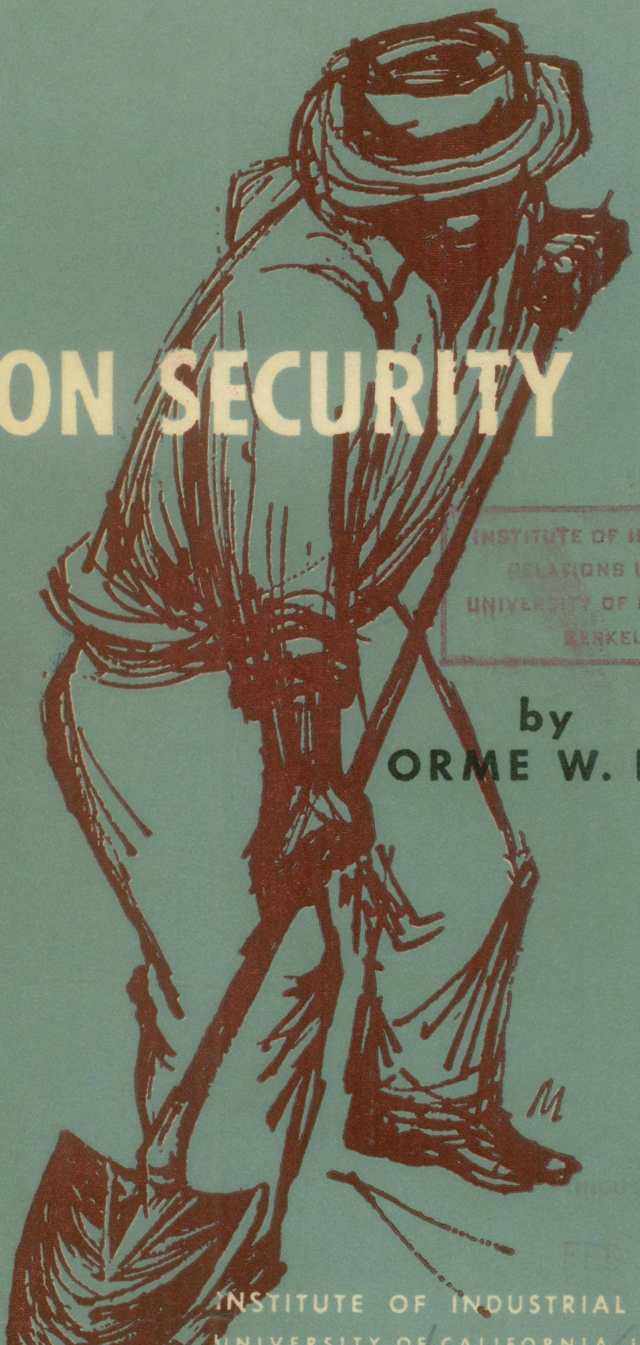
UNION SECURITY



by
ORME W. PHELPS

INSTITUTE OF INDUSTRIAL RELATIONS
UNIVERSITY OF CALIFORNIA, LOS ANGELES

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Edited by Irving Bernstein

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Foreword

THE INSTITUTE OF INDUSTRIAL RELATIONS of the University of California was created for the purpose, among others, of conducting research in industrial relations. A basic problem is to reach as large an audience as possible. Hence the Institute seeks through this series of popular pamphlets to disseminate research beyond the professional academic group. Pamphlets like this one are designed for the use of labor organizations, management, government officials, schools and universities, and the general public. Those pamphlets already published (a list appears on the preceding page) have achieved a wide distribution among these groups. The Institute research program includes, as well, a substantial number of monographs and journal articles, a list of which is available to interested persons upon request.

As Professor Phelps points out in this pamphlet, no issue in labor-management relations has engendered so much heat as union security. Organized labor and its friends, on one side, and employers and their allies, on the other, have undoubtedly warmed the controversy with appeals to prejudice. Hence the union-security issue cries for illumination—impartial, factual, thoughtful—and that the author has supplied here.

Orme W. Phelps is Professor of Industrial Relations at Claremont Men's College. He comes to the present subject with a broad background in his field, both theoretical and practical. He has taught at several universities, is the author of two books—*Introduction to Labor Economics* and *The Legislative Background of the Fair Labor Standards Act*—and served as vice-chairman of the San Francisco Regional Wage Stabilization Board.

The Institute expresses appreciation to the following for their review and constructive criticism of the manuscript: Benjamin Aaron, Varden Fuller, William Goldner, Paul T. Homan, George A. Pettitt, and Arthur M. Ross.

The cover design and the illustrations are the work of Arnold Mesches. Mrs. Anne P. Cook assisted with the editing. The viewpoint expressed is that of the author.

EDGAR L. WARREN, *Director*
Southern Division

E. T. GRETHER, *Director*
Northern Division

Contents

I. Union Security at Home and Abroad

AMERICAN UNIONS, unlike labor organizations in other nations, have placed paramount insistence upon security provisions in collective bargaining agreements. By the same token, our employers have fought these efforts more vigorously than their counterparts abroad.

By their historic failure to agree, labor and management have propelled the issue into the arena of public policy. Hence legislators and administrators have been compelled to wrestle with it for generations. In recent years union security has provoked endless debate under the Wagner, Taft-Hartley, and Railway Labor Acts, to say nothing of state legislation. The National Defense Mediation Board collapsed under the issue's weight; the National War Labor Board compromised it with uneasy success in the exigency of war; and the National Wage Stabilization Board found its burden too heavy.

1. THE TERM "UNION SECURITY"

"Union security" is a technical term in the industrial relations vocabulary. It means contract clauses which guarantee, or tend to guarantee, a stable member-

ship and a stable income to the organization. The usual forms of these guarantees today are: (1) some type of union-shop agreement, and (2) the checkoff of dues. The essence of the former is to make membership in the union a condition of employment; of the latter, to change dues payment from a voluntary, casual basis to the automatic certainty of the withholding tax.

Union security is a widespread practice in this country. If a Bureau of Labor Statistics' survey is representative, about three-quarters of all organized employees work under contracts which make membership a condition of employment for some or all workers, and a still larger proportion has authorized the checkoff of dues.

2. EXPERIENCE OF OTHER NATIONS

a. *Australasia.* Compulsory unionism on the scale found in the United States is almost unknown elsewhere. The only exception to this statement may be New Zealand, where union security is a direct function of government intervention in the form of compulsory arbitration. In New Zealand an award must require that all employees affected belong to the appropriate union. The arbitration statute provides that:

> It shall not be lawful for any employer bound [by an award] to employ or to continue to employ in the industry to which the award relates any adult person who is not for the time being a member of an industrial union of workers bound by that award.

This means that if an industry (employer or group of employers) "registers" with the government so as to get the benefits of compulsory arbitration, it is in effect registering for the full union shop.

Like New Zealand, Australia has had compulsory arbitration for more than half a century, but Australian unions enjoy no such privileges. Arbitration bodies in the latter country may grant "preference" to union members, but only if the candidates for employment are otherwise equal. As a matter of practice, they seldom go even this far and union security, in the prescribed American sense, must be obtained by the unions' own efforts. These efforts have been persistent but not too successful.

