expressed by Gompers are probably still held by a large number of labor officials and active union members, and result from a deeply-rooted conviction, the result of long experience with injunctions, convictions for picketing, and the like, that the judiciary as a whole is unsympathetic toward the labor movement. The recent liberalization of the Supreme Court has probably not affected this attitude to any material extent, for the lower ranks of the federal judiciary and the

48 state judicial systems have not been changed, and there is no assurance that the Supreme Court will remain liberal for long. As a result of New Deal legislation, however, the labor movement has changed its attitude toward the government as a whole. From a desire to see the government interfere as little as possible in the labor bargain the unions have come to welcome governmental participation. The National Industrial Recovery Act, the National Labor Relations Act, the Fair Labor Standards Act, the Social Security Act, and other New Deal legislation have helped to encourage this change in attitude. Though labor no longer distrusts government as a whole, however, it still distrusts the judiciary, and it may be expected to oppose vigorously any proposal of governmental regulation.

One of the proposals frequently advanced is that unions be required to register with a governmental agency before they can engage in organizing work, collective bargaining, or other union activities. The proposals have differed as to the information that would have to be furnished along with the application for registration, or the degree of supervision that would follow.

On December 3, 1941, when members of Congress were aroused over the strike of captive coal miners for the closed shop, the House of Representatives passed by a vote of 252 to 136 a drastic anti-strike measure which included a provision for the registration of unions. Section 8 of the bill, which was introduced by Representative Howard W. Smith of Virginia, provided that:

> Within thirty days after the date of enactment of this act and annually thereafter every labor organization, through its president or other authorized officer, shall register its identity with the National Labor Relations Board and shall state under oath the following information as the Board may require . . .
>
> The name of the labor organization.
>
> The address at which it has its principal office or does business.
>
> The names and titles of the officers.
>
> The company or companies with which the labor organization deals, if local organization.

The industry or industries in which the labor organization operates if a national organization or a craft.

Initiation fees.

Annual dues charged each member.

Assessments levied during the past twelve-month period.

Limitations on membership.

Number of paid-up members.

Date of the last election of officers.

The method of election.

The vote for and against each candidate for office.

And the date of the last detailed financial statement furnished all members and the method of publication or circulation of such statement.

With such information shall be filed under oath detailed and intelligible financial statements and a copy of the constitution and by-laws of the labor organization.

Under Section 10 of the Smith bill, any union that failed to register and file the required information was to be disqualified to act as the representative of workers in collective bargaining so long as the failure continued. In this bill registration of unions was but part of a comprehensive measure which, besides restricting defense strikes, regulated union practices in a variety of other ways. Many of the provisions of this bill, which was reintroduced by Representative Smith in March, 1943, were included in a measure reported favorably by the House Military Affairs Committee two months later.

Another proposal for union registration was introduced in Congress in June, 1941, by Representative Clare E. Hoffman of Michigan. This measure proposed to make it unlawful for a union with one or more members engaged in commerce to solicit membership or engage in any other activities affecting commerce until it had filed application for registration with the Secretary of Labor and such application had been approved. The registration statement was to include names of officers, place of headquarters, and such other information as the Secretary of Labor might require; an agreement to file annually with the Secretary of Labor a report of the auditors of the union's accounts, showing sources of receipts, persons

to whom payments were made, and balance on hand; and an agreement to comply with the act and enforce compliance by members so far as possible. Copies of constitution, by-laws, rules, and regulations were to be filed with the application. Applications were to be approved by the Secretary of Labor within thirty days, provided that the union rules showed that officers were selected and policies determined upon by vote of the membership, and that an annual, itemized audit was to be made. Registered unions were made subject to suit, and sit-down strikes were declared illegal. Registration was to be revoked by the Secretary of Labor if a union failed to comply with any of the agreements made in the application for registration, if a judgment against the organization remained unsatisfied, or if the union failed to comply with its rules concerning voting by membership or financial audits.

Other proposals for union registration have placed other requirements upon unions, reflecting the objectives that the authors had in mind. Sometimes registration has been merely part of a much broader measure, whereas in other instances registration has been the core of the proposal. The Naval Affairs Committee of the House of Representatives, in a report to the House on January 20, 1942, proposed that unions be required to register with a governmental body and furnish periodically information as to officers and finances. A bill to accomplish these objectives, applying both to labor organizations and trade associations, was introduced two days later by Chairman Carl T. Vinson of the committee. Utah has a law requiring every union within that state to register with the Industrial Commissioner. The only requirements, however, are that the principal address, the names of officers, and the international affiliation of the union be disclosed. Though the Utah measure is harmless enough, asking merely for information that is readily available, it should be apparent that compulsory registration, given an unfriendly government, could become a device for crippling unions by withholding approval or by cancelling registration.

Florida requires the filing of a certificate before any labor

organization is authorized to operate in the state. The proper circuit court may grant a charter following a hearing, if it is satisfied with the organization's motives and purposes. Anyone may attend the hearing to present evidence against the granting of the charter. The Minnesota Act of 1939 required the labor conciliator to maintain lists of unions and employers' organizations. In so far as registration is meant to insure democratic procedure the objective is desirable, and unions properly have no claim for exemption from such laws affecting other types of social agencies. However, unionists do have just cause for objection if their organizations are singled out for separate treatment, particularly if there is danger that persons unfriendly to the purposes of unionism may be given discretion to grant or withhold registration.

It should be recognized that the Utah law is merely a registration measure, whereas most of the so-called registration proposals in reality call for licensing. This has no relationship at all to the information required of business or other groups that seek incorporation, for most incorporations today occur under general laws that are virtually automatic and grant almost no discretion to the officials in charge. In the case of business, moreover, incorporation is optional, except in a few highly specialized fields, and is in fact a privilege that confers benefits. If the proposal for licensing included all types of organizations, including business, then that issue could be debated on its merits, and if it were adopted unions would have little claim for exemption. Until that time, however, there seems to be no adequate justification for singling out the labor movement for more drastic treatment.

Sometimes registration has been suggested as a weapon against racketeering, on the theory that the information required to be filed with the public authority would indicate the existence of racketeering. Where gangsters and racketeers are in positions of influence in unions, however, that fact quickly becomes known to all elements in the trade and to the local authorities as well. Any statements that racketeers file with a distant authority is certain to be doctored so as to

conceal any evidence of wrongdoing. Our present laws contain sanction enough against any form of dishonesty.

The British law under which unions may register is in no sense a precedent, for it was passed to confer benefits upon unions and under its provisions registration is voluntary. Before the law was passed British unions could not protect their benefit funds because their trade union functions were held to make them illegal, in restraint of trade. The benefit funds that many unions had accumulated made it desirable that they be able to prevent embezzlement by officers, sue to recover their property, and hold property in their own names. Accordingly the act of 1871 permitted a union to register by filing with the registrar an annual account of its funds and a copy of its rules. The rules must state the name and objects of the union and the provisions for benefits, fines and forfeitures, and amendments; the rules must also include provision for appointment and removal of trustees and officers, investment of funds, an annual audit, and inspection of the books and names of members by any person having an interest in the funds.

A union that chooses to register under the act receives certain benefits—it can hold property, sue or be sued in an action relating to union property, carry on its affairs through a board of trustees with continuing existence, and obtain a limited exemption from taxation of its benefit funds. The registrar functions only administratively, to see that the rules contain the required provisions. He has no power to require any particular form of organization or to supervise union conduct. Unregistered unions have neither these benefits nor these obligations. They may sue or be sued, but by a more cumbersome process. Under an act of 1913 a union, instead of registering, may be certified, and obtain all immunities granted unions under British laws without filing copies of rules or accounts, except political accounts. Certification, like registration, is wholly voluntary. In 1935 fewer than half the British unions were registered, though these had three-fourths of the union membership of Great Britain. Employers are not interested in

whether or not a union is registered, and in either case the organization can qualify to help administer the unemployment insurance law.[2]

In Sweden, which, like Britain, has received considerable praise in this country for its industrial relations, unions are under no obligation to register or account for funds, though both unions and employers' associations voluntarily publish statements of income, expenditures, and reserves.[3] Certain of the European countries other than Great Britain, in the democratic era, provided for registration of unions, but in each instance the unions in return received rights they had not previously enjoyed. In this country the situation is quite different, for unions would receive no additional rights and the drive for registration comes, for the most part, from groups who are strongly anti-union, and who have never become reconciled to the principles of the National Labor Relations Act. Nevertheless the American Institute of Public Opinion has reported that all sections of the population, including workers, are overwhelmingly in favor of requiring unions to register with the federal government and to report their receipts and expenditures.

The Smith and Hoffman bills indicate the type of governmental regulation frequently proposed for unions, sometimes combined with registration, sometimes without it. Frequently the proposals take the form of amendments to the National Labor Relations Act, and the penalty often proposed for failure to abide by the terms of the measure, if enacted, is loss of rights under the labor relations law, and sometimes under other labor legislation, such as the anti-injunction law, as well. Besides the types of regulation already listed there have been frequent proposals for regulation or outlawing of political contributions, restrictions upon strikes and upon picketing, prohibition of coercion or intimidation, and greater liability for damage caused by acts of the union or its members.[4]

The proposal for compulsory financial statements by unions is presented sometimes as a protection for union members and sometimes as a device to prevent racketeering, for the benefit alike of workers, employers, and the public. Sometimes, in

addition, it is argued that the public's stake in the labor movement requires that all receipts and expenditures of unions should be available to public scrutiny. Both the Smith and Hoffman bills included requirements for the filing of annual financial statements of unions with a public authority. Other proposals have also been made that the government, in the interests of union honesty and democracy, require that union books be open to members or that financial statements be filed with some public authority. The Oregon law adopted in a referendum in November, 1938, besides prohibiting unions from collecting funds in excess of their legitimate requirements, obliges them to keep their books open for the inspection of members and to render financial accounts. The Wisconsin labor relations measure adopted in 1939 requires every person acting as representative of workers in collective bargaining to keep adequate financial records and present a detailed financial report annually to each member. Early in 1943 Idaho, South Dakota, Kansas, Texas, and Colorado passed laws requiring unions to file annual statements. Employer members of the National War Labor Board, seeing that they could not prevent the grant of a maintenance-of-membership clause in the Caterpillar Tractor Company case, proposed that the union be required to file semi-annual financial statements, together with other information, with the board. This proposal was rejected by the public and labor members of the board.[5]

Here, as with registration or licensing, an important question is whether unions are seeking exemption from regulation to which other groups, including business organizations, are subjected, or whether it is proposed to single out trade unions for particular scrutiny. If the former, protests from union leaders may be discounted as a form of special pleading; if the latter, the burden is on the advocates of the proposal to show the existence of great abuses in unions, not found in other groups, that necessitate unusually drastic treatment. It is true that some union groups, particularly certain local unions, have failed to keep books at all or have kept their accounts very loosely, with large expenditures recorded, without itemization, under some very general heading. In other instances certain

forms of income have not been recorded on the books, and in still other cases officers have mingled union funds with their personal accounts. Where racketeers have influence in a union the books obviously will not show the correct picture, any more than dishonest businessmen will show swindles or bribes on their books, or a dishonest bookkeeper will keep proper entries of his embezzlements.

