

## State Protection of the Right to Work

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application of either domiciliary or non-domiciliary law. The effect of this shifting rule is to impose a geographic limitation on the applicability of the New York Rule against Perpetuities. The Rule apparently applies only where a resident of New York establishes a trust to be administered in New York.<sup>55</sup> Depending on the weight of the *Samuels* case, however, non-charitable testamentary trusts may be excluded from this rather ideal limitation.

The New York Rule against Perpetuities will not apply to an inter vivos trust of personal property with a foreign situs; nor will it apply if the beneficiary of a testamentary trust is a foreign charity and the trust is to be administered in another jurisdiction. If, in the latter case, the beneficiary is not a charity, the law can only be described as uncertain.



## STATE PROTECTION OF THE RIGHT TO WORK

### *Introduction*

Governmental policy in the United States, echoing what is undoubtedly the sentiment of most Americans, has sought to encourage competition in industry. This has required the enactment of legislation against those who would combine in order to raise artificially the price of their goods, either directly or indirectly. Such laws, however, impinge upon the liberty of those whom they affect by preventing them from contracting as they wish. It is therefore necessary to subject all such legislation to the closest scrutiny to determine whether or not the liberty which it preserves is greater than that which it restricts.

In recent years many states have enacted so-called "right-to-work"<sup>1</sup> laws, which prohibit the conventional union shop contract and other union-security devices. These statutes would appear to come within the general category of legislation the purpose of which is the maintenance of competition, since the underlying rationale is

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<sup>55</sup> See 2 WHARTON, *CONFLICT OF LAWS* 1325 (3d ed. 1905).

<sup>1</sup> Terminology in this field is fraught with partisan overtones. Union leaders prefer to call these enactments "anti-union-security" laws, rather than "right-to-work" statutes. This is in harmony with their use of the term "union security" rather than "closed shop," "union shop," "maintenance of membership," *etc.* It cannot be denied that the term "right-to-work" is misleading, if it is understood to mean a literal right to be employed. Such a "right," though foreign to American political concepts, is common among authoritarian regimes. *E.g.*, ARGENTINA CONST. Art. XXXVII, §1(1); Spain: Labor Charter, Art. I, §8; U.S.S.R. CONST. Art. CXVIII. In this article the terms "right-to-work" and "union security" will be employed in the interest of brevity and uniformity.

that the law should not permit individuals to combine for the purpose of monopolizing the labor market in an industry.<sup>2</sup>

### *Regulation of Union Security*

The discussion over the closed and union shop is almost as old as the Republic. The first American trade unions, formed at the end of the eighteenth century, included among their goals the ". . . establishment of the principle of exclusive union hiring, later known as the 'closed shop.'" <sup>3</sup> Contracts containing union-security provisions have been received with varying degrees of acceptance by the courts,<sup>4</sup> with New York representing a minority view in upholding such agreements.<sup>5</sup> In the federal sphere, powerful stimulus was given to the use of such clauses by the passage of the Wagner Act,<sup>6</sup> in which Congress expressly recognized their validity.<sup>7</sup> Some states thereafter enacted similar legislation.<sup>8</sup> With the passage of time and the increase in union strength, however, the belief became widespread that governmental fostering of union security did more harm than good. Accordingly, when the Taft-Hartley Act<sup>9</sup> was passed, it prohibited the closed shop.<sup>10</sup> The Act permitted the union shop, under which the employee could be required, as a condition of continued employ-

<sup>2</sup> The right-to-work statutes, by their terms, are directed at "monopolies" and "conspiracies." *E.g.*, ALA. CODE tit. 26, § 375(2) (Supp. 1953); LA. REV. STAT. tit. 23, § 882 (Supp. 1954); N.C. GEN. STAT. ANN. § 95-79 (Michie, 1950); VA. CODE ANN. tit. 40, § 40-69 (1950).

<sup>3</sup> U.S. DEPT OF LABOR, BRIEF HISTORY OF THE AMERICAN LABOR MOVEMENT 1 (Bulletin No. 1000, 1950).

<sup>4</sup> See 1 TELLER, LABOR DISPUTES AND COLLECTIVE BARGAINING § 170 (1940).