The net result has been very extensive union membership (about two-thirds of all employees) but relatively little compulsory unionism. As for the checkoff, it has aroused little interest and has seldom been an objective of collective bargaining.

b. *Europe.* In Europe the question of union security is answered in varied and conflicting ways. Nowhere is there anything corresponding to the American drive for contractual guarantees of union preference. In Great Britain and Scandinavia, with democratic governments and bona fide free labor organizations, the situation in general may be described as follows:

1) An almost total absence of the closed or union shop or any other form of prescribed union membership.

2) No checkoff of dues, fees, or assessments.

3) Very extensive union membership on a voluntary basis in all the organized trades—frequently to 100 percent of workers.

4) Reliance upon the "silent and unseen" compulsion of fellow workers through persuasion and refusal to work alongside of nonunion men.

5) Legality of union-security clauses. (Denmark is an exception to this general rule, with a statutory prohibition of compulsory union membership.)

Elsewhere in Europe the history of free collective bargaining is insufficient for comparisons to have any validity. In France and Italy the postwar instability of governments and the problems of recovery from enemy occupation have prevented the formation of a settled pattern of union-management relations—and so of union-security provisions. Germany is still an occupied country and the Russian concept of trade-union function makes any analogy to American experience more than questionable. If comparisons are to be made, then, they should probably be confined to Australasia, Britain, and Scandinavia.

3. SOME INTERNATIONAL COMPARISONS

Why have American trade unions sought to make membership a condition of employment while their counterparts in other free countries have to a large extent found it unnecessary? One conclusion may be derived from the statement itself. If foreign unions have

not tried to negotiate union-security clauses in their contracts, they may have felt secure without them.

It follows that employer resistance to unionism in the United States must have been more persistent and more strenuous than elsewhere. There seems to be considerable evidence that the conclusion is valid, when one considers the past disputes over recognition in this country. The use of strikebreakers, the black list, and the yellow-dog contract are local inventions; none of them were imported from abroad.

Another possible explanation lies in the character of the American workingman himself. By and large, he is independent, individualistic, and not accustomed to think of himself as a member of a fixed social class. The American employee is hard to organize and hard to keep organized. He frequently does not expect to remain an employee all his life, at least not in the rank and file, and he almost certainly plans "advantages" for his children in the way of education and social and economic advancement. In such an environment, unionism may be regarded as a temporary expedient, to be judged in terms of costs versus gains, and not as the affiliation of a lifetime on the basis of principle.

This attitude is at least partly the outcome of life in a tolerant, competitive, relatively classless environment, one subject to rapid change and permitting great social fluidity. A prime reason why American unions want compulsory membership is to keep the members from

backsliding and dissenting, at least to the point of fracturing the organization. It is a problem of much less seriousness in other countries, where class lines are firmer and it is harder to escape from the status in which one is born.

Still a third reason for union security, American model, is found in the nature of the labor movement in this country. It is characterized by individuality, competition, and conflict. From the days of the struggle between the Knights of Labor and the emerging American Federation of Labor to the present three-way AFL-CIO-Independent split, American unions have organized as they pleased, on whatever rationale they pleased, and have not hesitated to raid each other when the situation offered profit. This again is a distinctly American trait and contrasts sharply with experience abroad. Contractual security is a defense against the competing labor organization as much as it is against the backsliding member and the unpersuaded employer.

II. What Union Security Means

UNION SECURITY means an assured and stable membership. The main method of providing it is to require that an employee maintain union membership in good standing in order to hold his job. However, there are several different kinds or "grades" of membership guarantees which have been worked out through collective bargaining. The Bureau of Labor Statistics has described six primary types of contractual security, as follows:

1) The closed shop
2) The union shop
3) Maintenance of membership
4) Preferential hiring
5) Sole bargaining
6) Bargaining for members only

The full BLS definitions with some explanatory comments will make the distinctions clear.

1. THE CLOSED SHOP

Under the closed shop, all employees must be members of the union at the time of hiring and they must remain members in good standing during their period of employment. Hiring through the union (unless the union is

unable to supply the required number of workers within a given period) is required under most of the closed-shop agreements and those employees who are hired through other procedures must join the union before they start to work.

The closed shop was for many years the traditional objective of all unions, particularly those with a "craft" or "trade" background. Historically, it developed as an offset to employer opposition in such forms as the firing of union sympathizers, black-listing, and refusal to recognize the union or bargain with it. The closed shop minimizes the amount of time and energy spent on organizing, collection of dues, and other details of union management. It permits the union to screen incoming employees and regulate the labor supply in fluctuating or overcrowded trades. All these are great advantages to the labor organization.

At the same time, it presents an opportunity for the worst union abuses: closed unions, favoritism, and racketeering. Historically, the closed shop has been most solidly established in the building trades, the printing industry, the maritime trades, and a number of the local service trades such as janitors, stagehands, and teamsters.

Since the passage of the Taft-Hartley Act in 1947, the closed shop has been illegal in interstate commerce and it is also prohibited locally, along with all other forms of union security, in states with "right-to-work" laws.

This blanket prohibition has been vigorously challenged—by labor leaders, students of labor problems, and some employers. It is just as strongly supported by a very powerful segment of public opinion which is suspicious of the way trade unions use their power over the labor market.

Hiring halls. The closed shop has been especially effective on the waterfront—for ship crews, stevedores, and others—where employment is on a "casual" basis. By "casual" is meant employment for short periods of time, with workmen moving from one employer to another as the job is completed.

On the Pacific Coast docks, for example, the union hiring hall replaced the "shape-up," in which a number of men "shaped up" in a circle each morning while a dock boss selected a crew for the job at hand. As each dock had its own hiring boss and several of them might be hiring at the same time, selections under the shape-up were arbitrary, uncertain, and uneconomical of manpower. They were also subject to favoritism and preference based on "kickbacks" of part of the day's pay to the hiring boss.

The hiring hall, negotiated by the International Longshoremen's and Warehousemen's Union with the Waterfront Employers Association (now called the Pacific Maritime Association), eliminated this. It centralized the hiring of longshoremen through a single hall in each major port, with authorized branches where necessary.

The halls were put under the direct supervision of a port labor relations committee, composed of three union representatives, three agents of the employers, and an impartial chairman. This committee had full responsibility for operating the hall, controlling the registration lists from which men were assigned to work, and settling grievances. Expenses were divided equally between the union and the employers' association, and the personnel in charge (called "dispatchers") were selected by vote of the union, again under direct supervision of the labor relations committee. Both the employers and the union were given permission to keep a representative in each hiring hall at all times, to act as observer. Preference in employment was accorded to union members when available, and seniority was made the ruling basis for selection, with names taken from registration lists for assignment to gangs.

The improvement of the West Coast hiring-hall procedure over previous methods has been so apparent that no one has suggested a return to the former system. Its advantages have been underlined by the revelations of graft on the New York waterfront under the shape-up system.

2. THE UNION SHOP

Workers employed under a union-shop agreement need not be union members when hired, but they must join the union within a specified time, usually 30 to 60 days, and

remain members during the period of employment. When the union-shop agreements specify that union members shall be given preference in hiring or that hiring shall be done through the union, the effect is very much the same as the closed-shop agreement. . . . In some cases, the union shop is modified so that those who were employed before the union shop was established are not required to become union members.

