INDUSTRIAL DISPUTES
AND THE
PUBLIC INTEREST

Addresses by

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INSTITUTE OF INDUSTRIAL RELATIONS
University of California

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REMARKS

By ROBERT GORDON SPROUL
PRESIDENT OF THE UNIVERSITY

NOT UNNATURALLY *we Americans are well* aware *of industrial disputes. The results of such strife are felt quite as much in the general heart and mind as in the lives and pocketbooks of the contending parties. So, it must follow that all of us should be interested in the basic causes, and should desire to be "right" in our attitude towards labor and management both. But what is "right"? Are we extremely and unthinkingly partial one way or the other? Do we see the* entire *picture clearly and draw our conclusions solely from the facts? Only through a genuine "rightness" of attitude—none too easy to attain—can coöperative thinking function—free and unbiased—to achieve the welfare of all.*

The aim of this conference, which is being jointly sponsored by University Extension and the University's Institute of Industrial Relations, is to illuminate the battlefield whereon struggle management and labor, to the end that everything may be clearly seen and carefully considered in the light of truth. It is hoped that there may be an annual series of such discussions as we shall hear tonight, and that the conflicting attitudes of Labor toward Management, and Management toward Labor, may thus be presented in as unbiased manner as possible.

REMARKS

By EARL WARREN
GOVERNOR OF CALIFORNIA

I HAVE LOOKED FORWARD *to attending one of the conferences of the Institute of Industrial Relations ever since President Robert Sproul and I first talked about the establishment of the Institute. It is extremely heartening to find such a large and enthusiastic meeting as this on the occasion of the first annual conference.*

I believe that this Institute is most important and fundamental to the life of our State. No relationship other than that of the family is more important in our complex civilization than the relationship of employer and employee. There is none which needs to be kept on an even keel more than this.

Through the years, we seem to have studied every phase of business and industrial life seriously except this matter of industrial relations. I look forward to the day when we shall not only teach it as a subject in our University, but also when we shall have in all the high schools of the State a forum where people may study this important relationship. I think we are well on our way to do this when this First Annual Industrial Relations Conference attracts as many interested people as have come to this one.

I am convinced that we shall never have good industrial relations by choosing up sides and fighting things out to the bitter end. We cannot permanently improve our industrial relations just by the strained discussions that we have across the bargaining table. Our relations must be bettered by forums of this kind, where in good spirit we can exchange ideas, philosophies, and aims. And that is the reason I am so happy to know that this Institute of Industrial Relations is getting this wonderful start.

Collective Bargaining and Economic Progress

By WILLIAM H. DAVIS*

I SUPPOSE THAT the most important question in America today, and possibly the basically important question for the world today, is, How can we establish and maintain that high level of industrial production which represents a substantially full use of our manpower resources? How can we achieve and maintain a division of the products which will keep the machinery running at a high level and eliminate, or at least greatly moderate, the "boom and bust" cycle which we have enjoyed for many years? And I think that collective bargaining is very closely related to that basic question.

I have noticed with regret in the last year (I have been on the sidelines completely so I could take time to notice and also have the opportunity to regret) that the rational discussion of these problems which lie before us has been screened almost completely by alarm. Every time I have spoken the last year the question has been, "Well, what are we going to do about strikes?"

I do not want to minimize that question. The strikes in 1946 should not be minimized; they were very harmful. They delayed our conversion, which some of us had done a lot of work to try and speed up, and they made me pretty mad. But they did not terrify me and I do not think there is any reason why they should have terrified anyone. And I gathered from the remarks of my very dear friend Mr. Leiserson this morning that they did not terrify him. But they have screened the discussion. I think we saw that last night. And so I felt that I could contribute most today by not starting with a discussion of what we are going to do about these strikes? but to try really to lay before us the basic resources which we have here in America for self-government and then come back at the end to what we are going to do about strikes? because I think the time has come in America when we must drag out our capacity for self-government and look it over and see what it is good for.

We have been in more than one crisis since 1789 and have had occasion to haul out this capacity, and it has served us pretty well. It got us through the war. I have sometimes said lately that you would think we

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lost the war. But we did not. We won it. And on the whole, I will say we won it in spite of the War Labor Board! That's something!

The War Labor Board had its troubles, but we got along. I will have to admit that the darned thing backfired in 1946, but we got through that, too. And now we come to the time, however, when we are bedeviled by this question, in a voice of alarm and by too much excitement on both sides, especially at the extremities. As I said the other day, I wish for a couple of years the extremists on both sides would hire themselves a hall and fight it out between themselves and not in the path of the American people, who want very, very much to go ahead.

There were some remarks made last night, as there usually are, about either lawyers or professors, and they included remarks about the "learned liberals" who had some knowledge of Labor-Management matters derived from mediation, fellows like Bill Leiserson, and there was this tone of derogation.

If you take the total of those people, you will have 1400, let us say, out of 140,000,000 people. So that is 1 to 100,000. What I am interested in is the 140,000,000. I think that they can get ahead with, and in spite of if necessary, the professors and the "learned liberals." At any rate, it is what they think that counts.

It is hard for me to know exactly where to start a discussion of our resources, but I am going back. I recall an article written by Carl Becker, who was then at Cornell. It appeared in the *Yale Law Journal.* It was entitled "Some Generalities That Still Glitter." Carl Becker undertook in that article to spell out the basic principles of democracy and, as I remember it (and I remember it pretty well), he identified the three basic pillars of democracy in this way:

The first one was the recognition of the value of the individual as such, the dignity of the individual.

The second was a recognition of the value of persuasion and its superiority over force.

The third one was the recognition of the value of the truth and the obligation which we all have to search for the truth and, having found it, to share it with our fellowmen.

I think that only a very small percentage of the American people would find fault with Carl Becker's enumeration of the basic principles of democracy.

Where do we get those principles? From where do they come? How do we get that way?

It goes back a long time, ladies and gentlemen, and I shall go back two thousand years and indulge in a little philosophy (it is all my own, you

see) and take you to the banks of the river outside of Athens, to a grove under the trees where Socrates and the others were persuading Timaeus to venture for them his guess about the origin of the gods and the creation of the universe.

It was a joint discussion, and in self-defense I am going to read to you a very modest remark of Timaeus. The remark is this, and I want it applied today:

> If then, Socrates, we find ourselves in many points unable to make our discourse in every way wholly consistent and exact, you must not be surprised. Nay, we must be well content if we can provide an account not less likely than any others. We must remember that I who speak and you who are my audience are but men, and we should be satisfied to ask for no more than the likely story.

With that introduction he propounded this proposition. He said:

The origin of the universe, the creation of a cosmos out of chaos, came about when reason persuaded necessity (the Greek word means many things: random force, chance) to order the greater part of things for good. Then, his cosmology went on, they created demi-gods and they were endowed with reason, and the demi-gods were authorized to create mankind.

You see, the supply of reason was considerably depleted by that time! They created mankind. They endowed him, according to Timaeus, with what reason was left—insufficiently perhaps, but also with a passion for creation, and left to him the minor part.

That story always interested me very much. Here we have the picture. I should like to push it a little further. I hope there are no scholastic philosophers present, but to make my point throughout about the 140,000,000 people, I should like to put it this way:

Let us assume that the major part of which Timaeus spoke of as having been put into order for good is that part of the universe which we observe as the physical universe, which obeys the laws which we more or less and increasingly understand, or think we do; and that the minor part that was left for completion was the mind and will of men, the part of the universe which is the nonphysical part: because we observe that that minor part has not been ordered for good.

Now I shall illustrate that. You have a hundred men and you want to bring them into order. You can put uniforms on the hundred; you can make them look alike; you can stand them up against the wall. But you can't make them think alike by force—only by persuasion. If you stand them against the firing wall, you still do not know that their minds are in order and all you can do is shoot them, which consists of reducing them to the physical universe, moving them out of the nonphysical universe, and then no doubt they will obey the physical laws.

My point is this: if to point the thing up we assume that something like that is the order and that mankind is actually a participator with the Creator in the completion of the orderly arrangement of the minor part, you can see then where these basic democratic ideas came from. If you entertain such an idea as that, you can not fail to have regard for the human being as such, if it is only sympathy, because, you say, "Well, we are all in the same boat, with the same job. It affects us all the same. We hope the Creator sticks with us."

As Mr. Browning put it:

> Here work enough to watch
> The master work and catch
> Hints of the proper trade,
> Tricks of the tool's true play.

For people who have any such idea of the worth of the individual as that, it is natural to feel that the dignity of the individual is of primary importance; and also to realize the true value of persuasion.

Last night there was a slurring reference to those liberals who preach persuasion in preference to force. I did not invent the idea. Plato did not invent it. It preceded Plato. And all the history of mankind has confirmed it. It is a hard but inexorable rule that you make progress in human affairs by persuasion and not by force. I have been in positions where I wished it were different, but I have never found it so. And that is the rule and that is where we get it. That is where Carl Becker got it.

There has come to be since Plato's time a highly developed systematized, scientific research. We now have developed scientific methods of truth-finding which consists of high imagination coupled with checking of observations. And it has gone pretty far.

You may say, "What has all that got to do with collective bargaining and economic progress?"

I asked myself, Are those resources still available to the American people? As it happens, there have been occurrences recently that left no doubt about that. I had a funny experience about it.

Mr. McKinnon of San Francisco wrote an article that was published in the *Journal* of the Bar Association. He pointed out that there was prevalent in some circles in America, more than he liked, a theory that the old rights of man were unreal; that they did not really exist. He opposed himself very vigorously to that idea in this article, which is well worth reading, and he wound up, as I remember it, by saying that his opinion was that the rights of man did exist, that they had found full and, he hoped, eternal expression in the Declaration of Independence

and the Bill of Rights, and he expressed the view that the man in the street in America still believed in liberty.

Well, I thought so, too. But it was not long after that that I saw an article in the *Atlantic Monthly* written by the President of that publishing company. The title of it was "The Right to Strike." It was quite a philosophical article and it took the position that there is no such thing as human rights; that the idea of trying to write a Bill of Rights as they are now trying to do in UN was a foolish waste of time; that they are "documents of confusion," that was the expression used, and that there are no rights that do not give way to the rights of the public.

This was a doctrine that was expressed very temperately in a way, in philosophical tones, but would have served Hitler just as well as the somewhat more violent doctrine that Hitler expressed. It upset me quite a bit, because I was born and brought up in New England and I learned about the Bill of Rights at my mother's knee and I also learned there that the *Atlantic Monthly* had some sort of special connection with Divine Providence, which was never defined but never questioned! And so it was quite a shock to me. I felt like getting up and ejaculating a very emphatic "No!"

I was in that upset state of mind when I read in the papers Mr. Lilienthal's statement to Senator McKellar, and I want to read it. He said:

> I believe, and I so conceive the Constitution of the United States to rest upon, as does religion, the fundamental proposition of the integrity of the individual and that all government and all private institutions must be designed to promote and protect and defend the integrity and the dignity of the individual. That is the essential meaning of the Constitution and the Bill of Rights, and it is essentially the meaning of religion.

As I say, I felt better. Then when I observed the reaction across the country to Mr. Lilienthal's remarks, which was not indefinite, I concluded that Mr. McKinnon was right when he expressed the opinion that the man in the street in America still believes in liberty. So I think I need not argue with this audience, perhaps, that those resources are available to us.

My friends, it is those beliefs really that make these people so terrified about the strikes of 1946. It is because fundamentally they are opposed to tyranny and they think they have been tyrannized by the labor unions, and they are opposed to it and they get frightened about it. So, really, if you are an optimist you can see that there is a sign of good even in that.

How does that go for collective bargaining? and to get back from Greece to home.

Well, don't you see that those three propositions of Mr. Becker's "Gen-

eralities Still Glitter" are the very fundamentals of collective bargaining? Collective bargaining is based on the respect for the individual. Men sit around the table as equals. It is based on the values of persuasion over force, and it is based upon the search for truth. That could be improved in its technique and I am coming back to that.

So I said, "Well, I am feeling pretty good now. We have got quite a lot of evidence of these resources." And apparently they extend into collective bargaining. And I noticed that President Truman, when he sent his message to Congress the first of the year, said, "And collective bargaining is still the national policy." And did anybody on the Hill say No? In all the discussions before the committees of Congress there has not been a significant submission (I think this is correct) which has been opposed to collective bargaining. Nor has there been a significant submission either by Management or Labor or anyone else that is in favor of an economy controlled by government decree.

So that on the evidence before us, pessimists or optimists, you can say with the greatest of assurance that today the great body of the American people, leaving off the extremists, believe that collective bargaining, that is, industrial self-government, and free contract are superior to regulating our economy by government decree.

That is what the American people believe, whether they are right or wrong, and that is our asset for going ahead with the solution of this problem. We would be crazy not to go ahead in the direction that is indicated by that overwhelming opinion.

As we go ahead, you know, my friend Ben Selekman, in Boston at Harvard, made a very nice remark. He was asking for maturity in this subject, mature thinking. He said, "A mature mind is one that faces the facts of life as something to be handled rather than something to be hated." That is a very practical remark.

I think it was Tennyson, perhaps (someone may check me), who said, "As one lamp lights, another nor grows less; so nobleness enkindleth nobleness." That is a great remark, too, but unfortunately it is equally true of ignobleness, which spreads like a fire. And so the pessimist is the guy who puts the weight on ignobleness and the optimist is the guy who puts the weight on nobleness; and the mature mind, of which we had an example this morning, stands in between.

I am going to read Alfred North Whitehead's remark and then get away from philosophy. Whitehead said:

> The worth of men consists in their liability to persuasion. They can persuade and can be persuaded by the disclosure of alternatives, the better and the worse. Civilization is the maintenance of social order by its own inherent persuasive-

ness as embodying the nobler alternative. The recourse to force, however unavoidable, is a disclosure of the failure of civilization either in the general society or in a remnant of individuals.

And I say that collective bargaining, which is the chosen method of America, is well defined in that sentence. You sit around the table, if you are mature, or we will when we are mature; argue the thing through, argue the thing out; put the alternatives on the table and choose the better and reject the worse. And that is what I think we should get after. I think we are on the verge of a new era in human relations. In fact, we are either on the verge of a new era or we are sunk. But I think we are. We are well on our way, and we had better keep going.

And so I say almost the same thing that Dr. Leiserson said this morning. In all these considerations of laws to pass or things to do, there is one infallible criterion, and that is, Will it strengthen or weaken collective bargaining?

That may sound like an extreme position to take on collective bargaining, but I say to this audience that that is the way that the thing was set up from the beginning. That is the only way you can create progress. And so I say that is a good and sufficient criterion.

Now I shall get away from the philosophy of labor relations or metaphysics, perhaps somebody will say, to collective bargaining as a science.

You have, I think, two principles upon which the science of collective bargaining can base itself by substantial agreement in this country today. One of them is the principle that we want to settle our economic differences by collective bargaining rather than by government decree. The other principle is a newer one and yet I think it is in the picture. We know from experience that we can produce at a very high level. The technological problems have been solved to a point where we can produce as much as we want—full utilization of our resources. We do not know how to distribute that production so as to keep the thing going without the "boom and bust." But it is now beginning to be seen that that question is a cold, objective question of economics and social government. There was a time when if you did not get more than your share on this earth you would starve to death. It was a matter of life and death to get more than your share. That is not true in America any more, so the thing cools off. I do not know the answer, but part of the problem of collective bargaining is, What is that economic division of the total product which will keep the machine running at its highest speed? A great deal of study has been devoted to that and is being devoted to it. As I say, the novel feature of it is that it is now beginning to be seen to be a proposition without "heat," that what you need is "light" about it,

and that there is a division that is best for the producer, for the consumer, and the worker.

I think that those two principles can be said to be accepted as fundamental principles of the science of collective bargaining.

But here is what happens. You have principles and in this country particularly you have great organizations. That is, collective bargaining goes on not between individuals but principally between large organizations. As soon as you have an organization, you have pressure within and peculiar to that organization, and pressures differ depending on the nature and the purpose of the organization.

Professor Bakke at Yale, for instance, has been studying that subject, is doing special research on it, and it is being studied everywhere.

I was talking to a skilled labor man the other day and I said: "Sol, do your opponents know what your policies really are?"

He said: "No, I don't think they do."

I said: "Do you know what your opponents' policies are?"

"No, we don't. They keep them to themselves."

"Well, do you know what their pressures are?"

Well, he is an imaginative fellow and he undertook to say that he did!

The point I am making is that if you are going to have a science of collective bargaining you must study the pressures within the organizations and the way in which those pressures modify agreed principles to produce different policies. And collective bargaining consists in sitting down around the table and in one way or another shaping those pressures to policies on which the two sides can agree. That is, genuine collective bargaining.

All over the country that study is going on. That is what this Conference here is about. And it is going on in every big college in the country, in the labor organizations, in the big organizations of management like the CED, the American Management Association, the Society for Advancement of Management, National Planning Association, and so on.

I think it would be a very good thing if this institution or some wealthy institution could devote enough money to it, to have somebody sit down and give us a picture of what is going on in these studies and how far they have gotten. In the physical sciences where I was trained, you come pretty near finding out, at least, what is the generally accepted doctrine—about electro-magnetism, say. You may not be able to understand it, but you find some accord. They change that frequently, but that is all to the good. But you can not find that in the science of collective bargaining. So I am all in favor of keeping at that in a scientific spirit.