<sup>5</sup> *Ibid.* See Williams v. Quill, 277 N.Y. 1, 12 N.E.2d 547, *appeal dismissed*, 303 U.S. 621 (1938). Such contracts were given substantial recognition in New York in the early years of this century. See, *e.g.*, Jacobs v. Cohen, 183 N.Y. 207, 76 N.E. 5 (1905). Previously, they had been invalid in New York. See Curran v. Galen, 152 N.Y. 33, 46 N.E. 297 (1897); *cf.* People *ex rel.* Gill v. Smith, 5 N.Y. Crim. R. 509 (Ct. Oyer & Ter. 1887).

<sup>6</sup> 49 STAT. 449 (1935).

<sup>7</sup> ". . . [N]othing in this Act . . . or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization . . . to require as a condition of employment membership therein. . ." 49 STAT. 452, § 8(3) (1935). Indeed, it was indicated that the refusal of an employer to bargain with a union for union security was an unfair labor practice under the Act. See Alexander Milburn Co., 62 N.L.R.B. 482, 509-511 (1945). Ultimately, after its repeal, Section 8(3) was construed to be merely a disclaimer on the part of the Federal Government of any hostility to union-security agreements, rather than a bestowal of the right to make such contracts where they violated state law. See Algoma Plywood & Veneer Co. v. Wisconsin Employment Relations Board, 336 U.S. 301 (1949).

<sup>8</sup> *E.g.*, N.Y. LABOR LAW § 704(5); CONN. GEN. STAT. § 7392(5) (1949); PA. STAT. ANN. tit. 43, § 211.6(c) (Purdon, 1952).

<sup>9</sup> 61 STAT. 136 (1947), 29 U.S.C. § 141 *et seq.* (1952).

<sup>10</sup> 61 STAT. 140 (1947), 29 U.S.C. § 158(a)(3) (1952). It is an unfair labor practice, under the Taft-Hartley Law, to enter into a closed shop contract. Red Star Express Lines v. NLRB, 196 F.2d 78 (2d Cir. 1952).

ment, to join a union on or after the thirtieth day of work.<sup>11</sup> This provision is, by virtue of Section 14(b),<sup>12</sup> only applicable where state law does not prohibit the union shop contract. It is this latter section which has stimulated the enactment of right-to-work laws by the legislatures of various states.

Eighteen states now have right-to-work laws.<sup>13</sup> These enactments vary widely, both in form and in content. In some states they are contained in the state constitution; in others they are included as statutory provisions. Characteristically, they commence by declaring it to be the policy of the state that no person's employment should be conditioned upon membership or non-membership in a labor organization.<sup>14</sup> Subsequent clauses ordinarily proscribe the closed shop, the union shop, and "employment monopolies," as well as contracts which require or which prohibit union membership as a condition of employment.<sup>15</sup> Contracts providing for the compulsory payment of union dues are also outlawed.<sup>16</sup> In some states the statute prohibits any deduction of union dues from the employee's pay envelope except

<sup>11</sup> 61 STAT. 140, § 8(a) (3) (1947), 29 U.S.C. § 158(a) (3) (1952). It has been suggested that the union-shop provision of the Taft-Hartley Law is unconstitutional, although no case has yet reached the Supreme Court on the point. See Lawrence, N.Y. Herald Tribune, Dec. 13, 1954, p. 17, col. 1.

<sup>12</sup> "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." 61 STAT. 151, § 14(b) (1947), 29 U.S.C. § 164(b) (1952).