The union shop is the closed shop with the "open front door." It is primarily an outgrowth of industrial unionism, reflecting its emphasis on inclusiveness rather than exclusiveness. This is the theory that all workers should have access to union membership as a matter of right, with the corollary proposition that all workers should join and support the union as a matter of responsibility. It opposes the idea that membership is the privilege of the few, a point of view still retained by a minority of craft unions. Under the Taft-Hartley Act, the union shop is the maximum form of union security allowed in interstate commerce.

The union shop is favored over the closed shop by most employers, since it gives unrestricted freedom to hire. It is concentrated in the manufacturing industries, especially the mass-production group: automobiles, glass, rubber, and lumber. It has had a rapid growth among the railway brotherhoods during the last few years.

As a device, the union shop is hard to operate where work is on a casual basis, as in building construction, the maritime trades, and agriculture. In these industries a case can be made for regulating employment through the union hiring hall. This, however, means the closed shop.

There are many types and varieties of the union shop. A standard modification is to require all existing members of the union to keep up their membership and all new employees to join, but to exempt nonmembers at the time of signing from the necessity of taking out membership. Under this arrangement it is only a matter of time until union coverage is 100 percent.

Another form of the modified union shop is found in the 1950 agreement between General Motors and the United Automobile Workers, CIO. Here, as above, all members in good standing at the time of the agreement "shall, as a condition of employment, maintain . . . membership in the Union." Nonmembers are not required to join, but if they do so, they also must keep up their membership thereafter. New employees, on the other hand, must join the union upon "acquiring seniority" (after ninety days of work) and continue their membership for one year. At the end of their first year of seniority they may notify the company in writing of their resignation from the union and be excused from the requirement of membership in the future. If no such notice is given, "such employe shall maintain his membership in the

Union as a condition of employment during the life of [the] agreement." Thus, all new employees are required to spend a probationary year as union members, at the end of which they may take advantage of an "escape clause" and get out. Failing this, they are permanently in the organization.

An example of union preference in hiring combined with the union shop is the following contract clause:

> All employees covered by this agreement shall become and remain members in good standing of the Union as a condition of employment. When new or additional employees are needed, the Employer shall notify the Union of the number and classification of employees needed. The Union shall have 24 hours from receipt of such notice to nominate members for such jobs. The Employer shall choose between any nominees of the Union and any other applicants on the basis of their respective qualifications for the job.... All new non-union employees shall complete their affiliation and membership in the Union no later than 30 days after their date of hire.

A rather recent development, an example of which is found in the contract between Western Union and the Commercial Telegraphers, AFL, is called the "agency shop." It requires employees to pay dues to the union but does not compel them to join. Although not actually prescribing membership in the true sense, it is classed as a form of the union shop.

3. MAINTENANCE OF MEMBERSHIP

Maintenance of membership, as a general rule, requires that all employees who are members of the union a specified time after the agreement is signed and all who later join the union must remain members in good standing for the duration of the agreement. Following the pattern of the maintenance-of-membership clause established by the National War Labor Board, most of the agreements with this type of union-security clause provide for a 15-day period during which members may withdraw from the union if they do not wish to remain members.

Maintenance of membership is the wartime compromise between the union shop and sole bargaining, worked out, though not invented, by the National War Labor Board during World War II. It is the "one-way-street" type of union security. The employee does not have to join, but if he does, he is in for the duration of the contract. When the contract is renewed, he has a two-week period (the "escape clause") in which to resign. Needless to say, few do so.

Under most maintenance-of-membership agreements, the proportion of union membership among eligible employees is very high. However, it never reaches 100 percent, and there is a nagging resentment at the few "free riders" to be found in every shop. This helps to explain the United Steelworkers' drive to substitute the union shop for maintenance of membership in the 1951–1952 dispute, when nine out of ten employees were already members of the union.

4. PREFERENTIAL HIRING

Under preferential hiring no union membership is required but union members must be hired, if available. When the union cannot supply workers, the employer may hire non-members and they are not required to join the union as a condition of employment.

In practice, preferential hiring turns out to be much like the closed shop. In fact, when combined with the union shop, as sometimes occurs, it becomes a variant of the closed shop. Preferential hiring is not very popular.

5. SOLE BARGAINING

Sole bargaining exists under some agreements which have no requirement for union membership or for hiring through the union. The union is the sole bargaining agent for all employees and negotiates the agreement covering all workers in the bargaining unit whether they are members of the union or not.

The sole-bargaining provision is the product of the majority rule principle incorporated in the Wagner (National Labor Relations) Act. Under the law, if a union won a representation election before the National Labor Relations Board, it was certified as the sole bargaining agent of *all* the employees in the bargaining unit. These provisions were carried over in the Taft-Hartley Act.

Sole bargaining usually represents the preliminary and unsettled phase of union security. The nonmembers are "free riders" and a potential source of open-shop

sentiment or rival unionism. If the employer is anti-union he may be inclined to encourage a schism. Sole bargaining tends to be superseded by other types of security as union and management become accustomed to one another and work out their relationship. It is currently prevalent in the tobacco, petroleum refining, electrical machinery, and communication industries.

6. BARGAINING FOR MEMBERS ONLY

A few agreements stipulate that the union shall act as bargaining agent for its members only, and the agreement does not cover other workers.

Unless the employees covered by union contract are sharply defined by craft, class, trade, or department, this is a very unstable situation. With every new hire, the question of union membership inevitably arises. If new employees are not members and do not join, it is merely a matter of time until the union disappears. If the union is given a free hand to recruit among newcomers, there is a permanent organizing campaign under way with all the argument, cajolery, dispute, and emotional stress which accompany such activity.

Union moves intended as economic bargaining may be misinterpreted as organizing tactics and vice versa. Both union and employer may be forced into more aggressive attitudes. The sole element of "security" in this situation is the fact of recognition of the union and the opportunity to extend its membership to other employees through on-the-job persuasion.

7. THE NONUNION SHOP

The six types described above are, in general, ranged in a descending order, from more to less security. To complete the array of union security (and lack of it), one additional classification is needed. A shop in which the union bargains only for its members is truly open; employees may join or not, without discrimination or coercion from either side. However, there is another type of "open" shop, the nonunion shop or "employer's closed shop," in which union men may not be employed. This is the type of employment protected by the now defunct yellow-dog contract. Here, of course, union security is zero.

III. Extent of Union Security

WE DO NOT KNOW exactly how many contracts contain union-security provisions or how many workers are blanketed under them. The sample surveys of the Bureau of Labor Statistics, however, give us a rough idea. This agency made a study of 1,653 collective bargaining agreements covering approximately 5,550,000 employees during 1952. The distribution among the union shop (including closed shop and preferential hiring), maintenance of membership, and sole bargaining was as follows:

Table 1. DISTRIBUTION OF UNION SECURITY: 1952

Union status	*Agreements* Number	Percent	*Workers covered* Number	Percent
Union shop	1,045	63	3,448,000	62
Maintenance of membership	201	12	756,000	14
Sole bargaining	407	25	1,345,000	24
Total	1,653	100	5,549,000	100

This showing may be compared with the BLS figures for 1950–1951 and those of the preceding year, 1949–1950. For 1950–1951, the distribution was as follows, in the "workers covered" category.