I think if my friend George Taylor were here he would say, "Well, Bill,

what are you talking about? You see, this matter of fixing wages is a specialist's matter. You have got to do (this, that and the other)." He would give you an expert's advice on it. And so it is in every science. The practitioner is different from the scientist.

There is an old saying that "A scientist is a man who knows everything and can't do anything. An engineer is a man who can do everything and doesn't know anything." That is pretty accurate, and it is in the nature of things. You cannot be both. So I am all in favor of developing these scientists, even if they cannot do anything at the bargaining table.

That brings me to the art of collective bargaining. And it is a great art. There we get into two things: procedures and personalities. Both are of controlling importance.

It is the beginning of wisdom to understand that social science is founded on routine, and unless you have routine in collective bargaining, unless you have agreed procedures, you make no progress. I am inclined to think at this stage of the game procedures are superior in importance to personalities, in spite of the tremendous importance of personalities. But at any rate we have to develop the procedures in the faith that collective bargaining is inherently capable of solving the problem, and with the criterion that everything you do, every rule you make, every law you pass, if you pass any, should be tested by the question, Does it strengthen and not weaken the processes of collective bargaining?

That would be my platform. I think that that art is really the most rewarding art that is known to man, and it is pleasant in some ways. Goodness knows, I got my share of being kicked around. I am an amateur in the game. I went in it because I loved it and I got kind of toughened up. I remember saying to my wife, who was worried about me in 1943, because she thought I was going to break down, "My dear, you know that I am a very gentle person," at which she smiled. I said, "Down here in Washington I have gotten so, if I don't get a bucket of blood by noon, I feel anemic!"

I hope some day we shall get to a point in collective bargaining where it won't be so bloody. But I shall say this to you: Don't let anybody go out from here with the thought that I have said it is an easy game or the solution is an easy one. To paraphrase Churchill, We may not have blood, but we shall have sweat, and being engaged in human relations, we are going to have tears. But who wants an easy road? If the Creator had intended us to march forward on an easy road, he would have had no need to endow man with reason or with a passion for creation, because neither one would be of any use to us. What did they say in the Declaration of Independence? Our inalienable right is the *pursuit* of happiness. No one wants an easy road to happiness.

So with that declaration of faith in the possibilities of collective bargaining and an attempt to lay down a general criterion, I return, as I promised I would, to the question, What are you going to do about these strikes?

In the first place, a strike in the ordinary industrial relationship is, as you know, a part and a very useful part of the machinery of collective bargaining. I think Dr. Leiserson would agree with me that in the last fifteen minutes of big controversies it is the right to strike or the threat of a strike, the possibility of a strike, that is the instrument with which the controversy is settled. It is always present at the conference table. It is the thing that puts a limit on unreason and it is the thing that holds the parties in the last fifteen minutes to the full responsibility of making their own decisions. And without that responsibility you do not have collective bargaining.

Don't I know that! Having been Chairman of the War Labor Board for several years! What we did to collective bargaining! If there is some place that you can take the "baby" in the last fifteen minutes, one side or the other is going to think that that is a better place than to sign the contract that is on the table, and you don't have genuine collective bargaining.

So the strike in the ordinary, everyday round of affairs is the way you settle the thing finally. It is like my going into a store to buy a pair of socks. The fellow shows me socks and he says, "$1.50." I say, "I don't want them. It is too much."

Well, we haven't done any business. He hasn't sold the socks and I haven't got any socks.

I go out, however. The world is still revolving. I go around town looking for socks, and I find I can't get any socks for less than $1.50. So I get more reasonable and I think, "Well, maybe I will go back and buy those socks." But maybe by the time I get back the fellow has found that he can't move the socks at $1.50 and he offers them at $1.25.

That is what the strike does frequently. Besides that, it teaches people the realities of existence and usually results in a period of stable peace.

Don't think that I am an advocate of strikes. In 1944 we were having the "quickie" strikes all over the country. People went out knowing the War Labor Board would order them back and they would go back in a day or two.

It is one thing to do that and it is quite another thing to lay down your tools when you do not know when you are going to pick them up again. So knowing that, I said in a moment of madness, "What this country needs is a first-class strike."

Well, the papers throughout the country were full of it: "Davis favors strikes in wartime! He must be a Communist!"

However, that is what the country did need. Goodness knows! we got it, and I think it is quite plain that with all the harassments, with all the tumult and the shouting, it was a very good thing for our constitutions. We are much better off that we had them. I am convinced of that. We are not on the brink of disaster. The labor movement in this country is not a horrible monster with unlimited power. In fact, my guess is that it is in one of the weakest positions in which it has been in my time. And the country is not in danger. We have plenty of time to think it over.

I should like to go back for a minute to this matter of the science of collective bargaining and the procedures of the art. Take a paper like Dr. Leiserson's today. Here is a man who knows what he is talking about. He has a mature mind, if you will excuse me. He faces the facts of life as something to be handled and not something to be hated, and he lays down a program in that paper which, in my judgment, could well be taken by the country as something to go on and go into every big industry in this country. I don't mean to go to Washington, but go to the industries, to labor and management in the industries and say, "Boys, how about this paper of Dr. Leiserson's as a procedure to start on in this scheme of collective bargaining?"

I think it would be a great thing. They would modify it in different places. But it faces the facts of the situation.

So I come to the conclusion, you know, that strikes are not such a bad thing in their place. They are all right.

Then I got into this dispute about the right to strike. I told you about that. In the *Atlantic Monthly* it was dragged off into a question of the basic rights of man. And when you get off there, there is no doubt about the answer in this country. But the fact of the matter is that, in my judgment, this very interesting discussion of basic human rights has nothing to do with the question: What are you going to do about strikes? I want to tell you what I mean by that.

There are certain cases in which the procedure of interrupting production and sifting the thing out while the other fellow gets more reasonable or you get more reasonable (good technique in many cases or in most cases) is simply not available. Nobody knows that better than the mature leaders of labor in America. I think such a situation as that exists on the subways of New York. All you have to do is to look at the map of New York to know that if you did not have a transit system, you might as well give Manhattan Island back to the Indians, and you would be lucky to get back your $24.00. You simply could not live there. So you can not

shut down the subways; you can not shut down the railroads. When Mr. Whitney's outfit started it, the President came out that Friday afternoon and said, "The government will use all its powers to keep the railroads running." And they ran. So did Mr. Whitney! I think he is a pretty wise fellow.

So actually, then, those who know anything about the history of labor in America can cite more cases than one. Actually the fact is that the government always steps into those cases, and it has to if it is to be a government at all. Then people's rights are not in question. The point is that the strike technique is not available. So wise people, who have mature minds and who know that in their hearts, should sit down around the table and try to work out in each industry of that character a substitute for strikes. And that is what we should be doing in these cases. It can be done. It should be industry by industry, because the labor leaders know what they are up against.

It was a policemen's strike, the only one I ever heard of in America, that made Mr. Coolidge President. Well, no one could call that a commonplace event! Everybody feels that sort of thing, you see, so that there is this material for working it out.

Somebody is going to say, "Yeh, but suppose they don't work it out? Suppose in the last analysis they shut down the railroads?"

Well, I say, "The President will do what the President has always done. He will come in and keep the railroads running."

I was a little facetious about that one time. I got in trouble. I said that one of the virtues of our Constitution was that the President's powers remain undefined although ample for the emergency. The result was that in our history, and we have had emergencies since we began, each time we have had a President with the courage to act and save the Union—usually unconstitutionally or extra-constitutionally. Then after the Union is saved and the emergency is over, the thing gets into the Supreme Court and they say that the thing is unconstitutional and thereby save the Constitution.

That is not so facetious as it seems. Let me put it another way. We have these undefined powers of the President which are ample for the emergency. People say they ought to be defined. All right. By whom? By Congress, within limits. Suppose Congress says, "In such an emergency the President is authorized to do (so-and-so)." The first thing would have to be seizure, just because you can't make people work for a private employer. So it would be seizure.

The Fifth Amendment of the Constitution says that Congress shall pass no law depriving the citizens of the United States of life, liberty or prop-

erty without due process. So the first thing Congress has to do is to set up due process. And the second requirement of the Amendment is, If you take a man's property you must make just compensation for it, and the Supreme Court has said that a man's labor is a property right. So I say, If Congress is going to pass any law on the subject it should be a law which does not become effective until there has been a declaration of national emergency. If Congress wants to join with the President in that declaration, all right. The danger is that the collective bargainers will know beforehand where to go to get out of the hole they are in, and if they know it beforehand it is always going to be more attractive to one side than the other, and there goes your collective bargaining.

But, then, if the emergency is declared and there is seizure, it must be constitutional seizure and something must be set up to fix the just compensation to management and labor because of the property of theirs that has been seized. I think such a provision as that would never be used, probably. In fact, I do not advocate it. I would leave it to the President's emergency powers, as we have done now since 1789 and gotten along. But if anybody wants a law, that is the kind of a law I would like.

That is my answer to, What are you going to do about strikes that endanger the health and safety of the people?

When it comes to amendment of the Wagner Act, I will go along with what Dr. Leiserson has said completely. I put it this way: the purpose of the Wagner Act was to secure a better division of the income of the American people. In 1935 when the Act was passed we had all been through the NRA. It was the only time in my life I ever knew economists to be all agreed on one thing, and they were all agreed then that our trouble was maldistribution of the national income. The declared purpose of the Wagner Act was to improve that distribution. The method employed was to stop employers from interfering with self-organization of employees. It worked pretty well, as statistics show, but it is now said that the result either of the Act or its interpretation has been to throw the balance the other way, to unbalance it in favor of labor and against management. The declared purpose was to improve the distribution of the national income and the method was to redress the unbalanced power at the bargaining table. But if the bargaining table is now unbalanced in favor of labor against management, it ought to be corrected because that was not the intention of the Act.

But I agree with the President and with Dr. Leiserson and others who say, If you are going to amend the Wagner Act at all, let a study be made. Here is an Act of Congress which introduced into our social system certain rules for a certain purpose. There has been built up on it a great

deal of law and it needs the study of experts. You do not amend a thing like that, retaining its basic purpose, by shooting at it. You look at it and say, "Is this thing being carried out in a way that serves the purpose? If it is not, how do we need to change it?" You do not want to change it any more than you have to. In other words, it is a matter to be done with your brain and not with your heart completely; although I would not leave the heart out entirely. So on the Wagner Act I would advocate a study.

On this matter of prohibiting industry-wide collective bargaining, it is hard for me to speak. Anybody who knows anything about my views knows what they are. The basic trouble with it is you can find out by looking at the proposed Act itself. There are two pages of things that are forbidden to American citizens. You must not do this, you must not do that. No one of them has the slightest tinge of moral turpitude. They are things that they have been doing, that they think they have the right to do. The history on the subject has shown success in almost every case of industry-wide bargaining, and so the bill tells all these people, "You can't do that."

Well, you cannot pass a law like that in a democracy and get away with it. As Dr. Leiserson said, all you do is to expose the impotence of democratic government. So that is enough to condemn it. And besides that, Are we cowards? Here we are engaged in a process, a great adventure, in which the ultimate purpose is to bring into order these social forces, to order them for good. The more of that we do, the better.

It happens that in this industry-wide bargaining the forces are at a high level. That fact creates danger, risk, but it creates at the same time opportunity. The higher the level of the forces, the greater the opportunity for creative results.

And so I say, Unless we are cowards we shall not run away into chaos from that opportunity. And the question is, Have we the guts to be great in that field?

A Possible Solution for the Issue of the Closed Shop

By PAUL H. DOUGLAS*

I

I AM AFRAID that I have chosen a very ambitious subject, and that you are probably all looking at me with eyes of wonder as a person with such a lack of intellectual restraint as to venture upon such a topic as this. I hope, however, that you will bear with me.

Certainly, one of the most important issues in the field of labor relations upon which men and women of good will divide is that of the so-called closed shop. Those favorable to unionism commonly argue that the closed shop is necessary in order to ensure genuine collective bargaining. If the employers are free to hire nonunion men, then it is contended, they will upon one pretext or another gradually drop the active union men and replace them by nonunionists. What was once a union shop will, it is contended, sooner or later cease to be such. When the percentage of active union men has been greatly reduced and that of the nonunionists built up, then it is said, the employers, who tend to accept collective bargaining merely because it is forced upon them, will feel free not to renew the union contracts. In the struggle which ensues the employer will, it is alleged, have the strategic advantage and the final results will be nonunion shops which in most cases will be closed to union men. It is, therefore, argued that the closed shop is necessary to buttress and to protect the permanence of collective bargaining.

The employers are likely to object to this, that these are false suspicions and that they would not try to take such an unfair advantage of the unionists since they are not opposed to collective bargaining as such, but merely to the closed shop. To this the advocates of unionism are likely to make the same reply as the inimitable Mr. Dooley is supposed to have made in his saloon on "Archey Road" in my city of Chicago when his friend, Mr. Hennessy, similarly protested that "these open-shop min ye menshun say they are f'r unions iv properly conducted." To this Mr. Dooley retorted, "Shure—iv properly conducted. An' there we are! An' how would they have thim conducted? No strikes, no rules, no contracts, no scales, hardly iny wages, an' damn few mimbers."

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Now let us take the case of the opponents of the closed shop. They contend that this practice violates the fundamental rights of both the employers and the individual workers and unwarrantedly restricts the liberties of each. Thus it is said that if the employer is compelled to accept the closed shop he is virtually placed at the mercy of the unions and their officials. It is feared that in practice his right to discharge for inefficiency will either be seriously impaired or abrogated. Inefficient men, it is charged, can be kept on the job and plant discipline ruined. Once the power of the union is fastened upon the employer, it is alleged that restrictive practices and "feather-bedding" rules will be imposed which will be designed to create as many jobs as possible and give security to those who wish to work slowly. Wildcat strikes can start over minor grievances and disrupt production and the instigators escape scot-free. It is charged that union officials, however well intentioned, cannot be expected to control or discipline their members when they overstep decent limits because they depend upon the votes of these members for continuance in office or election to higher posts. Those leaders who do try to hold the rank and file to responsibility for high output and steady work are quickly labeled as "company stooges" and are forced out of office. They are replaced by others who tend to become demagogic defenders of individual workers, whether right or wrong.

It is thus argued that the closed shop means an all-round hampering of business initiative and efficiency. The experience of England, Australia, and New Zealand is frequently cited in support of this argument. In these countries the closed shop is widespread and at the same time the general pace of work is beyond question much slower than it is in the United States.

It is furthermore contended that individual rights are violated when men are compelled to join a union when they do not wish to do so. While in the past, multitudes of men have refrained from joining unions because of their fear that if they did so they would be fired or discriminated against, it is nevertheless true that there are others who conscientiously do not wish to join specific unions and some who are opposed to unions as such. Thus workmen may believe that the policies and leadership of a given union may be corrupt and that they should keep out. They may honestly disagree with specific policies, such as the wage, production or shop practices of the union and not wish to support them by paying dues. They may think that the union is either too "tough" or not "tough" enough in time of strikes. They may disagree with the political orientation of their specific unions and as sturdy Republicans object to the union aiding the Democrats or vice versa. If by any ill chance, the union

should be afflicted with Communist leadership and used to favor the foreign policy of Soviet Russia, it would be natural for loyal Americans to object and not wish to give it aid and comfort. Finally, there are those who object to unionism as an institution, even when purged of its abuses, and still other rugged individualists and lone wolves who are constitutionally antipathetic to group action of any kind.

It is argued, therefore, that it is at once unfair and a violation of civil liberties to compel these men to join a union against their will. If a union is really so helpful as its supporters contend, why, it is asked, cannot it depend for its membership upon the voluntary choices of the workmen rather than upon coercion? If a given workman wishes to resist the leveling processes of unionism, and prefers to remain outside and forego its benefits, should he not be at liberty to do so?

It should, moreover, be recognized that there are also workers who, while perfectly willing to join a union themselves, nevertheless do not want to have the closed shop fastened upon a plant or industry. They may, for example, fear that if the company hires men referred to them by the union office, they may be discriminated against by the union leaders who may instead give the jobs to their personal favorites and supporters. They may also fear that the union will not furnish them with sufficient protection against capricious and unjust expulsion, and in such an event, with the closed shop in effect, loss of membership in the union means at the least, loss of one's job. If indeed the closed shop were universal, this would mean that the expelled man would find it almost impossible to get work anywhere in his industry and extremely difficult to get any job at all. He would be like the kin-wrecked men of feudal times who had nowhere to attach themselves and who wound up as the armed retainers of the lords, the tyrants, and the professional condottiere.

There are also ardent unionists who believe that unionism will be stronger and more virile if it is based purely on the voluntary membership of men who join from their own choice. Such men, it is said, will take a greater interest in union affairs than will indifferent or sullen workers who are coerced into joining and who then tend to content themselves with paying dues (or having these checked off from their pay) but who seldom attend meetings or vote.

Finally, there are some philosophically minded workers who favor unionism as a counterpoise to the power of employers, but who do not want it to become overpoweringly dominant.

For these and many other reasons as well, there are men within the union movement itself who, while believing in collective bargaining, do not believe that this should carry with it the closed shop. But these men

are either in the minority within the unions or they are chary about expressing their doubts in an intellectual climate which is hostile to their opinions.