<sup>13</sup> ALA. CODE tit. 26, § 375 (Supp. 1953); ARIZ. CONST. Art. II, § 35, ARIZ. CODE ANN. § 56-1302 *et seq.* (Supp. 1952); ARK. CONST. AMEND. XXXIV (1), ARK. STAT. ANN. § 81-201 *et seq.* (1947); FLA. CONST., Declaration of Rights § 12; GA. CODE ANN. tit. 54, §§ 54-902 *et seq.*, 54-9922 (Supp. 1951); IOWA CODE ANN. c. 736A (1950); LA. REV. STAT. tit. 23, §§ 881-888 (Supp. 1954); LAWS of Miss. 1954, c. 249, § 1; NEB. CONST. Art. XV, § 13, NEB. REV. STAT. §§ 48-217, 48-219 (1952); NEV. COMP. LAWS § 10473 (Hillyer, 1929); N.C. GEN. STAT. ANN. § 95-78 *et seq.* (Michie, 1950); N.D. REV. CODE tit. 34, § 34-0114 (Supp. 1953); S.C. CODE ANN. tit. 40, § 40-46 (Supp. 1954); S.D. CODE § 17.1101 (Supp. 1952); TENN. CODE ANN. §§ 11412.8-11412.12 (Williams, Supp. 1954); TEX. STAT. arts. 5154c, 5207a (Vernon, 1947); VA. CODE ANN. tit. 40, § 40-68 *et seq.* (1947), §§ 40-74.1 *et seq.* (Supp. 1954). This year Utah also enacted a right-to-work law. See N.Y. Times, March 20, 1955, p. 50, col. 3. England had such a statute from 1927 until 1946, but it applied only to public employees. Trade Disputes and Trade Unions Act, 1927, 17 & 18 GEO. V, c. 22, § 6, repealed by Trade Disputes and Trade Unions Act, 1946, 9 & 10 GEO. VI, c. 52.

<sup>14</sup> *E.g.*, ALA. CODE tit. 26, §§ 375(1), 376 (Supp. 1953); IOWA CODE ANN. c. 736A, § 736A.1 (1950); LA. REV. STAT. tit. 23, § 881 (Supp. 1954); S.C. CODE ANN. tit. 40, § 40-46 (Supp. 1954).

<sup>15</sup> *E.g.*, LA. REV. STAT. tit. 23, §§ 882, 884 (Supp. 1954); LAWS of Miss. 1954, c. 249, § 1(b), (c), (d); N.C. GEN. STAT. ANN. § 95-79 *et seq.* (Michie, 1950); VA. CODE ANN. tit. 40, § 40-69 *et seq.* (1950).

<sup>16</sup> *E.g.*, ALA. CODE tit. 26, § 375(5) (Supp. 1953); ARK. STAT. ANN. § 81-202 (1947); GA. CODE ANN. tit. 54, § 54-904 (Supp. 1951); IOWA CODE ANN. c. 736A, § 736A.4 (1950).

on his request.<sup>17</sup> Two states make it unlawful to threaten with injury any person who refuses to join a union.<sup>18</sup> Some of the states exclude from the coverage of their statutes those employees who are covered by the Railway Labor Act,<sup>19</sup> since that statute contains no provision comparable to Section 14(b). The right-to-work statutes have been held constitutional under both state<sup>20</sup> and federal<sup>21</sup> constitutions.

The remedies provided in the various states for the enforcement of these laws are both civil and criminal. Virtually all of the right-to-work laws declare that contracts which contravene their provisions are void or unenforceable.<sup>22</sup> Parties who are injured by their violation are permitted to enjoin the harmful acts, recover damages, or both.<sup>23</sup> The violation itself is a misdemeanor,<sup>24</sup> and substantial penalties are included in some of the statutes.<sup>25</sup>

Few other state laws have provoked as much debate as have the right-to-work statutes. While they have been warmly supported in principle by business associations,<sup>26</sup> union organizations have unre-

<sup>17</sup> *E.g.*, GA. CODE ANN. tit. 54, § 54-907 (Supp. 1951); IOWA CODE ANN. c. 736A, § 736A.5 (1950); S.C. CODE ANN. tit. 40, § 40-46.4 (Supp. 1954).

<sup>18</sup> ARIZ. CODE ANN. § 56-1304 (Supp. 1952); S.D. CODE § 17.1101(2) (Supp. 1952).

<sup>19</sup> 44 STAT. 577 (1926), as amended, 45 U.S.C. § 151 *et seq.* (1952). *E.g.*, IOWA CODE ANN. c. 736A, § 736A.8 (1950); Laws of Miss. 1954, c. 249(h). One court has held that the provision of the Railway Labor Act which permits a union shop is unconstitutional. See *Sandsberry v. Gulf, Colorado & Santa Fe Ry.*, 25 LABOR CASES ¶ 68,128 (Dist. Ct. Tex. 1954).