Table 2. DISTRIBUTION OF UNION SECURITY: 1950–1951

Union status	*Workers covered* Number	Percent
Union shop	3,231,000	58
Maintenance of membership	912,000	16
Sole bargaining	1,438,000	26
Total	5,581,000	100

For 1949–1950, the distribution was much more evenly spread between the union shop and sole bargaining.

Table 3. DISTRIBUTION OF UNION SECURITY: 1949–1950

Union status	*Workers covered* Number	Percent
Union shop	1,259,000	40
Maintenance of membership	752,000	24
Sole bargaining	1,143,000	36
Total	3,154,000	100

If the three studies are comparable, they show a significant shift in the direction of union membership as a condition of employment. Workers covered by union-shop (including closed-shop and preferential-hiring) agreements rose from 40 percent to 62 percent of the total, an increase of 22 percentage points. Maintenance-of-membership coverage was practically cut in half, and sole bargaining dropped a third—from 36 to 24 percent.

The tendency to agree upon union-security clauses progressed steadily in major settlements in 1952 and

1953. Union-shop agreements were negotiated in the former year by Westinghouse Electric and International Harvester. At the same time, the railway industry accepted compulsory unionism, following the recommendations of an Emergency Board favoring the union shop. None of these agreements are included in the statistical tables given above. Hence, it seems probable that future reports by BLS will show an increase in the proportion of unionized employees with the maximum security coverage permitted by law.

IV. The Checkoff

UNION SECURITY is based upon a stable membership, which, in turn, rests upon several elements: bargaining power, support, money. The importance of funds in union operations can be overemphasized. Actually, no amount of money can substitute for morale, loyalty, disciplined execution of necessary but unpleasant duties, such as strikes, and the cheerful disposal of a multitude of chores incident to administration, like committee work and stewardship. At the same time, in labor unions as in all other forms of organization, the treasury is a key factor in success or failure.

1. REASONS FOR AND AGAINST THE CHECKOFF

Union funds come from membership dues, fees, and assessments. Obviously, this revenue cannot be used to pay bills until it is collected. Few union members actively avoid the payment of dues, but the great majority would be more than human if they made this obligation the first charge against the monthly budget.

In practice, the collection of dues often turns out to be a major job for local officials, and much time, energy, and tact are called for in its discharge. Although it has

been claimed that dues collection keeps local officials in touch with the membership and therefore with grass-roots sentiment, to many it seems a wasteful process. In these days of "withholding," they argue, the obvious solution is a payroll deduction to be paid over to the union by the employer. This deduction is called the "checkoff."

One advantage of the checkoff, from the standpoint of the national union, is that the payment may be made to international headquarters, rather than to the local, with the national remitting the balance due to the local union. This frees the national office from what could be an embarrassing financial dependence upon its subordinates. The United Steelworkers of America, CIO, uses this procedure. The more general practice, however, is for the employer to remit directly to the local union, as stipulated in the following clause taken from the 1950 agreement between the United Automobile Workers, CIO, and Chrysler:

> Deductions for any calendar month shall be remitted to the designated financial officer of the Local Union as soon as possible after the tenth (10th) day of the following month. Local management shall furnish the designated financial officer of the Local Union, monthly, with a list of those for whom deductions have been made and the amounts of such deductions.

The principal argument against the checkoff is that it is a form of taxation by a private body. If the agreement

is entered into between the union and the company without individual employee approval, it may result in a pay deduction contrary to the wishes of the worker. This is particularly true where the contract makes the obligation "irrevocable."

The checkoff is also, of course, clearly a case of employer assistance to the union. This might seem to come under the prohibition of the second employer unfair labor practice of the Wagner Act (any form of assistance, financial or otherwise, to the union). However, the National Labor Relations Board long ago ruled otherwise, and the Taft-Hartley Act explicitly approves the practice with certain reservations. Some employers, nevertheless, resist it on these and other grounds and charge the union at cost for the service rendered.

2. THE "DUES PICKET LINE"

The fundamental appeal of a checkoff provision in the contract is its elimination of the need for a "dues picket line." In these days of mass unionism, with local lodges running to memberships in the thousands, the simple mechanics of dues collection by personal contact is a major problem. At a minimum, members must be located, solicited, and the dues accepted and receipted. Since many union members seldom attend meetings and live miles apart, the obvious point of contact is the workplace. The dues picket line results. Shop

stewards or local financial officers periodically take positions at plant entrances and "check off" the arriving or departing workmen for unpaid dues, fees, and assessments.

The procedure is undignified, time-consuming, and productive of arguments and disputes. For example, the man who has already paid may be delayed along with those who have not. If the line is set up at the beginning of the shift, it may make some men late. If at the end of the shift, everybody is tired and in a hurry to get home. Men come to work without money and must be caught again later. If the line is on payday, checks must be cashed and change made. Assessments duly voted in regular meeting must be explained to those who were not present, and are often paid grudgingly. Chronic malingerers find ingenious ways to avoid the payment of obligations.

It is not surprising that the automatic checkoff, with remittance by the employer direct to the union, is preferred by the unions and even by management.

3. TYPES OF CHECKOFF PROVISIONS

The checkoff has several dimensions. For example, it may be voluntary or involuntary; revocable or irrevocable; consent may be written or oral; and the agreement may apply to any combination of dues, initiation fees, fines, or assessments.

The voluntary checkoff is a withholding of dues or other payments which has been approved in advance by the individual union members. The involuntary checkoff is one negotiated by the union which does not call for specific, individual approval by each member before going into effect. A revocable checkoff is one which may be cancelled at any time by the person whose dues are being withheld. The irrevocable checkoff is one which runs for a given period or indefinitely and cannot be vetoed by individual members as applying to them.

The Taft-Hartley Act prohibits the involuntary (automatic and compulsory) checkoff and makes any voluntary commitment revocable at the end of a year or at the termination date of the agreement, whichever comes first. Written consent is prescribed. The specific provisions of the law are as follows:

(a) It shall be unlawful for any employer to pay or deliver, or to agree to pay or deliver, any money or other thing of value to any representative of any of his employees who are employed in an industry affecting commerce.

(b) It shall be unlawful for any representative of any employees who are employed in an industry affecting commerce to receive or accept, or to agree to receive or accept, from the employer of such employees any money or other thing of value.

(c) The provisions of this section shall not be applicable ... (4) with respect to money deducted from the wages of employees in payment of membership dues in a labor organization: *Provided,* That the employer has received from each

employee, on whose account such deductions are made, a written assignment which shall not be irrevocable for a period of more than one year, or beyond the termination date of the applicable collective agreement, whichever occurs sooner.

This, of course, is not all. Interpretation of even such an explicit requirement is necessary. For example, it has been ruled that an individual authorization, made irrevocable for one year, may be *automatically* extended year after year, provided the employee has the privilege of cancellation during a ten-day "escape period" in the month prior to expiration.

Then the question arises as to what is meant by the term "membership dues." Does it include, for instance, initiation fees? Assessments? Fines? The first two are general levies; the last applies to individuals. As a matter of fact, all three are included in many contract checkoff provisions along with dues and are regularly withheld from wages and paid over to the unions involved. The Attorney-General has rendered the opinion that the Act permits the deduction of fees and assessments but he did not deal with fines.