The reply of the advocates of the closed shop to these objections customarily takes the form of (1) deprecating the possible abuses which the closed shop might entail, and (2) maintaining that men who profit from the work of an organization have the obligation to belong to and help support it. To a consideration of this second point, I now turn. The advocates of the closed shop point out that unionism protects all workers against capricious and unjust discharge and discipline by management; that it has undoubtedly reduced the hours of work and that it increases the wage rates of those employed. Why, it is asked, should men profit as workers from these gains and yet refuse to support the organization which has brought them about? To permit men to do so, would, it is contended, allow them to reap without cost what others have sown with sacrifice and effort. This would embitter the true-blue believers in unionism and lead to strained relations within the shop. At the same time, the fact that the nonunionists could get most of the material advantages of unionism without any of its costs, would induce the laggards to do likewise. These men, it is pointed out, would then begin to drop out of the unions and these would soon disintegrate.

Just as the political state has found it necessary to levy taxes upon citizens to support the schools who may not have children of their own to educate or who may not believe in public school education itself, so it is said, the burdens of unionism should be similarly shared. In time of war, moreover, nearly all countries have discarded the volunteer method of raising armies and have come to require military service or its equivalent from appropriate adult males irrespective of the personal desires and even the conscientious scruples of those who do not wish to give it. Great Britain and the United States were in this last war quite generous in their treatment of the conscientious objector, but both have properly insisted that if these are to be spared from violating their scruples against the taking of life, they shall, at the least, be compelled to render equivalent peaceful service to the nation. They have, however, found that the purely volunteer system does not produce sufficient men to fill the armies and to defend the country and that to use it concentrates the casualties upon the bravest and most unselfish of the youth with a consequent adverse selective effect upon the community and the next generation. They, therefore, have adopted compulsory military service in times of great national emergency as the best means of compelling the lazy, the selfish,

and the indifferent to do their share in helping to defend the nation which in turn protects them.

Turning to other historical analogies, readers of Benjamin Franklin's *Autobiography* will remember how he started separate voluntary coöperatives in Philadelphia for policing purposes, to put out fires, and to sweep and light the streets. Similarly, the studies of Beatrice and Sidney Webb on the evolution of British local government show how these functions together with the actual construction of highways, etc., started on a voluntary basis. The difficulty with all such attempts is obvious. The patrolmen found it hard to inquire whether the citizen who was being attacked by the footpad was really a member of the coöperative, and difficult to withhold aid from him if he were not. The fire company found it ridiculous to refuse to put out a fire in the house of a nonmember or to drive a bargain with him for membership as his house was burning down. In order to protect their own members from the spread of the flames, they had to try to put out the fires at their source. Similarly, the street lamps by night, like the sun by day, shed their beams upon nonmembers and members alike and the latter found themselves compelled to pay for the aid which was given to the former. The result was that in all of these cases, the work of the voluntary coöperatives was taken over by the local government which then levied compulsory taxes to pay for the cost of what was for the general benefit. So, it is argued, should the expenses of maintaining protective organizations for labor be borne by all labor and not merely by the most idealistic and self-sacrificing.

The opponents of the closed shop counter the force of this analogy by declaring that it has nothing to do with the case. They assert that the state is the only organization, in liberty-loving nations, which is given compulsory powers. It exercises these powers for purposes which the majority adjudge to be in the public interest. But to give to private societies composed of one set of men the power to conclude agreements with employers which will force other men against their will to join these bodies is violating, it is said, the fundamental right of an individual to decide for himself, to which groups, if any, he wishes to belong. If such agreements can be made to force men into unions, cannot they be similarly made to compel men to belong to one church, one fraternal organization, and one political party?

At this point, it would be well to leave the formal argument. Perhaps enough has been said to indicate that the closed shop is an issue upon which good men can disagree and over which, when impelled by conflicting economic interests, they may violently conflict.

II

Before turning to a possible reconciliation of these opposite sets of values and interests, it is perhaps appropriate to discuss briefly the changes which have been introduced by the National Labor Relations Act and also to review various devices which have been developed to soften the impact of the closed shop.

There would seem to be little doubt that the Wagner Act has somewhat weakened the case for the closed shop. By its outlawing of certain specified "unfair labor practices," that act threw certain legal protections around union membership and activity which when absent, as formerly, were used to justify the establishment of the closed shop. Thus the act provides that it is an unfair practice for an employer:

(1) "to interfere with, restrain, or coerce employees" in the exercise of their right to unionize and bargain collectively, or

(2) to encourage or discourage membership in any labor organization by "discrimination in regard to hire or tenure of employment or any term or condition of employer."

If it can be proved that a union man has been discriminated against because of these reasons, the National Labor Relations Board can order him reinstated and paid damages equal to the wages he has lost. The employers, therefore, cannot legally use their power of discharge to break up a union. Since they are not able to fire union men in the first place because of their union activity, then why is it now necessary to provide through the closed shop that these men must be replaced by other unionists? Has not the main reason for the closed shop therefore been removed?

While there is some force to this contention, it would seem to be only partially true. For in the first place, the law can only sift out and deal with the most obvious cases of discriminatory discharge. There is a fine art to getting rid of men whom one dislikes and most employers and managers are rapidly becoming expert practitioners of this art. Unionists can be dropped for minor infractions of rules which would pass unnoticed if committed by an antiunionist. In industry, the nonconformist must commonly attain a height of personal and productive virtue to which the nonunionist workman can sometimes hardly dare aspire.

A second point is connected with layoffs caused by seasonal or cyclical declines in business. At such times it is easy for the employers, unless restrained by other rules, to pay off old scores and guard against future dangers by concentrating the layoffs from among the active union men. This is especially hard to detect and to prevent when a large number

are being laid off. This tendency can indeed be checked by the introduction of seniority systems and this is perhaps the chief driving force behind the establishment of such systems. But so far as my observation goes, the introduction of seniority systems generally, although by no means universally, follows the establishment of the closed shop and is a further manifestation of increasing union control. It is doubtful if seniority would be widely adopted were unions to be weak. And it is because the proponents of the closed shop want to make unions strong that they insist upon it.

While the Wagner Act has, therefore, somewhat weakened the case for the closed shop, it has only done so in part. There is still danger that many employers would be greatly tempted to let union men out if they could replace them with nonunionists. It is also probable that this could be managed with sufficient subtlety as to escape prosecution.

If the Wagner Act has somewhat weakened the arguments of the advocates of the closed shop, certain modifications in that institution should have softened some of the objections of its opponents. Thus it was over thirty-five years ago at the instance of the late Louis B. Brandeis that the famous protocol for the women's clothing industry provided that in hiring, union men should be preferred, but that[1] "employers shall have freedom of selection as between one union man and another and shall not be confined to any list, nor bound to follow any prescribed order whatever." This gave the employer greater freedom and did not oblige him to hire everyone whom the union sent. This provision has been widely copied in a number of industries. It is often accompanied by a further provision that if after a stated period of time, the union is unable to provide a satisfactory workman for an opening, the employer is then free to hire a nonunion man.

In recent years, a still further modification has been introduced in the mass production industries in the form of the so-called "union shop." Here the employer is permitted to hire anyone he wishes, whether nonunionist or unionist. It is merely stipulated that after a given period, the nonunionists are to join the union if they are to retain their jobs.

There is still another classification of closed shops which cuts across the previous differentiations. This is according to whether the union dues are collected by the union itself or compulsorily deducted from the pay of the workers by the employers and then turned over en bloc to the union. The latter form is the check-off system which is in effect in coal mining and certain other industries.

Finally, there is the so-called "maintenance-of-membership" provision

[1] A. T. Mason, Brandeis—*A Free Man's Life*. P. 301.

which the National War Labor Board introduced as a compromise during the war. This permits those who were not members of the union on a given date to continue in their status and still hold their jobs. But it also prevents those who were union members on a given date after a transitional "escape period" from resigning from the union or allowing their membership to lapse. While this decision respected the conscientious objections of those who were not originally union members, it prevented those who were already members from changing their minds and bound them by their past decisions. Maintenance of membership, therefore, permitted those who already had strong objections to unionism to stay outside of these organizations and yet not be deprived of their jobs. But it provided that the unions be protected against any future backsliding on the part of their members.

Taken as a whole, therefore, while these modifications of the closed shop soften its import, they do not change its fundamental character. It is still a device whereby men, as a condition of obtaining or retaining employment, are compelled to join or refrain from leaving a union.

III

There is one final observation which I should like to make before I turn to the constructive part of my paper. It is this. The determination as to whether or not the closed shop shall be put into effect is now primarily made in individual cases according to the relative bargaining strength of the union and the employer. It is something which the union can impose, along with other terms, under threat of a strike, even though the workers in a particular plant or company are not deeply in its favor. And yet if the demand is once made by union leaders, the rank and file may feel obligated to walk out if it is not granted: (a) because the closed shop issue is involved with other terms about which the workers are deeply concerned, or (b) because of loyalty to the general cause of unionism which they may feel is involved, once the issues narrow down to a test of strength. Moreover, once the strike is called, the union does not depend solely upon the loyalty of the immediate workers involved, but it can call also on the loyalties and resources of workers employed by other companies to impose its will upon the employer in question. It can do this: (a) by having these other workers and members contribute to the financial support of those out on strike, (b) by manning the picket lines with members largely recruited from outside, and (c) by using these outside unionists to enforce secondary boycotts against the products turned out by the concern in question.

It may often be possible, therefore, for union leaders by using, or

tacitly threatening to use, these methods to induce employers to yield on the closed shop issue despite the fact that it may not be warmly desired by the men immediately concerned.

On the other hand, if the union is comparatively weak in finances and in outside connections, it may frequently be possible for the employer to prevent the closed shop from coming into being even though the mass of the workers feel an intense need for the protection which it would give. In other words, with the issue determined under the power struggle of collective bargaining, the closed shop is frequently obtained where the workers need and desire it least and is often denied where the workers need and desire it most.

IV

A Possible Reconciliation

I should now like to make a suggestion which may possibly improve the situation. This is to take the issue of the closed shop out of the area of collective bargaining and make it (like the determination as to whether the workers want collective bargaining and if so, through whom) a condition antecedent to collective bargaining. Stated briefly, it consists in letting the workers themselves decide, in a free and fair election, whether or not they want the closed shop. I hasten to add that this suggestion is in no sense original with me. So far as I know, it was first advanced by Mr. Arthur S. Meyer, the experienced chairman of the New York State Board of Mediation, who deserves a great deal of credit for his informed ingenuity in this as in so many other matters.

There is sound precedent for this step in the developments which the Wagner Act effected in the field of representation. Prior to that act, it was common practice for employers to refuse to bargain collectively with those who claimed to represent their workers on the ground: (1) that the employees did not really desire to bargain collectively, and (2) that in any event, the workers did not desire the particular union concerned or its representatives to act for them. Such, for example, was the attitude taken by Judge Gary of the U.S. Steel Corporation and by other leading steel companies during the big organizing campaign in steel in 1919.

Now, the tragedy of the situation prior to the passage of the National Labor Relations Act was that there was no mutually acceptable way of determining what the workers really wanted. It was always possible for employers to discount the fact of workers signing applications for union membership by either questioning these signatures or by claiming that they were obtained under duress and did not represent the real desires of the workers. In some cases, this was true, but even when it was false, there was no way of proving that this was so.

The result was that commonly the issue as to whether the workers wanted to bargain collectively through given representatives could only be determined by a strike. This not only interrupted production and bred ill will, but it was no sure test as to what the workers wanted. For the results were determined by the comparative strength of the contestants rather than by the real desires of the employees. The strike was indeed a no more effective method of determining these facts than was trial by combat a way of rendering individual justice in feudal times or war a means of deciding equitably between nations.

Now, while there are incompletenesses in the Wagner Act and doubtless some abuses in its administration, I submit that it was a mighty step forward when it made the issue of whether or not the workers desired collective bargaining a matter of ascertainable fact rather than one of negotiation by the interested parties or a matter of combat. It provided instead that when the issue was in doubt, the workers themselves should vote on what they wanted in fair and impartially supervised elections. And while the Labor Relations Board has been bitterly attacked by employers on many grounds, I have never known it to be criticized for the way in which it has conducted these elections. Whatever other changes may be made in the act, I do not believe that this feature will be abolished, unless a tidal wave of blind reaction should sweep over our country.

I should like to ask why the same procedure should not be applied to the issue of the closed shop. Instead of letting it be decided by an economic combat, why should it not be decided instead by referendum? Then when the parties sit down to negotiate the terms of a collective agreement, they can confine themselves to questions of wages, hours, and working conditions without having the situation muddied by the issue of the closed shop. There may be vital defects in this plan, but I confess that up to date it seems to me to be essentially sound.

There are, of course, certain procedural details which would be essential to a satisfactory working out of any such plan. First, I take it that it is obvious that in a plant or industry which is adopting collective bargaining for the first time, such a referendum should follow and not precede the election to choose a bargaining agent. If the workers reject the idea of collective bargaining outright, then there is obviously no need to submit the further issue of the closed shop to the workers.

Secondly, the issue should only be submitted to referendum if the bargaining representatives who have been chosen make this as a demand upon the employers. If, for any reason, they do not raise the issue, it is probably infinitely better to let the sleeping dogs lie. Employers should

not, however, have the power to agree or be forced into agreeing to such an arrangement without referring the matter to the workers by a referendum.

Third, the precise nature of the type of closed shop desired should be carefully and succinctly described by the union in writing and printed on the ballot. The voters themselves would, however, only vote "yes" or "no" on the proposition itself. This requirement that the precise proposition be defined would in turn be a force which would tend to prevent the unions from poposing the more obnoxious forms of the closed shop and would tend to lead to the more reasonable forms being proposed.

Fourth, in view of the tremendous importance which the choice of the closed shop might have upon the affairs of a business, I believe it is only proper that the employers should have the right to acquaint the workers with their own preferences and the reasons why they believe as they do. As a matter of fact, I believe they, as well as national unions, should have that right in connection with the choice of a bargaining unit. But the case for this is much stronger in the issue of the closed shop, where what is at stake is a limitation of the employer's right to hire and retain. Such a right to propagandize should, of course, be exercised soberly by all parties, without undue defamation or excessive expenditures. These are all problems in the political state for which perfect answers have certainly not as yet been found. If we can approximate the restraints which are now imposed by civilized societies in connection with governmental elections, we will be doing well and we will certainly be effecting a big improvement over the present situation.

Fifth, if the proposal is adopted, it will, I think, be admitted that workers should be protected against discrimination for any lawful activities during the referendum process.

Sixth, decision by a majority vote would seem the only equitable method. This is the method which we use in political democracy and to require more than this would be to give to members of a minority a greater importance than those of a majority.

Seventh, it would be unfair to have such a decision made once and for all. For if the workers vote the closed shop into being, abuses may develop in its operation which may cause the employees to change their minds. The door should not be closed to such a possible change of opinion. Electors should no more be given the power to vote for a perpetual closed shop than to vote for a President for life. Conversely, the workers might turn down a closed shop at one period, but later, on the basis of more experience, become convinced that it would be desirable. In my judgment, they should be given that chance.

Of course, these elections should not be allowed to occur so frequently as to keep a plant or company in a continuous electioneering uproar. The chief task of industry is not to hold elections for the delight of the participants, but to get on with the job of production. I would suggest, therefore, that the referenda should not be held more frequently than once every four years and then only at the request of either party. This will make both sides watch their step and be more on guard to prevent possible abuses from developing than if having once won an election, they were to be in power forevermore.

Eighth, a pressing issue is what should be the unit for voting. In view of the fact that convictions may vary widely between plants and companies, it would seem unwise to let this issue be decided on an industry-wide basis and that instead the unit should not be broader than the company, or at most a cluster of companies under unified control and management. This is without prejudice to the possibility that it may be desirable in matters of wages, hours and other working conditions to have industry-wide bargaining and agreements.

Ninth, a very important final issue is whether any such referendum is to apply to concerns which do not now have the closed shop or whether the issue can be opened up afresh in firms where this is already established. To the degree that the unions come to favor any such plan at all, they will obviously tend to want only the former of these alternatives. For this would permit them to hold what they have already obtained through collective bargaining and by strikes and to expand their area of control through elections. And yet this would seem to be unfair in those cases where the workers in given enterprises have tired of the closed shop and would like to make a change. If the principle suggested is sufficiently fair so that workers not yet under it may adopt it for new plants, it would seem only just that workers in plants where it has been adopted should be given the chance to make a change, if they so desire. If this is not done, the opponents of the closed shop may properly object that it is a heads-I-lose, tails-you-win proposal.

V

Some Important Conditions

There are, however, at least two very important substantive conditions which should be attached to any such proposal. These are designed to protect the public and the individual worker against certain abuses which the closed shop may bring.