Should, then, the government require financial statements of all types of organizations to be registered with a public authority? This would not disclose false entries, nor would casual examination, assuming a minimum of bookkeeping knowledge on the part of the guilty persons. Money paid to racketeers, whether by unions or by businessmen, would be disguised on the books, as would bribes or other illicit expenditures. The moving picture magnates who paid huge sums to crooked leaders of the stage employees' union concealed their payments on the company books by padding vouchers, listing imaginary gifts to film critics, placing nominees of the crooked union heads on the payroll at huge salaries, or paying large "commissions" to them. Nor were these the only instances of false accounts in the books of at least one of the movie magnates, Joseph M. Schenck of the Twentieth Century-Fox Film Corporation, who with his personal bookkeeper was convicted of income tax fraud. Crooked unionists may be expected similarly to disguise their illegal operations. Illicit income, such as bribes taken by a dishonest union official, would not go through the union accounts at all, but would simply be pocketed by the guilty party. Nor would requirements of affidavits help, for anyone who would engage in embezzlement or extortion would hardly shrink from perjury. In any event union crooks, like others, can be proceeded against under the laws on embezzlement, extortion, and the like, or for income tax violation.

If the requirement is for auditing by a government authority, then indeed false entries might be disclosed. To be fair, however, the government would have to impose this requirement upon all groups, including business. No one has yet advanced such a proposal, at any rate, not seriously. Even

though some union accounting has been bad, there is nothing to indicate that unions as a group have financial practices poorer than those of other organizations. If it is argued that the expenditures of unions in organizing campaigns or strikes are affected with a public interest, and should therefore be exposed to public scrutiny, then obviously the same is true of the expenditures of employers' associations and individual employers in their efforts to avoid or defeat unions. In any event, there seems to be no sound reason for requiring public financial reports of unions when no such requirement is made of other groups.

In the overwhelming majority of unions the members receive full financial reports now, or can decide by simple majority vote to receive such reports as frequently and in as great detail as they desire. In a great many unions discretion is no longer vested in local financial officers; all such officers are bonded, uniform bookkeeping practices are prescribed, and auditors are sent from the national organization to examine the accounts. The problem with regard to accounting occurs in unions where standards are lower, and where funds may be mismanaged without full and adequate reports. Court action to compel an accounting may be resorted to if the will of the membership is ignored, but apathy, ignorance, fear, and lack of funds are in the way. It is the rank-and-file member, not the employer, who needs protection and who should be able to obtain access to the books without a long and expensive court proceeding. The public, however, must guard against any proposal which on its face seems designed to protect members from unscrupulous union leaders, but which is really intended to aid anti-union employers. So far as the salaries of national officers are concerned, these are not secret but are fixed by convention action and embodied in the union constitution, copies of which are usually available to every member and are on file in a great many libraries as well.

It has already been noted that unions generally give complete financial statements to convention delegates, and that these statements are usually bound with the proceedings, and are available to the public in many libraries. A number of

unions, in addition, issue full financial statements annually or semi-annually to every member, usually by printing in the union newspaper or magazine, and these statements are also released to the daily press for publication. The unions following this practice are for the most part the large and successful ones, with the bulk of their industries already under collective agreement. Unions that are just in the process of establishing themselves, on the other hand, are reluctant to publish information that might prove of value to the employers whose plants they are seeking to organize or with whom they are about to engage in collective bargaining. If the financial statement shows that the union could probably not afford a serious strike the employers, understandably enough, might make few concessions in collective bargaining, and the anti-union ones among them might be encouraged to resist organization in every way possible. Expenditures might become the subject of anti-union propaganda, engaged in by employers in an effort to convince workers that union dues were excessive and union funds wasted.

The attitude of the labor movement to the proposal that unions be compelled to give out public financial statements is thus stated by Philip Murray:

> This attempt to "make labor responsible" has always amused me. All the more so, because of the 475,000 private corporations in the United States, less than five per cent give out public financial statements. A much larger percentage of the labor unions in the United States give out financial statements. The United Mine Workers of America, of which I am vice-president, is one of the older and well established unions. It has virtually every coal operator under contract. For the past seven years it has assumed responsibilities for the welfare of the bituminous coal industry, for example, that far transcend any responsibilities ever assumed by the organized coal operators. Its position is recognized as invulnerable. As a result, every six months the United Mine Workers makes public its financial accounts. The S.W.O.C. is a new union, still violently opposed by a minority of the steel employers. It does not give out a public financial statement because of the obvious reason that its enemies would distort its meaning and significance for the purpose of malign-

ing and harassing the S.W.O.C. After the entire industry is under written collective bargaining contracts, S.W.O.C.'s financial accounts no doubt will be made public as are those of the United Mine Workers, and, I feel, will receive as little public notice as the statements of the mine workers' union now do.[6]

Other proposals call for government supervision of strike votes or union elections, or other regulation of union procedure. The Smith bill, for example, contains a provision outlawing strikes in defense industry unless the workers who would be affected first vote in favor of such action by secret ballot in an election conducted by the United States Conciliation Service. Other proposals have also been made, some in legislation introduced in Congress, to forbid strikes unless the majority of the workers first approve by secret ballot, and such a provision was incorporated in the Wisconsin Act of 1939. Numerous proposals were made during the defense crisis beginning in 1940 for the outlawing during the emergency of strikes for the closed shop, and some Congressional support was reported for a proposal to forbid the granting of a union shop to any labor organization which did not publicly account for its funds or provide for regular and frequent elections under government supervision.

Another suggestion frequently made is that unions be compelled to hold annual election of officers by secret ballot, perhaps under the supervision of the National Labor Relations Board. Still other critics propose that a union should be recognized as a collective bargaining agent under the labor relations law only if initiation fees and dues are fixed at reasonable sums and if there is no unreasonable limitation on membership, as by the exclusion of Negroes. Proposals have been made for legislation to require unions to admit qualified applicants. The Smith bill would deny the benefits of the National Labor Relations Act to any union which knowingly or negligently permitted Communists, Bundists, or persons convicted of a felony involving moral turpitude to hold any appointive or elective office. It is a sad commentary on the labor movement that a provision such as this latter one should have to be pro-

posed in legislation, that the trade unions themselves should not have acted long ago to make it impossible for racketeers and other wrongdoers to hold positions of trust and responsibility.

The judicial process within unions has likewise been subjected to a great deal of criticism, and it has been suggested that a Bill of Rights be recognized for members, that suspension or expulsion be permitted only after a convention vote, that members be protected by law when making complaints, and that provision be made for the swift redress of grievances within unions. One rank-and-file union member argues persuasively, on the basis of his own experience, that an average worker is helpless in the hands of autocratic union officials in a closed shop industry; that justice within unions can be controlled and perverted by the officials; that the penalty of expulsion from a union, which may carry with it the loss of one's job and the inability to obtain another in the industry, is too drastic to escape impartial supervision; and that resort to the courts is too expensive for a worker and takes far too long. He proposes that the labor movement establish general union courts so that union members charged with violations of the rules of their organization be tried before a jury composed of members of other unions, and that the government should establish labor courts on the same level as juvenile or domestic relations courts to which members might bring their complaints against treatment by their officials.[7] Others have proposed that the disciplining of members by unions, including expulsions, suspensions, and fines, be made reviewable by the N.L.R.B.

There can be no doubt that a great many unions have paid too little attention to their judicial machinery. The judicial function in unions should be separated from the legislative and administrative machinery, with care taken that judges and juries be free from official control and that prompt appeal be allowed to an impartial tribunal. National unions and union federations should insist that their subordinate units and their affiliates establish suitable judicial machinery.

There should be some committee or other agency within the labor movement to which aggrieved members could go with complaints, and be assured of an impartial investigation and protection against discrimination. This should be a function of the labor movement, not subject to governmental regulation. By failing to pay proper attention to such matters, however, the labor movement is inviting supervision by the state.

The suggestion has been made widely, particularly following campaigns in which unions have taken an active part, that political contributions or expenditures by unions be barred. It is asserted that such expenditures out of union funds are unfair to the minority of union members, whose money is thus spent to support candidates to whom they may be opposed. Unionists reply that their interests are involved in elections and that, whatever purpose money may be spent for, there may be a minority opposed to the action. So long as free discussion is allowed and a fair vote taken, they say, the minority has no just complaint. They point out, furthermore, that individual businessmen may be able to make substantial contributions to the party and candidates they favor, whereas the personal resources of most workers are negligible. To take from unions the right to make political expenditures, they point out, is virtually to deny workers effective political influence.

In Great Britain a similar controversy long raged. In 1910 a court decision held political expenditures to be beyond the powers of a union, but three years later Parliament legalized such expenditures provided that the members approved them by majority vote and that any member by written notice to his union could relieve himself of any obligation. Following the British general strike of 1926, Parliament sought to weaken the Labor Party by permitting political contributions only from members who filed with their unions written notice of their willingness to contribute. All British unions are required to file with a government official annual accounts of their political funds.[8]

Various restrictions on strikes, picketing, and boycotts have

been suggested in this country from time to time, and the number of such proposals increased sharply during the defense crisis. Perhaps the proposal most frequently made has been for a 30-day notice before strikes in defense industry could be called. Before the defense emergency arose a "cooling-off" period was frequently suggested for all industry, with railroad labor legislation pointed to as a model. On the railroads the provision for delay in strikes or changes by management in wages, rules, or working conditions has worked well, and has helped, along with other provisions of the law, in keeping interruptions in work to a minimum. In railroad labor legislation, however, the cooling-off period is not an isolated requirement, but forms an integral part of a comprehensive plan for the peaceful settlement of disputes.

On the railroads the plan works so well partly because of union strength and experience and management's attitude, partly because a government mediation board works with both sides long before the dispute reaches the stage of strike action, and partly because the provisions were framed jointly by labor and management and then embodied in legislation by Congress. Railroad labor has long been organized, and management today makes no effort to destroy the unions. Railroad unions therefore enjoy security that labor organizations in most other industries lacked until the constitutionality of the National Labor Relations Act was upheld, and rail transportation is not subject to the high seasonal peaks and periodic mass lay-offs that characterize most manufacturing, building, and other enterprises. In many of these fields the 60-day wait required on the railroads after the appointment of an emergency board would carry the industry into the dull season, when strike action would be ineffective. Railroad unionists, moreover, are experienced, disciplined, and union-conscious, and can delay strike action indefinitely without organizational loss. Both unions and management have learned from long experience the costliness of strikes, and each has learned to respect the fighting power of the other. Under these circumstances both sides are usually prepared to accept a reasonable

proposal framed by an impartial agency rather than precipitate a conflict.

In other industries the barriers to be overcome are higher and more difficult. Until the constitutionality of the National Labor Relations Act was upheld in 1937 trade unions enjoyed no legal protection, and anti-unionism was a settled policy of large sections of American industry. The attitudes then developed still persist, despite a reversal on the part of most employers of their earlier attitude. A group of newly-organized workers, moreover, may have weak organizational loyalties, and in addition they may fear discrimination or be suspicious of each other. Some act of management, such as the discharge of an active unionist, may arouse them to strike action at a particular time, whereas 30 or more days of inaction may find little either of fighting spirit or union interest remaining. An N.L.R.B. proceeding might indeed reinstate a discharged worker without a strike, but the company could force delays during which the newly formed union might disintegrate. In Michigan and Minnesota, where the cooling-off periods were imposed by legislative action despite labor's opposition, the effect has been greatly to increase the number of strike votes. In industries in which labor is now well organized and relations are governed largely by collective bargaining, on the other hand, a plan similar to that on the railroads, if supported by all parties, might make a significant contribution to industrial peace.