4. CHECKOFF COVERAGE

The checkoff, as a form of union security, has a slightly broader coverage than membership provisions. The 1952 BLS study of 1,653 contracts covering

5,549,000 employees, showed that almost four out of five of the employees included had agreed to the checkoff of dues.

Table 4. DISTRIBUTION OF THE CHECKOFF: 1952

Provision for:	*Agreements* Number	Percent	*Workers covered* Number	Percent
Dues only	494	29.9	1,323,000	23.9
Dues and initiation fees	339	20.5	894,000	16.1
Dues and assessments	48	2.9	124,000	2.2
Dues, initiation fees, and assessments	249	15.1	1,905,000	34.3
Dues, initiation fees, fines, and assessments	27	1.6	97,000	1.7
Other	9	.5	9,000	.2
No checkoff	487	29.5	1,197,000	21.6
Total	1,653	100.0	5,549,000	100.0

This table needs some interpretation. Separating out the various provisions, one finds the following:

Dues were checked off under 70 percent of the agreements for 78 percent of the workers.

Initiation fees were checked off under 37 percent of the agreements for 52 percent of the workers.

Assessments were checked off under 20 percent of the agreements for 38 percent of the workers.

Fines were checked off for 2 percent of both the agreements and the workers.

This still is not the complete story. A natural assumption—in view of the close correspondence of the statistics — that membership-security provisions and the

checkoff go hand in hand, would be in error. The Bureau of Labor Statistics informs us that:

> Checkoff provisions were found in nine-tenths of the agreements which had no [membership] union-security clause; among agreements providing for some form of union security—either union shop or maintenance of membership—only slightly more than three-fifths had checkoff clauses. Generally, the industry and union-affiliation data reflected this relationship between checkoff and union security. For example, all of the agreements analyzed in the communications industry had checkoff clauses but few had union-security clauses, while in the construction industry the situation was reversed. Union-security clauses were more frequent in agreements of AFL unions than CIO and independent unions, but checkoff clauses were less prevalent.

To a degree, then, it appears that membership-security clauses and the checkoff are substitutes one for another. A majority of unions have both, but a union which does not have one tends to have the other.

V. The Issues of Union Security

NOTWITHSTANDING the statistical increase in union security, the issues, as noted above, are by no means settled. The arguments for and against required union membership range all the way from so-called "fundamental principles" of individual liberty to the highly practical necessities of organization and administration.

1. THE UNION'S POSITION

As the initiating party, the union has been forced to justify its demand for "membership as a condition of employment." The explanation has taken two main lines, one practical, the other theoretical. The former is short-run, realistic, and defensive. The latter is grounded on the trade unionist's view of modern society and the employee's obligations of industrial citizenship therein.

a. *The practical need for union security.* As a practical matter, the argument for required membership rests on the notion that security is necessary to survival. The

union shop has been the union's answer to three major threats: (1) employer opposition, sabotage, or antiunion persuasions; (2) employee apathy—"free riding" and general neglect; and (3) rival union raiding, as in the case of competing AFL and CIO affiliates.

Of the hazards listed, the opposition of employers was the greatest danger in the past. This risk has been reduced by the passage of protective legislation (the Norris-LaGuardia and Wagner Acts), the rise in union membership, and the widespread practice of collective bargaining. It is true that many labor leaders are still skeptical of the extent to which unions are accepted by management. The days of the black list, the yellow-dog contract, and the labor spy are too recent and too vivid in their memories. Nonetheless, open and aggressive employer opposition to labor organization has now been prohibited by federal statute for about twenty years and its more violent forms have practically disappeared. The same cannot be said for employee apathy and rival unionism.

The backsliding union member is a constant problem, as is the backsliding church member and lodge brother. Many well-intentioned trade unionists fail to attend meetings, let their dues fall in arrears, and otherwise weaken the society without abandoning their belief in unionism for the workingman. Others let their membership lapse while out of work or in nonunion employment and are tempted to "free ride" when they return to the

union's jurisdiction. Some give way in times of emergency, crossing picket lines to "scab" on their brothers. Finally, there remains the small residue of confirmed antiunion workers who criticize union discipline and philosophy and refuse to support the organization and its policies, but who do not turn down the gains which accompany an organized shop.

For all these elements the union answer is prescribed membership and the checkoff of dues. Without distinguishing as to motive, the union demands equality of support and sacrifice and the right to discipline those who jeopardize the welfare of the group. The union argues that the genuine trade unionist will not object to prescribed membership and that the half-hearted joiner should not. The statistics on union-shop elections while the Taft-Hartley Act made them necessary seem to bear out the argument.

Another point is that the backslider and free rider imperil contract observance. This is a very practical argument, often admitted by management. The union is party to an agreement with the employer which imposes duties as well as rights. Hence it must be in a position to carry out its end of the bargain. This may mean disciplining its members to enforce compliance with the contract. Such restraint is difficult if the union is at the same time campaigning for members. Nor is it made easier if the penalized employees are free to turn in their cards and work nonunion or start a rival union in the shop. Given

security, the union may turn its energy to administering the contract with more impartiality and with more attention to the problems of management.

Although rival unionism does not threaten the labor movement as a whole, it is potentially as fatal to a particular union as employer opposition or backsliding membership. With the American union movement split into two major segments during the past fifteen years, the competition between legally-chartered organizations covering the same jurisdictions has increased rapidly. The jurisdictional dispute today *may* be over job territories, but it also may be between AFL and CIO affiliates for the right to represent employees in a given bargaining unit. In the latter case, the dispute goes to the National Labor Relations Board for a representation election.

The possibility that members may be induced to switch affiliation from one union to another creates uncertainty and insecurity. No union, faced by such a threat, can carry out its contractual obligations with efficiency. One answer is to require membership for all employees in the bargaining unit for a fixed period of time. The Taft-Hartley Act provides: "No election shall be directed in any bargaining unit, or any subdivision within which, in the preceding twelve-month period, a valid election shall have been held."

The National Labor Relations Board has extended this protection to the full term of the contract where it ran to

three and even five years. This immunity, of course, applies to outsiders only. It does not hold against decertification actions initiated by the employees themselves.

b. *Union security—the theoretical position.* The preceding arguments are essentially pragmatic in character. They rest on the objective of making collective bargaining "work." Unions also support them with a more fundamental set of propositions concerning the rights and obligations of the industrial worker.

The believer in "union membership as a condition of employment" feels that in an industrial society in which the large corporation dominates the labor market there is no place for individual bargaining. There is no bargaining between a single employee and the great corporation; there is only dictation by the employer. Hence the employee who goes it alone is not only misguided as to his own welfare, but also jeopardizes the welfare of others by undermining the only organization capable of dealing with management on equal terms: the union.

If it is true that individual bargaining is a myth, then two alternative conclusions follow: (1) management may be relied upon to deal fairly with employees in all circumstances: wages, hours, job rights, discipline, grievances, and so on, or (2) collective bargaining is necessary. Conclusion no. 1, unions argue, needs only to be stated to be dismissed; management has too many interests to look out for—itself, stockholders, creditors, customers—that come ahead of the employees' claims. That leaves

only conclusion no. 2. If collective bargaining is the answer, it should require that all employees receive the benefits as a matter of right, support the union as a matter of obligation, and help decide policy as a matter of citizenship.