<sup>20</sup> See *Finney v. Hawkins*, 189 Va. 878, 54 S.E.2d 872 (1949).

<sup>21</sup> See *Lincoln Federal Labor Union v. Northwestern Iron & Metal Co.*, 335 U.S. 525 (1949); *A.F. of L. v. American Sash & Door Co.*, 335 U.S. 538 (1949).

<sup>22</sup> Despite the all-embracing language of the statute, however, it has been held that the prohibited clauses may be severed from a union contract, leaving the rest of the agreement enforceable. *Matter of Port Pub. Co.*, 231 N.C. 395, 57 S.E.2d 366 (1950). *But cf.* *Lewis v. Jackson & Squire, Inc.*, 86 F. Supp. 354 (W.D. Ark. 1949).

<sup>23</sup> *E.g.*, ARIZ. CODE ANN. §§ 56-1306, 56-1307 (Supp. 1952); GA. CODE ANN. tit. 54, § 54-908 (Supp. 1951); IOWA CODE ANN. c. 736A, § 736A.7 (1950) (injunction only); LA. REV. STAT. tit. 23, §§ 885, 886 (Supp. 1954); VA. CODE ANN. tit. 40, § 40-73 (1950) (damages only). Even though the local right-to-work law did not specifically grant such relief, at least one state has enjoined picketing which had as its purpose a violation of the law. See *Local Union No. 519 v. Robertson*, 44 So.2d 899 (Fla. 1950).

<sup>24</sup> Some of the states in question explicitly make a violation of their right-to-work statute a misdemeanor. It has been held to be one even where the statute lacks such a clause. See *State v. Bishop*, 228 N.C. 371, 45 S.E.2d 858 (1947).

<sup>25</sup> *E.g.*, ARK. STAT. ANN. § 81-204 (1947) (fine up to \$5,000); TENN. CODE ANN. § 11412.12 (Williams, Supp. 1952) (up to \$500 fine and one year imprisonment); VA. CODE ANN. tit. 40, § 40-74.5 (Supp. 1954) (up to \$500 fine). Each of these statutes also provides that each day that any person or organization remains in violation of the statute constitutes a separate offense.

<sup>26</sup> See U.S. CHAMBER OF COMMERCE, POLICY DECLARATIONS, INDUSTRIAL RELATIONS IN AMERICA 2 (1954); N.A.M., INDUSTRIAL RELATIONS POLICY STATEMENT 7 (1954).

servedly denounced them.<sup>27</sup> Proponents of such legislation compare union-shop contracts to the outlawed "yellow-dog" contracts of an earlier day, in that they both make a person's continued employment contingent on whether or not he joins a union.<sup>28</sup> It is argued that since union-security agreements destroy the worker's right to leave the union without leaving the job, he is thereby deprived of his most effective protest against bad union leadership.<sup>29</sup> Advocates of right-to-work legislation deny that there can be any true collective bargaining where the union members have been coerced into joining the organization, since "[t]rue collective action is always based on the voluntary choice of those who act."<sup>30</sup> It is pointed out that these enactments represent a praiseworthy effort to revitalize states' rights in the field of labor law.<sup>31</sup> Finally, it is contended that they protect the workers, since the right to work is a primary right, more essential than any other except the right to life. To be denied the right would condemn the worker to dependence upon the state.<sup>32</sup>

On the other hand, it is alleged that the actual purpose of such statutes is to weaken labor unions and to lower standards of wages and working conditions.<sup>33</sup> Opponents of such legislation say that union-security contracts stabilize labor relations,<sup>34</sup> and they denounce right-to-work laws as restrictions upon the freedom of employers and employees to bargain as they choose.<sup>35</sup> It is urged that the application of the "states' rights" label to these laws is a fraud, since the Taft-Hartley Law does not allow the states to pre-empt the field of union-security regulation, but only to impose additional restrictions upon unions.<sup>36</sup> In addition, it is claimed that laws prohibiting the union shop permit an employer to dilute union strength by replacing union men with non-union men;<sup>37</sup> that they run counter to the Amer-

<sup>27</sup> See A.F. OF L., *THE SIGNIFICANCE OF STATE LAWS PROHIBITING UNION SECURITY* (1954); C.I.O., *THE CASE AGAINST "RIGHT TO WORK" LAWS*.