1. The first is that in order for a union recognized as a bargaining agent to ask for a referendum on the closed shop, it must itself be an

"open" union. To combine the closed shop with an artificially "closed" union would permit the insiders to wring monopoly gains from the public and at the same time would force those denied entrance into poorer paid industries where their addition to the social product would be less. It would, in my judgment, be both unwise and improper for the state to protect or to foster such an antisocial arrangement. While a large degree of autonomy and self-determination should be granted to industrial units to which the state may properly delegate certain powers of self-government, these should not be allowed to degenerate into an exploitation of the public. The interests of a particular occupational group, particularly in those cases where the demand for the product is relatively inelastic, frequently conflict with those of the public and the public interest is not protected by giving to occupational groups a completely free rein. This is one of the chief objections to a syndicalistic or guild regulated society. We need to keep the occupations open in order to get the best distribution of ability and to produce at nonmonopoly prices the goods which the public wants. Just as the existing farmers, doctors, and lawyers should not have the power to determine how many should enter their occupations, nor businessmen the power to bar competitors, so workers should not have the power to lock the gate on qualified men who wish to enter.

As is well known, there are some unions which unreasonably restrict entrance into their ranks by one or more of the following methods: (a) by imposing an outright prohibition upon entrance or narrowly restricting it; (b) by requiring the payment of unreasonably high initiation fees; (c) by requiring a period of apprenticeship appreciably longer than that which is required to learn the trade or perform the tasks required; (d) by limiting the number of apprentices so rigidly that not enough workers are provided to meet the demands of the public for products at competitive prices.

The first of these unreasonable requirements can be prevented by an outright prohibition. The others are far more difficult to define and to regulate. Certainly initiation fees of $250, $500 and even more than this are unreasonable and should not be allowed. While it is hard to pick out a definite figure as the dividing line as between what is "reasonable" and "unreasonable," in the matter of initiation fees, I am inclined to believe that rough justice would be done by fixing the maximum initiation fee to be charged by a union at approximately $25. So far as I know, there are few unions in the mass production industries which now charge more than this and the imposition of such a maximum would prevent those now in the unions from making it more difficult for later comers to enter.

A further protection which in my judgment should be included is to provide that no one should be denied entrance into a union because of race, color, religion, or sex. As is well known, some international unions bar negroes explicitly from membership and in other cases this is done by the local unions. In many other cases, this is done not by formal rule, but by accepted if informal practice and by "gentlemen's agreements." In some unions also it is probable that persons of other races and religions are at times denied entrance. There is also a fairly frequent discrimination against women as such.

It is, in my judgment, impossible to justify such discrimination in a democracy which does not believe in dividing its members into citizens of different grades. Under the closed shop, if unions in considerable numbers bar negroes and women from membership, they distinctly limit the employment opportunities of these groups and put them at a grave economic disadvantage. If unions are allowed to expand their membership by including the unwilling, they should not be permitted to restrict their membership by excluding workers because of race, religion, or sex. As a matter of fact, this is forbidden by the State Labor Relations Act of Pennsylvania and by the State Fair Employment Practices Act of New York and New Jersey.

There are abuses connected with the apprenticeship requirements of unions. These are, however, confined to only a minority of the skilled crafts engaged in manufacturing and other industries affecting interstate commerce. Conditions vary so greatly between these crafts as regards (a) the number of jobs a worker should master, (b) the length of time needed to learn each job properly and (c) the number of workers required that it would, I believe, be foolish to attempt to fix the proper limits by statute or even by administrative rulings.

The task of administering any such provisions for referenda will be difficult enough even at best and it would seem unwise to overload the administrative body with such a variety of perplexing tasks for which it will quickly have to find definitive answers. A great step forward will be made if the outright prohibition or explicit limitation of entrance be prohibited together with the elimination of excessive initiation fees.

2. A second basic condition should be to provide some impartial review of cases of expulsion from unions operating under these closed shop provisions. Some unions, like the International Typographical Union, carefully safeguard the rights of their members in this matter. There are other unions, however, where, I have become convinced from such study of individual cases as I have been able to give, grave abuses have occurred. These instances of abuse seldom find their way into the literature of

trade unionism, but they are no less real. Men have been victimized because they have honestly opposed the policies of officers in charge of the unions and once expelled, have found it difficult to obtain employment. The granting by the state to the unions of the right to require union membership of the unwilling if it be approved by a majority vote would be a further grant of power by the state which would make of unions even more quasipublic bodies than they now are. It is a truism both of ethics and of law, however, that no persons or institutions should have rights without corresponding duties or privileges without commensurate responsibilities. Men who join a union under these circumstances should be protected against capricious or unjust expulsion by the union just as much as against discharge by their employers for union or collective bargaining activities. Such abuses should be directly forbidden by law and some of the necessary safeguards should be spelled out in the act itself. These might include the provision that (a) the charges against any member should be stated in writing, (b) the accused person should have the right to appear in his own defense, engage counsel, and summon and cross-examine witnesses, (c) if found guilty, the accused should have the right of appeal to higher union bodies including the international officials, and (d) he should also have the right to appeal to local representatives of the National Labor Relations Board, state labor boards, or such body as administers the act. The costs of such appeals should, of course, be kept very low and every effort made to settle appeals quickly.

The question may well be raised if certain other compensatory protections should not also be introduced into any such law. Among these possible provisions might be: (a) a requirement that the union itself must hold periodic and secret elections at least once every four years, (b) that local, district and national unions make an annual financial statement to their members as to the amount and general nature of the receipts and expenditures during the given years.

There is little doubt that unions should take more steps toward reform in these lines. Whether they should be required to effect such changes as a prerequisite for having the privilege of having the closed shop made subject to the results of a referendum is, however, a moot point. The mere fact that the workers will have the right to vote on a closed shop and to reject it if they do not like the union in question will force the unions to do some housecleaning in order to gain votes. If this can be done voluntarily, so much the better since it will free the governmental supervisory body from an added administrative load. But if sufficient reform is not effected in this manner within a decent interval of time, then serious thought should at least be given as to whether this should not be required by law.

It will be asked, of course, if the unions should not also be asked to forego the imposition of restrictive rules and practices or what is popularly known as "feather-bedding." There is little doubt that there are some such abuses. It is highly desirable that these be removed. The subject is, however, so complicated and it is so hard to define what are "reasonable" and what "unreasonable" restrictions, that it would not seem wise to include them in the proposed act. It is important not to overburden the administrative machinery and not all abuses can be removed at any one time. Gross and unreasonable restrictions, particularly when they involve the fixation of prices, can still be prosecuted under the Sherman Act as was done when Thurman Arnold was in charge of this work. Perhaps it would be well to leave the matter in this status for a period until it is seen whether the situation is being cleaned up.

VI

A Last Word

I am aware that the zealots on both sides of this issue of the closed shop and of unionism in general will probably regard this proposal as a subterfuge which avoids a decision on the relative merits of unionism and the closed shop as such. Those who regard unionism as essentially evil in its effects upon production and upon the relationships between employers and workers and who believe that under no circumstances should a man be forced to join a private association against his will, are likely to object to letting such a moral issue be decided by a majority vote of the workers. To these men, unionism is itself something evil which should be stamped out and even if the workers want to extend it, no compromise should be made.

The more extreme advocates of unionism and the closed shop may take a similar position. Believing firmly in the righteousness of their cause, they are likely to believe that unionism is "good" for all workers, irrespective of whether the workers themselves believe it to be or not. This school may, therefore, favor the compulsory extension of the closed shop by collective bargaining or legal enactment and scorn a process under which the workers, exposed to opposing propaganda, might decide against them.

There may also be unionists who will think that the conditions which I have attached are too onerous. Many, for example, will probably not want the principle of the referendum applied to those plants which already have the closed shop since they may be fearful that under such an arrangement unionism will lose more than it will gain. They may also oppose action by the state in keeping the unions "open" and in

protecting the members against unjust expulsion. They may, therefore, regard the practical price of these conditions as too great for any benefits which unions may reap.

Conversely, there may be many employers who believe that they will have a better practical chance to overthrow the closed shop through state and national legislation forbidding it than to take the chance of having it voted in as well as out by the worker.

Both groups may, therefore, on principle and in practice, reject the method of popular choice as the advocates and opponents of slavery finally came to reject the doctrine of "squatter sovereignty" advanced between 1848 and 1860 by Lewis Cass and finally by Stephen A. Douglas. Cass and Douglas strove to make slavery a local issue under which the inhabitants of a territory could decide for themselves by majority vote whether or not they would permit the institution of slavery within their borders. The Southern advocates of slavery and their Northern allies were not content with this. They wanted to extend slavery by national action into the territories even though the inhabitants did not want it and finally they legalized their position through the Dred Scott decision. Indeed, many of them wanted to extend slavery as a national institution into the free states themselves as was evidenced in the boast of Senator Toombs, of Georgia, that he intended to call the roll of his slaves from the foot of Bunker Hill Monument. On the other hand, Lincoln and his followers wanted to prevent, by national action, the spreading of slavery into the territories and the extreme abolitionists, such as John Brown, wanted to free the slaves in the Southern states. Under the terrific pressure of these conflicting forces, the attempt by Douglas and his followers to localize the problem by letting the territories decide for themselves was defeated.

And yet it is permissible to ask, as George Fort Milton, Avery Craven, and J. G. Randall have done, whether the program of Douglas was not after all wiser than it has seemed. Because the extremists on both sides would not let it operate, we got the Civil War, which Douglas was trying to avoid. This war freed the slaves which was a great ethical gain, and it preserved the Union, but it did so at a terrific cost in life, hardship, and bitterness between sections which even now, after the passage of nearly a century, is still acute. And while the Negroes have been freed, they are still grievously oppressed politically, economically, and socially. It is, at least, possible that we might have made more enduring progress if we had moved less hastily and drastically. And yet to do this, the extremists on both sides would have had to maintain a patience and a moderation which in practice it is hard for those with sharply differing ideologies to display.

It is well to remember the sad, but trenchant, dictum which Justice Holmes expressed in his fascinating correspondence with Sir Frederick Pollock: "As between two groups, each equally convinced with the righteousness of its own cause, I see no ultimate arbitrament but force." Perhaps this is so, but if it is true, it means that incessant civil and international war is the inevitable consequence of sharp differences of opinion and of moral judgments. I cannot believe that this is either necessary or desirable in the present instance. The peace, harmony, and high productivity of this nation is far more important than the issue of the closed shop. Certainly this is a far less pressing moral issue than was slavery. It would be a great mistake to let ourselves be torn apart by strikes to establish the closed shop or by blanket legislative prohibitions of its existence. There seems to me to be sound merit, therefore, in Mr. Meyer's proposal to let the issue be decided plant by plant and company by company in the time-honored and democratic way of free elections. It is because of our free elections and our willingness to abide by the results that we do not have revolutions or the secret police in this country. We have built up a political process by which moral issues can be submitted to the people and their judgments recorded and put into effect. We have gone on the basis that as Justice Holmes once said, the "test of truth is its ability to establish itself in the competition of the market." This competition should be freed from gross misrepresentation and coercive force but can we not trust in the essential fairness of men when given the facts and the arguments to winnow out the truth from error? Men and causes which depend upon getting the permanent approval of the voters have to purge themselves of gross abuses in order to survive. Public opinion operates to keep our political parties comparatively decent. If allowed to express itself, it would, I think, purge unionism from many of its abuses and help further to protect the individual workers from being victimized by their employers.

Most young men tend to be impatient with what the lawyers term procedural matters and to be far more interested, instead, in substantive issues. Only the latter seem to the young to have vitality. But as time passes and men grow older, it dawns upon them that a great part of our progress has been made through transforming substantive issues of conflict into accepted matters of procedure. For it is in this way that society peacefully disposes of issues which, if not so handled, would tear it apart. May there not be a moral guide for action in this fact?

The Role of Government in Industrial Relations

By WILLIAM M. LEISERSON*

I

THE GREAT OBSTACLE to orderly development of public policy with respect to industrial relations is the tendency of each generation to consider its labor problems unique. There is a general impression, for example, that active government participation in labor relations began with the New Deal laws protecting union organization and encouraging collective bargaining. And the more ardent New Dealers have been inclined to think labor history began in 1933. As a matter of fact, labor relations have been controlled by law and government in this country since the beginning of our history. Nevertheless, recurring periods of labor turmoil and widespread strikes continue to succeed each other over the years, and each generation repeats the cry for something that will "really solve" the labor problem.

Our concern being the relations of free workers and free employers, I propose to begin the discussion with a text from the prophet of free, private enterprise, Adam Smith. I read from Book I, Chapter VIII of *"The Wealth of Nations:"*

> We rarely hear, . . . of the combinations of masters, though frequently of those of workmen. But whoever imagines, upon this account, that masters rarely combine, is as ignorant of the world as of the subject. Masters are always and everywhere in a sort of tacit, but constant and uniform combination, not to raise the wages of labour. . . . To violate this combination is everywhere a most unpopular action, and a sort of reproach to a master among his neighbours and equals. . . . Masters too sometimes enter into particular combinations to sink the wages of labour. . . .
>
> Such combinations, however, are frequently resisted by a contrary defensive combination of the workmen; who sometimes, too, without any provocation of this kind, combine of their own accord to raise the price of their labour. Their usual pretenses are, sometimes the high price of provisions; sometimes the great profit which their masters make by their work. But whether their combinations be offensive or defensive, they are always abundantly heard of. In order to bring the point to a speedy decision, they have always recourse to the loudest clamour, and sometimes to the most shocking violence and outrage. They are desperate, and act . . . [to] . . . frighten their masters into an immediate compliance with their demands.

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The masters upon these occasions are just as clamorous upon the other side and never cease to call aloud for the assistance of the civil magistrate, and the rigorous execution of those laws which have been enacted with so much severity against combinations of . . . labourers and journeymen . . .

That sounds pretty modern.

Apparently people were fighting the same devils when the good book was published in 1776 that we are fighting today. Though writing in England, Smith described as well the labor relations that prevailed in the United States and the role the government has played in them down to recent times. Today many employers think the situation has been reversed. The law, they say, especially the National Labor Relations Act, bears with greatest severity on them rather than on the laborers; and the magistrates' hands have been tied by the Norris-La Guardia Act. But they still do not cease to call aloud for the assistance of the government, only now their clamorous cries are directed to the Congress rather than to the magistrates.

Like Adam Smith, however, we must not be misled by the clamor of those who have been masters. The picture is not as dark as they paint it. No employer has gone to jail for violating the Labor Relations Act, but workers are still going to jail for their "unfair labor practices,"—for disorderly conduct in connection with strikes, for mass picketing, as well as for the violence they resort to in desperate efforts to bring their disputes to a speedy decision.

To understand what really has happened to our industrial relations in recent years, we need to look back at least a hundred years. During the first quarter of the 19th century property qualifications for voting were abolished and manhood suffrage established in most of our states. This fact probably has more to do with our present labor troubles than most of the other causes we ascribe them to. It brought relaxation of the laws against combinations of working people, and soon led to legalizing of unions and of the right to strike. Certainly public control of industrial relations today is primarily conditioned by the fact that Labor has votes, and has learned how to use them.

Legalizing unions and strikes was helpful to wage-earners, but largely ineffective in safeguarding their interests, so long as employers had the equal right to destroy their unions, to refuse to deal with them, to discharge or discriminate against employees for talking unionism. It was the votes of workers, aided by the support of the general public which sympathized with their cause, that changed this condition by laws designed to equalize their rights and bargaining strength with those of industrial managements.

But like most remedies for social ills, this remedy has created new problems equally serious. Although many workers and unions are still weak in relation to their employers, some unions have so grown in power that they are in a position to dictate terms of employment, and they have demonstrated their ability to shut down whole industries like coal and steel, transportation and other public services.

There has been a natural reaction of antilabor public opinion which finds expression in Congress and state legislatures in a flood of bills to restrict and regulate the activities and practices of union organizations, and to abolish some of their privileges. The unions want no labor relations legislation at all. Although they strongly advocate and prepare programs for general social legislation, in respect to their own activities, they take a completely *laissez faire* position. They want to be let alone.

Some legislation directed against unions is bound to be passed. The negative attitude of organized labor has made this inevitable. But little effort is being made to study the experience with the laws that have been passed, and with the policies of the Labor Relations Board, the War Labor Board, and other government agencies, to find out what measures were helpful and constructively directed toward peace and amity in labor relations and which tended in the opposite direction. A brief examination of what we have been doing about our labor relations in the last decade or so will make plain, I think, why failure to study this experience is likely to result in legislation that defeats its own purposes.

II

When Congress adopted the Labor Relations Act in 1935, it laid the foundation for a national labor policy that was at once a wage policy and a policy of governing labor relations. It chose to avoid government setting of rates of pay and other details of employment contracts. It sought instead to equalize bargaining power between industrial managements and their labor forces, and leave them free to agree on terms by the process of collective bargaining. Congress recognized that individual bargaining meant, in effect, management dictation of terms of employment. By eliminating employers' unfair labor practices, it tried to establish what the law refers to as "actual liberty of contract," and thus avoid also dictation by government officials. Wages and working rules would be determined by collective agreement and mutual consent.

That the Act has been eminently successful in accomplishing its immediate objectives is obvious. The bargaining power of workers has been enormously increased by encouraging and protecting union organization; and all the major industries now recognize and deal with unions.

But the collective bargaining policy was adopted not because freedom to organize and equality in negotiating labor contracts were regarded as ends in themselves. The underlying idea was that the public interest in industrial peace and justice in labor relations would be furthered by such a policy. This is made plain by Section 1 of the Act which recites that the practice of collective bargaining is necessary for the following among other reasons: (1) to remove "certain recognized sources of industrial strife and unrest;" (2) to stabilize competitive wage rates and working conditions; (3) to secure "friendly adjustment of industrial disputes arising out of differences as to wages, hours, and working conditions."