Other limitations on strikes that have been suggested, besides a cooling-off period and government supervision of a strike vote, include the outlawing of sit-down strikes, sympathetic strikes, jurisdictional strikes, and strikes in violation of contract. The Smith bill would allow picketing only by persons who were bona fide employees of the establishment immediately prior to the beginning of the dispute. Others would bar picketing by the losing union in an election conducted by the National Labor Relations Board.[9] The secondary boycott would be outlawed under many of the proposals, and the check-off would be declared illegal. Occasionally it is still pro-

posed that all strikes be outlawed by a process of compulsory arbitration, but experience in Kansas, Australia, and elsewhere indicates that such a law is not likely to prevent strikes in a democracy, except perhaps in time of war. In March, 1943, after the war had brought on a serious labor shortage, Representative Smith introduced a bill to nullify all union rules or contract provisions prescribing the minimum number of employees on any project, their period of training, the kind of tools they might use, or any requirement that an employer who hired non-unionists must employ an equal number of union members to be present while the work was being done.

Among the various amendments to the National Labor Relations Act that have been proposed, one of the most persistent has been the suggestion that coercion by unions or by fellow-workers be outlawed, along with coercion by employers, as an unfair labor practice. Though this sounds fair on its face, the term "coercion" is really used in two different senses. The coercion prohibited to employers is economic coercion—dismissal or other discrimination or the threat of it. The coercion that unionists are most likely to use on their fellow-workers, however, is the coercion of their fists, which is already prohibited as assault and battery. If a union or its members do indeed commit or threaten physical violence, complaint to the nearest police court should quickly end the practice and punish those who engaged in it. There is no justification, in addition, for denying to workers the benefits of the National Labor Relations Act. In some cases the National War Labor Board has ordered that a union should not coerce any employee to join, with provision that any employee who claimed he had been coerced should have the right to impartial trial by an umpire.[10]

The state labor relations acts passed in Wisconsin, Pennsylvania, Michigan, and Minnesota in 1939 all had provisions against unfair labor practices by labor as well as by employers. The Wisconsin measure, besides barring the check-off of union dues unless authorized in writing, bars coercion or intimidation by labor, along with mass picketing, secondary boycotts, picketing or boycotting in the absence of a strike, and

sit-down strikes. The other three state laws contain somewhat similar lists of unfair labor practices by labor. The Pennsylvania act makes it a complete defense against a charge of unfair labor practices to show that the complainant is also guilty of unfair labor practices. The check-off is forbidden except by majority vote of the workers and by individual authorization. The sit-down strike is made an unfair labor practice, as is the coercion of fellow-workers in the matter of union membership or choice of bargaining agent and the coercion of an employer to induce him to meet demands.

The Michigan law bars sit-down strikes and intimidation of workers to induce them to join a union or keep them from working. The Minnesota act makes it an unfair labor practice for a worker or a union to call a strike in violation of an agreement, to strike without giving the required notice, to engage in a sit-down strike, to picket a place of employment unless a strike is in progress and unless the majority of pickets are employees, or to compel a worker to join a union or strike against his will. Both the Michigan and the Minnesota laws provide for cooling-off periods before a strike or lock-out may be instituted. In both states, for industries affected with a public interest, a notice of intention to strike or lock out must be filed 30 days in advance. For other industries the waiting period is five days in Michigan and ten in Minnesota. Georgia also has a law requiring a waiting period before a strike may be called.

In the winter of 1943, according to the U. S. Department of Labor, more bills relating to union activity were introduced in the various state legislatures than in any earlier year, and all but a small minority of the bills were restrictive or regulatory. A number of the measures proposed the registration or licensing of labor organizations, called for financial reports from them, or sought to place restrictions on strikes or picketing. One of the more drastic of these proposals, enacted in Kansas, provided for the licensing of union officials and the filing by all unions of annual financial statements, and also outlawed sit-down strikes, jurisdictional strikes, and strikes

not authorized by majority vote. Texas adopted a measure which required unions to file annual financial statements, forbade the collection of fees or dues in excess of reasonable requirements, and empowered the courts to order reinstatement of members expelled without good cause. Organizers were required first to obtain a card from the Secretary of State, and persons convicted of a felony were made ineligible to serve as union officers. Colorado passed a law creating an Industrial Commission with power to examine unions' financial accounts, review the reasonableness of fees, and pass on cases of discipline. Unions were required to incorporate, sit-down strikes and political contributions were barred, and unfair labor practices by unions were listed and prohibited. A bill passed by one chamber of the Minnesota legislature proposed to bar any person convicted of a felony or crime of violence from acting as a union representative, and to require all unions to be licensed and all officers to be elected annually by secret vote. The Florida House approved a bill opening union records to state inspection, limiting income to reasonable requirements, and requiring annual election of officers.[11]

Still other proposals have sought to impose upon unions greater financial responsibility for damage caused by their acts or by acts of their members. It has already been shown that unions are subject to suit, though unincorporated, in three-fourths of the states, including almost all the industrialized ones in which unions would be most active. As for the degree of liability imposed upon unions for acts of their officers or members, unions should properly be held responsible, along with other types of organizations, for acts authorized by the group or by its officers, or for acts ratified after their commission. This rule is now followed in some states; in others more drastic rules are followed, which in reality impose upon unions more rigid tests of responsibility than those imposed upon other organizations. With regard to liability for illegal damage unions should receive no special privileges, but merely a fair interpretation of the law of agency to which all other groups are subject. In all fairness the foolish act of a hot-

headed member in time of stress should be his responsibility, not that of the organization unless, according to reasonable tests, it authorized or ratified the act. It should be remembered in this connection that some employers have used agents provocateurs in unions, some of whom have risen to high office. If unions were made responsible for unauthorized acts by members, unscrupulous employers could drain union treasuries by having their agents commit illegal acts of violence, ostensibly in the union behalf.

It has also been suggested that greater power of enforcement be provided for union agreements. Proposals of this type differ from most of those that have been considered in that their objective is to strengthen, not weaken, collective bargaining. Better enforcement of agreements would aid the innocent party, whether union or employer, whenever a contract was violated. In earlier years, when collective agreements were not considered by the courts as binding contracts, there was much more point to this type of proposal than there is today, when collective agreements may be enforced in court, if the grievance machinery provided for in the agreement fails, under rules applicable to other types of contracts.

Nevertheless proposals have been made by competent observers in recent years for changes in the law designed to strengthen union agreements. The Special Committee on the Government and Labor of the Twentieth Century Fund, which was headed by William H. Davis and which included in its membership such students of labor relations as Sumner H. Slichter and William M. Leiserson, among others, proposed that union agreements, if the parties so desired, be registered with an appropriate governmental agency, which would then be empowered to enforce the agreements.[12] It has also been suggested that state agencies, along with a federal one, be empowered to enforce registered agreements, that all registered agreements be required to contain machinery for the handling of grievances, and that the violation of an agreement be made an unfair labor practice under the National Labor Relations Act.[13] Proposals of this sort, coming from believers in collec-

tive bargaining who seek to strengthen it, are deserving of serious consideration.

Some of the proposals that have been offered in an effort to increase union responsibility, both in a narrow financial and in a larger social sense, have considerable merit. There is room for improvement in the relations of unions to their members, to employers, and to the public, as indeed there has been improvement in the past. Nevertheless abuses have been tolerated in a number of unions, to the detriment of non-unionists, rank-and-file union members, employers, and the general public. In the past organized labor has successfully pleaded that abuses would disappear in time, and that in any event unions were voluntary institutions, constantly battling to establish and maintain themselves in the face of determined employer opposition. Now, however, the government protects labor's right to organize and compels employers under appropriate circumstances to recognize and deal with labor organizations. The prevalence of the closed or union shop, moreover, makes union membership, as a practical matter, a compulsory rather than a voluntary act in a growing number of industries and areas.

The labor movement would be wise to support a program of reform proposed by those who wish to strengthen unionism, who seek to force the more backward unions to live up to standards which, for the most part, are already observed in the more progressive organizations. Barring this, some disclosure of serious wrongdoing in some union may lead, in a moment of anger such as that in which the House of Representatives passed the Smith bill, to the imposition of unwise and unduly burdensome restraints, proposed by those who seek to hamper labor's growth and diminish its influence. In the following chapter is set forth a program that, while eliminating abuses and increasing union responsibility, would make for larger and stronger unions and more effective collective bargaining. At the same time such a program should result in better morale among union members, increased respect on the part of employers, and more favorable public opinion.

10. Toward More Responsible Trade Unionism

MANY of the faults of American trade unions discussed in the preceding pages may be thought of as the growing pains of a young and vigorous movement which has yet to reach that stage of maturity upon which a full sense of responsibility depends. In the past unions have had to fight for every objective, beginning with the right to exist, against spies and private guards, against injunctions and police. Under the circumstances it was to be expected that two-fisted, hard-hitting men should emerge as leaders. If some of them had little knowledge of the economics of their industries or little regard for the niceties of parliamentary procedure within their unions, that should be ascribed to the conditions under which they arose rather than to any perverseness of labor leadership. The rank-and-file members of a union must learn through long experience how to function democratically and effectively, just as the officials must learn what concessions an industry can grant under particular conditions and still prosper. In all of these respects responsibility is the product of growth; it can hardly be imposed by legislative fiat, though the co-operation of employers and the wise actions of government may speed its attainment.

At the same time the labor movement has obligations to its members, to employers, and to the public consonant with the power it has achieved. Members are entitled to honest unionism and to a high type of union official. They are entitled to fair admission policies, democratic administration, and judicial machinery within unions that promptly and effectively

protects them from arbitrary or despotic treatment. They are entitled to the lowest dues consistent with efficient administration, and to an honest dollar's worth of service for every dollar they pay in. Only unions of this type, in the long run, will command the loyalty of their members that is necessary if the labor movement is to be a growing and progressive force in the community.

Employers, similarly, are entitled to honest unionism and to scrupulous adherence to contracts. They are entitled to trade unions that use peaceful means, that seek the highest possible production consistent with the health and safety of workers, that frame their bargaining objectives in the light of economic realities, and that seek to place the employers with whom they deal on an equal competitive level. Employers are entitled to freedom from jurisdictional strikes and from unreasonable interference in business affairs. They can properly expect that unions will place in positions of authority only persons of good character. If a local union fails to live up to its obligations in any of these respects, employers are entitled to prompt corrective action by the national union or the federation with which the group is affiliated.

The public likewise has a stake in honest, open, and democratic unionism. Since trade unionism is encouraged by law as a matter of public policy, the public is rightly interested in seeing that unionism is a means of helping the entire working class, not a device for excluding the many so that the few many enjoy monopoly benefits. The public is entitled to fairly administered unions that seek greater production and higher living standards for all, and that assume their fair share of responsibility for the production essential to national defense in a period of crisis.