<sup>28</sup> See Hartley, *Compulsory Unionism*, 12 HUMAN EVENTS No. 5 (Jan. 29, 1955); Ball, *The Union Drive for Power*, 2 THE FREEMAN 305, 306 (Feb. 11, 1952).

<sup>29</sup> See Ball, *supra* note 28, at 307.

<sup>30</sup> Haney, N.Y. Journal-American, Jan. 6, 1955, p. 24, col. 7.

<sup>31</sup> See WATTS, *UNION MONOPOLY* 79 (1954).

<sup>32</sup> See Rose, *The Right to Work: It Must Be Supreme over Union Security*, 35 A.B.A.J. 110, 111 (1949). But see C.I.O., *THE CASE AGAINST "RIGHT TO WORK" LAWS* 85, where it is asserted that in a union shop, "[t]he liberty that the non-union man gives up is really nothing to cry about. . . ."

<sup>33</sup> See A.F. OF L., *THE SIGNIFICANCE OF STATE LAWS PROHIBITING UNION SECURITY* 6 (1954); C.I.O., *"RIGHT TO WORK" LAWS—LOW WAGE SCHEME 2* (Pamphlet No. 263, 1955).

<sup>34</sup> See C.I.O., *op. cit. supra* note 32, at 65. But see U.S. CHAMBER OF COMMERCE, *THE RIGHT TO WORK* 2 (Information Bulletin No. 2, 1954), wherein it is contended that the union shop has not eliminated industrial strife in the automobile, construction and maritime industries.

<sup>35</sup> See statement by Secretary of Labor Mitchell, N.Y. Times, Dec. 8, 1954, p. 27, col. 5.

<sup>36</sup> See C.I.O., *op. cit. supra* note 32, at 13-17, 96.

<sup>37</sup> See GREGORY, *LABOR AND THE LAW* 119 (1946).

ican tradition of majority rule;<sup>38</sup> and that they unjustly permit some employees to obtain the benefits of trade unionism without supporting it.<sup>39</sup>

Opinions also differ on whether or not the workers themselves want union-security agreements. During the period from 1947 to 1951, when the Taft-Hartley Law required an election before a union-shop contract could be negotiated, 91% of the votes cast favored the union shop, and 97% of the election results authorized a union-shop clause.<sup>40</sup> On the other hand, it is pointed out that these votes represent only one-third of the total union membership and less than 10% of American workers.<sup>41</sup> In any event, it is clear that a substantial number of employees, though probably a minority, are strongly opposed to joining a union as a condition of continued employment.<sup>42</sup> It is certainly arguable that numbers is no criterion in this matter if even one citizen is deprived of a basic liberty. Since the right to life is a basic liberty of which a citizen cannot be deprived, even in the interests of society, and since the right to life inextricably depends upon the right to work, it would seem that the right to work is a basic liberty. If this be so, there is need for both a legal remedy to redress his injury and a statutory bar to prevent its recurrence.

### *Moral and Economic Considerations*

There can be no doubt that workers have a moral right to organize unions.<sup>43</sup> As a correlative to this, it would seem that they also have a right to refrain from doing so, in the absence of special cir-

<sup>38</sup> See A.F. OF L., *THE SIGNIFICANCE OF STATE LAWS PROHIBITING UNION SECURITY* 8-9 (1954).

<sup>39</sup> *Ibid.* See C.I.O., *THE CASE AGAINST "RIGHT TO WORK" LAWS* 73-76.

<sup>40</sup> See A.F. OF L., *op. cit. supra* note 38, at 10. It has been charged, however, that these were hand-picked elections held only in highly organized plants where unions felt sure of winning decisively. See N.A.M., *INDUSTRY'S VIEW ON DO WE HAVE THE RIGHT TO WORK?* (Jan. 1955).