2. THE OPPOSITION TO UNION SECURITY

The case for the opposition rests on three main arguments: a "realistic" view of the effects of union security upon officers and members of the union, government protection of the right to organize and bargain collectively, and the principle of the "right to work."

a. *The effects of union security—a realistic view.* The "practical" side of the argument counters the union demand for security as a means to effective administration of the agreement. According to this view, the protected union becomes fat and lazy, its officers relieved of hard work, and its members shielded from competition by outsiders. Such an organization is likely to be a breeding ground of patronage and nepotism. It may then display less rather than more concern for contract observance.

Some argue that the way to keep a union—like a business—on its toes is with competition. The most effective form stems from the employees themselves, in their rights to join rival unions or to refrain from membership entirely. So, the Taft-Hartley Act added a proviso to the

long-standing guarantee of the right to organize and bargain collectively, stating that employees "shall also have the right to refrain from any or all of such activities." In effect, the law now safeguards the right to bargain individually.

b. *Government protection of the right to organize.* This brings us to the opposition's second argument: that governmental protection of the right to organize has taken the place of the unions' own security provisions and the latter are now out of date and superfluous. For years the National Labor Relations Board and various state agencies have been engaged in tracking down and punishing employers guilty of "unfair labor practices." On the federal level, the labor injunction and the yellow-dog contract have been made largely unavailable to management since 1932.

The question is asked: What are unions afraid of? Do they fear their own members? Are they daunted by anti-union sentiment among nonunion employees? If so, they should clean house and make themselves attractive to members and potential members.

c. *The right-to-work argument.* The opposition's main reliance, however, is on the right-to-work argument: job-holding should not be limited or denied because of membership or nonmembership in a private organization. An employee's membership in a union should be voluntary. Where it is a condition of employment his rights as a citizen are violated since he is excluded from a job

until he satisfies the demands of unofficial authority. This, they claim, denies the individual's liberty and is an intolerable exercise of power by a private body.

The premises upon which this view rests are these: Employees are individuals and citizens, with all the rights guaranteed in the constitutions of the United States and the states in which they live. They are contracting parties on an equal status with management. In the eyes of the law, employer and employee are equals. The idea of inequality of bargaining power is mostly "hot air," designed to promote the vested interests of those in control of labor organizations.

The employment market is the same as any other market, a place where a commodity called "labor" is bought and sold at a price. The price is set, within limits, by the law of supply and demand. All the union can do is establish a monopoly and get more at the expense of unorganized employees. This means that the weaker and lower-paid suffer. The road to true equality in the labor market is through competition: among employees for jobs and between employers for men. This permits the assignment of workers to the jobs they are best fitted for, and advancement and payment according to worth.

According to this view, the union's policies on output and efficiency are bad. It excludes qualified men from employment by barring them from membership. It substitutes seniority for ability in promotion as well as transfer and layoff. It interferes with reorganization and

technological improvements which eliminate jobs and increase efficiency. Its main weapons are strikes, slowdowns, and picketing, all of which directly hamper production. The results are lowered output, higher costs, higher prices, and a burden on the economy as a whole.

3. CONCLUSION

While directed to immediate adversaries, the contentions are, in fact, addressed to a wider audience. The final appeal in an issue of this gravity must be to public opinion. If the decision is adverse, union security will decline—in extent, or in rigor of application, or both. If the public reaction is favorable, the trend noted in the preceding chapter will extend into the future and union security will grow as it has in the past.

VI. Union Security Under The Taft-Hartley Act

1. UNION SECURITY AND THE LAW

In this country any issue which is controversial and affects a large number of people is certain, sooner or later, to catch the attention of legislators. Union security is no exception to the rule.

The present legal status of compulsory unionism is primarily fixed by the Taft-Hartley Act, the leading federal statute regulating union-management relations. Its provisions, therefore, deserve careful attention. The companion law on the federal level is the Railway Labor Act. It also regulates union security.

A third area of legislative concern with the problem is found in the state laws. A good many states have adopted—either in statutes or constitutional amendments—restrictions upon compulsory unionism, representing the current high-water mark of disapproval.

Before taking up these subjects, however, we shall refer to the law which preceded Taft-Hartley and whose union-security provisions were the basis for the amendments to follow.

2. THE WAGNER ACT AND UNION SECURITY

For twelve years—from 1935 to 1947—the Wagner Act supplied the main provisions relating to union security in the United States. The principles were simple and inclusive. They asserted that nothing in the law or any other law of the United States should keep an employer from making an agreement with a union requiring membership in the union as a condition of employment.

There were a couple of safeguards: The union should be a bona fide labor organization representing a majority of the employees; and the agreement must have been arrived at without coercion or collusion. It is a matter of record that a number of union-security agreements were disestablished by the National Labor Relations Board for failure to meet these tests. An example would be a closed-shop contract negotiated for the purpose of keeping out a rival labor organization, when the negotiating union represented only a minority of the employees in the bargaining unit. Both of these provisions were retained in the Taft-Hartley Act.

3. UNION-SHOP ELECTIONS UNDER THE TAFT-HARTLEY ACT

In 1947 the National Labor Relations Act was superseded by the Labor Management Relations Act, better known as the Taft-Hartley Act. In strict accuracy, the former law, as amended, remains a part of the United States Code, as Title I of the new statute. Comparisons of the two frequently make it sound as though the former had disappeared. Much of the original Wagner Act, however, remains unchanged and a great deal of the remainder has the form of the original with qualifying amendments.

The union-security section of the Wagner Act was extensively modified in the new law. The maximum form of membership security permissible became the union shop. To qualify for this kind of agreement, the union first had to petition the National Labor Relations Board for a secret-ballot election and then win the election by a majority of the employees eligible to vote—not just a majority of those voting, as in representation elections. Behind this requirement lurked the suspicion that many employees had been forced into unions against their will through closed- and union-shop agreements. In the elections to follow, it was expected, large numbers of workmen would extricate themselves from the encumbrance of membership.

These anticipations were promptly upset. In the first four months of operation under the Act the unions won 660 out of 664 union-shop elections, with more than 90 percent of the employees voting for compulsory membership. In its annual report for 1951, the NLRB gave the box score for the first four years:

Union-shop elections conducted	46,119
Union shops authorized	44,795 (97 percent)
Workers eligible to vote	6,542,564
Votes for union security	5,071,988 (78 percent)

In the face of such a record, it was hard to maintain the fiction that employees were being forced into unions against their own wishes. It was also clear that time and money were wasted in holding the elections. The Act was, accordingly, amended in 1951, and the elections are no longer required.

The decertification process. As a companion piece to the union-shop election, the Taft-Hartley Act contained a decertification procedure, which is still in effect. Its purpose is to furnish a way out of compulsory membership for employees who have changed their minds or who never approved of the arrangement in the first place.

The preliminary step is a petition to the NLRB, signed by at least 30 percent of the employees in the bargaining unit, stating that they want the agreement rescinded. The next step is a secret-ballot election, held by the

Board, the results of which are certified to the union and the employer. If a majority go along with the petition, the agreement is void. A decertification election stands as a bar for one year to another union-preference agreement between the same parties.

The decertification process has been used in very few cases. In fact, the total number of employees withdrawn from prescribed union membership by this means is almost negligible. Nonetheless, it has been resorted to, and therefore presumably is a protection against the exceptional instance of compulsion against the wishes of a majority.