It should not be thought that labor alone must change its attitude in certain respects if we are to achieve satisfactory labor relations. Employers, likewise, must make important changes. The charge of labor irresponsibility is too often a weapon of anti-union employers, rather than a complaint of those who try sincerely to deal with labor organizations. Em-

ployers must observe the labor relations law in good faith, recognize majority unions and bargain fairly with them, and abide scrupulously by the letter and spirit of their contracts. They must give up their spies, their professional strikebreakers, and their company unions, and retrain their foremen and management officials to co-operate with unions instead of fighting them. They must adopt a sympathetic and understanding attitude in the early stages of trade unionism and collective bargaining, when the union membership is not disciplined and the officials are inexperienced. They must recognize that satisfactory collective bargaining relations are realized only when both sides work hard to achieve them. They should seek to discover and eliminate causes of conflicts, and themselves accept a proper share of responsibility for achieving peaceful industrial relations and promoting the common good.

Government and the law, similarly, must make necessary adjustments. Too large a percentage of government officials, particularly in the judiciary, have sympathized frankly with employers in the labor struggle and have known and cared little of the problems of wage-earners and the organizations they sought to build. Other government representatives, comprising a much smaller number, have been equally partisan in support of the labor movement. Administrative officials, and particularly police heads, should remember that human relations call for sympathetic understanding, and that the use of force often creates greater problems for the future. The schools in working class areas should not seek to instill in children an anti-union bias. The public must recognize that if local government is corrupt there is little hope for a decent labor movement in its area. Higher standards of policing must be established, and the law must place more emphasis on human rights and less on property rights.

Though some unions may be administered in an undemocratic fashion, it must be remembered, the union itself is an instrument of democracy in economic life. In the absence of unionism each employer has the power of an autocrat in his relations with his workers. A few are benevolent and enlight-

ened rulers, a few are anti-social despots, and the great majority range somewhere in between. In no event does any real democracy, in the absence of unionism, exist in industry, for such limited rights as a benevolent employer may confer upon his workers are theirs only at his sufferance. In a highly industrialized nation, in turn, an absence of democracy in industry is bound to affect the degree of democracy that can exist in political life.

Unions, however, cannot expect to abuse their power and still escape government regulation. Unionists are entirely justified in opposing regulation so long as it is proposed in a spirit of anti-unionism, so long as the men who frame legislation and the men who will administer it seek to limit the growth and restrict the effectiveness of the labor movement. What unions cannot legitimately object to is some degree of regulation with the object of removing abuses that now hamper their growth and weaken the loyalty of their members. So long as labor is relatively lacking in political power, needless to say, it has no assurance that even the best-intentioned legislation will not be so administered or interpreted as to hamper the legitimate function of the labor movement to win for its members an increasing share in the administration of industry and the highest living standards that industry can legitimately afford. Nevertheless, government regulation of unions, as of every other factor in economic life, will inevitably come. The labor movement is gaining too much power to hope that it can avoid permanently some degree of supervision for the common good. Unions must act quickly to end abuses if they would delay regulation by the government until all employers give up anti-unionism, or until labor has sufficient political influence to assure the appointment of fair-minded administrators and judges.

No longer can labor protest that it should permanently escape any degree of regulation, save only that which may exist under the ordinary criminal laws, because it is voluntary in character. The truth is that, at least in an economic sense, unionism is not voluntary in many areas of industry. Employ-

ers are now legally obligated to bargain with unions desired by a majority of their workers in an appropriate bargaining unit. Is not the government likewise obligated to see that such unions are honestly and democratically administered? The union, moreover, bargains for all workers in the unit, not merely for its members. Indeed, it is entirely possible for a union, by receiving the votes of non-members, to be certified as exclusive bargaining agency though it has not in its membership a single worker within the unit. Who, then, will protect the non-members, whether they vote for or against the union? Indeed, who will protect the union members if their organization, certified as bargaining agency by the government, is dictatorily operated, if it is officered by racketeers or irresponsible leaders? It is not enough to say, in the light of the abuses that have been discussed in the preceding chapters, that all workers should join the organization and fight for democratic rights and clean unionism.

Once the union has been certified as exclusive bargaining agency it may ask for and obtain a closed shop contract, and where an industry in any area is completely unionized under such contracts a worker must belong to the union if he is to be employed in that trade. Society cannot thus permit him to be forced into a union unless he is afforded protection against abuses in union administration. Indeed workers may desire to join the union, as required by a closed shop provision, and yet some of them, because of their race or for other improper reasons, may be barred from membership and thereby deprived of employment. From the point of view of the employer, the union member, and the non-unionist alike, the legal privileges accorded labor organizations would seem to require the government to see that certain admitted abuses are eliminated.

In the highly complex society in which we live various types of organizations, once considered wholly private in character, now have become so large and powerful, and so vitally affect our welfare, that government must establish proper standards of behavior for them. Stock and commodity exchanges, banks

and insurance companies, and other types of organizations, besides unions, fall into this category. The regulation of such organizations, once thought private and voluntary but now becoming quasi-public in nature, will be one of the important administrative problems of the future.

In her annual report for the year ending June 30, 1941, Secretary of Labor Frances Perkins observed that the private affairs of unions had become matters of public interest and significance. The American public would demand of unions, as of other institutions, she said, scrupulous accounting of funds, democratic procedures, observance of contracts, and the end of excessive practices such as closed memberships and high dues, raiding of another union's membership, jurisdictional strikes, and secondary boycotts. Now that unions enjoy legal protection, she added, any need for such excessive practices had been largely modified and they should be abandoned.[1]

In two important respects governmental review of trade union actions is now desirable. The first of these relates to the removal of the various inequitable restrictions on membership that now bar the way of workers who desire to join unions. That there should be a racial, religious, political, or sex test of membership is wholly repugnant to the spirit that should activate the labor movement. Negroes and other minorities should not be barred from membership, initiation fees should be kept at a reasonable level, apprenticeship regulations should be fairly administered, the membership should not be restricted to an unreasonably low number or the books of the organization arbitrarily closed. If any category of workers with less than full membership rights is created, such as class B, junior, or permit members, there should be a sound reason for such action, the device should preferably be of a temporary nature, and the rights of workers in such a group should be fully protected.

The other urgently needed reform is an impartial review of disciplinary procedure. The fining, suspension, or expulsion of members and the revocation of charters of locals should

be subject to prompt and impartial review, with the organization held responsible for loss of wages caused a member by improper suspension or expulsion under a closed shop contract. Members should receive full protection against punishment or discriminatory treatment as a result of complaints to governmental officials. These two proposals, for governmental review of union admission policy and discipline, at the very least should apply where the closed or union shop is in effect.

With regard to the internal union reforms here suggested, an important problem is the type of enforcement that would prove most effective. It would largely defeat the purpose if the individual worker had to go to the regular courts to enforce his rights, since too heavy an expense would be involved and too great a delay encountered. The ordinary local law enforcement agencies, similarly, do not have the specialized knowledge required for a proper understanding of the problem. Preferable by far would be a grant of jurisdiction over such problems to a specialized administrative agency such as the National Labor Relations Board, which could establish and enforce reasonable standards without sacrificing the flexibility so essential in such a rapidly changing field as labor relations. Some proposals have been made that unions failing to maintain proper standards of admission or democracy be deprived of their rights under the National Labor Relations Act. Some powerful unions, however, might prefer to lose such rights rather than, for example, admit Negroes, relying upon strike action to force recognition and collective bargaining from employers. This would neither accomplish the purpose of the law nor contribute to industrial peace and stability. It would be far preferable for inequitable restrictions on membership and improper disciplinary action to be made unfair labor practices by unions, with the National Labor Relations Board, for example, authorized to receive and investigate charges of violation of these standards by aggrieved workers. The Board would then proceed against unions found to have violated proper standards in the same way that the National Labor Relations Act is now enforced

against employers, by complaints and cease and desist orders, with enforcement by the courts. Congress might fix a maximum initiation fee, perhaps of $25, or it might merely make the reasonableness of the fee subject to review by the Board.

In two other respects legislation to protect the rights of union members may be desirable in the not far distant future. Democracy in union affairs is assured only if there is fair and frequent election of officers, preferably yearly in local unions and every second or third year in national unions. If the practices of some of the worst unions do not improve it may become necessary to write such a provision into the law, giving a governmental agency authority to conduct a union election if an honest vote seems unlikely otherwise. Similarly, it may become necessary to protect members against loose handling of funds, by requiring that adequate books be kept, every official handling money be bonded, audits be made periodically, members receive regular and full financial statements, and reasonable opportunity be afforded any member who so desires to inspect the books. Legislation to accomplish these objectives is not advocated at the present time, however, in the belief that enactment of the other proposals might spur the labor movement to eliminate abuses.

Employers, for their part, are entitled to relief from particularly burdensome practices of unions. Where a majority union has been certified by the N.L.R.B. a strike by a minority union should be illegal, as should picketing by such a union. Indeed, the employer might likely be found guilty of an unfair labor practice if he did what such strikers or pickets desired. It should be remembered that picketing, besides being a form of free speech, is also a weapon that may subject the employer to a serious economic loss.

Some method must likewise be found to reduce the number of jurisdictional strikes, if indeed they cannot be completely eliminated. In the typical jurisdictional strike the dispute is really between two unions, with the employer an innocent victim. Until such time as the labor movement establishes adequate machinery for the elimination of such disputes, it

might help to have a governmental board appointed to which the employer could appeal, with strikes against awards of such a board held illegal. Such a board should assume jurisdiction only where the labor movement has failed to resolve the issue; or, if the proper union body has acted upon the issue, the board should intervene only to enforce its decision.

For the protection of employers and unions alike, some means should be found for strengthening union agreements. The proposal that the parties be enabled to register agreements with a governmental agency, which could then enforce the agreements, merits trial. At the same time collective bargaining would be strengthened if more national associations of employers were formed in various industries, and national collective agreements then negotiated in place of the individual contracts now prevalent. More attention should be paid by unions and employers to the establishment of arbitration machinery, by reference to which grievances and disputes over the interpretation of contract provisions could be brought to a speedy and authoritative conclusion.

The public, along with workers and employers, is entitled to a clean labor movement, free from any suspicion of graft or racketeering. No special legislation seems needed here, since vigorous enforcement of existing laws should suffice to put every racketeer behind bars. The type of legislation often proposed, the compulsory filing of financial information with a public authority, would hardly serve the purpose, since improper proceedings would not appear on the books or would be disguised. Public balance sheets, on the contrary, might harm weak unions by encouraging employers to resist their proposals. Nevertheless it is wise for unions to publicize their financial statements, unless substantial harm in collective bargaining is feared, since such action builds up a favorable public attitude. With regard to political expenditures the situation is different, for such sums are properly a matter of public interest. No legitimate interest of the labor movement would be harmed by the compulsory publication of such data, and while the matter does not merit the widespread attention it

has received the passing of such a law would remove a source of criticism. In this respect the labor movement can afford to be above suspicion.

More important is the need to keep the most essential services functioning, whether they are operated by governmental bodies, nonprofit organizations, or private utility companies. The public need for police and fire protection, hospitals, water, sanitation, and power should be superior to the desire of workers in those industries to correct their grievances by strike action. This does not mean that unionism should be outlawed, but merely that the strike weapon should be surrendered by such workers, as many unions of government employees have already surrendered it. If such strikes are to be outlawed, however, adequate machinery for the prompt and satisfactory peaceful adjustment of disputes must be created. The areas in which strike action is prohibited should be narrowly restricted, and with this limitation on labor's rights should go a prohibition of anti-union activity on the part of the employers. Where public hardship is caused without health being directly threatened, as by strikes of transportation workers, the right to strike should be retained but governmental machinery, such as now exists for the railroads, should be created to remove the causes of disagreements and minimize the number of strikes. So far as violence is concerned, that is illegal now, and the need is not for new legislation but for high standards of police administration.