<sup>41</sup> See N.A.M., *op. cit. supra* note 40.

<sup>42</sup> For instance, 400 workers were reportedly fired by the New York Central Railroad because they resisted compulsory unionism. See Hartley, *Compulsory Unionism*, 12 HUMAN EVENTS No. 5 (Jan. 29, 1955). See also Coogan, *Election at Burroughs*, 86 AMERICA 309 (Dec. 15, 1951), wherein the author describes a recent election at the Burroughs Adding Machine Co., where, in a 95% turnout, the employees voted by a ratio of five to one against organizing into a union. See also the excerpts from communications from union members protesting compulsory unionism, contained in Appendix A to the statement of George W. Armstrong, Jr., before the Senate Committee on Labor and Public Welfare, March 26, 1953.

<sup>43</sup> See Encyclical *Quadragesimo Anno*, translated in PEGIS, *THE WISDOM OF CATHOLICISM* 715, 724-726 (1949) *passim*. See also RYAN AND BOLAND, *CATHOLIC PRINCIPLES OF POLITICS* 150, 151 (1950), quoting a statement by the Archbishops and Bishops of the Administrative Board of the National Catholic Welfare Conference.

cumstances affecting the common good.<sup>44</sup> This general subject has been recently illuminated in a statement by Pope Pius XII. In speaking of the burdens which today afflict the consciences of men, His Holiness employed the following language:

Again, access to employment or places of labor is made to depend on registration in certain parties or in organizations which deal with the distribution of employment.

Such discrimination is indicative of an inexact concept of the proper function of labor unions and their proper purpose, which is the protection of the interests of the salaried worker within modern society, which is becoming more and more anonymous and collectivist.

In fact, is not the essential purpose of unions the practical affirmation that man is the subject, and not the object of social relations?

Is it not to protect the individual against collective irresponsibility of anonymous proprietors? Is it not to represent the person of the worker against those who are inclined to consider him merely a productive agent with a certain price value?

How, therefore, can it be considered normal that the protection of the personal rights of the worker be more and more in the hands of an anonymous group, working through the agency of immense organizations which are of their very nature monopolies? The worker, thus wronged in the exercise of his personal rights, will surely find especially painful the oppression of his liberty and of his conscience, caught as he is in the wheels of a gigantic social machine.<sup>45</sup>

It is respectfully suggested that appropriate legislation to rectify the evils alluded to by His Holiness may properly take the form of the state enactments which are the subject of this note.<sup>46</sup>

It is sometimes contended that the union shop elevates wage levels, and that right-to-work laws therefore tend to lower the general standard of living.<sup>47</sup> This position is a consequence of the belief

<sup>44</sup> See editorial, 86 AMERICA 346 (Dec. 29, 1951). See also Encyclical *Quadragesimo Anno*, *supra* note 43, wherein Pope Pius XI emphasized that workers are "free to institute these unions," but did not indicate that they were obligated to institute them. Instead, His Holiness compared them to those municipal associations ". . . which various individuals are free to join or not. . . ." *Id.* at 744 (emphasis added).

<sup>45</sup> See the 1952 Christmas Eve Message of Pope Pius XII, reported in *The Tablet*, Jan. 3, 1953, p. 9, col. 2.

<sup>46</sup> For a recent discussion of the right-to-work laws in connection with Catholic principles, see Byrd, *A Laboring Man Looks at Labor*, *The Tablet*, March 19, 1955, p. 4, cols. 5-7. The author, a student of Catholic social and industrial relations for many years, therein indicates that such statutes are desirable in the light of recent Papal statements, including that quoted in the text. Other Catholic scholars, however, oppose right-to-work laws. See, e.g., Cronin, *Right-to-Work Laws Are Strongly Opposed*, *The Tablet*, March 19, 1955, p. 4, cols. 1-4. Father Cronin disapproves of such statutes on the ground that union-security contracts often conform to the moral principle that the common good must prevail over the interest of the individual. He concludes that the union shop is "a legitimate feature of union organization." *Id.* at col. 4.