Its use has raised one practical question: Should decertification be permitted before the end of the contract period or should it be held up until the agreement as a whole expires? The NLRB, by a divided vote, has taken the former position as squaring with the statute. It was argued by the minority that the result would inevitably be disruption of contractual relations in other departments than union membership, and decertification should therefore be delayed until the end of the contract period.

4. UNION SECURITY AND INTERNAL UNION AFFAIRS

The Taft-Hartley Act is generally regarded as inaugurating detailed regulation of internal union af-

fairs by the federal government. Certainly many of its provisions are directed to this end, and a number of them are tied to union security, either as conditions precedent to negotiation of the agreement or as restrictions upon its administration.

An example is the necessity to comply with requirements of annual reports—informational and financial—and non-Communist affidavits. Unless the union has received formal notices of compliance from the NLRB within the past twelve months, it is not free to negotiate an agreement containing union preference.

The administrative restrictions aim at preventing the arbitrary treatment of members by the union when membership is a condition of employment. Here the purpose of the statute is to safeguard the individual's right to a job rather than to restrict the union's choice of members. The critical periods are when the employee applies for admission to the union, and when he is reported to the employer as not in good standing and therefore subject to discharge. Both entrance to and exit from the union are protected by clauses in the law limiting the union's authority. As to admission, there are two requirements: (1) membership must be made available to all new employees on the same terms and conditions as are generally applicable to other members, and (2) membership may not be denied for *any* reason other than failure to pay "reasonable" initiation fees and dues. What is reasonable is to be determined by the National Labor Rela-

tions Board, taking into account the level of wages and past practice in the union involved.

Although the Act does not limit the union's authority to set standards for admission and retention of membership, it prohibits the denial of employment in face of a union-security clause to any employee who pays reasonable dues and initiation fees. With this rule, known labor spies and saboteurs may keep their jobs under a union shop even after the denial of admission or expulsion. As the law stands, the rights of the individual employee are paramount and the inconvenience to the union is a matter of secondary importance.

Another difficulty with these rules is the manner in which they are enforced. Discharge and discrimination in employment are prerogatives of management. The language of the Act is: "That no employer shall justify any discrimination against an employee for nonmembership in a labor organization . . . if he has reasonable grounds for believing" that the union has violated one of the above regulations. This is a rather slippery injunction. What are "reasonable grounds for believing"? And is it the employer's job to police the union? To a degree, the problem is simplified by limiting the requirements of admission and membership to the tender of dues and fees. However, the employer who fails judicially is guilty of an unfair labor practice, just as is the union which misleads him or tries to mislead him in such matters. The matter of assessing guilt has raised a number of ticklish questions for the NLRB.

5. THE TAFT-HARTLEY ACT AND STATE LEGISLATION

During the three years prior to the passage of the Taft-Hartley Act, there had been strong adverse reactions to union security in several states, especially in the South. Between 1944 and 1947 a dozen jurisdictions passed restrictive legislation (either by statute or constitutional amendment), the effect of which was to outlaw any form of union preference. The framers of the Labor-Management Relations Act took friendly cognizance of this sentiment by giving such regulations the right of way over the federal law. Several problems were thereby raised, which will be outlined in the next chapter.

VII. The Railway Labor Act and State Legislation

1. UNION SECURITY ON THE RAILWAYS

The Railway Labor Act was first passed in 1926, and was significantly amended in 1934. At the latter date Congress inserted a provision in the statute to outlaw any form of union security, including the checkoff.

This prohibition of 1934 contrasted sharply with the protection for the closed shop incorporated in the Wagner Act, passed the following year. The special policy for the railways was in response to the pressures of the time: the views of the principal federal official responsible for railway matters, Joseph B. Eastman; the carriers' opposition; and the feeling by most unions that the closed shop would prove a burden. This last involved a number of administrative problems, including seniority, jurisdiction, insurance, and equal rights for Negroes. Over the years, however, the railway labor organizations switched their position, stressing the inequity between Taft-Hartley protection and the Railway Labor Act ban on the union shop.

In January, 1951, Congress recognized this inequity by passing the union-shop amendment to the railway

statute. The new section authorized membership as a condition of employment, provided its terms and conditions were the same for everyone, and provided also that the only grounds for denying admission to the union or terminating membership afterward were the nonpayment of dues, fees, and assessments. The checkoff was also permitted, but only when individually sanctioned in writing and made irrevocable for a maximum of one year.

While the indebtedness to Taft-Hartley was clear, the differences were equally noticeable. There was no requirement for an election prior to negotiation of an agreement. (This provision of the Labor-Management Relations Act was still in effect when the Railway Labor Act was amended, although strong agitation had begun for its removal.) Nor was there a decertification procedure, and nothing was said about non-Communist affidavits or reports. The amendment specifically overruled any conflicting state or territorial laws, exactly reversing the Taft-Hartley position on restrictive local legislation.

Passage of the legislation initiated active negotiations on the railroads. The first union-shop agreement was signed less than two weeks after the new rule went into effect. Numerous other conferences were scheduled. At this point, however, most of the railroads refused to execute union-security agreements. Acting under the terms of the Act, therefore, President Truman referred the question to an emergency board composed of three well-

known arbitrators. The board recommended the full union shop. Within a year, a majority of the railroads had signed and union-shop coverage had risen by several hundred thousand.

2. UNION SECURITY UNDER STATE LAW

The third general area of union-security regulation is found in the state laws. By the end of 1952, seventeen states had placed restrictions upon compulsory unionism. In thirteen of them, with so-called "right-to-work" laws or constitutional amendments, all forms of union security were prohibited. These jurisdictions were: Arizona, Arkansas, Florida, Georgia, Iowa, Nebraska, Nevada, North Carolina, North Dakota, South Dakota, Tennessee, Texas, and Virginia. The preponderance of southern and agricultural states is obvious. In three other localities—Colorado, Kansas, and Wisconsin—agreements requiring union membership as a condition of employment were ruled valid only if an election had been held and a given percentage of the employees voted in favor of the arrangement. In Massachusetts, union security was permitted, but loss of membership was restricted to violation of union discipline and failure to qualify for the job.

The complete exclusion of compulsory unionism in thirteen states is accomplished by a "right-to-work" provision, passed either by the legislature or by a general referendum. The form is simplicity itself and the result

is to make any kind of union preference illegal. The Florida amendment, passed in 1944, for example, provides: "The rights of persons to work shall not be denied or abridged on account of membership in any labor union or labor organization."

3. THE TAFT-HARTLEY TIE-IN

Normally, state restrictions upon union security would apply only to employers in intrastate commerce or in industries explicitly exempted from the coverage of federal labor laws. However, the framers of the Taft-Hartley Act took the unique step of subordinating federal to state rules where the latter were more restrictive. The applicable section of the law prescribes:

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

The effect was to hand over most industries in interstate commerce to the right-to-work states in matters of union security. This was in 1947. However, in the 1951 union-shop amendment to the Railway Labor Act, conflicting state laws were explicitly overruled and the federal law took primacy. As a result, railway union-security agreements are controlling in all forty-eight states, while contracts in other interstate industries are effective in only thirty-five.

VIII. The Future of Union Security

THE PRECEDING DISCUSSION of right-to-work legislation raises once more the fundamental issue of union security and the outlook for its future.