The compulsory incorporation of unions, it has been seen, would accomplish no desirable purpose, and the proposal of registration is largely meaningless unless registration becomes a device for licensing, which would be wholly unjustified. Nevertheless unions should not be allowed to escape proper financial responsibility, nor should they be permitted to fall short of proper standards, for the protection of workers, employers, and the public alike. Certainly they should be subject to suit, whether incorporated or not, and be answerable for illegal damage sustained by members, employers, or the general public, according to reasonable tests of agency.

Legislation to improve in certain respects the conduct of employers is likewise desirable. Just as unions, for example, should be forbidden to raise a racial or religious bar to membership, so should employers and government agencies be forbidden to raise such a bar to employment. The Committee on Fair Employment Practice appointed by President Roosevelt should become, or be succeeded by, a permanent agency, enforcing anti-discrimination legislation on employers and unions alike. To supplement the National Labor Relations Act Senator Robert M. La Follette's proposed oppressive labor practices act should be adopted, with its explicit prohibitions of such improper practices of management as the use of spies, industrial munitions, the blacklist, yellow dog contracts, and other devices of anti-unionism. Just as workers should be protected against any improper disciplining by unions, moreover, so they should receive protection against improper discharge by employers. Now they receive help from a governmental agency only when the improper discharge is motivated by their union membership or activity.

Workers, employers, and the public alike would benefit if a sound plan acceptable to all parties could be worked out for postponing strikes while the disputes leading to them might be adjusted. A requirement for a cooling-off period, standing alone, would be regarded by workers primarily, if not solely, as a limitation upon their rights and increase bitterness rather than promote industrial peace. The chief result might be merely to increase enormously the number of cases in which strike votes are taken. To be effective the waiting period, following notice of an intent to change conditions, must, as on the railroads, be an incident in a comprehensive program designed to remove the causes of dissatisfaction that periodically erupt in strikes. The waiting period should begin with notice to a suitable federal agency, which would be required to investigate the dispute during the interval and make recommendations for settlement. If the governmental agency enjoyed the confidence of both sides, its recommendations should avert a large number of strikes, with either party free to refuse the

recommendation and precipitate a conflict if it so desired. Because the situation does not remain static in seasonal industry, the agency performing this task must be geared to quick action. It should probably be required, barring exceptional circumstances, to report within 15 days in seasonal industries and 30 days in others. No such plan is likely to be very effective, however, unless it enjoys substantial acceptance and support by both parties. Since labor has relinquished the right to strike for the duration of the war, this question is not of immediate urgency but rather forms part of the larger problem of postwar industrial relationships.

Probably the most constructive approach to this problem, as well as to others that have been considered, would be for the government to appoint a commission made up of leading representatives of organized labor, management, and the public, to frame a comprehensive plan for the avoidance of industrial strife and the satisfactory adjustment of labor disputes in the postwar period. If strife can be eliminated to win the war, surely it can be minimized to achieve prosperity and sound industrial relations following the war. In the interval unions and employers will have had valuable experience in solving their problems peacefully and in co-operating for maximum productivity. The labor movement should then be soundly established, and anti-unionism among employers should have greatly diminished. If such a commission can frame a plan for the postponement of strikes, pending investigation and recommendations by an impartial agency, Congress would probably embody such proposals in legislation as was done on the railroads. A plan thus voluntarily entered into, with necessary safeguards for seasonal industry and other special problems, should have great likelihood of success, whereas one imposed by Congress might merely increase bitterness.

At the same time such a commission might propose a plan for integrating the government's mediation and adjustment machinery into a comprehensive system, perhaps similar in many respects to that established for the railroads, to function at every stage of the bargaining relationship and place

primary emphasis upon the agreement of the parties and the removal of causes of conflict. The commission might likewise submit recommendations for legislation or voluntary action by the parties bearing upon all phases of industrial relations, including the shortcomings in unions that this volume has discussed. Hasty legislation, without careful investigation and an opportunity for labor to participate in framing a program, might do more harm than good.

In the meantime the labor movement, if it would avoid legislation, must turn its attention more earnestly than in the past to the elimination of racketeering, autocracy, and other abuses. Persons who have been found guilty of crimes involving moral turpitude, or who have used their offices for personal gain, should permanently be barred from positions of trust and authority. Autonomy of national unions must not continue to be an excuse for inaction, or a cloak to hide wrongdoing. Both A.F. of L. and C.I.O. should adopt a set of standards, including fair admission policies, democratic procedures, and proper handling of funds, to which affiliates must conform to retain their charters. More attention than has heretofore been the case must be paid to union judicial machinery, to safeguards for providing members accused of misdeeds with fair trials in which the accusers are not the judges, and with prompt appeals to an impartial tribunal.

Much would be gained if the A.F. of L. and the C.I.O., in addition, would each set up a standing committee to receive and investigate complaints of abuses, whether these complaints came from union members, from workers who were denied admission to unions, from employers, or from the general public. Such committees, if made up of courageous men of outstanding integrity, might through publicity to evils and recommendations to cure them raise the standard of responsibility of the backward union elements to the level of the more progressive groups. If lesser remedies fail, it is better to recommend revocation of a charter than to tolerate misdeeds that reflect upon the entire labor movement. Such committees might help convince the public that the labor movement was

seeking energetically to place its own house in order. A program of the type here advocated, if voluntarily adopted and enforced, might ward off legislation that would subject unions to far greater restraints, perhaps wielded by unfriendly hands. But time is short and public resentment is mounting. Labor should act quickly if legislation, perhaps of a very undesirable nature, is to be avoided.

It is desirable, moreover, that unions integrate themselves more fully into community life, and along with other elements in the population help to solve common problems. This will build much better relationships in the community than will exist if unions remain aloof except where the interests of their members as workers are specifically and directly concerned. In some industries unions have already assumed partial responsibility for sanitation, efficiency, promotion, and other matters that affect all elements in the industry, and in some instances unions have helped to reform practices and eliminate abuses that plagued the entire industry. A number of unions already function effectively, not merely on community, but likewise on national and even international problems, as by participation in the defense program or by generous donations to refugee relief. In earlier years, in industries in which large numbers of foreign-born workers were employed, unions were among the primary agencies that interpreted the United States to the newcomers and aided in the process of Americanization. Unions must also become consumer-conscious to a greater extent, and think more in terms of higher living standards for the community. Indeed, by so doing they help themselves, since in an industrial society workers and their families comprise a large majority of the population. Most unions have not yet learned to take their proper part in civic life, nor to present their community or other activities in the most favorable light. A sound public relations program might help considerably to raise the public estimate of the labor movement.

Through their unions workers can protect and raise their own standards at the same time that they contribute to their

industry and to society at large. Unionism can and should be more than a protective device for workers, an agency for getting the best conditions that the state of an industry will permit. It should also be a force for achieving larger social aims, a means of harnessing the creative energies of millions of workers to the common good. This is the larger responsibility of the trade union movement.

Labor relations in Great Britain and in Sweden have long been pointed to as far more satisfactory than in the United States, and the trade union movements of those countries have been held up to American unions as models of responsibility. In those countries most of the rights only recently guaranteed to American labor by the National Labor Relations Act have long been enjoyed and employers, with rare exceptions, have disagreed with unions without challenging their right to exist, and without engaging in the anti-union practices recently current among important sections of American employers. "In Sweden, as in Great Britain," in the words of President Roosevelt, "employers generally have fully accepted a program of collective bargaining; there is extensive independent organization of both groups and all concerned live up to the rules of the game, participating with restraint and mutual respect in the processes of collective bargaining." [2] Given greater experience, recognition and co-operation by employers, and fair treatment at the hands of the government, American unions should soon match in every desirable respect the unions of those countries, and be second to none in discharging to the fullest their obligations to their members, to employers, and to the general public.

Notes

CHAPTER 1

1. For estimates of trade union membership from 1897 to 1934 see Leo Wolman, *Ebb and Flow in Trade Unionism.* New York: National Bureau of Economic Research, 1936, p. 16.

2. Morris Llewellyn Cooke and Philip Murray, *Organized Labor and Production: Next Steps in Industrial Democracy.* New York: Harper, 1940, pp. 259-60.

3. Cyrus S. Ching, "Problems in Collective Bargaining," *The Journal of Business of the University of Chicago,* January, 1938.

4. *Ibid.,* pp. 36-7.

5. William H. Davis, "Labor Relations in the Crisis," *Survey Graphic,* November, 1941.

6. *Ibid.,* p. 547

7. Robert M. La Follette, Jr., "Management, Too, Must Be Responsible," *National Lawyers Guild Quarterly,* December, 1937. On the responsibility both of unions and of employers see National Labor Relations Board, Division of Economic Research, *Union-Employer Responsibility,* by Lyle Cooper. Research Memorandum No. 4, 1939.

8. American Steel Foundries *v.* Tri-City Central Trades Council, 257 U.S. 184, 209 (1921).

9. *Reports of the Industrial Commission* [19 volumes]. Washington: U. S. Government Printing Office, 1900-02, Vol. XIX, p. 805.

10. Commission on Industrial Relations, *Final Report and Testimony.* 64th Congress, 1st Session, Senate Document No. 415 (11 volumes). Washington: U. S. Government Printing Office, 1916, Vol. 1, p. 64.

11. National Labor Relations Board *v.* Jones & Laughlin Steel Corp., 301 U.S. 1 (1937); National Labor Relations Board *v.* Fruehauf Trailer Co., 301 U.S. 49; National Labor Relations Board *v.* Friedman-Harry Marks Clothing Co., 301 U.S. 58; Associated Press *v.* National Labor Relations Board, 301 U.S. 103; Washington, Virginia & Maryland Coach Co. *v.* National Labor Relations Board, 301 U.S. 142.

12. The New York *Times,* December 10, 1939.

13. *Ibid.,* November 22, 1940.

CHAPTER 2

1. Citizens' Committee to Investigate Conditions in the Painters' Union District Council No. 9, *Report of the Committee.* New York: September 21, 1935. (A manuscript copy is in the Library of the School of Business of Columbia University.)

2. *Ibid.*, pp. 28-9.

3. *Ibid.*, pp. 31-3.

4. The story of Commerford's activities is told in Harold Seidman, *Labor Czars: A History of Labor Racketeering.* New York: Liveright, 1938, pp. 156-61.

5. *Constitution, By-Laws and Standing Resolutions of the American Federation of Musicians of the United States and Canada* (Article 1, Section 1, of By-laws), 1941 edition, p. 19.

6. For the autonomy issue in the United Mine Workers see *Proceedings of the Thirty-fifth Constitutional Convention of the United Mine Workers of America,* 1938, pp. 71-2, 149-57, and 159-66; *Proceedings of the Thirty-sixth Constitutional Convention,* 1940, pp. 89-90 and 125-41 (Lewis' speech will be found on pp. 135-9).

7. Copal Mintz, "Trade Union Abuses," *St. John's Law Review,* May, 1932. In this article, pp. 272-313, will be found a collection of abuses in union administration. See also Norman Thomas, "How Democratic are Labor Unions?" *Harper's,* May, 1942.

8. The New York *Times,* April 10, 1941.

9. State of New York, *Final Report of the Joint Legislative Committee on Housing.* Legislative Document No. 48, 1923, p. 34.