<sup>47</sup> See C.I.O., *THE CASE AGAINST "RIGHT TO WORK" LAWS* 29-30.

that wage rates are dependent upon the power of labor unions to enforce their demands.<sup>48</sup> Actually, economists hold that union pressure, ordinarily, ". . . cannot be depended upon to raise the standard of living of the community as a whole, to increase the share of the national income going to union members, or to increase the average income of union members relative to the incomes of other members of the community."<sup>49</sup> This does not mean that unions serve no useful economic function, however. In specific instances they perform an important service for their members by assuring that they obtain the true market value of their labor, since the individual worker otherwise might, through ignorance, work for less than his labor is actually worth.<sup>50</sup> In addition, they have often been instrumental in compelling employers to establish wholesome working conditions for their employees.<sup>51</sup> However, it would not seem that a union shop is a necessary prerequisite to the successful performance of these functions.<sup>52</sup> While it would be outside the scope of this article to attempt an analysis of the effect of right-to-work laws on living standards in the states where they are in force, it would appear that in no event can they have any lasting depressive effect on wage levels in the American labor market as it is presently organized.

### *Conclusion*

The power which the Federal Government possesses in the field of labor relations is so extensive that some have regarded it as exclusive.<sup>53</sup> This immense authority is entirely drawn from the judicial construction which has been placed upon the constitutional grant of power to Congress,

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<sup>48</sup> See, e.g., Note, 28 IND. L.J. 355, 361 (1953) wherein this view is expressed.

<sup>49</sup> SLICHTER, *THE CHALLENGE OF INDUSTRIAL RELATIONS* 95 (1947). See that author's discussion of the effect of unions upon wage rates. *Id.* at 71-98. See also VON MISES, *HUMAN ACTION* 591, 763-773 (1949) wherein it is demonstrated that the determination of wage rates can ultimately only be achieved on the open market, and that unions cannot raise wages above the market rate for the country as a whole without causing unemployment. It is certainly not necessary that there be trade unions for wages to rise. For instance, wage scales advanced in the period 1820-1860, although unions were almost unknown. See U.S. DEP'T OF LABOR, *BRIEF HISTORY OF THE AMERICAN LABOR MOVEMENT* 7 (Bulletin No. 1000, 1950).

<sup>50</sup> See HAZLITT, *ECONOMICS IN ONE LESSON* 124-125 (Foundation for Economic Education ed. 1952).

<sup>51</sup> *Id.* at 134.

<sup>52</sup> The union could clearly disseminate information concerning wage rates even though not all the workers in a place of employment were union members. It is also difficult to see how it would be hampered in its effort to establish better working conditions by the fact that a few employees had not joined. In fact, their failure to join would seem to indicate that they did not feel particularly aggrieved at the prevailing conditions.

<sup>53</sup> See Cox and Seidman, *Federalism and Labor Relations*, 64 HARV. L. REV. 211, 212 (1950). This point of view has been warmly assailed. See Petro,

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.<sup>54</sup>

It is only in the past twenty years that Congress has asserted that the commerce clause empowered it to regulate the labor market. Until 1935, it had left employers and employees virtually to their own devices in compromising their differences, subject only to the rules laid down by the courts.<sup>55</sup> The passage of the Wagner Act<sup>56</sup> in that year signified a determination on the part of the Federal Government to intervene actively in labor matters. This meant, of course, that the states would lose much of their power to regulate in the field.<sup>57</sup> With the inclusion in the Taft-Hartley Law of Section 14(b), by which the states were allowed to pass laws regulating union security, it appeared that Congress had decided upon a partial return to the principle of state control of labor relations. In reality, however, no real shift of power has transpired, since the states are only permitted to legislate at the pleasure of Congress, which may repeal Section 14(b) whenever it chooses.

The phenomenal growth of the American trade union movement<sup>58</sup> has created those problems which necessarily attend any concentration of power. The possibility that trade unions will obtain a monopoly over the employment opportunities for millions of Americans has become so imminent that legislative recourse is necessary to insure the survival of competition in the labor market.<sup>59</sup> The Papal

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*Participation by the State in the Enforcement and Development of National Labor Policy*, 28 NOTRE DAME LAW. 1 (1952).