Since the passage of the Taft-Hartley Act in 1947—the most recent period during which legal limitations have been relatively stable—there appears to have been a steady increase in the proportion of unionized employees working under union-security agreements. The latest BLS sample shows this figure to be about three out of four for membership security and four out of five for the checkoff. If the BLS survey is representative, nineteen out of twenty unionized employees are covered by union-security agreements of some sort, either prescribed membership or the checkoff or both.

The continuance or discontinuance of this trend seems to depend primarily on the legislative situation. If it is legal to negotiate contracts with some form of union preference, experience indicates that unions will request it and that management will often go along. If, however, the law says more union security or less union security or a different kind of union security, the pattern will change in response to the new rules.

The legislative pattern from 1944 to 1947 was restrictive. During this period, most of the state right-to-work provisions appeared and the Taft-Hartley Act ruled out the closed shop. Since that time, both Taft-Hartley and the Railway Labor Act have been amended, the former to eliminate union-shop elections and the latter to permit the union shop and the checkoff. These amendments, coming in 1951, relax previous limitations.

In 1952, a right-to-work law was enacted by Nevada, and during 1953 similar legislation was passed in Alabama but voted down in several other states: California, Colorado, and Oregon, for example. The prohibition of union security on the state level is significant primarily because of the Taft-Hartley provision which makes such restraints binding on interstate commerce. The future of this clause is therefore a key factor in the outlook for union security.

In November, 1952, the National Industrial Conference Board—a research organization supported by industry—made a comprehensive report on the subject. The Board quoted with approval a study of the closed-shop principle made a number of years ago by its research director and based primarily on the views of industrial executives. In the opinions of these management men, there were advantages as well as disadvantages in the arrangement. The following summary is quoted verbatim:

Advantages

Possible advantages under closed-shop operation cited by industrial executives include:

1. Eliminates factional strife within the working force by giving a single union exclusive recognition and an assured status.

2. Improves discipline by holding the union responsible for actions of employees, all of whom must be members of the union and, therefore, answerable to the union officers.

3. Puts an end to periodic, short but troublesome interruptions to operation.

4. Ends the frequent demands by the union for concessions from the employer for the sole purpose of holding membership.

5. Tends to standardize wage costs.

6. Brings about a greater feeling of responsibility and interest in their jobs on the part of employees because of a voice in determining working conditions.

Disadvantages

Anticipated or experienced disadvantages of the closed shop as stated by industrial executives include:

1. Interferes with the employee's right to decide the question of membership or nonmembership in the labor union.

2. Makes employment contingent on maintenance of good standing in union, and, consequently, commits the employee to permanent union membership.

3. Tends to create a labor monopoly.

4. Destroys discipline and efficiency by making the union officers seem more powerful than the foremen.

5. Places the union, which has neither investment in, nor responsibility for, the business, in a position where it can checkmate the management's operating policies.

6. Deprives management of the power to determine who shall be selected for employment.

7. Tempts the union officers to become arbitrary and unreasonable, because their status is assured.

Attitudes like these are a part of the climate of opinion in which labor legislation is formed. So are the attitudes of workingmen, both organized and unorganized, union officials, students of industrial relations, and the general public. In the final analysis, it will be the balancing of some such table of advantages and disadvantages which will produce legislation restricting or extending the use of union security in collective agreements in the future.

IX. Suggestions for Further Reading

A COMPREHENSIVE RECENT study of the union-security situation in the United States is *Union Security and Checkoff Provisions*, published by the National Industrial Conference Board in November, 1952. This monograph, which goes into considerable detail, has the advantage of giving all the dimensions of the problem. At the same time, it has a point of view and a limitation. The point of view is that of management, which supports the Board, and the limitation is that of any private research agency when compiling information on a subject that is national in scope. With these qualifications in mind, the study is a good place to start for the reader who wants to go further on union security. An older study, more sympathetic to labor's position, is Jerome L. Toner, *The Closed Shop* (Washington: American Council on Public Affairs, 1942).

A set of general readings in a single volume is found in E. Wight Bakke and Clark Kerr, *Unions, Management, and the Public* (New York: Harcourt, Brace, 1948), Chapter 4. It contains a representative sample of views on union security by a variety of authors, from "Mr.

Dooley on the Open Shop," by Finley Peter Dunne, to the National Association of Manufacturers on the same subject. These may be supplemented by William M. Leiserson's article, "Closed Shop and Open Shop," in the *Encyclopedia of the Social Sciences.* An authoritative study, now somewhat dated, is Sumner H. Slichter's "Control of Hiring," in *Union Policies and Industrial Management* (Washington: Brookings, 1941).

The legal aspects of union security have been a popular topic for the law journals, but most such articles are limited in scope and highly technical in treatment. A comprehensive and up-to-date introduction to the subject is offered in *Labor Relations and the Law* (Boston: Little, Brown, 1953), a legal textbook, of which Robert E. Mathews is general editor. The discussion of union security covers the common-law background, statute law, and the judicial and quasi-judicial interpretations by courts, administrative agencies, and arbitrators. The presentation offers case material, explanatory notes, and illustrative questions.

The development of public policy toward union security has been a prime topic for writers. "The Union Security Issue," by Lloyd G. Reynolds and Charles C. Killingsworth, in the *Annals of the American Academy of Political and Social Science,* November, 1942, relates the steps in the formation of the wartime maintenance-of-membership compromise by the National War Labor Board. See also John V. Spielmans, "The Dilemma of the

Closed Shop," *Journal of Political Economy,* April, 1943, and "Union Security and Its Implications," by Louis Stark, in the *Annals,* November, 1946.

The public policy issue is highly controversial. For an illustration of opposing viewpoints, compare "Compulsory Union Membership and Public Policy," by James R. Morris, in the *Southern Economic Journal,* July, 1951, with Fred Witney's note on "Union Security," in the *Labor Law Journal,* February, 1953. A similar comparison of the arguments of union and management spokesmen may be found by comparing Chapter III, "Union Protective Clauses," in *Management at the Bargaining Table* (New York: McGraw-Hill, 1945), by Lee H. Hill and Charles R. Hook, Jr., with Clinton S. Golden and Harold J. Ruttenberg's "Necessity of Union Shop," Chapter VII of *The Dynamics of Industrial Democracy* (New York: Harper, 1942).

The *Report to the President by the Emergency Board,* appointed by Executive Order 10306 dated November 15, 1951, covers the dispute over the union shop between the seventeen nonoperating railway unions and most of the carriers. It is an excellent discussion in the context of a specific dispute by a highly competent fact-finding board headed by David L. Cole. Likewise, the *Report and Recommendations of the Wage Stabilization Board in the Matter of United Steelworkers of America-CIO and Various Steel and Iron Ore Companies* (Case No.

D-18-C) carries a section which does the same thing for the union-shop issue in the steel dispute of 1952.

The Bureau of Labor Statistics description of the forms of union security is found in its *Handbook of Labor Statistics—1947*. The Bureau's recent surveys on the extent of union security and checkoff provisions appear in the *Monthly Labor Review*, August, 1950, November, 1951, and April, 1953.

5*m*-1,'54(1496s)

PRINTED IN THE UNITED STATES OF AMERICA
BY THE UNIVERSITY OF CALIFORNIA PRINTING DEPARTMENT