10. For a good study of this subject see Neil Chamberlain, "The Judicial Process in Labor Unions," *Brooklyn Law Review,* December, 1940.

11. Good reviews of the attitude of the courts in internal union disputes will be found in "Judicial Intervention in Internal Affairs of Labor Unions," *Minnesota Law Review,* May, 1936; and William W. Stafford, "Disputes Within Trade Unions," *Yale Law Journal,* May, 1936. See also Miller D. Steever, "The Control of Labor through Union Discipline," *Cornell Law Quarterly,* February, 1931, and "The Elements of a Fair Trial in Disciplinary Proceedings by Labor Unions," *Columbia Law Review,* June, 1930. For the attitude of the courts in two recent cases in which local unions protested disciplinary action by their national organizations see 10 *Labor Relations Reporter* 614-19, July 6, 1942.

12. See Tobacco Workers' International Union *v.* Weyler, 280 Kentucky 355 (1939).

13. *Report of Proceedings, Twenty-third Convention of the International Ladies' Garment Workers' Union,* 1937, p. 482.

14. In the Allis-Chalmers strike early in 1941, for example, the Wisconsin Employment Relations Board, after a study of strike ballots by handwriting experts, charged that union officers had caused at least 2,200 fraudulent ballots to be cast in favor of striking. See the New York *Times,* March 28, 1941.

15. Monthly per capita charges of a number of national unions, together with the dues charged by their New York City locals, are assembled in "How Much to Be a Union Man?" *Business Week,* August 17, 1940.

16. *Report of the Executive Council of the American Federation of Labor to the Sixty-first Annual Convention,* 1941, pp. 143-52.

17. The New York *Times,* September 18, 1940. For a review of union benefit plans see United States Department of Labor, Bureau of Labor Statistics, *Beneficial Activities of American Trade-Unions,* by Florence E.

Parker. Bulletin No. 465. Washington: U. S. Government Printing Office, 1928.

18. The 1942 statement is reported in the New York *Times* for June 17, 1942. For several years the annual financial statement has been printed as a supplement to the June 15 issue of *Justice,* the I.L.G.W.U. newspaper.

19. For a recent case of that sort, involving the Newburgh, N. Y., local 17 of the International Hod Carriers, Building and Common Laborers' Union, see the New York *Times,* March 16 and September 9, 1941. For another recent case, involving a local of steamfitters in Pittsburgh, see *ibid.,* September 5, 1942.

20. State of New York, *Intermediate Report of the Joint Legislative Committee on Housing.* Legislative Document No. 60, 1922, pp. 49-50.

21. For an instance of this sort see the investigation of the 1926 New York furriers' strike by an A.F. of L. committee. The committee reported that, of total expenditures of $838,000, it had been able to audit only $195,000, and that even for most of this supporting data were lacking. *The Fur Worker,* February, 1927. The committee's report is printed in *The Fur Worker* for January, February, and March, 1927.

22. Victor Weybright, "Ford Puts on the Union Label," *Survey Graphic,* November, 1941.

23. See F. E. Wolfe, *Admission to American Trade Unions.* Baltimore: Johns Hopkins University Studies in Historical and Political Science, Series XXX, No. 3, 1912, pp. 74-95, for the attitude of unions toward the admission of women. On pp. 96-111 will be found a discussion of the admission of aliens.

24. The National Urban League, Department of Research and Investigations, *Negro Membership in American Labor Unions.* New York, 1930, pp. 33-4.

25. *Ibid.,* pp. 35-8, contains a list of such provisions enforced in various unions.

26. For the experience of Negroes with unions see Sterling D. Spero and Abram L. Harris, *The Black Worker: The Negro and the Labor Movement.* New York: Columbia University Press, 1931; and Horace R. Cayton and George S. Mitchell, *Black Workers and the New Unions.* Chapel Hill: University of North Carolina Press, 1939. See also Charles Lionel Franklin, *The Negro Labor Unionist of New York.* New York: Columbia University Press, 1936.

27. See the New York *Times,* February 18, 1942, for such an incident involving a local of chemical and oil workers in Belleville, N. J.

28. For the first order of this sort see 10 *Labor Relations Reporter* 567-8, June 29, 1942. See also 11 *Labor Relations Reporter* 467, December 14, 1942.

29. *Proceedings of the First Constitutional Convention of the Congress of Industrial Organizations,* 1938, pp. 132-4.

30. *Proceedings of the Twenty-third General Convention of the United Brotherhood of Carpenters and Joiners of America,* 1936, pp. 248-57. When requests for a definition of "Communistic" were made, Delegate Dunn of Local Union 264 replied: "As the mover of the motion, I would

like to inform the Brother what 'Communist' means. I happen to be a dog raiser up in Wisconsin, and every dog that comes out of the same litter is a dog, but they are all not colored alike, and in my estimation any man who affixes his signature or goes out to meetings and declares himself as a member of the Third Internationale and sings the Internationale, whether he is a Socialist or a Communist or whatever he may be, he should be expelled from our international union."

31. *Report of the Proceedings of the Fifty-ninth Annual Convention of the American Federation of Labor,* 1939, p. 505.

32. Statement of William Green to the House Judiciary Committee, reported in the New York *Times,* May 13, 1941.

33. *Ibid.,* March 23, 1941, for letters from Senator George W. Norris to Philip Murray and William Green, protesting high initiation fees on defense projects; *ibid.,* March 25, for Green's reply; the Baltimore *Sun,* March 23, for Murray's reply.

34. The abuse of privilege cards by Local 3 of the International Brotherhood of Electrical Workers is shown in *Intermediate Report of the Joint Legislative Committee on Housing, op. cit.,* pp. 49-50. In Harold Seidman, *op. cit.,* pp. 81, 128, and 174-5, will be found instances of the abuse of permit or privilege cards by racketeering union officials.

35. *Proceedings of the Twenty-third General Convention of the United Brotherhood of Carpenters and Joiners of America,* 1936, pp. 21-39, 99.

36. See, for example, Collins *v.* International Alliance of Theatrical Stage Employees, 182 Atlantic 37 (1935). These cases are commented upon in "Judicial Intervention in Internal Affairs of Labor Unions," *loc. cit.*

37. The millinery workers' union, for example, has used this method to discipline workers who formed a dual union under communist leadership. See *Report of Proceedings of the Third Convention of the United Hatters, Cap and Millinery Workers International Union,* 1939, pp. 581-602.

38. Florence Peterson, "Extent of Collective Bargaining at Beginning of 1942," *Monthly Labor Review,* May, 1942. Good discussions of various aspects of the closed shop will be found in Jerome L. Toner, *The Closed Shop.* Washington: American Council on Public Affairs, 1942; in Leon M. Despres, "The Collective Agreement for the Union Shop," *The University of Chicago Law Review,* December, 1939; and in Ralph A. Newman, "The Closed Union and the Right to Work," *Columbia Law Review,* January, 1943. An analysis of types of open or closed shop provisions in 400 union agreements negotiated between 1933 and 1939 will be found in Sumner H. Slichter, *Union Policies and Industrial Management.* Washington: The Brookings Institution, 1941, pp. 60-1.

39. United States Department of Labor, *Report of the Commission on Industrial Relations in Great Britain.* Washington: U. S. Government Printing Office, 1938, p. 23.

40. United States Department of Labor, *Report of the Commission on Industrial Relations in Sweden.* Washington: U. S. Government Printing Office, 1938, p. 4.

41. See the New York *Times,* October 21, 1942, for an extreme case in which a union obtained membership applications from a group of employees, on the basis of which it became entitled to exclusive bargaining

rights and thereupon negotiated a closed shop contract with the employer, rejected the applications of his employees for membership, and filled their places with old members of the union. This procedure was held invalid by the National Labor Relations Board, which ordered the original employees returned to their jobs.

42. A good discussion of union finances, administration, and leadership will be found in Robert R. R. Brooks, *When Labor Organizes.* New Haven: Yale University Press, 1937, pp. 245-76.

CHAPTER 3

1. The record of the case may be followed in the issues of the New York *Times* from October 9 to November 13, 1941.

2. *Ibid.,* June 8, 1939. For summaries of the complaints against the unions see Stanley High, "Labor in the World of Tomorrow," *The American Mercury,* November, 1939; George E. Sokolsky, "Racketeering at the World's Fair," *Liberty,* September 2, 1939; and Charles Stevenson, "Labor Takes in the Fair," *Atlantic,* January, 1940. For the unions' point of view, presented by the business manager of Local 3, I.B.E.W., see Harry Van Arsdale, Jr., "The Case for the Union," *Atlantic,* May, 1940.

3. *How to Win for the Union: A Discussion for U.A.W. Stewards and Committeemen.* Detroit: International Education Department, UAW-CIO, 1941, revised, p. 39.

4. See, for example, the breaking of outlaw strikes in New York City in 1919 and 1923 by the International Printing Pressmen and Assistants' Union. These and other outlaw strikes in the period following the first World War are reviewed in the chapter on "Post-war Militancy: 'Insurgency'" in Selig Perlman and Philip Taft, *History of Labor in the United States, 1896-1932.* New York: Macmillan, 1935, Vol. IV, pp. 435-60.

5. Commission on Industrial Relations, *op. cit.,* Vol. 1, pp. 119-20. For a recent study of the obligations of the parties under collective agreements and the manner in which they are discharged see Frank C. Pierson, *Collective Bargaining Systems: A Study of Union-Employer Responsibilities and Problems.* Washington: American Council on Public Affairs, 1942.

6. Harold J. Ruttenberg, "The Strategy of Industrial Peace," *Harvard Business Review,* Winter, 1939.

7. George W. Taylor in *Textile World,* August, 1937.

8. The New York *Times,* November 12, 1939.

9. For a thorough study of this subject see Wilfrid Harris Crook, *The General Strike: A Study of Labor's Tragic Weapon in Theory and Practice.* Chapel Hill: University of North Carolina Press, 1931.

10. United States *v.* Hutcheson, 312 U.S. 219, 61 Sup. Ct. 463 (1941).

11. Brooks, *op. cit.,* pp. 4-5.

12. William Green, *Labor and Democracy.* Princeton: Princeton University Press, 1939, p. 10.

13. Roger N. Baldwin and Clarence B. Randall, *Civil Liberties and Industrial Conflict.* Cambridge, Mass.: Harvard University Press, 1938, pp. 34-5.

14. Senate Committee on Education and Labor, *Violations of Free Speech and Rights of Labor,* 76th Congress, 1st Session, Report No. 6, Part 3, "Industrial Munitions." Washington: U. S. Government Printing Office, 1939, pp. 3-4.

15. *Ibid.,* p. 92.

16. *Final Report of the Joint Legislative Committee on Housing, op. cit.,* p. 37.

17. St. Louis *Post-Dispatch,* March 14, 1939.

18. *Report of Illinois Building Investigation Commission.* Springfield, Ill., 1923, pp. 60-1.

19. For an interesting British study of this subject see *Are Trade Unions Obstructive? An Impartial Inquiry.* London: Gollancz, 1935.

20. See Stanley B. Mathewson, *Restriction of Output among Unorganized Workers.* New York: Viking, 1931.

21. On the attitude of labor to the introduction of machinery see Federal Works Agency, Work Projects Administration, *Trade-Union Policy and Technological Change,* by Harry Ober. National Research Project, Report No. L-8. Philadelphia, 1940; and Slichter, *op. cit.,* pp. 201-81. See also John W. Riegel, *Management, Labor and Technological Change.* Ann Arbor: University of Michigan Press, 1942.