But what happened to these larger purposes? Apparently the policy in this respect worked to ends opposite of those intended. Certainly work-stoppages did not become less frequent, and the attitudes of management and labor less bitter and more friendly. Perhaps the explanation is that no provision was made for dealing with the problems that would arise when collective bargaining ends in disagreement. The law compels bargaining, but not agreement. Its requirements are satisfied when the Labor Relations Board succeeds in joining managers and workers in a vow to bargain collectively. Was the assumption that they would live happily ever after?

The Labor Relations Act does not deal with the subject matter of collective bargaining—wages, hours, working conditions. Because the government provided no adequate machinery and policies for securing peaceful and friendly adjustment of disagreements about these vital matters, industrial strife was stimulated. When the National Defense Program got under way, a rash of strikes broke out over the country about just such problems. A Labor Division was hurriedly set up in the Office of Production Management to deal with them, which duplicated the meager facilities of the U.S. Conciliation Service. Both proved ineffective, and a third agency was hastily created, the National Defense Mediation Board. This board soon found itself making decisions, in the form of recommendations, which fixed wages and granted "maintenance of membership," among other conditions. If the recommendations were not accepted by either party the government took over the industry. Thus voluntary mediation ended up in a form of compulsory arbitration, and John Lewis' coal miners wrecked this when the Board decided against a closed shop in the captive coal mines.

Then came the war; and it will be recalled that the War Labor Program did not start out to be a compulsory program with the government fixing details of the labor bargain. The pledge not to strike or lockout was made and the War Labor Board was established by agreement of

representatives of labor and industry. This voluntary method, after the manner of collective bargaining, was proposed and accepted as a substitute for compulsory legislation passed by the House of Representatives and pending in the Senate toward the end of 1941.

By 1943, however, Congress had given the War Labor Board, which was thus voluntarily set up, the power and the duty to "provide by order the wages and hours and all other terms and conditions (customarily included in collective bargaining agreements) governing the relations of the parties" to labor disputes. Directive orders supplanted collective bargaining as the method of adjusting labor relations and fixing terms of employment. To be sure, some compulsion was necessary under war conditions, but it was not foreseen and not planned. We drifted into it while struggling to maintain voluntary methods.

The Smith-Connally Act which formalized this compulsory policy, also provided for a so-called cooling off period, for government-conducted strike votes, for plants to be taken over by the government, for prohibition of strikes in such plants, and for other restrictions. But despite this law, if not because of it, labor strife increased, and mines or factories operated by the government have been shut down by strikes just like privately managed enterprises.

After the war ended the government wanted to get out of the business of dictating terms of labor contracts. An Executive Order authorized free bargaining about wages provided no price increases would result from such action. But by that time collective bargaining had become a lost art, and the government itself did not know the part it had to play in it. As a result, we had the great national strikes last year with lost working time breaking all records. And we ended up by government fact-finding boards setting the pattern of wage increases after all.

So our legislative and administrative methods of controlling labor relations have gotten us much that we didn't want, and what we wanted most we didn't get.

III

There are many who think that when powerful and well-financed national labor organizations are pitted against great employing corporations, the inevitable result is either industrial war on a grand scale or collusion against the consuming public; and however reluctant the government may be to dictate terms and conditions of employment to both management and workers, public necessity and public opinion will force it to do so. This view is expressed in the current demands for labor courts, and other devices for outlawing or restricting strikes and subjecting labor controversies to compulsory arbitration of some kind.

But this was substantially what we had during the war period. Yet 1944, at the height of the war, saw the greatest number of strikes on record up to that year. The lost time was not very great, but the actual number of strikes was the greatest on record. Both individual and collective bargaining were all but done away with and terms of employment were fixed by government fiat. Free management and free labor unions could not be maintained under this policy, and because most employers and unions have learned the lesson, they are joined in opposition to such a program. Public exasperation with their inability to settle controversies peacefully may force some kind of compulsory arbitration; but the experience of other countries as well as our own makes plain that only a police state can make a system of compulsory arbitration work in practice.

There is much popular support, also, for the view that unions have built up powerful labor monopolies which need to be made subject to antitrust laws as monopolistic business combinations are. "Coal operators (we are told) cannot combine to choke off our supply of coal until they get the *price* they want, (but) mine workers can combine to stop production until they get the *wage* they want. The owners of an electric light company are obligated by law to give continuous service, even though losing money, but employees of such a company, through a union, are allowed to shut that service down and plunge a whole community into darkness and danger." Such actions by labor unions are permitted, so the argument goes, because the unions have been given a special license to violate the law against monopolies. Labor should be brought within the law.

But not only labor unions, farmers' organizations too are exempted from antitrust laws. Unquestionably unions are combinations to restrict competition among workers, to raise and standardize wages and working conditions through whole industries; and farmers organize to standardize products and raise prices. In fact, the government lends money to combinations of farmers to help them withhold their products until they can get the prices they want. If that were proposed for labor unions it would be called "one-sided." These government policies with respect to labor and agriculture were established by law to deal with economic and social evils brought on by competition among farmers and workers, just as the antitrust laws were directed against the evils of business monopolies. To say they are special licenses to violate the law and to compel wage earners (or farmers) to compete and underbid each other is to ignore history and the progress that has been made since the combination laws of Adam Smith's days.

Closely related to the fear of union monopoly is the fear of industry-wide bargaining. To prohibit such bargaining is one of the main demands employers are pressing on Congress. But the very purpose of union organization is to standardize wages and working conditions so that employers will earn their profits by good management, and not by paying less for labor than their competitors. That is why any bona fide union, even though it gets started locally, soon spreads out and strives to organize the whole trade or industry.

Economic forces have pressed our unions to become the national organizations that most of them are. A law prohibiting formal labor contracting on an industry basis can only result in unions insisting on the same terms from each separate employer. This is the current actual practice, and the unions usually have their way; which means of course that the terms agreed upon in the first plant or two, set the standards for the whole industry. But because employers are reluctant to organize nationally for labor bargaining, strikes multiply to force all competing employers to adopt the same standards.

So far as this reluctance is due to fear of antitrust laws, it seems to have little basis in fact. All industries have their national trade associations for dealing with trade problems, but most of them shun labor problems. These organizations have frequently come into conflict with the Sherman Act. But I know of no employers' association that has ever been prosecuted as a monopoly, if it confined itself to dealing with labor—defined by law as not an article of commerce. The lack of employers' organizations for labor bargaining is, I think, a distinct weakness in our industrial relations.

To be sure there are dangers to the public in possible nation-wide strikes, or collusion against consumers between industry-wide organizations of employers and workers. The purpose of public control of industrial relations is to provide safeguards against such dangers. But if we are to have unions at all, they will be national unions, and in industries whose markets are nation-wide they will bargain nationally. It seems as futile to try to stop this, as to compel employers to sell only to local customers or to prevent a multiplant corporation from having a common labor policy for all its plants in all the States.

Public opinion generally, despite its condemnation of union abuses and reckless use of the strike weapon, still feels that freedom of workers to combine in labor unions for bargaining purposes is somehow connected with the maintenance of democratic political institutions, and with free private enterprise. Even those who favor the strongest "anti-union laws" are careful to provide in their bills for "full freedom of asso-

ciation, self-organization, and designation of representatives of their own choosing." No better proof of this public feeling is needed than the policy of the Western Allies in defeated Italy, Germany, and Japan. Among the first steps taken to build democracy in the former Nazi and Fascist countries was to proclaim freedom for workers to form and join unions. Revival of suppressed free labor movements has been stimulated and organization of new self-governing unions encouraged. Apparently those who framed the policy felt that democracy could not be built in those countries without union organizations like those that thrive under free governments. And it is to be noted that this policy has brought no public opposition in the United States.

Plainly the tumultuous labor relations we have experienced since the Wagner Act was passed, and the failure of government efforts to reduce industrial strife, have not changed the minds of most of our people as to the soundness of the policy of protecting labor's right to organize and encouraging the practice of collective bargaining.

IV

The foregoing indicates, I think, that any constructive program for controlling labor relations must be predicated on continuation of the collective bargaining policy Congress adopted with the Wagner Act. Yet the problems which have aroused the public to the need of more government control have grown out of this policy. What, then, is needed in the way of additional controls and improvements to make the policy work to the public ends stated in the Act itself: reduction of industrial strife and unrest, stabilization of wage rates and working conditions, and friendly adjustment of industrial disputes?

In trying to perfect the policy we must understand the limitations of the tools we use—the limitations of "government control." There is a common misconception that the government is all powerful. If it passes a law, say to forbid certain kinds of strikes or some customary management or union practice, and the law has teeth in it, it is thought that the prohibited practices will really disappear, except for a violation here and there for which those responsible can be punished. Then there is the notion that if the government or the public does control, the results are necessarily fair and good and in the public interest.

But relations between teachers and public schools are completely controlled by public authorities. They license teachers and they frown on unions among them. Strikes to force changes in salary scales fixed by legislatures or boards of education are obviously illegal. Nevertheless, beginning in Norwalk, Connecticut, last summer, a wave of such unlawful

strikes has shut down schools in many cities throughout the country. In Buffalo, at least, even the principals, who are part of the management of these schools, joined the strikers. There is much opinion that the public, or the taxpayers, have not done right by the teachers, and usually the strikers have triumphed over the authorities rather than suffered punishment for their unlawful revolts. Who will say that government control of teacher relations has been in the public interest during the recent period of high price of provisions, as Adam Smith put it? And who is in a position to say that the illegal strikes, picketing, and closing of schools have not contributed as much as government controls to improving teacher relations and meeting the public responsibility for education of the young?

Government control may have just as bad effects as lack of control. And the government alone cannot fairly and effectively control industrial relations any more than it can maintain law, order and justice generally without the aid of self-governing organizations or institutions like the family, the church, professional societies, trade associations, better business bureaus, etc., and the codes and traditions they develop. Private governments, the political scientists call them, and industrial managements and labor unions are such private governments. When these enter into collective bargaining agreements they set up joint industrial governments which institutionalize labor relationships with codes, traditions and norms of conduct that are the basic elements of social control. Despite temporary breakdowns when strikes occur, such industrial governments are maintaining law, order and justice in industry today to an extent that the public government alone could never achieve.

Just as international law has been slowly developing over the years through conferences, agreements, decisions and precedents, so industrial law has been developing through similar collective bargaining customs and practices; through union agreements, and decisions and precedents made in administering and interpreting them. If we would have effective public control, the government must build its program on this private industrial law, and on the methods by which it is made and developed. What happens when this necessity is disregarded is well illustrated by the public furor over the billion-dollar portal-to-portal suits. These, by the way, though following the course of law in the courts, seem to be regarded as greater threats to the economy of the nation than the strikes that unions carry on. And that was because the law was not based on the practices and customs that unions and employers had built up among themselves.

The National Labor Relations Act has freed the forces that make for

union organization and collective bargaining, and thereby it has contributed greatly to the private industrial law-making through which government control is made practical and effective. Its basic provisions must therefore be retained, and government policy grounded in them. But the Act has also developed some abuses which obstruct rather than promote agreement between labor and management. It is folly, therefore, to hold that no changes in it are necessary. But if the collective bargaining policy is to achieve its purposes, any amendments made must strengthen such bargaining, not weaken it. The public interest requires collective bargaining to be strengthened if it wants to avoid dictation either by management or by government officials. Private interests would be furthered if the collective bargaining policy were weakened.

To strengthen this policy, therefore, an amendment is needed that will require unions to bargain collectively, as well as employers. On the assumption that unions exist primarily for bargaining purposes,—which is true enough—the obligation was imposed only on employers. But this stimulated a take-it-or-leave-it attitude on the part of not a few unions, and the omission needs to be corrected.

Similarly the Act does not make it an unfair labor practice for a union to discriminate against employers who form or join employers' associations. Neither does it encourage organization among employers as it does among working people. There is no good reason why the Act should not treat management and labor alike in these respects, and an amendment to this effect would strengthen the bargaining policy. To make sure of such equal treatment, some countries define labor unions as organizations either of employers or workers for collective bargaining purposes.

As our unions have grown in membership and power, some of them have tipped the scales with more bargaining strength than the employers. This tends to make the unions headstrong, conciliation and mutual agreement more difficult. The collective bargaining policy, however, is predicated on equal bargaining power. Many proposed amendments would weaken unions as a means of equalization. This would be a backward step. It would lessen responsibility, and stimulate warfare rather than industrial law making. The constructive way is to encourage employers to organize to match the strength of the unions.

Another change in the Act is necessary to prevent interference by a minority with the functioning of a union chosen by a majority to act as collective bargaining representative. Some unions have called strikes to compel employers to deal with them after they had lost elections which resulted in another union being certified as the legal representative. This is contrary to the policy of the Act, and should be made an unfair labor

practice. A closely related problem is the practice of a few unions to boycott products made by members of another union which has been legally designated bargaining agent. This too can be met by defining the practice as unfair under the Act. There is reason to believe, also, that a more precise definition of bargaining units would also be helpful.

These are examples of the types of amendment that we must always be prepared to adopt in order to strengthen the collective bargaining policy of the law. By the same tokens we must be ever watchful to reject amendments that are constantly being offered that would have the contrary effect. For example, there are proposals for taking away rights of employees, unions and their officers under the Act, if they misbehave in certain ways. But it would be as absurd to say that the management of a corporation or its officers shall not be allowed to act for the owners because they have committed some unfair labor practice, as to prohibit a union or its officers to represent or bargain for the employees. Certainly bargaining and adjustment of disputes would not be furthered by such legislation. Proposals of this kind would promote disorder, not orderly control of industrial relations.

I have mentioned the futility of trying to stop the growth of industry-wide bargaining. A safeguard against its abuse has already been provided by the Supreme Court in its decision that if unions conspire with employers to fix prices or monopolize articles of commerce they are as guilty as the employers, and subject to the same penalties. Protection against dangers that might grow out of legitimate bargaining on an industry basis, can be provided by the administrative and judicial agencies which conciliate, mediate, arbitrate and otherwise direct the process of collective bargaining, which I shall presently describe.

But the public interest is furthered by the wider bargaining because it provides a sounder base for industrial government. It extends the area of law and peace over a whole industry, just as the King's law and peace were extended over a whole nation to supplant the petty rule and warring of feudal lords. It provides administrative and judicial procedures for settling and deciding controversies in accordance with law. The collective agreement is the constitution of this government, and the customs, precedents and decisions constitute the body of common industrial law. Periodical conferences of representatives of management and labor provide new laws.

On a small scale such governments exist also in the plant or plants of a single employer. But the smaller the scale, the less stable the governments; and the traditions of common interest in the industry of both management and labor are slower to grow in the smaller scale. Also the

small-scale governments can rarely afford a permanent independent judiciary in the form of an umpire, impartial chairman, or adjustment board. This institution grows only under industry-wide governments, or where a great employing corporation operates many plants covering large sections of the country.

In this connection, a realistic program of government control would correct a weakness in the judicial system of the private industrial governments, and at the same time provide a means for embodying the private industrial law into the public law. Contrary to the practice in other countries where compacts between managements and unions are treated as gentlemen's agreements, in the United States they are legal contracts enforcible in the courts. The common complaints about violations of union contracts make plain that ordinary courts are not equipped to administer justice under industrial laws. On the other hand, the judicial processes developed under union agreements are still in rudimentary form. The judges are still in the circuit-riding stage, temporary itinerant referees, arbitrators, umpires.

Nothing illustrates better the need of an organized system of industrial adjudication than the dispute between John Lewis and Secretary of the Interior Krug which brought on the recent coal strike. The question about which they differed was whether the agreement between the union and Mr. Krug could or could not be cancelled before the mines were returned to private ownership. That was the simple question. This obviously was justiciable under the terms of the contract. But when the case got to the courts, the issues were about injunctions, the Norris-La Guardia act, and about a lot of other things in which lawyers are learned. The simple question has not been answered yet. Punitive remedies for violations of agreements can help little because in the course of their working relationships both managements and employees are unwittingly violating agreements almost every day. The need is for an independent judiciary to apply and interpret the industrial law developed under the customs and practices of collective bargaining agreements.

This does not require an elaborate system of labor courts established by the Government. An Act of Congress is needed, however, requiring every union contract to include a provision that all grievances arising under it, and all disputes about its meaning shall be settled by arbitration if they cannot be adjusted by mutual consent. Then if they fail or are unable to set up their own arbitration system, there should be made available an industrial arbitration tribunal to which either party may refer cases for final and binding decisions. This is not compulsory arbitration in the ordinary sense of the term. It would merely substitute an

effective industrial judicial system for deciding disputes arising under labor agreements in place of the regular courts which theoretically are already empowered to decide such issues. Public opinion both among unions and managements favors such adjudication of disputes under agreements. The government would merely extend their own custom and practice, and make certain that the judicial system works to prevent work-stoppages.

V

But when agreements expire or are to be revised, or new agreements are to be made, the differences are not justiciable. These controversies have been causing our greatest industrial wars since the Labor Relations Act has made strikes for union recognition unnecessary. True, most disputes of this kind are settled peacefully by collective bargaining; nevertheless it is the disagreements about making or changing contracts that bring on the great strikes and labor crises, and pose the most difficult problems of public control.