<sup>54</sup> U.S. CONST. Art. I, § 8.

<sup>55</sup> See Cox and Seidman, *supra* note 53, at 211. One important exception to the general laissez-faire policy of Congress in labor disputes was the enactment of the Railway Labor Act of 1926, 44 STAT. 577 (1926), 45 U.S.C. § 151 *et seq.* (1952). This Act was sustained as a proper exercise of the commerce power in *Texas & New Orleans R.R. v. Brotherhood of Railway & Steamship Clerks*, 281 U.S. 548 (1930).

<sup>56</sup> 49 STAT. 449 (1935). The Act was held constitutional in *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1 (1937).

<sup>57</sup> Initially, some states sought to assume jurisdiction in cases affecting interstate commerce where the National Labor Relations Board had not intervened. See Cox and Seidman, *supra* note 53, at 212. The Supreme Court rejected this approach, however, holding that the states were excluded from industries where the Board customarily exercises jurisdiction. *La Crosse Telephone Corp. v. Wisconsin Employment Relations Board*, 336 U.S. 18 (1949). See also *Bethlehem Steel Co. v. New York State Labor Relations Board*, 330 U.S. 767 (1947).

<sup>58</sup> Today there are some 140,000 collective bargaining agreements in force, covering some 17 million workers. Union-security clauses are found in 75% of these contracts. In recent years the Bureau of Labor Statistics has observed a tendency to include union-shop provisions, rather than the less strict maintenance of membership and bargaining agent clauses. See CCH, *UNION CONTRACT CLAUSES* 26 (1954).

<sup>59</sup> But see GREGORY, *LABOR AND THE LAW* 416-423 (1946), wherein the author denies the practical possibility of restricting unions, and foresees a possible end to the competitive economic system.

message previously quoted,<sup>60</sup> while asserting the morality of the proper activities of labor unions, was directed at monopolistic tendencies on the part of particular labor organizations. It would seem that practices presently engaged in by certain American labor unions come within this classification.<sup>61</sup> The right-to-work type of statute merits consideration as a step toward the elimination of abuses which are engendered by union-security agreements.<sup>62</sup> In addition, it represents a wholesome return to state control over labor relations, albeit this power is embodied in a retractable grant from Congress. As to the latter point, it is imperative that federal and state legislators should begin to envision the feasibility of a constitutional amendment which will insure that state legislation in the field of labor relations cannot be nullified by Congress. In the meanwhile, it is to be hoped that the New York State Legislature will take under advisement the question of whether or not a right-to-work law is desirable for the protection of non-union workers in this state.



## THE NEW YORK CITY COUNCIL—ITS AUTHORIZATION, OPERATIONS AND LIMITATIONS

### *Introduction*

Although the legal profession has admirably served the public on the national and state levels of government,<sup>1</sup> the recent *Survey*

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<sup>60</sup> See p. 263 *supra*.

<sup>61</sup> Thus, the Motion Picture Machine Operators frequently admit only sons or close relatives of members; the Brewers exclude new members unless jobs are available; and the Locomotive Firemen and the Boilermakers discriminate against negroes. See Summers, *Union Powers and Workers' Rights*, 49 MICH. L. REV. 805, 821 (1951). Some unions have the power to expel members for reasons not connected with union activity. See Summers, *Disciplinary Powers of Unions*, 3 IND. & L. REL. REV. 483, 492-493 (1950). In industries where union-security contracts predominate, expulsion may bar a worker from his trade. See Summers, *Disciplinary Procedures of Unions*, 4 IND. & L. REL. REV. 15, 28 (1950).

<sup>62</sup> See, e.g., Lawrence, N.Y. Herald Tribune, Feb. 4, 1955, p. 15, col. 1, wherein the author relates the recent action of a union leader in Pennsylvania who threatened 2,900 members with unemployment unless they registered to vote in a public election. If Pennsylvania had a right-to-work law, no such incident could have occurred.

<sup>1</sup> See BLAUSTEIN AND PORTER WITH DUNCAN, *THE AMERICAN LAWYER* 97-103 (1954).