22. For the situation that led to this action and its results see "Union-Management Cooperation in Full-Fashioned Hosiery Industry," *Monthly Labor Review,* November, 1941.

23. Green, *op. cit.,* pp. 112-13. For labor's earlier opposition see Robert Franklin Hoxie, *Scientific Management and Labor.* New York: Appleton, 1915, pp. 13-19 and 169-77.

24. For the earlier experience under these railroad plans see Louis Aubrey Wood, *Union-Management Cooperation on the Railroads.* New Haven: Yale University Press, 1931. The more recent developments are included in Slichter, *op. cit.,* pp. 437-503.

25. Richmond C. Nyman and Elliott Dunlap Smith, *Union-Management Cooperation* in the *"Stretch Out."* New Haven: Yale University Press, 1934.

26. The union's proposals are embodied in a pamphlet entitled *Production Problems.* Pittsburgh: Steel Workers Organizing Committee. For a persuasive argument by leaders of this union for co-operation between labor and management for greater efficiency and higher production, with the proceeds shared equitably between them, see Clinton S. Golden and Harold J. Ruttenberg, *The Dynamics of Industrial Democracy.* New York: Harper, 1942.

27. The New York *Times,* October 1, 1941. For the reaction of the unions see *Justice,* October 15, 1941, and *The Hat Worker,* October 15, 1941.

28. George Soule, *Sidney Hillman: Labor Statesman.* New York: Macmillan, 1939, pp. 135-6.

29. A good review of efforts at union-management co-operation will be found in Slichter, *op. cit.,* pp. 393-571. Convenient short accounts include "Union-Management Cooperation," *Monthly Labor Review,* June, 1941;

and Bryant Putney, "Labor as Partner in Production," *Editorial Research Reports*, March 29, 1941.

30. The union's proposal is embodied in a pamphlet by Julius Hochman, *Industry Planning through Collective Bargaining*. New York: Joint Board of the Dressmakers' Union, 1941. See also Julius Hochman, "Dressmakers' Union Promotes Industry Planning," *Labor Information Bulletin*, May, 1941.

31. For an instance of this sort, involving the Amalgamated Clothing Workers, see Joseph Gollomb, "Sidney Hillman," *Atlantic*, July, 1938.

32. *Final Report of the Joint Legislative Committee on Housing, op. cit.*, p. 30.

33. Gollomb, *loc. cit.*, p. 50.

CHAPTER 4

1. *Violations of Free Speech and Rights of Labor: Hearings Before a Subcommittee of the Committee on Education and Labor, United States Senate, Seventy-Fifth Congress, First Session, Pursuant to S. Res. 266*, Part 4, pp. 1247-71. The testimony of Herman L. Weckler of the Chrysler Corporation and James H. Smith and Dan G. Ross of the Corporations Auxiliary Co. will be found on pp. 1247-62. Frankensteen's testimony is on pp. 1262-71.

2. *Ibid.*, Part 5, pp. 1513-14.

3. Senate Committee on Education and Labor, *Violations of Free Speech and Rights of Labor*, 75th Congress, 2d Session, Report No. 46, Part 3, "Industrial Espionage." Washington: U. S. Government Printing Office, 1938, pp. 46-7. Before this summary of the testimony taken by the Senate subcommittee appeared, two unofficial studies based on the same material were published. These were Leo Huberman, *The Labor Spy Racket*. New York: Modern Age, 1937; and Clinch Calkins, *Spy Overhead: The Story of Industrial Espionage*. New York: Harcourt, Brace, 1937.

4. For a partial list of employers using detective agency service during the years 1933 to 1936, inclusive, arranged by industries or trades, see *Industrial Espionage, op. cit.*, pp. 90-121.

5. *Ibid.*, p. 28. On pp. 75-9 will be found a list of the unions in which Pinkerton spies operated.

6. Senate Committee on Education and Labor, *Violations of Free Speech and Rights of Labor*, 76th Congress, 1st Session, Report No. 6, "Strikebreaking Services." Washington: U. S. Government Printing Office, 1939, p. 46.

7. *Industrial Espionage, op. cit.*, pp. 61-71.

8. *Strikebreaking Services, op. cit.*, p. 2.

9. The constitution of the National Metal Trades Association is reproduced in Senate Committee on Education and Labor, *Violations of Free Speech and Rights of Labor*, 76th Congress, 1st Session, Report No. 6, Part 4, "Labor Policies of Employers' Associations," Part I, "The National Metal Trades Association." Washington: U. S. Government Printing Office, 1939, pp. 118-23. The by-laws appear on pp. 123-5 and the Declaration of Principles on pp. 125-6.

10. *Strikebreaking Services, op. cit.,* p. 71.

11. *Ibid.,* p. 71.

12. In the Matter of Remington Rand, Inc. *and* Remington Rand Joint Protective Board of the District Council Office Equipment Workers, 2 N.L.R.B. 626, 703 (1937).

13. *Hearings before a Subcommittee of the Committee on Education and Labor, United States Senate, Seventy-Sixth Congress, First Session, on S. 1970, Oppressive Labor Practices Act.* Washington: U. S. Government Printing Office, 1939, p. 21.

14. Senate Committee on Education and Labor, *Violations of Free Speech and Rights of Labor,* 76th Congress, 1st Session, Report No. 6, Part 5, "Labor Policies of Employers' Associations," Part II, "The Associated Industries of Cleveland." Washington: U. S. Government Printing Office, 1939, pp. 80-4.

15. *Strikebreaking Services, op. cit.,* pp. 47-9.

16. *Ibid.,* p. 101.

17. *Ibid.,* pp. 91, 87-91.

18. Senate Committee on Education and Labor, *Violations of Free Speech and Rights of Labor,* 77th Congress, 1st Session, Report No. 151, "Labor Policies of Employers' Associations," Part IV, "The 'Little Steel' Strike and Citizens' Committees." Washington: U. S. Government Printing Office, 1941, p. 126.

19. *Hearings on Oppressive Labor Practices Act, op. cit.,* p. 26.

20. *Ibid.,* pp. 26-7.

21. *Industrial Munitions, op. cit.,* pp. 52-7, contains a list of companies possessing armaments, with the amount owned by each.

22. *Ibid.,* pp. 5-13, summarizes these investigations.

23. Senate Committee on Education and Labor, *Violations of Free Speech and Rights of Labor,* 76th Congress, 1st Session, Report No. 6, Part 2, "Private Police Systems." Washington: U. S. Government Printing Office, 1939, pp. 164-5.

24. *Ibid.,* pp. 140, 128-9. A full description of the activities of the Republic Steel Corporation police force will be found on pp. 115-206.

25. *The "Little Steel" Strike and Citizens' Committees, op. cit.* The Canton back-to-work movement and Law and Order League are described on pp. 220-7.

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Index

American Institute of Public Opinion, 17, 187
Andrews, John B., and John R. Commons, *Principles of Labor Legislation*, 228
Andrews, John C., 81
Anheuser-Busch brewery strike, 62-63, 140
Apex Hosiery Company, sit-down strike in plant of, 66, 138; damage suit, 171
Arbitration, in labor disputes, 132-33
Arms, use of by unions, 68-69; by employers, 69, 91; in possession of Republic Steel Corporation, 89-90; of Youngstown Sheet and Tube Company, 90; furnished to police by employers, 157, 158, 224. *See* Gas
Arnold, Thurman W., 110, 139, 140, 226

Back-to-work movements, in Republic Steel Corporation strike at Canton, O., 91-93; set up by strikebreaking agencies, 93; 156, 157, 224. *See* Johnstown Citizens Committee
Baldwin, Roger N., on violence by and against the C.I.O., 67; and Clarence B. Randall, *Civil Liberties and Industrial Conflict*, 221
Bath, A. J., 81
Beesley, Thomas Quinn, and Gordon L. Hostetter, *It's a Racket!*, 226
Beneficial activities of unions, 32-33, 35-36, 218
Bergoff, Pearl, on function of strikebreakers, 87
Bergoff Service Bureau, 86
Berman, Edward, *Labor and the Sherman Act*, 227; *Labor Disputes and the President of the United States*, 227
Bethlehem Steel Corporation, and the Johnstown Citizens Committee, 92-93, 143-45
Bing, Alexander M., *War-Time Strikes and Their Adjustment*, 228
Bioff, William, 52, 53
Black, Circuit Judge Edward S., 160
Blacklist, the, 97-98
Bliss, Elizabeth T., and David J. Saposs, *Anti-Labor Activities in the United States*, 225
Bonnett, Clarence F., *Employers' Associations in the United States*, 225
Bookhamer, G. W., 84
Bowman, D. O., *Public Control of Labor Relations*, 228
Boycott, the, 69-70, 127-29, 130, 131. *See* Danbury hatters' case
Brandeis, Louis D., on the incorporation of unions, 166-67
Bridges, Harry, 27
Brindell, Robert P., 28
Brissenden, Professor Paul F., 23-24
Brooks, Robert R. R., 65; *When Labor Organizes*, 221; *Unions of Their Own Choosing*, 228

Browne, George E., 14, 52, 111
Buchalter, Louis (Lepke), 116

Calkins, Clinch, *Spy Overhead*, 223
Casey, Michael, 86
Chamberlain, Neil, 218
Chambers, Walter, *Labor Unions and the Public*, 226
Check-off, the, 55, 59, 198
Chicago Memorial Day Massacre, 152-53, 158, 229
Ching, Cyrus S., 9-10, 11-12, 217
Chrysler Corporation, 59, 95; its use of labor spies, 81-82, 223
Chrysler, Walter P., 82
Citizens committees, *see* Back-to-work movements
Citizens' Committee to Investigate Conditions in the Painters' Union, New York, 23-24, 217, 218
City Club of New York, Subcommittee on Labor Unions, 113, 226
Closed shop, the, 44-46; in Great Britain, 45
Cohen, Samuel (Chowderhead), 87-88
Commerford, Patrick J., 25, 218
Commons, John R., and Associates, *History of Labour in the United States*, 227; and John B. Andrews, *Principles of Labor Legislation*, 228
Company towns, 98-99
Company unions, 95-97. *See* Independent unions
Connor, Fulton, 144
Cooke, Morris Llewellyn, and Philip Murray, *Organized Labor and Production*, 217
Cooper, Lyle, 217
Co-operation, union-management, 72-77, 222, 223
Coster, F. Donald (Philip Musica), 100
Crain, Thomas C. T., 226
Crook, Wilfred Harris, *The General Strike*, 221
Cunningham, E. T., 146

Dailey, Senator John T., 112
Danbury hatters' case, the, 128-29, 168-69, 171
Daugherty, Harry M., 149
Davis, William H., 12, 103, 200, 217
Debs case, the, 123, 227
Deming, George E., 95
Depres, Leon M., 220
Dewey, Thomas E., 114
Discrimination, racial and other, in unions, 36-39, 50, 192
Dues, union, 32, 218

Ellicott, C. R., 144
Ely, C. R., 145
Emery, James A., 167
Evans, Sidney D., 144

Fair Employment Practice, Committee on, 39, 212
Frankensteen, Richard T., 81, 82, 223
Frankfurter, Felix, and Nathan Greene, *The Labor Injunction*, 227