In international affairs we have learned that wars cannot be prevented unless we organize for peace, and establish orderly methods and procedures for consultation, investigation, conciliation, mutual adjustment and voluntary arbitration. But we have not yet learned that we need similar machinery, organized methods and established procedures to prevent industrial governments from breaking down when the contracts which set them up expire in the legal sense of the term. Instead, we have been content with haphazard government intervention by the U.S. Conciliation Service, or by so-called fact-finding boards, as often after the wars are on as before they have begun. Actually the contracts do not really terminate. For the seniority, pension, promotion, transfer and work-assignment rules provided in the agreements are permanent rights that continue in effect until changed by mutual consent. There is no hiatus in reality between agreements. And this is the most powerful factor that collective bargaining provides for maintaining industrial peace.

The Labor Relations Act compels bargaining. Why should not conciliation or mediation also be compelled? The principle is the same. As already indicated, much of the criticism of this law is more justly ascribed to the lack of adequate mediation machinery. Whenever a critical labor situation arises, as during the defense and war periods, or during the wage and price strikes of last year, new boards are created; and these usually drift into compulsory arbitration, because methods, procedures and traditions of mediation have not become established.

For the very reason that a program of Government control based on

collective bargaining cannot compel agreement, it must compel mediation and organize an adequate administration of it. Once this is done, the absurdity of laws requiring so-called cooling-off periods and government-conducted strike votes will become evident. Mediation machinery, if properly designed and operated, settles disputes, not strikes. There is an important distinction between the two; and the measure of the effectiveness of this method of control—mediation—is the number of strikes it prevents, not the number it settles; for the strike itself is a method of settlement—the war method.

If, therefore, strike notices have to be filed at any time before the whole process of mediation is completed, and this sets the time for the expected cooling to begin, the effect is to heat rather than cool tempers during the periods of collective bargaining or conciliation when cool heads are most needed. This is what happened under the Smith-Connally Act, and disagreements and strikes were thus stimulated.

What is needed is a mediation period after bargaining has ended without agreement. But this requires that the government must be ever ready with an established organization and procedures, and expert mediators trained in the methods by which differences between management and labor are ironed out. If the Government is prepared to meet its responsibilities in these respects, both parties customarily agree to maintain the status quo until all mediation proceedings have been completed. Here again is an industrial custom which needs to be embodied into public law. Government mediation must require, therefore, that while a dispute is in process, management shall not change the conditions out of which it arose, and workers or unions shall not attempt to force the change. Because the Government has failed to do this, the propaganda slogan "no contract, no work" has become popular and caused many unnecessary strikes.

Whether the mediation organization is headed by a board or a single administrator is immaterial. The important thing is that managements and unions, and the government too, shall have obligations, duties to perform in connection with mediatory efforts to settle disputes *before* they break out in strikes. In addition to maintaining status quo while cases are in process, there are other responsibilities that must be imposed on the parties to disputes, if mediation is to be effective in preventing strikes. The negative requirement of the Wagner Act that they shall not refuse to bargain collectively needs to be translated into positive specific duties.

There must be the duty to exert every effort to make and maintain collective labor agreements; to give adequate notice in writing of pro-

posed changes in agreements; to arrange joint conferences promptly for negotiating the changes or new proposals; to exert every effort to settle all disputes, whatever their nature, in such conferences between authorized representatives of employers and employees; the duty to refer all unsettled disputes to the appropriate government agency for mediation or other assistance. Some of these are commonly stipulated in union agreements with employers, but those referring to obligations to the government are not common. I propose that they should be prescribed by law.

We hear frequently that what mediation machinery we have needs to be strengthened. But this can only mean jobs for more mediators unless responsibilities like these are met by both management and workers in connection with the government's conciliatory efforts. But legal penalties will be of little help in enforcing them. What is most needed are habits of law and order in settling labor controversies, and these can best be established by orderly procedures provided by a mediation agency with appropriate methods for handling different kinds of disputes, and then pressing and exercising the parties in meeting their obligations in connection with the mediation process. Unions say they want to use the strike only as a last resort. But this is not possible without government mediation measures of the kind suggested.

Other measures such as voluntary arbitration and what is called fact-finding need to be integrated into the mediation system. They are really a part of it, and they have been much less effective than they might be, because they have been haphazardly used, and their places and functions in the system have been ignored. Fact-finding, for example, is a useful emergency procedure when all mediation efforts have been exhausted and voluntary arbitration cannot be secured. But if a board really found and published all the facts, the effect would be to defeat the purpose of securing a peaceful settlement. People would draw different conclusions from the facts, and much of the public might conclude that the Board's recommendations were wrong. This emergency procedure, therefore, requires that the dispute shall be arbitrated, with the decision put in the form of a recommendation. If such decisions are well publicized, and are not frequently made so that public attention can be centered on them, then pressure of public opinion is mobilized to secure acceptance of the recommendation, provided the men who made it are well known and respected for their impartiality.

There is no assurance, of course, that partisan and political pressures will not prevent the maintenance of an adequate mediation organization to avoid strikes by settling disputes. But here again, industry-wide

and other large-scale bargaining have valuable contributions to make. Wherever such bargaining has existed for a long time, and permanent arbitrators adjudicate disputes arising out of the agreements, it is customary to invite these industrial judges to assist as mediators in negotiating new or revised agreements. They know the problems of the industry, and both parties have confidence in them if they have functioned well as arbitrators. Sometimes the adjudication functions are entrusted to an adjustment board representing labor and management in the industry as a whole, with or without a neutral umpire.

Here are the elements of a complete mediation system within nation-wide industries. Instead of discouraging bargaining machinery of this kind, Government policy would serve public interests better if it encouraged them, as it does farmers, processors, and distributors to organize coöperatives. Such industrial home rule arrangements, I think, hold the greatest promise for effective maintenance of labor peace. If industries, or groups of industries, were helped to develop their own mediation systems, with the kind of impartial conciliators they would jointly select, then the Government's mediators and arbitrators would have to be men of equal caliber and experience. They could neither influence nor help the top men in the industrial setup if they were not; and both management and labor would have a direct interest in seeing to it that government mediators are top-notch men.

VI

This completes the improvements that seem to me to be immediately necessary to make government control based on a collective bargaining policy work more effectively to safeguard public interests. The compulsions in the proposed amendments to the Labor Relations Act, the obligatory mediation, and the adjudication of disputes about interpretation of agreements, are nominal, not punitive, and are based on the customs and rules developed through the collective bargaining process.

I offer no suggestions for regulating unions by law, not because they must be kept free of all government regulation, but because we do not know enough about their internal affairs at present, to devise effective regulations that will not do more harm than good. The Smith-Connally Act provided that every strike ballot shall have printed on it the question: "Do you wish to authorize this interruption of war production?" The assumption was apparently that union officials wanted strikes, that the members did not want to strike; and if the Government took a secret ballot on this question, the workers would mostly vote "No." But what most of them did was to vote "Yes." The framers of the law did not know

what kind of animal a union was, and what kind of people union people were. The attempts to outlaw closed shops, without providing for the needs they meet, have proved futile in the states, and a federal act is not likely to fare any better. I see no objection to requiring unions to register, and file financial reports, constitutions, etc.; or to requiring that partisan political contributions shall be voluntary. This has been tried, but the laws have not changed labor relations for the better.

Our courts have been regulating unions for very many years. They hear and decide numerous cases in which members or local unions complain of violations of union constitutions or by-laws, arbitrary expulsion from membership, and autocratic practices by union officials. But whether a statute will accomplish any more than the court decisions have done, we do not know. If, however, such legislation is to be adopted to improve labor relations, we would have to regulate the internal affairs of management as well as unions. For the same kind of autocratic practices occur within the management hierarchies, as within union organizations. Management of a large corporation has two or three thousand people as part of the management staff. They arbitrarily discharge people; there are favoritism and other abuses just as in the unions. If we are going to regulate one, we shall have to regulate the other. Both are responsible for bad labor relations. Until we can be reasonably certain of the effects of regulatory legislation on both management and union, it would be better to study the subject a little more rather than to try to adopt hasty laws.

I conclude, therefore, with suggesting that the predominantly voluntary methods outlined above offer the best course of action for perfecting government control of industrial relations founded on a collective bargaining policy. To those who think that laws with teeth in them can improve human relations like those between workers and managers, this will be unsatisfactory. The only answer I can give is that in democratic countries, strong laws providing for compulsory settlements and restrictions on strikes have proved less effective in maintaining peace and amity in labor relations, than the apparently weak, voluntary, conciliatory methods.

As a wise Englishman told me once, a democratic government must be very careful not to expose its own impotence.

Industrial Disputes and the Public Interest: I

By DONALD R. RICHBERG*

I AM MOVED by a headline in today's papers to recount a little incident in my life in connection with a man quite well known to fame: Mr. John L. Lewis.

I had many associations over many years with Mr. Lewis and at times I may have been of quite considerable service to him, although never professionally employed. But I remember one time when I was in the public service and I incurred Mr. Lewis' extreme displeasure. In fact, certain legal opinions which I gave as counsel for the NRA at that time were very offensive to Mr. Lewis, and in his customary "restrained and moderate" language, he issued a statement to the press in which he said "(I had) betrayed Labor and turned against the breast that (had) suckled (me)."

I was not entirely familiar with that location, but I thought I understood what Mr. Lewis meant!

I restrained a natural inclination to make any answer for quite a time, and one day a few weeks later I happened to be going in to see the President when Mr. Lewis was coming out. We met in the office of dear old Secretary McIntyre. I said to Mr. Lewis: "John, I don't know why you got so irritated about my opinions a few weeks ago." He looked at me with considerable surprise and put his arm around my shoulders in a most affectionate way and said, "Why, Don, there was nothing personal in that!"

If I find at the present time that I must say some things that sound a little unkind about some very good friends of mine with whom I have worked in what I thought was a common cause many years, I hope you will all understand that there is "nothing personal" in what I say!

Nearly fourscore and seven years after the election of Abraham Lincoln we find ourselves facing the problem again as to whether any nation "conceived in liberty and dedicated to the proposition that all men are created free and equal . . . can long endure."

An irreconcilable conflict between free labor and slave labor brought about, and was ended by, a civil war. The subjection of workers to the political-economic tyranny of employers was made unlawful in the

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United States. But today there is a new and growing tyranny of labor organizers and labor politicians—a rapidly expanding laborarchy—that seriously threatens the endurance of a nation conceived in liberty.

This is my short answer to the question: "What is the extent of the public interest in labor disputes?" There is, of course, an unending public concern with all controversies which threaten either to disturb the peace and good order of society or to bring injuries and suffering to innocent people. The progress of civilization has been achieved primarily by establishing peaceful procedures for the settlement of domestic conflicts, and by requiring all citizens to submit their unsettled disputes to the compulsory arbitration of public officials and to refrain from trying to settle them by the compulsory arbitration of private force. That sort of compulsory arbitration we call "the administration of justice."

The studies, the courage, and the toil of scientists and philosophers would have been largely in vain if a social intelligence and idealism had not created systems and mechanisms of law and an orderly society within which free men could seek and gain the rewards of service to others. Materialistic, commercial-minded men are inclined to forget that their liberty and self-advancement is only preserved by our society because of the idealistic theory that in a free economy private gain is the just reward for a service to others. If it were regarded as right for the strong to oppress and exploit the weak, why should we have policemen and courts? Why should we protect any liberty except the anarchistic freedom of the brutal, the ruthless and the cunning to compel gentler, kinder and finer men and women to serve them?

The Pharoahs, the Caesars, the feudal lords, the brigands and slave drivers have been brushed aside, as political idealists have organized popular governments and a public police to maintain the greatest possible freedom for all and to defeat and to repress those private armies that are always being organized to obtain the greatest possible freedom and power for a few.

But, unhappily, the same individualism which makes men willing to die for liberty, makes them also hostile to those restraints upon their individual freedom which are necessary to preserve the freedom of others.

The successful businessman, having used his competitive freedom to defeat competitors, becomes a would-be monopolist, seeking to dictate prices to consumers and wages to labor, inspired by a lofty confidence in the benevolence of his intentions, the rightness of his judgments and the justice of his rewards.

The successful politician, having used his political freedom to defeat his opponents, becomes an autocrat, seeking to perpetuate his dynasty,

confident that, in its purposes, its methods and its wisdom it will surmount all previous records of public service.

The successful labor organizer, having used economic and political freedom to defeat all opposing tyrannies, becomes a labor monopolist aiming at the centralized control of all labor, all wages, all production, and inevitably all prices, exalted by the strange delusion that a ruling class of labor politicians—a laborarchy—will be less destructive of individual liberty and more productive of mass security and prosperity than any previous breed of tyrants.

If these labor leaders, and the self-proclaimed liberals who give them unquestioning support, were genuine libertarians, they would be ardently demanding the enactment of laws to provide for the peaceful settlement of industrial disputes. Every true liberal must know that only by the establishment of an administration of justice under law can the liberties of the masses and the liberties of the individual be maintained.

Controversies between individuals or between groups, which threaten injury to others, and particularly those which are injurious to the community, must be settled voluntarily or by the intervention of public authority. That political principle must be enforced, with no exceptions for persons or classes, if the idealisms of individual liberty, of equal justice under law, and of government by the consent of the governed, are to be sustained. In a word, the ways and means for the peaceful settlement of industrial disputes must be created and maintained by law, if this nation, "conceived in liberty," is to endure.

Let me make it quite plain at the outset that I do not propose to argue with those who question or deny the idealisms which are fundamental to our form of government. Nor do I propose to argue with irresolute, confused and timid reformers who are afraid to have the government, which represents all the people, assert the supremacy of public force over the private forces which are organized to advance the special interests of one economic class of people.

There are those who honestly fear a strong government. In this day when individual manpower has become so gigantic that a few ruthless men might wipe out a great city, there are still backward-looking people who chatter incoherently about the best government being the least government. There are still political imbeciles who think it is safer to leave labor dictators like John L. Lewis free to force the nation to submit to the demands of private interest, than to empower the government to force Lewis and his followers to submit to the demands of the public interest.

But, enough time has been wasted in futile debating with the conscious and unconscious enemies of our society. It is now the time for action by

men and women who retain faith in our institutions and whose vision has not been impaired by ignorant prejudice or learned petit-pointing. It is the time for discussing, not whether the lawless campaigns of labor unions against the general welfare shall be stopped, but what is the wisest, most effective procedure for stopping them.

Therefore, we must reject at the outset the counsel of those who are ever ready to palsy the strong arm that is raised to check or to punish the evildoer. There is a beautiful appeal to our finer feelings in the argument that it is more blessed to give than to receive, and that we should return good for evil and that human beings should be persuaded to do right and not forcibly prevented from doing wrong.

In truth, a beautiful, appealing argument can be made in favor of abandoning all attempts to govern people by organized public force—an argument in favor of a universal effort to accept the Sermon on the Mount as a political constitution. However, it is well to recall that He who delivered the Sermon scourged the moneychangers from the Temple and vigorously announced that He had come, not to bring peace but a sword for the destruction of evil.

It is also well to remember that, throughout the world and within our own borders, every existing civilization has been founded and developed under the protection of publicly controlled force designed ostensibly for the advancement of the common good. Fascism and Communism give examples of the oppressive and selfish uses of political power, offsprings of the military tyrannies of bygone ages. But all the potential evils of centralized power are a lesser menace to our society than the anarchy of a continuing warfare for private gain between factions and classes and individuals unrestrained by any legal obligations to protect and to promote the general welfare.

So let us begin our search for a new labor law with a clear understanding that we are seeking to preserve a free economy, liberty of contract and a competitive regulation of wages, prices, and production. We are not seeking, but we are resolved to escape from, that political regulation of industry which is the objective of those modern radicals who are ready to sacrifice individual liberty to gain an illusory security. Unless we have lost faith in our long-accepted national ideals we must rely fundamentally on the voluntary agreements of free men for the fixing of wages and prices and for arranging the terms on which they will work together or exchange their products. We must not encourage or require the compulsory arbitration of industrial disputes, except as a last resort and a necessary defense against lawless injuries to the general welfare.

We are seeking to find a way for the peaceful and just settlement of

economic conflicts of interest without permitting any private monopolist to exploit us for selfish purposes or any public authority to regiment us into the service of even an evangelistic ruling class.

The first step in reëstablishing competition and voluntary agreements as the regulators of industry is to outlaw the organization and coercive operation of labor monopolies that are now legalized by federal law. In the early days, when labor unions were struggling for existence against big business organizations which created practical monopolies of employment, it seemed reasonable and desirable to free the unions from the restraints of the antitrust laws. To legalize labor combinations in restraint of trade appealed to many as the logical way to combat big business monopolies whose control of the labor market appeared to be also legalized.

In recent years, federal law has favored the growth of labor monopolies, not only by special privileges and immunities conferred upon labor unions, but also by special restraints imposed on management. Under this political favoritism we have made lawful the stifling of competition and the domination of industry by labor organizations unrestrained by any legal obligation even to avoid needless, willful and intolerable injuries to millions of helpless, innocent people. And this has been pointed out very bluntly by the Supreme Court in many recent cases.

We are indeed fortunate that more serious harm has not been done by our toleration of these antisocial conspiracies which have been legalized. A certain amount of foresight, and a well-grounded fear of public resentment, have restrained a great many powerful unions from the full use of their extraordinary privileges. The ambitions of many labor bosses have also been moderated by rivalries between unions, by the menace of unorganized workers, and by the uncertainty of their control over masses of undisciplined and unwilling followers who have been conscripted into the closed shop unions which they would not voluntarily support.

Yet, despite these weaknesses in labor unions, which have newly come into their monopolistic powers, they have made it evident in the past year (in the one year of 1946 it has been made very clearly evident) that we have been nourishing the growth of economic monsters that are capable of vast destruction. Even before they have reached maturity they have shown that they are able and willing to rule or ruin our commerce and are able and willing to paralyze our industries to achieve their selfish aims. We have ample evidence that these economic monstrosities can, by industrial paralysis, render the government itself impotent to protect the American people at home or to serve them faithfully in international

relations. I hate to think of the harm that has been done to our international relations by the industrial warfare of the past eighteen months.

Such a private power cannot be successfully regulated. It cannot be tolerated. It must be destroyed.

The creation or operation of a labor organization which is capable of dominating the commerce of the nation, or of a community, in any industry of public concern, must be made unlawful; and the law must be enforced by the full use of all the powers of government. That is the first step in the protection of the public interest against the evils that have arisen and will continue to arise out of unsettled labor disputes.

The destruction and prevention of labor monopolies must not, however, bring about the destruction or crippling of labor unions in their useful efforts to protect and promote the welfare of the wage earners in a free, competitive economy. Big business has not been destroyed by anti-monopoly laws. Nor is it any answer to assert falsely that the antitrust laws have not been enforced. They have been enforced; and the labor unions are the loudest advocates of more and stricter enforcement. They agree that business is made more healthy and the people more prosperous by the destruction of monopolistic controls. Yet the most vicious and injurious monopoly controls over business that are in effect today are those which are maintained by labor unions, alone or in conspiracy with employers.

Labor monopolies, like all other private monopolies, are indefensible. The wage earners themselves will be the first to profit by their destruction.

But, when the government takes away from labor unions the monopolistic power to enforce good wages and working conditions it must give the workers some other assurance that they can obtain economic justice. They must not be left unprotected against cutthroat competition or the oppression of mean and hard employers. The power of organized money to dictate terms to helpless workers must not be reëstablished. The long and sordid record of industrial greed and cruelty warns us against any lazy, or shall I say?, *laissez faire,* solution of our problem. And here I may say that I am speaking from something over forty years of experience fighting this battle in behalf of workers.

And so it becomes the duty of the government to establish peaceful procedures upon which both employers and employees can rely for a prompt and just settlement of their differences. This does *not* mean the creation of labor courts to which disputes must be submitted for compulsory decision. Such a procedure would mean the end of collective bargaining and voluntary agreements. It would mean more and more

governmental control of wages, production, and then prices—and thus, inevitably, bring about a politically regulated economy.

The object of our new labor law must be to keep open the way to genuine collective bargaining and to require both employers and employees to use and to exhaust all possible means of reaching voluntary agreements before taking any aggressive action against each other. We have had a law on the books for nearly twelve years which has required *employers* to bargain collectively; but the Wagner Act has left the unions free to attack without warning or good cause—a freedom which has been outrageously abused. Isn't it about time to require the unions *also* to make an honest effort to preserve the peace before starting a civil war?

The law furthermore should require employers and employees, involved in disputes which are of public concern, to refrain from aggression until public representatives have had a fair opportunity to induce an agreement, either by mediatory persuasion or by an impartial investigation and a public report upon the controversy. It has been conclusively proved by over twenty years' experience under the Railway Labor Act that these legalized procedures will assure the peaceful settlement of the vast majority of industrial disputes.

Since I find even in educated audiences such a complete ignorance on the subject of what the Railway Act has done, I merely call your attention to the record of the fifteen years prior to the outbreak of the war during which uncounted thousands of disputes were settled by agreement and out of over three thousand that finally went into mediation, more than a third were settled by mediation agreements and something like fifteen hundred were settled in other ways and over five hundred and fifty were settled by voluntary arbitration, and only twenty-six reached the final stage of an emergency board, the recommendations of which in every case were accepted. And so you have a practically strikeless record. And that is a record that has not been matched under any industrial relations law in this or any other country.

I do not wish to bore you with any more statistics, but you can investigate and find the facts if you are interested.

It should not be necessary to spend the next year or two convincing the Congress that this Act of 1926 has been the only labor relations legislation in American history that has promoted and preserved industrial peace. Also, lengthy arguments should not be needed to convince any intelligent person that peace in one industry cannot be indefinitely preserved, even by a sensible law, if industrial warfare is to be legalized and encouraged in every other industry. But it does seem necessary to point out that those who in recent years have been working night and day to

discredit the Railway Labor Act include all the trouble-making elements in America, from the avowed Communists who are the professional enemies of industrial peace, on through the labor racketeers, the fellow travelers, and other misguided liberals, and—last but not least—those academic perfectionists who think that expounding petty criticisms and untested theories gives better evidence of scholarship than drawing practical conclusions from practical results.

I have to pay a tribute to some of my old professors!

To those who are honestly seeking a way to industrial peace, the path is not obscure. Study the Railway Labor Act and the extraordinary record of its successful operation. Revise it so as to correct weaknesses that have developed and so as to apply its principles to the problems of other industries that are fundamentally the same but different in detail. Then, by the passage of a comprehensive Federal Industrial Relations Act (following the pattern of the Railway Labor Act) establish the ways of peace in all industries subject to national regulation and establish the legal obligation of employers and employees to make every reasonable effort to preserve the peace. Thus, at long last, we may seriously undertake our long-neglected task of civilizing our industrial relations. And to the "doubting Thomases," let me point out that the establishment of the obligation upon employers and employees to preserve the peace which was successfully used in the railroad industry was not the result of any extraordinarily peaceful, beautiful situation in the railroad industry, because it happened to be one of the worst strike-torn industries in the country at the time the Act was passed. And it was not the result of the fact that there were a lot of fine, strong unions in the railroad industry, because as a matter of fact, there were a great many unions fighting for their lives in the railroad industry and many crafts that were very inadequately organized. So all the beautiful arguments that you will hear from time to time as to the reasons why the Railway Labor Act philosophy can not be applied to other industries break down upon facing them with the facts.

It must be admitted that the ending of labor monopolies and the reestablishment and enforcement of genuine collective bargaining will not insure the peaceful and just settlement of all labor disputes. There are profound economic conflicts in the interests of employers and employees which will lead from time to time to disagreements which can hardly be decided except by some form of coercion.

In the same way, there are other social conflicts which would lead to violence and a brutal decision if the modern state did not make the preservation of an orderly society more important than the liberty of an

individual to fight out his quarrels regardless of the injury done to others. But this is the law of the modern state; and so—even a mother and father who have separated, with each wanting the custody of a child, must submit this controversy to the final and binding decision of public authority.

Can it be suggested that any issue of wages or working conditions is as important to a worker as would be the custody of his child? Can it be argued that although men and women are not permitted to use force to retain a child, or a wife or a husband, they should be permitted to wage civil warfare to decide whether a wage should be increased five cents or seven cents an hour—or whether a worker should be paid for taking a bath, before or after going to work?

The proposition that economic justice cannot be obtained except by leaving men free to coerce and intimidate one another is absurd on its mere statement. If force must be the final arbiter of any dispute, then the underlying principle of a civilized society compels us to establish a *public* force controlled by a *public* law as the arbiter and to prohibit the use of *private* force and the application of any *private* law to dictate the decision.

Thus, by a logic that cannot be evaded, we come to our last resort for the settlement of an industrial dispute that cannot be left unsettled and that in its consequences deeply concerns the public interest. Such a dispute would be one which threatened to stop the production or distribution of an indispensable product. Our new labor law must provide for the creation of an impartial tribunal for the decision of such an unsettled controversy. That decision must be written by law into the coöperative agreement of the parties so that they may continue to work together for mutual benefit and may continue their service to the society which is protecting their freedom and security.

Let it be emphasized again, however, that this use of compulsory arbitration must be made the exception and not the rule in the settlement of labor disputes. There must be no encouragement of management or labor to shirk responsibility and to blame their failures on public arbitrators, as lawyers often do when they lose cases which they should have settled without litigation.

For this reason there should be no permanent tribunal with open doors inviting quarrelsome persons into the judicial arena. The costs of litigating should be imposed on the parties in accordance with the reasonableness of their contentions and the time-saving efficiency of their presentations. The public arbiters should be required to avoid any drastic changes in existing relations and should be restricted to the application of prevailing standards which have been established by volun-

tary agreements. The new conditions imposed should be made effective only for a sufficient period to provide a fair test of their justice. Finally, the public arbiters should be required to avoid authorizing any changes in existing labor relations that might be detrimental to the interests of the consumers or to the general public interest.

By such limitations upon the authority of public arbiters, industrial disputants may be encouraged to settle their own disputes and to avoid the risks of an exterior decision which may be very disappointing. Most important of all, these discouraging restrictions will assure the fixation of wages and working conditions generally by voluntary agreements which will establish prevailing standards which public arbitrators can apply in the exceptional cases submitted to them. Thus the dangers of political wage-fixing will be largely avoided.

You have been very patient. There are a multitude of problems presented by industrial disputes in which the public interest is deeply involved. There should be no attempt to solve all these problems by legislation—not even by laws giving administrative commissions the authority to bless or curse management and labor with paternalistic controls! To preserve a free economy we must be as vigilant against nourishing political overlords as against tolerating economic monopolists.

But, to sum it up, let me say: It is the function and duty of a government, organized to preserve freedom and to protect the general welfare, to maintain the supremacy of public law and order. It is the duty of such a government to destroy or else rigidly to control any private organization that is being used or may be used to deprive citizens of their liberties or of their protections from wanton or deliberate injury. This duty our federal government and our state governments have long neglected. No public official who is willing to continue this evasion of responsibility and this violation of his own oath of office, is worthy of any further public confidence.

There is no partisanship in this assertion except a resolute and unqualified partisanship for the maintenance of self-government under the Constitution of the United States.

Industrial Disputes and the Public Interest: II

By the HON. LEWIS B. SCHWELLENBACH*

I ACCEPTED with alacrity the invitation to come to the State of California to participate in this Institute Conference. To a greater extent than most anybody knows, the universities and colleges of the country have come to recognize a responsibility which is theirs in an effort to bring about successful, peaceful relationships between Management and Labor. And I am proud of the fact (even though we talk about California once in a while in not such high terms up in the State of Washington, nevertheless we are from the Pacific Coast) that here in California you have started this movement under such propitious circumstances. I am particularly grateful for the fact that the Governor of your State, a man who is recognized throughout the country not merely as a man of ability but also a man of the highest integrity, a man whose reputation might be the ambition of any individual in the country, has shown me the personal privilege of coming here to introduce me to this audience.

During the last year and a half our Nation has faced the most difficult and complicated economic problems of its history. These arose because of the necessity for the reconversion of our economy from war to peace. Outstanding among these problems were those which arose because of differences between industry and labor. I would be the last to attempt to minimize the importance of these conflicts. I was in no sense surprised that these differences arose. What has surprised me most has been the apparent belief that it would be possible completely to rearrange our economy and at the same time avoid any strife between industry and labor.

Increasingly throughout the conflict our economy has been geared to war—patterns of production and employment underwent profound changes. The wage and salaried workers of America were called upon to meet the huge and unprecedented demand for war equipment while maintaining a remarkably high level of civilian goods and services.

This achievement, which hastened the day of final victory, was more than a triumph of men and machines. This achievement proclaimed the enduring strength of our democratic traditions and our devotion to the principles of human freedom.

For remember that our participation in World War II was so vast and

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intricate that it required much greater control and direction of the national economy than we had ever experienced in the past. Yet the measures which we adopted and the methods which were used owed much of their success to the very fact that they did reflect both unity of purpose and faith in the free American way of life.

The period of reconversion, with all its trials and difficulties, called for a basic decision. The government and people of this nation faced a choice between continuing war controls and resuming the free pattern of life. In many respects, and especially in the field of labor relations, that was not an easy choice. But I am convinced, and I think the record proves beyond a doubt, that the return to free collective bargaining was a wise one—the only choice for a nation conceived in liberty.

I certainly need not remind this audience that the problem of industrial relations is fundamentally a problem of human relations. And by the same token, laws which seek to regulate or control this relationship should not neglect or overlook this fundamental aspect.

I mean to discuss some of these proposals with you, but first I want to set in true perspective certain important facts. One of the most outstanding is the immense productive capacity which this nation has developed. America at war was able to maintain production for civilian needs at record levels and also turn out war materials with an annual value exceeding 60 billion dollars. America at peace is moving toward an era of unprecedented output.

This huge production potential, enlarged by technological advances already under way, points to higher levels of living than we have ever known. The great task that lies before us is to achieve an economic balance and stability which will promote the wise use of all our resources in men, materials, and machines.

If that achievement is to be of lasting benefit—if it is to endure down through the years, it must have as its basis the American ideal of a free democratic economy—free for management to exercise its natural function, free for labor, so that all who are willing and able to work can find jobs under satisfactory conditions. By definition this excludes abnormally long hours of work or wage scales that impose substandard living conditions. It demands a firm basis of mass purchasing power among the nation's wage and salaried workers—since these groups comprise such a large segment of our economy.

Put in this way, the problem seems simple, but in reality any program which seeks a sound economic balance must reckon with other less tangible factors. Some of these factors are still not clearly understood, some of them are deeply rooted in the habits and customs of our people. The

decisions which we reach and the programs which we adopt must fit the pattern of a free society.

It is common knowledge that much of the labor legislation which is before Congress was offered as a means of curbing labor and "restoring equality" at the bargaining table. Are such "curbs" needed to give us a better economic balance? Is there a real danger that labor through collective bargaining, will demand and get too large a share of the national income? A share so large that industry could not function successfully?

This involves a question around which most of the debate between representatives of industry and labor has been waged. Each side in this debate has employed economists. These economists have made studies, have issued reports, the American public has been deluged with figures, all of which has resulted in confusion, disputes, and strife. I am not an economist. However, it seems to me that the problem is of such a nature that one need not be an economist in order to arrive at a correct conclusion concerning the issues. I think the most important thing is that those who attempt to reach a correct conclusion be not special pleaders for either side of the controversy. The labor economists say that with living costs increasing, wage increases are necessary in order to maintain the standard of living of the American workers. No thoughtful person can combat the correctness of that position. On the other hand, the economists for industry say that wages form an important part of the cost of production. Therefore any wage increase must be reflected in the price of the products produced by those who have secured a wage increase. No thoughtful person can combat that philosophy. Therefore, what do we have? A constantly increasing spiral of wages and prices from which nobody benefits. The editors of our papers and of our magazines, most of our commentators and columnists, have argued that there is a very simple answer which should be recognized by labor. That is, that labor should realize that any wage increase simply reflects in a higher price for the products of labor and that therefore labor should be satisfied and desist from making demands for increase in wages. What these gentlemen neg lect to say is that industry also should recognize that with every price increase there follows as a necessary corollary a further demand for wage increase. Therefore the value of price increases is only temporary and ephemeral. What both industry and labor should understand is that ultimately they together are going to price the products which they produce out of the market, which will be a disaster not only to each of them, but to our whole national economy.

The President's Council of Economic Advisors and President Truman's Economic Report to the Congress had this to say concerning it:

"Chief among the unfavorable factors is the marked decline in real purchasing power of great numbers of consumers. . . .

"If price and wage adjustments are not made—and made soon enough—there is danger that consumer buying will falter, orders to manufacturers will decline, production will drop, and unemployment will grow. . . ."

This is another way of saying that our free nation cannot keep the balance sheet of industry in the black if the balance sheet of labor is in the red. Look, for example, at what has happened since V-E Day to the buying power of factory workers who represent about 30 per cent of all workers who are not on farms.

Moreover, the financial news indicates that management itself is concerned over this same situation.

There is one further point I wish to make before discussing specific labor legislation. The Department of Labor has consistently maintained that this whole question of labor-management relations and legislation bearing upon it cannot be treated as a thing apart. We must never forget that industrial strife is a symptom of basic economic maladjustments. Therefore, legislation designed to promote industrial peace must also be geared to the larger national purpose which seeks increased security and well-being for all of our people.

I have not taken the position, nor do I take the position, that I oppose every piece of legislation which attempts to restrict the activities of labor unions. The organized labor movement in the United States has grown by leaps and bounds in the last 10 years. It is but natural that such rapid growth would bring with it abuses which, if the labor movement is not willing to correct, the Government must correct. Certainly the employer and the public should not be penalized by the inability of labor unions to agree as to which union has jurisdiction in a certain plant or factory or industry. In 1934 we in the Congress passed the National Labor Relations Act which gave to labor unions the machinery by which it could be determined what was the proper bargaining agent for the employees of any employer. Organized labor hailed this Act as its Magna Charta. It should be compelled to use the Act and to accept the decisions of the National Labor Relations Board, not only in reference to disputes between employers and workers, but also in reference to disputes between the various branches of organized labor. Particularly, as the President pointed out in his State of the Union message, labor should be prevented from using the secondary boycott as a device to thwart the decisions of the National Labor Relations Board. With the growth of the labor-union movement, it is certain that unions should be compelled to make public their financial transactions. As a matter of fact, most of the unions do this already.