Gadola, Circuit Judge Paul V., 160
Garland, J. V., *Federal Regulation of Labor Unions*, 231
Gas, tear: possession of and use in strikes by employers, 69, 89, 90; by police, 153, 158; furnished to police by employers, 157-58. *See* Arms
General Motors Corporation, sit-down strikes in plants of, 10-11, 55, 159; industrial espionage in plants of, 82-83
General strikes, 60, 109; British, 64; in Seattle, 108; in San Francisco, 109
Golden, Clinton S., and Harold J. Ruttenberg, *The Dynamics of Industrial Democracy*, 222
Gollomb, Joseph, 223
Grange, David E., 29
Green, William A., 40, 66; on the speed-up, 72; 172, 179, 220; *Labor and Democracy*, 221; 230

Greene, Nathan, and Felix Frankfurter, *The Labor Injunction*, 227
Goodyear Tire and Rubber Company, purchase of gas and gas equipment, 158
Gompers, Samuel, 128; on the Clayton Act, 129; 166, 167, 170, 181, 227
Gurfein, Murray I., 226

Haberman, Leo, *The Labor Spy Racket*, 223
Hague, Frank, 161
Hard, William, 231
Harris, Arthur, 228
Herbert, Arthur (Tootsie), 114-15
Herzog, Paul M., 226
High, Stanley, 221
Hillman, Sidney, 80
Hillquit, Morris, 231
Hines, James, 114
Hochman, Julius, 76, 223
Hoffman, Representative Clare E., proposes registration of unions, 183-84
Hoffman, Harold G., 146, 229
Holmes, Oliver Wendell, Jr., 121, 226
Hoover, James Dawson, *Union Incorporation and Regulation*, 231
Hopson, Howard C., 100
Hostetter, Gordon L., 113; and Thomas Quinn Beesley, *It's a Racket!*, 226
Hoxie, Robert Franklin, *Scientific Management and Labor*, 222
Hutcheson, William L., 140

Incomes, union, 34
Independent unions, 4, 35, 225. *See* Company unions
Initiation fees, 40-41, 50, 104, 209
Injunction, the use of against strikers, 92; in company towns, 98; 111, 123-26, 130, 134, 135, 141, 147, 148, 149, 160, 169, 227
Insull, Samuel, 100

Johnsen, Julia E., *The National Labor Relations Act: Should It Be Amended?*, 228; *Trade Unions and the Anti-Trust Laws*, 228
Johnstown Citizens Committee, 9, 91-92, 143-45
Jurisdictional strikes, 60-61; at Anheuser-Busch brewery, 62-63; 140, 198, 209, 210

Kaplan, Sam, 27
Kester, Howard, *Revolt Among the Sharecroppers*, 230
Kirkman, Bert, 54
Kirshbaum, Louis, 232
Ku Klux Klan, the, 159

La Follette, Senator Robert M., Jr., 82; on criminal character of strike guards, 87; 89, 90; proposed oppressive labor practices act, 212; 217
La Follette-Thomas Committee, the, 18; report on industrial espionage in plants of General Motors Corporation, 82-83; 89, 99; and the Johnstown Citizens Committee, 144-45
Lee, Kendrick, 231
Lehman, Herbert H., 39
Leiserson, William M., 200
Levinson, Edward, 226
Lewis, John L., 26, 105, 107
Limitation of union membership, 40, 41
Lockwood Committee, the, 28, 35
Long, Huey P., 161
Lorwin, Lewis L., and Arthur Wubnig, *Labor Relations Boards*, 228
Ludlow Massacre, the, 67, 148

McDade, E. J., 88
McGrady, Edward F., 82
McWilliams, Carey, *Factories in the Field*, 229
Madden, Martin B., 29

Madden, J. Warren, 159
Martin, Francis C., 144
Martin, Homer, 26, 160
Martin, Jules, 114
Mason, Alpheus T., *Organized Labor and the Law,* 226
Mathewson, Stanley B., *Restriction of Output among Unorganized Labor,* 222
Merritt, Walter Gordon, 178, 231
Middleton, Theodore R., 155, 156
Mintz, Copal, 218
Mohawk Valley Formula, the, 94
Moreschi, Joseph V., 20
Murray, Philip, 9, 41, 104, 176, 191; and Morris Llewellyn Cooke, *Organized Labor and Production,* 217; 220, 225, 231

National Metal Trades Association, as supplier of labor spies, 83-84; and strikebreakers, 85-86; its use of men with criminal records, 87, 88; 94; and the blacklist, 97-98; 223
National Urban League, 37, 38; *Negro Membership in American Labor Unions,* 219
Nelles, Walter, 227
Newman, Ralph A., 220
Norris, Senator George W., 220
Nyman, Richmond C., 222

Ober, Harry, 222
O'Daniel, W. Lee, 151, 152, 229
Olney, Attorney General, 148
Outlaw strikes, 55-56, 58-59, 221

Padway, Joseph A., 229
Parker, Florence E., *Beneficial Activities of American Trades Unions,* 218
Patch, Buel W., 231
Perkins, Frances, 207
Perlman, Selig, and Philip Taft, *History of Labor in the United States,* 221
Peterson, Florence, 220
Petrillo, James C., 110
Pierson, Frank C., *Collective Bargaining Systems,* 221
Pinchot, Gifford, 150, 151
Pinkerton Agency, the, 82, 83, 157, 223
Plummer, Leigh S., *Getting Along with Labor,* 225
Police, private: distinct from strike-guards, 85; of Republic Steel Corporation, 91; use of violence by, 91; 150-51, 224
Police violence in strikes, 152-55
Putney, Bryant, 222

Racketeering, in unions and in business, 111-18, 175, 185
Rand, James H., Jr., and the Mohawk Valley Formula, 93-94
Randall, Clarence B., and Roger N. Baldwin, *Civil Liberties and Industrial Conflict,* 221
Randolph, A. Philip, 38
Reading, Richard W., 161
Registration of unions, 182-87; in Florida, 184; in Utah, 184-85; in Minnesota, 185; in Great Britain, 186-87; in Sweden, 187
Reister, Philip B., 226
Remington-Rand, use of strike-breakers at plant of, 86-87; 93; and the Mohawk Valley Formula, 94; 224
Republic Steel Corporation, its purchase and possession of arms, 89-90; and gas, 89; its private police force, 91; instigates back-to-work movement, 91-92; 157; its gifts of munitions to law enforcement authorities, 158; 224
Reuther, Walter P., 104; *500 Planes a Day,* 225
Reynolds, Lloyd G., *Labor and National Defense,* 225
Rice, William Gorham, Jr., 229
Rich, Bennett Milton, *The Presidents and Civil Disorder,* 229
Riegel, John W., 222

Rogers, Joseph P., 160
Roosevelt, President Franklin D., 216
Roosevelt, Theodore, 131
Rosenfarb, Joseph, *The National Labor Policy and How It Works*, 228
Rothschild, V. Henry, 2nd., 231
Ruttenberg, Harold J., 221; and Clinton S. Golden, *The Dynamics of Industrial Democracy*, 222

Salaries of union officials, 33-34
Saposs, David J., and Elizabeth T. Bliss, *Anti-Labor Activities in the United States*, 225; *Union Responsibility and Incorporation of Labor Unions*, 231
Saylor, Morris, 160
Sayre, Homer D., 94, 95
Schecter case, the, 136, 228
Schenck, Joseph M., 189
Schenck, Nicholas M., 52
Schlesinger, Emil, 225
Seabury, Samuel, 226
Seidman, Harold, *Labor Czars: A History of Labor Racketeering*, 218
Senate Committee on Education and Labor, report on use of munitions in industrial disputes by, 68-69; 165; *Violations of Free Speech and Rights of Labor*, 222, 223, 224
Shapiro, Jacob (Gurrah), 116
Shaw, Chief Justice, 123
Sheilds, Daniel J., and the Johnstown Citizens Committee, 143-45
Sherwood Detective Agency, the, 146
Silverberg, Louis G., 224
Sit-down strikes, at General Motors Corporation plants, 10-11, 55, 159-60; at Apex Hosiery Company, 66, 138; 198, 199
Slichter, Sumner H., 200; *Union Policies and Industrial Management*, 220
Smith, Daniel Boone, 155
Smith, Edwin S., 231
Smith, Elliott Dunlap, 222
Smith, Representative Howard W., 105; introduces anti-strike bill, 182-83
Sokolsky, George E., 221
Soule, George, *Sidney Hillman, Labor Statesman*, 222
Sparks, C. Nelson, 93
Spies, labor, 81-86; used by Chrysler Corporation, 81-82, 223; by General Motors Corporation, 82-83; provided by National Metal Trades Association, 83; by Pinkerton agency, 84
Stafford, William W., 218
Steever, Miller D., 218
Stevenson, Charles, 221
Strikebreakers, 67, 85-89; cost to employers, 88-89; at Remington-Rand plant, 86-87; at Black and Decker Electric Company, 88
Strikebreaking agencies, 82, 83, 86, 146, 157, 223
Strike guards, 85-89; criminals hired as, 87-89
Strikes. *See* General strikes, Jurisdictional strikes, Sit-down strikes, Sympathy strikes, Outlaw strikes
Strikes, methods of voting for, 31
Strikes of public servants, 108, 211, 225
Stringham, L. A., 94, 95
Structure of unions, 21
Sympathy strikes, 59-60
Sullivan, Edward Dean, *This Labor Union Racket*, 226

Taff-Vale case, the, 166, 167, 169, 179, 230
Taft, Chief Justice, 170
Taft, Philip, and Selig Perlman, *History of Labor in the United States*, 221
Taylor, George W., 221
Taylor, Myron C., 57
Thomas, Senator Elbert D., 82, 89

Thomas, Norman, 218
Thomas, R. J., 38
Toner, Jerome L., *The Closed Shop,* 220
Troops used in strikes, federal, 147-48, 169, 229; state, 149-50, 229

Untermyer, Samuel, 181, 231
Unthank, Ben, 154

Van Arsdale, Harry, Jr., 221
Van Siclen, Justice, 160
Vinson, Representative Carl T., 184

Waldman, Louis, *Should Unions Be Incorporated?,* 230
Walker, Edwin, 148
Wall Street Journal, 100
Waterfront Employers Union, supplies gas and gas equipment to San Francisco Police Department, 158
Wellner, Jake (Jake the Bum), 118
Weybright, Victor, 36; *Ford Puts on the Union Label,* 219, 226
Whitney, Richard, 100
Wilkerson, Federal Judge, 149
Wilson, Walter, *The Militia: Friend or Foe of Liberty?,* 229
Witte, Edwin E., 168; *The Government in Labor Disputes,* 227
Wolf, Harry D., 232
Wolf, Herman, *Labor Defends America,* 225
Wolfe, F. E., *Admission to American Trade Unions,* 219
Woll, Matthew, 166, 177; *Labor, Industry and Government,* 230
Wolman, Leo, *Ebb and Flow in Trade Unionism,* 217
Wood, Louis Aubrey, *Union-Management Co-operation on the Railroads,* 222
Wubnig, Arthur, and Lewis L. Lorwin, *Labor Relations Boards,* 228

Youngstown Sheet and Tube Company, possession of arms, 90, 157; gives gas and gas equipment to law enforcement officials, 158

Ziskind, David, *One Thousand Strikes of Government Employees,* 225