A study made by the Labor Department shows that among 25 international A.F.L. organizations, 22 provide for regular reports on finances either directly to the local unions or to the union's convention and three provide for regular publication of financial reports. Of the 36 CIO international unions, 31 provide for regular financial audits by a certified public accountant. Thirty publish financial reports available to anyone and five provide for financial reports to local unions or to members.

I agree also that labor unions should be made subject to suit in the event of violation of contract upon their part. The fact is that in 35 of our 48 states, they already are subject to such suits, both in the state courts and the federal courts. The only objection I have taken to the legislation proposed on this point is that it is so designed as to set labor unions apart from everyone else or from every kind of organization in the country by allowing suits in federal court, regardless of the amount in controversy and in defiance of the constitutional provisions that jurisdiction of such private suits in federal courts shall be limited to those controversies in which there is a diversity of citizenship as between the parties.

There are several bills before the Congress which feature the creation of a mediation board. Some would set up a board outside the Department of Labor; others would set up a mediation board within the Department but would make the board practically independent and give to it the work of conciliation and mediation now being carried on by the Labor Department's Conciliation Service.

I am opposed to these measures because I do not believe that either approach will promote industrial peace. There are several compelling reasons for my conclusion.

The establishment of such a board would interfere with and disrupt not only the work of the Conciliation Service, but a much larger area of voluntary collective bargaining between labor and management.

Inevitably, both sides would tend to carry important issues directly to the board without making any serious effort to reach a voluntary agreement among themselves. During the war we saw this happen time and time again—the parties were so anxious to have "their dispute" reach the National War Labor Board in Washington that in thousands of cases the preliminary negotiations were little more than a dress rehearsal for the big scene in Washington.

That is one of the reasons why the National Association of Manufacturers, the U.S. Chamber of Commerce, the American Federation of Labor, and the Congress of Industrial Organizations all strongly oppose the creation of a mediation board.

And these four groups know the value of the U.S. Conciliation Service because they have had a great deal of experience with it. Last year, for instance, Commissioners of Conciliation aided in the peaceful settlement of 13,000 industrial disputes. What's more, in 90 per cent of the disputes where Commissioners were called in *before* work had halted, no stoppage occurred.

Last year our Conciliators also helped settle 3,400 strikes. Nearly two thirds of these had begun before either side asked the Service to step in.

Moreover, as you know, all of these settlements were reached by voluntary methods, carried on with the friendly help of an impartial "moderator."

I am convinced that we would be very unwise to jeopardize or by-pass this highly useful machinery in order to set up a mediation board. But there is another reason why such a board would fail of its purpose. The solution of labor disputes is such a many-sided and complicated task that no board—regardless of the character, ability and experience of its members—would have the necessary background to mediate the enormously varied range of disputes that arise along our industrial front.

Now let us examine a very different set of proposals—those designed to prevent industry-wide bargaining or to enact other restrictions which will limit the scope of a given union agreement within an industry. We here on the West Coast have had considerable experience with agreements of this sort. We know how flexible such contracts are and what a wide range of problems and conditions they are designed to meet. And I believe most of you share my belief that these bargaining systems have helped bring stability into industrial relations and that they indicate maturity of development.

The avowed purpose of limiting proposals is two-fold. They seek to prevent complete or widespread shut-downs as the result of a labor-management dispute; and they seek to protect employers within an industry from the economic pressure which unions might otherwise be able to exert.

So far as the first purpose is concerned, I see no reason to suppose that a ban on industry-wide bargaining will achieve it. Witness the fact that there was no industry-wide contract in steel when the industry was sharply curtailed early in 1946. Nor would such a prohibition cope with the problems raised by disagreements affecting such public utilities as gas, light, or local transportation companies.

In this connection, I would like to cite a study recently made by the Bureau of Labor Statistics entitled "Area of Bargaining with Associations and Groups of Employers." This compilation shows the important industries which now bargain on a national or industry-wide scale, those which

bargain by geographic or regional areas and those bargaining within a city, county, or metropolitan area.

The study clearly indicates that proposals which would narrow the scope of bargaining, either within an industry or a geographic area, would also disrupt established procedures in such industries as glass and glassware, dyeing and finishing textile, hosiery, lumber, maritime, metal mining, rubber, men's clothing and women's clothing, paper and pulp—to name only some of the more important sectors. In most of these industries area-wide bargaining has worked very well and employers themselves are not desirous of a change.

As I look back over the troubled period of reconversion, I find little reason to think that these proposed limitations would have contributed anything substantial toward industrial peace.

This desire to localize negotiation seems to rest somewhat on the belief that both sides are more apt to reach a peaceful settlement under such conditions. My experience since V-J Day does not bear this out. Time after time when local union committees and their employers were deadlocked, I have called upon the heads of international unions, and they were able to reach a settlement.

Regarding the second purpose—to restrict the economic power of unions at the bargaining table—I can see no justification for this approach unless it can be demonstrated that labor is receiving a disproportionate share of the national income. To date, I have seen no evidence to support this view.

In this connection, it is only fair to say that some employers feel that organized labor now threatens management's "right to manage." While I do not question the sincerity of this viewpoint, I do believe that such fears are based upon a lack of real familiarity with the collective bargaining process. Because of the increase in union membership during the war and because of changes in union and business management, many representatives of both groups got their first taste of free collective bargaining in the last year.

Undoubtedly there were instances where one side or both took extreme positions, but I do not think this fact warrants any curtailment of the sort proposed. Moreover, I am convinced that those limitations would encourage further strife. It is significant, too, that the trend of successful bargaining has been to increase the range of subjects which are open for discussion. For example, many employers who once objected to discussing anything but wages and hours, have found by experience that grievance machinery, safety and health and other matters are proper subjects for collective bargaining.

Witness, also, the recent letter which President Truman received from the Advisory Board of the Office of War Mobilization and Reconversion—discussing a report on the guaranteed wage, the Board unanimously concluded:

"Adoption of guaranteed wage plans should not be the subject of legislative action, but should be referred to free collective bargaining. . . .

"Stabilization of employment and its effectuation through wage or employment guarantees, wherever possible, are matters of mutual concern to employers and employees. Each party has the definite responsibility of seeking to stabilize operations within a plant or industry in order to advance the level of general economic security of the nation. . . ."

Another group of proposals is aimed at the closed shop and kindred forms of union security. By forbidding any contract which makes membership or nonmembership in a labor organization a condition of employment, these bills presumably would outlaw the closed shop, the union shop, maintenance of membership and possibly preferential hiring.

As of last April, 77 per cent of the workers in this country who belonged to organized labor and worked under union contract would have their status changed by these bills. Here are the figures, by type of agreement:

Closed Shop	30 per cent
Union Shop	15 per cent
Maintenance of membership	29 per cent
Preferential hiring	3 per cent

Neglecting other considerations, it is plain that such proposals would open the doors to prolonged industrial chaos in America. Union security is the very heart of these contracts. In many cases these security provisions were won after long struggles and against the bitterest opposition from open shop employers. Given this historical background, and the undeniable fact that some employers still are anxious to get rid of unions, I do not see how a ban on union security could fail to provoke industrial strife.

But I also know that many employers, after direct and long experience with union security clauses, found that they were desirable and would object seriously to any legal ban on such provisions.

Let me be more specific and cite some definite examples. The National Foremen's Institute, Inc., an advisory service on labor matters for employers, recently surveyed the attitude of 1,000 companies that have some form of "closed shop." The Foremen's Institute reported—in some astonishment—that nearly one-fifth, 19.2 per cent, of these employers believe that closed shop contracts made for better relations between employers

and employees. Less than 15 per cent reported that union security clauses had worsened labor relations in their plants. The remainder, almost two thirds of the employers, could see little difference one way or the other.

In case you think the Foremen's Institute poll was not typical, let me refer you to a very recent issue of *Business Week*. This magazine sent its reporters to interview businessmen on this subject. Altogether, their reporters talked to employers who manufactured just about everything from aircraft to razor blades. Each one had some form of union security—and what was the result?

Fifty-eight per cent said that the effect of such elimination would be bad for management.

There is one particular reason why many businessmen should prefer some form of union security. So far as I know, every authority in the field of industrial relations favors the inclusion in labor contracts of provisions for handling grievances.

As some of you will recall, there was no dispute at the President's Labor-Management Conference on Industrial Relations in November, 1945, on this question. Enlightened employers and enlightened labor unions have come to recognize through experience the necessity of including in their contracts sound provisions for the settlement of minor disputes—even up to the point of providing a terminal point in the form of arbitration or an umpire system where disputes within the operation of the contract can be decided. These are the day-to-day disputes, the inevitable frictions that are bound to arise where men work together. In the overall scheme of things, any single one may be unimportant. But unless they are handled properly, they breed discontent and frictions which in a short time would break down good industrial relations.

I doubt if you could find a management representative who is active in the field of labor relations who would question that conclusion. Now, if through a ban on union security, a substantial proportion of employees in any establishment would fall outside the union which has done the bargaining and would be compelled to deal individually on every grievance, the most substantial advance that has been made in industrial relations in many years would be lost.

The question of democracy in unions is another case in point. Of course, the affairs of unions should be conducted democratically. And this does not always hold true. Yet here, as in every other phase of human relations, the preponderance of evidence must be given great weight. My own experience and observation leads me to conclude that union rules and practices are not behind other segments of American life in the practice of democracy.

In this connection, let me cite a recent article by Joseph Shister of Yale University. Entitled "The Locus of Union Control in Collective Bargaining," the article appeared in the *Quarterly Journal of Economics* for August 1946.

One of the points which the author makes in his summary and conclusions is of particular interest. I quote:

> The ultimate control over collective bargaining in most unions does rest with the rank and file.... True, the full power of settlement is sometimes vested in the negotiators, but the significant point is that this power is voluntarily entrusted to the leaders by the rank and file in most instances. It is true further that (especially) in national negotiations, the actual control over the bargain—in practice—rests with a small subcommittee of the negotiating group. But here again the condition has been brought about by necessary structural conditions, and was not imposed on the rank and file by leadership.

A third group of legislative proposals revolve around amendments to the National Labor Relations Act. In general, these bills would "equalize bargaining power" and seek to discourage strikes by depriving workers of certain rights they now have under the Act.

Passed in 1935, the Wagner Act has been attacked and defended in court and out. As you recall, its constitutionality was upheld by the Supreme Court early in 1937. During the next ten years a great body of law has been developed in interpreting the Act and its meaning. In many respects, the provisions of this law are enmeshed with the collective bargaining process itself and it is very difficult to know just how far-reaching any given change might be. So much is involved—including the attitudes of many employers when and if a new power equation is created. Therefore, I have strongly urged the Congress that this whole question be made the subject of a special study by a commission, as the President recommended in his State of the Union Message.

It goes without saying that such a study should look closely into the basic causes of labor disputes. And I would further recommend the kind of approach that I have indicated, paying close attention to the real goal this nation seeks in the years ahead—secure abundance in a world at peace.

Right here I would like to add a word or two about compulsory arbitration. To some people this looks like a fair and simple solution to the strike problem. But let me remind you again—if compulsory arbitration is to succeed in eliminating walkouts and lockouts, it can only do so by abolishing or restricting the right to contract.

Compulsory arbitration simply means that the Government writes a contract for the parties. Proponents of such legislation seem to believe

that Government intervention would apply primarily to wages, perhaps even to hours, but not much else because they hold that these are the most frequent matters in dispute. But many labor agreements contain numerous detailed provisions concerning working conditions, safety measures, benefits and grievance procedures. Disputes can and do arise over these matters. The arbitrator, if the dispute is to be settled, must arrive at a just and equitable settlement. Those who are most strongly opposed to Government control and planning have not been slow to point out the impossibility of Government effectively regulating the infinite details of economic activity.

The principle of compulsory arbitration does violence to our whole Anglo-Saxon concept of law. Many people say that it is customary under our system when two people have a dispute to take that dispute into court and let the court decide which side is right and which is wrong. So far as contractual relations between parties is concerned, it has never been within the purview of the court's power to write contracts for people. Once contracts have been written and agreed upon, the courts will interpret and enforce them, but no court has attempted to write contracts. That is what those who advocate compulsory arbitration would have the board of arbitration or a court do for the parties.

Where they are confused in their thinking is the realization that under our Anglo-Saxon concept of law our courts do not write contracts. When I sat on the bench there might be cases when the equity side of the court was brought into use, where rights had been created through usages and practices. But outside of those situations no court ever tries to write a contract. And this argument that is presented so frequently and was presented just yesterday, as I read the press (I have not seen the Bills introduced by two prominent Senators), that we should set up a system of labor courts in this country, is completely and absolutely contrary to our system of judicial process. Let me given you an example.

We have a young couple going together. They are congenial. They are very healthy. They enjoy the same things. They would make an ideal married couple. The young man decides that he wants to marry the young lady and she says, No. He cannot take her into court and, just because they have all of these different attractivenesses for each other, have some court say, "You have got to marry this man." That is her right to decide.

The same thing is true of the writing of any sort of a contract. The great majority of the cases which would come before the courts or come before any board of compulsory arbitration would be cases which would involve the Government itself writing a contract between the parties.

There are some certain disputes which the courts could decide. They are disputes involving the interpretation of a contract or disputes involving the enforcement of a contract after it was entered into. But there is only one trouble when our courts or any board of arbitration attempts to decide questions of that kind. After the system has been working for about six months either the court or the arbitration board gets so far behind that it is not possible for the court or the arbitration board successfully to handle the problem.

Ordinarily if you have a dispute with somebody that you want to take into the Federal Court, you expect that it will not come to trial for six months. I know that when I was on the bench I got so that cases were being disposed of six weeks after the cases were filed, and the lawyers all came in and objected because they said that they could not convince their clients that they were entitled to very much of a fee because I got rid of their cases so fast. But the ordinary litigant who goes into court expects that it is going to take him six months in the trial court, another six or eight months in the Circuit Court of Appeals, and another year or two to take it to the Supreme Court of the United States.

Labor disputes are too "hot." They involve too much of the human relations to be subjected to that sort of delay. And every board that we have ever set up, starting back with the Interstate Commerce Commission in the 1890's, has resulted in such and similar delays.

What happened during the war? We had a lot of strikes during the war. I think that the War Labor Board did one of the finest pieces of work that any board has ever done in the history of the United States. I have great respect for its membership and the integrity and the ability and the skill which they used. But they got so that they were at least four and a half months to nine months behind on cases. What did the unions decide to do? They had Case No. 4983 on the Board's calendar; they knew that if they went out on strike they would get it to be No. 1 on the Board's calendar. So they simply went out on strike and that would happen with any board or any court that you try to set up.

It must also be realized that if an arbitrator writes a contract which, by increase in wages or by any other device, increases the cost to the employer, it will then be necessary for the arbitrator or for some governmental agency to determine what price the employer may charge for the products which he manufactures and sells. Just as sure as night follows day the second step must follow the first. You cannot have control over industrial relations in the form of compulsory arbitration without going on to the next step of price control, then on through the various steps until we have a complete control of our economy. And I do not

think any of the people who advocate compulsory arbitration would want that complete control of our economy.

The Government cannot control the industrial relations side of the problem without controlling all of the other steps and the manufacture, distribution, and sale of the goods produced. Therefore, those who unwittingly believe that there is a simple answer through the medium of compulsory arbitration have not looked further down the road which must be followed if such compulsory arbitration is to be effective. I don't think the American people want such a planned economy as the compulsory arbitration proposal would require.

Both management and labor oppose such an extension of control for they know that if a free-enterprise economy is to be preserved, the terms of labor-management agreements should not be dictated by Government. This relationship touches the most vital activity of an overwhelming majority of our adult population. Freedom to contract in the sense that parties are free to refrain from entering into contracts, even where public policy requires the setting of some of the terms, is basic to the preservation of a free society.

My position on certain boycotts and other unlawful combinations should be well known. As President Truman said in his State of the Union Message, the use of the secondary boycott to further jurisdictional disputes or compel employers to violate the National Labor Relations Act is indefensible. But as the President's recommendation pointed out, not all secondary boycotts are unjustified. He carefully distinguished between boycotts intended to protect wages and working conditions and those in furtherance of jurisdictional disputes.

The bills dealing with this subject go far beyond the President's recommendation. They are aimed at all boycotts. I strongly urge that legislation dealing with this matter be so drawn as to come within the purview of the President's recommendations.

The months that followed V-J Day were anxious ones for industry and labor—and unhappy ones for the Secretary of Labor! During the war, to a very large extent, the normal processes of collective bargaining had given place to patriotic sanctions, including the no-strike pledge and a wide range of wartime controls. Necessarily this meant that many problems were left unsettled and many questions remained unanswered.

When Japan surrendered, these old questions rose to plague us. But unless I am very much mistaken, we have come a long way since August 1945. Both labor and management have a much more constructive attitude. The nation has boldly reaffirmed its faith in freedom, its regard for human dignity and human rights. Let us keep these principles constantly before us as we move into the world of tomorrow.